

Draft Discussion Document

Industry-Funded Monitoring Omnibus Amendment

**New England Fishery Management Council
Observer Oversight Committee Meeting
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Prepared by NOAA's National Marine Fisheries Service

1.0 INTRODUCTION AND BACKGROUND

The New England and Mid-Atlantic Councils are interested in increasing monitoring and/or other types of data collection in some fishery management plans (FMPs) to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring would be above and beyond coverage required through the Standardized Bycatch Reporting Methodology (SBRM), the Endangered Species Act (ESA) or Marine Mammal Protection Act (MMPA). The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between the National Marine Fisheries Service (NMFS) and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically Atlantic Herring Amendment 5, Atlantic Mackerel Amendment 14, and Northeast (NE) Multispecies Framework Adjustment 48. The Councils have initiated this omnibus amendment to remedy the disapprovals of these actions and to reconsider new monitoring requirements for the Atlantic herring and mackerel fisheries. This amendment considers mechanisms that could facilitate the use of industry funding to increase monitoring, but it cannot resolve the underlying issue of limited Federal funding.

The Anti-Deficiency Act (ADA) prohibits augmenting or improperly shifting congressional appropriations, and a criminal prohibition restricts supplementing government employee salaries. These provisions tightly control government funding and services. The basic funding principle is that congressional appropriations establish a maximum authorized program level that cannot be exceeded without specific statutory authorization, and any monitoring or observer funding must comply with these restrictions. When Congress appropriates money for observer coverage, NMFS cannot obligate funding for a monitoring program if the total costs to fund that program and existing monitoring programs exceeds its appropriations for that purpose.

Consequently, NMFS cannot approve monitoring levels for which there is potentially insufficient funding because NMFS cannot spend funds on contracts that are not provided for in its appropriations. Also, insufficiently funded monitoring coverage would result in coverage levels that would not meet the FMP's goals and objectives. NMFS also cannot commit to pay for costs that do not fall under its legal obligations to pay for government services. NMFS has interpreted this to mean that it can only be obligated to pay for its infrastructure costs to support industry-funded programs and cannot commit to pay for any costs generated from sampling activities for these programs. This standard was applied to the monitoring cost provisions recently proposed in the Herring, Mackerel, and NE Multispecies FMPs and resulted in the disapproval of those measures.

NMFS Greater Atlantic Regional Fisheries Office (GARFO) and Northeast Fisheries Science Center (NEFSC) receive certain line items and set amount of funds in those line items to fund its infrastructure costs for monitoring programs. NMFS cannot shift funds appropriated for another purpose to pay for new monitoring programs, without congressional authorization. Additionally, monitoring coverage levels for the NE Multispecies and Atlantic Sea Scallop FMPs

are specified through existing processes that do not allow for coverage levels to fluctuate based upon NMFS funding, so NMFS must fully fund its infrastructure costs for monitoring in those fisheries. Monitoring in the groundfish fishery is required to meet a 30% coefficient of variation. While NMFS has paid for both infrastructure and sampling costs in past years, the groundfish fleet is required to cover the sampling costs if NMFS does not cover those costs. Observer coverage in the scallop fishery is based on SBRM and ESA requirements and sampling costs are funded by a 1% harvest set-aside. NMFS cannot reduce coverage in NE multispecies or scallop fisheries in order to increase coverage in another FMP. Thus, “available Federal funding” refers to any funds in excess of those allocated to meet SBRM or other existing monitoring requirements. However, this amendment could apply to the NE multispecies and scallop fisheries to the extent that the Council desires coverage above levels currently set by those FMPs.

The Miscellaneous Receipts Statute requires Federal employees to deposit any money received on behalf of the government into the general Treasury, unless otherwise directed by law. This means that if NMFS could accept funds from the industry, NMFS would be required to direct those funds to the Treasury and would not be able to reserve them to pay for monitoring in the Northeast. The Alaska Region has special authorization in the Magnuson-Stevens Act (MSA) to collect fees from the industry and to put these fees into a fund to be used to defray the costs of monitoring in that region (Section 313). The NMFS Northeast Region does not have any such authority, except for cost recovery for Limited Access Privilege Programs (LAPPs).

Given these constraints, a joint New England and Mid-Atlantic Fishery Management Council Industry-Funded Monitoring Plan Development Team/Fishery Management Action Team (PDT/FMAT) has been tasked with developing alternatives for the omnibus amendment that would allow NMFS to approve the Councils’ future proposals for new monitoring programs while meeting the legal requirements outlined above.

The PDT/FMAT used the following criteria in developing the alternatives outlined in this document. The alternatives must allow NMFS to approve new monitoring programs **without**:

- Obligating itself to pay for any costs beyond its appropriations;
- Obligating itself to redirect appropriations designated for another purpose;
- Obligating itself to pay for costs it is not required to by law; and/or
- Requiring itself to accept funds from the fishing industry or other entity in order to meet its obligations.

