



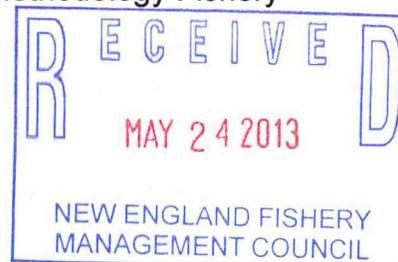
1350 Connecticut Ave. NW, 5th Floor
Washington, DC 20036 USA

+202.833.3900
oceana.org

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May 17, 2013

Doug Potts
Chair, Northeast Region Standardized Bycatch Reporting Methodology Fishery
Management Action Team
National Marine Fisheries Service
Northeast Regional Office
Great Republic Way
Gloucester, MA 01930



Re: Oceana Comments on Draft Standardized Bycatch Reporting Methodology

Dear Mr. Potts:

Oceana writes to follow up on the concerns we expressed to the New England Fishery Management Council in April about the draft Standardized Bycatch Reporting Methodology (SBRM) document that was presented to the New England and Mid-Atlantic Councils.¹ Because of the shortcomings that I identified to the New England Fishery Management Council in April comments, the Fishery Management Action Team (FMAT) must make significant changes to the document before presenting it to the Councils again in June for action.

As drafted, the document does not provide meaningful information to the Councils or the public about the impacts of the SBRM amendment on fisheries management in the northeast region. The proposed methodology also would not provide meaningful or useful information about bycatch in the region. Thus the current proposal would not satisfy the "primary purpose" of bycatch reporting and monitoring': to "collect information that can be used reliably as the basis for making sound fisheries management decisions."²

Oceana understands the agency's desire to fulfill its responsibility to make changes to the 2007 SBRM document to comply with the court order in *Oceana v. Locke*³. However, it is also the responsibility of the agency to produce an up-to-date document satisfying all applicable requirements of the Magnuson-Stevens Act that supports ongoing management of the fisheries of the region as well as a National Environmental Policy Act (NEPA) document that considers the impacts of the decision on the prosecution of the region's fisheries.

¹ Draft Standardized Bycatch Reporting Methodology Document, April, 2013
(<http://www.mafmc.org/s/DRAFT-SBRM-Amendment-Document-for-MAFMC-April-2013.pdf>)

² Id. pg. 3

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

cc: Council (5/24), CBI

Oceana submits the following specific comments on various sections of the document and looks forward to future FMAT discussions and development of these elements before the anticipated action at the June New England and Mid-Atlantic Fishery Management Council meetings.

- The information that forms the basis of the SBRM amendment must be updated to reflect the current fisheries of the region
- The SBRM must consider the data collection needs of managing a fishery using Annual Catch Limits and Accountability Measures as prescribed by the Magnuson Stevens Act
- The document must be updated to fully analyze and account for bias in sampling
- The use of “fisheries modes” must be reconsidered to provide information to manage fisheries
- The amendment must explicitly consider the recommendations of the 3-year SBRM review
- The “penultimate approach” to addressing budgetary shortfalls through removal of sampling strata is not appropriate for species protected by the Endangered Species Act or Marine Mammal Protection Action
- The Magnuson-Stevens Act prohibits the rejection of alternatives without explicit Council action to do so

The information included in the draft Standardized Bycatch Reporting Methodology is outdated and must be significantly updated

Oceana is encouraged that the FMAT has indicated that the dataset supporting the SBRM will be updated to include recent catch data before it is provided to the Councils for review and approval for public comment. The use of 2004 catch data to support a management action in 2013 is irrational and counter to the intent of National Standard 2 for the SBRM to be based on the best scientific information available. The agency has recent catch data and should use it to support this action.

In many cases the document fails to describe the current management or management needs of the fisheries. Examples of this include the lack of discussion of the management needs of the groundfish sector fishery, the scallop or tilefish Individual Fishing Quota (IFQ) programs, or the need to monitor Turtle Deflector Dredges (TDDs) separately from the traditional New Bedford dredges because of statistically different catch rates of some bycatch species.⁴

The SBRM must consider the data collection and reporting needs of Annual Catch Limit and Accountability Measure management in the region

Since 2011 all fisheries in the Northeast Region have been required to use ACLs and AMs to control mortality and end overfishing. During the development of the original SBRM Oceana raised a concern that the SBRM should plan for data collection and

⁴ Scallop FW23, page 146-147

reporting needs to support this new management tool. The agency shielded itself from these important considerations in the SBRM rulemaking under the assertion that ACLs and AMs were future actions in which the SBRM could not anticipate.

The SBRM is intended to collect information about the bycatch of each of the fisheries of the Northeast Region to support assessment and management for these fisheries. The draft document is correct in its assertion that “the 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.”⁵ However, the document then fails to consider the “appropriate operational level” for each fishery.

ACLs and AMs are now the status quo for all fisheries and this important issue must be fully explored in the SBRM including the effect of the 30% CV on the ability of the agency to administer the requirements of the Magnuson Stevens Act. The SBRM must ensure that the data collection needs of ACL(and sub-ACL)/AM management are addressed on a fishery-by-fishery basis with a discussion of the effects of the SBRM data collection program on the setting of ACLs and sub-ACLs and the scientific and management uncertainty buffers employed by each fishery. The effect of the SBRM on the administration of existing AMs must also be discussed.

Oceana agrees with the findings of the Standardized Bycatch Reporting Methodology 3-year review on this topic: “Ultimately, managers require estimates of discards by species for managed fisheries to determine if the discard component of ABC, ACL, and/or ACT has been exceeded to comply with the new annual catch limits and accountability measures of Magnuson-Stevens Act.”⁶

ACLs and AMs are the “appropriate operational level” of the fisheries of the region, except for the groundfish sectors, where sector Annual Catch Entitlements and AMs are the appropriate operational level. The current document ignores the clear need to address the monitoring needs to support ACL/AM (and ACE/AM) management and must be amended.

The SBRM must be updated to fully analyze and account for bias in sampling

When the discussion of bias in the current SBRM document is considered together with the agency analysis of sector monitoring needs for the 2013 fishing year,⁷ the discussion of bias appears irrational and inconsistent.

⁵ Standardized Bycatch Reporting Methodology Draft, page 9.

⁶ Standardized Bycatch Reporting Methodology 3-Year Review part 2 page 36

⁷ Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY2013

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

Specifically, the analysis done to support the 2013 sector fishery concludes ‘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.**⁸ This conclusion is based on analysis done by Chad Demarest from the Northeast Fishery Science Center that looked at the behavior of similar vessels between eight fishing performance metrics (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). Mr. Demarest further clarifies 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.’⁹

Bias is clearly affecting the catch sampling in the Multispecies fishery.

These findings are dramatically different than the conclusions reached on bias in the draft SBRM that found, ‘these results indicate that observer trips are generally similar to FVTR trips **and there are no bias issues evident.**¹⁰

Oceana has encouraged the Council and the agency to fully consider bias when establishing the SBRM since the beginning of the original Standardized Bycatch Reporting Methodology. Oceana continues to have concerns with the treatment of bias by the agency. The conflicting findings of the two agency analyses discussed above support this concern and Oceana encourages the FMAT to enhance its discussion of bias to ensure that bias is accounted for in its sampling design and that the discard data produced by the SBRM is accurate as well as precise.

The use of fisheries modes must be reconsidered to provide information to manage fisheries-

Oceana continues to oppose the use of the fishery mode as the basis of SBRM reporting because the resultant data is of little use to fisheries managers or scientists in identifying bycatch problems or developing solutions to these problems. This is caused by an inappropriate reporting stratification by gear type and home port and not Fishery Management Plan or fishing gear. As the SBRM describes the issue, ‘In some cases, a fishing mode may represent only one FMP, which itself is limited to only one fishing mode (the crab pot/trap fishery and the Deep-Sea Red Crab FMP is an example). In most other cases, however, each fishing mode incorporates subset fisheries managed under multiple FMPs, such as the New England gillnet mode, which includes subset fisheries managed under the Northeast Multispecies, Monkfish, and Northeast Skate FMP...’

⁸ Summary of Analyses Conducted to Determine At-Sea Monitoring Requirements for Multispecies Sectors FY2013, Page 21.

⁹ Id

¹⁰ Standardized Bycatch Reporting Methodology Draft Page 158

Although the fishery mode approach may be useful for the design and deployment of an observer program, it is of little use to managers since the current SBRM reporting provides no way for fisheries managers to parse discard data to determine the cause of bycatch even when it is reported in the SBRM Annual Report.

For example in 2011 a significant catch of southern New England windowpane flounder was discovered outside of the Multispecies fishery. When managers tried to determine the cause of this catch and assign management responsibility they could not use the data collected by the SBRM to forensically tie this catch to a particular fishery¹¹. Instead the Council had to develop a generic 'other fisheries' sub-ACL as their only management response in Framework 48 to control catch. Lack of fine-scale catch data forced the Council to use a crude tool when a fine data would have allowed a surgical response.

The MSA requires all FMPs to be accountable, liable and responsible for their catches¹². Oceana understands the reporting difficulties presented by vessels that carry multiple permits issued under various FMPs. However, NMFS is the agency that issues, coordinates and tracks these permits and the FMPs of the region. NMFS must be able to collect and manage useful information to support management and should let the management needs of the fisheries guide the design of the SBRM.

Addressing bycatch requires accurate and precise catch data reported at the fishery level by gear and area fished.