Additionally, the PDT/FMAT developed the concept of monitoring *coverage targets*, rather than *mandatory coverage levels*, for industry-funded monitoring to achieve on an annual basis to meet certain FMP objectives. The realized coverage level in a given year would be determined by the amount of funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the fishery in a given year (above and beyond SBRM) would fall somewhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new

industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this industry-funded omnibus amendment WOULD NOT automatically allow for higher coverage levels in NE fisheries. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in NE fisheries when Federal funding is available. Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage, even if industry is able to fully fund their cost responsibilities.

1.1 PURPOSE AND NEED FOR ACTION

The purpose of this action is to consider measures that would allow the Councils to implement industry-funded monitoring coverage in New England and Mid-Atlantic FMPs. This amendment would allow industry funding to be used in conjunction with available Federal funding to pay for additional monitoring to meet FMP-specific coverage targets. This amendment also considers (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, (3) standard administrative requirements for industry-funded monitoring service providers, and (4) process to prioritize available Federal funding for industry-funded monitoring across FMPs. Additionally, this amendment considers monitoring coverage targets for the Atlantic Herring FMP and the Atlantic Mackerel, Squid, Butterfish (MSB) FMP, which are anticipated to enhance the monitoring of at-sea catch of herring, mackerel, river herring, shad, haddock, and other species harvested in the herring and mackerel fisheries. This amendment is being done as an omnibus to ensure consistency for industry-funded monitoring programs across New England and Mid-Atlantic FMPs.

2.0 MANAGEMENT ALTERNATIVES

The PDT/FMAT for this amendment has developed a range of management alternatives for the Councils to consider. These alternatives include the following:

- Standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry;
- A process by which NMFS and/or the Councils would prioritize available Federal funding for industry-funded monitoring across FMPs, when Federal funding is not sufficient to meet all coverage targets;
- A process by which industry-funded monitoring programs (e.g., at-sea monitoring, dockside monitoring, electronic monitoring) can be implemented via framework adjustment in each FMP;

- Standards for industry-funded monitoring service providers (e.g., for dockside monitoring, at-sea monitoring, electronic monitoring); and
- Monitoring coverage targets or requirements for certain permit categories and/or gear types for the herring and mackerel fisheries.

2.1 OMNIBUS ALTERNATIVES

The following alternatives consider provisions that would apply to all New England and Mid-Atlantic FMPs, including (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, (3) standard administrative requirements for industry-funded monitoring service providers, and (4) process to prioritize available Federal funding for industry-funded monitoring across FMPs.

2.1.1 Omnibus Alternative 1: No Industry-funded Monitoring Programs (No Action)

Under Omnibus Alternative 1 (No Action), there would be no standard definition of costs and cost responsibility for industry-funded monitoring in the New England and Mid-Atlantic fisheries. Cost definitions and the determination of who pays for them would be considered individually by each FMP as industry-funded monitoring programs are developed. Under Omnibus Alternative 1, there would be no process to prioritize available Federal funding to meet Council desired monitoring coverage target above and beyond the SBRM and no standard administrative requirements for industry-funded monitoring service providers. The allocation of available Federal funding to increase monitoring to meet Council desired coverage levels and observer service provider requirements for industry-funded monitoring would be evaluated on an FMP-by-FMP basis. Additionally, under Omnibus Alternative 1, there would be no framework adjustment process to implement FMP-specific industry-funded monitoring. Rather, industry-funded monitoring programs would be developed and established in FMP-specific amendments.

2.1.2 Omnibus Alternative 2: Industry-funded Monitoring Programs

Under Omnibus Alternative 2, there would be an industry-funded monitoring program that would apply to all New England and Mid-Atlantic FMPs. This industry-funded monitoring program would include the following components: (1) standard cost responsibilities associated with industry-funded monitoring for NMFS and the fishing industry, (2) process for FMP-specific industry-funded monitoring to be implemented via a future framework adjustment action, and (3) standard administrative requirements for industry-funded monitoring service providers. Additionally, Omnibus Alternative 2 would include a range of option for the process to prioritize available Federal funding for industry-funded monitoring across FMPs.

Standard Cost Responsibilities

Omnibus Alternative 2 would include standard cost responsibilities between NMFS and the industry for supporting monitoring programs targeting coverage above and beyond SBRM. Because there are legal requirements that dictate cost responsibilities, as described in the Introduction, certain costs must be borne by NMFS. These cost responsibilities would be codified into regulation for industry-funded monitoring in New England and Mid-Atlantic FMPs. If Omnibus Alternative 2 was not selected by the Councils, cost responsibilities for industry-funded monitoring would be codified on an FMP-by-FMP basis.