The recommendations of the 3-year Standardized Bycatch Reporting Methodology Review must be explicitly addressed in the draft document

In November 2011 the Councils received the results of the 3-year review of the Standardized Bycatch Reporting Methodology including a list of recommended changes for the next SBRM¹³. This advice is provided by the scientific and technical experts who completed the review and forms part of the best scientific information available on the SBRM.

Therefore, the advice must be explicitly considered in the upcoming draft. Failing to address these issues is irrational and contrary to the scientific advice provided by the review team.

Consideration of protected resources in 'penultimate approach'

¹¹ See New England Fishery Management Council Multispecies Plan Development Team Meeting 10/31/12 and Multispecies Oversight Committee meeting, November 5, 2012

¹² *Flaherty v. Bryson*, 2012 WL 752323 (D.D.C. Mar. 9, 2012) at 58.

¹³ See presentation of Paul Rago to the New England Fishery Management Council, November 2011.

http://www.nefmc.org/press/council_discussion_docs/Nov%202011/Weds,%20SBRM%20Disc_2_SBRM%20Presentation_Paul%20Rago.pdf. Slides 23-27.

The so-called penultimate approach will remove the species/mode combinations with the greatest need for observer coverage until available resources match the projected observer needs. It is unclear from a careful review of the SBRM draft how this approach to reconciling operating constraints will treat protected species such as sea turtles. This approach needs to be more clearly articulated in the document along with a discussion of the ongoing management and monitoring needs of the 11 fisheries that are operating under Biological Opinions and Incidental Take Statements as well as the Atlantic Large Whale Take Reduction Plan¹⁴. Since management action is required if set limits are exceeded (e.g. an Incidental Take Statement), the impact of reduced monitoring under the penultimate approach must be thoroughly discussed.

Oceana suggests that due to the relatively rare nature of protected resource bycatch and the threatened status of these species that the FMAT include a sub-option in the penultimate approach that treats protected species differently from fish species and does not remove coverage of these species combinations through the penultimate approach.

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The considered but rejected alternatives were removed prematurely without consideration by the Council –

The draft SBRM presented to the Councils included a range of items that are grouped as ‘considered but rejected.’ Oceana has reviewed the actions of the New England Fishery Management Council during the development of the current Standardized Bycatch Reporting Methodology and cannot find an action where the Council rejected these options. The general endorsement of the work of the FMAT in September 2012 certainly does not count as rejecting specific options.

Without a NEPA scoping process and Council action to define the breadth of the amendment, removing these alternatives is inappropriate, irrational and counter to the intent of the MSA for Councils to develop management actions for agency review and approval and the intent of NEPA for reasonable and feasible alternatives to be considered.

Barring the development of a Secretarial Action to implement a new Standardized Bycatch Reporting Methodology, it is the responsibility of the Council to remove alternatives from consideration for management actions. Even if the Council did remove an alternative from management consideration, it might remain necessary to analyze the comparative impacts of the alternative under NEPA as a reasonable and feasible alternative to the Council’s proposal.

¹⁴ See Summary of NE Region Endangered Species Act Section 7 Program at: <http://www.nero.noaa.gov/protected/section7/bo/actbo.html> and Marine Mammal Fisheries Interactions at: <http://www.nero.noaa.gov/Protected/mmp/>

These considerations are all the more true for those alternatives that were recommended for development and consideration in the amendment by the 3-year review such as the inclusion of additional species in the sampling and reporting design.

Conclusion-

The Standardized Bycatch Reporting Methodology is critically important for fisheries management under Annual Catch Limits and Accountability Measures. Without accurate and precise information about discards the agency and Councils cannot effectively administer limits catch and ensure the accountability that is required by the MSA. The FMAT and council should make the following changes to the draft document before presenting it for review and approval by the Councils.

1. Update all analyses to be based on the most recent fishing year and the gears used in that year.
2. Redesign the sampling program to allow discards to be attributed to respective FMPs and gears rather than generic gear modes
3. Fully consider the effect of the SBRM on the administration of the ACLs and AMs for the range of affected fisheries
4. Expand the discussion of bias in the document and develop alternatives to minimize bias and correct for it where it occurs.
5. Include an alternative to exempt protected species from the "penultimate approach.
6. Fully consider reasonable and feasible alternatives including alternatives suggested by the 3-year review.

The development and administration of the SBRM is a complex task that is important to the ongoing management and success of the region's fisheries. The effects of insufficient or biased sampling are potentially significant and threaten to undermine the work of the Councils and the agency. Every effort should be made to improve the SBRM amendment before moving it forward to the Councils.

Thank you for considering these comments,



Gib Brogan
Oceana
Wayland, MA

Cc: John Bullard, Rip Cunningham, Rick Robins, Gene Martin