The cost responsibilities described below would be considered by the Councils when developing any industry-funded monitoring program for New England and Mid-Atlantic FMP in future actions. The cost responsibilities described below are already in operation in the Atlantic Sea Scallop and NE Multispecies FMPs, although the cost responsibilities are not explicitly defined in those FMPs. Selection of the Omnibus Alternative 2 would codify the industry-funded monitoring cost responsibilities in regulation for all New England and Mid-Atlantic FMPs, but it would not change industry-funded monitoring in the scallop or multispecies fisheries.

NMFS Cost Responsibilities

NMFS would be responsible for funding the costs to set standards for, monitor performance of, and support industry-funded monitoring programs. These program elements would include:

- The labor and facilities costs associated training and debriefing of monitors
- Certification of monitoring providers and individual monitors
- Developing and executing vessel selection
- Data processing
- Costs associated with liaison activities between service providers and NMFS

Industry Cost Responsibilities

The industry would be responsible for funding all other costs of the monitoring program. These program elements and activities would include, but are not limited to:

- Costs to the provider for deployments and sampling (e.g., travel and salary for observer deployments and debriefing)
- Equipment, as specified by NMFS, to the extent not provided by NMFS
- Costs to the provider for observer time and travel to a scheduled deployment that doesn't sail and was not canceled by the vessel prior to the sail time.
- Provider overhead and project management costs (e.g., facility costs, training)
- Other costs of the provider to meet performance standards laid out by a fishery management plan

NMFS costs to support industry-funded monitoring must be fully funded. The industry would be responsible for its cost responsibilities, unless it was determined that Federal funds were also available to offset industry cost responsibilities. The administrative mechanism by which

industry cost responsibilities could be offset using available Federal funding is being developed by NMFS separately and can be used in conjunction with Omnibus Alternative 2.

Framework Adjustment Process

Omnibus Alternative 2 would include the ability for Councils to implement industry-funded monitoring programs, including at-sea monitoring, dockside monitoring, or electronic monitoring, through framework adjustments to the relevant FMP. If Omnibus Alternative 2 was not selected by the Councils, a full FMP amendment would be required to implement industry-funded monitoring programs for all New England and Mid-Atlantic fisheries, excluding existing industry funded monitoring programs in the Scallop and Multispecies FMP and any program developed in this action for the Herring or MSB FMPs.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, would be specified and/or modified in a subsequent framework adjustment to the relevant FMP. These details may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional National Environmental Policy Act (NEPA) analysis would be required for any subsequent FMP framework adjustment action implementing and/or modifying industry-funded monitoring programs.

Omnibus Alternative 2 contains a framework adjustment component for the known types of monitoring that are available for NE fisheries. At-sea monitoring focuses data collection at sea, recording the type and quantity of retained and/or discarded catch. Dockside monitoring focuses data collection at the dock, accounting for landings of target species and incidental catch. If all fish caught are retained and landed, dockside monitoring can also record type and quantity of total catch. Electronic monitoring uses video cameras and other sensors to monitor discards at sea or to monitor compliance with full retention requirements or other at-sea requirements. Depending on the information needs for a given fishery, a dockside and/or electronic monitoring program could be used in addition to at-sea monitoring to provide more complete catch monitoring, or to reduce the overall monitoring costs for a given fishery (if dockside or electronic monitoring can be administered at a lower cost).

Monitoring Service Providers

Omnibus Alternative 2 would include standard administrative requirements for industry-funded monitoring service providers. If Omnibus Alternative 2 was not selected by the Councils, service provider requirements for industry-funded monitoring programs would be developed and implemented in individual FMPs.

The SBRM Omnibus Amendment, if approved, would modify the scallop industry-funded observer service provider requirements (at 50 CFR 648.11(h) and (i)) to apply to all New England and Mid-Atlantic FMPs as of April 2015. Specifically, the SBRM Amendment would authorize at-sea observer service provider approval and certification for all applicable fisheries, should a Council develop and implement a requirement or option for an industry-funded observer program in other fisheries beside scallops. However, the SBRM Amendment does not address service provider requirements for other types of industry-funded monitoring programs.

The Omnibus Alternative 2 would include an approval and certification process for dockside and electronic monitoring service providers for all New England and Mid-Atlantic FMPs. The monitoring service provider approval and certification process would be based on the current process in place for the scallop fishery and would be developed in the coming months. The selection of Omnibus Alternative 2 would not implement any dockside or electronic monitoring programs, but would only implement a process to approve and certify dockside and electronic monitoring service providers. In the future, if the Councils implement any industry-funded dockside or electronic monitoring programs through a future action, the process to develop those monitoring programs would be streamlined.

Prioritization Process

The Omnibus Alternative 2 also includes prioritization options to allocate available Federal funding towards industry-funded monitoring. When Federal funding is not sufficient to cover NMFS cost responsibilities to achieve target coverage levels (above and beyond SBRM) across FMPs, Omnibus Alternative 2 includes different prioritization processes to allocate available Federal funding towards industry-funded monitoring. Alternatives 2.1 and 2.2 provide the Councils and NMFS with more discretion to make trade-offs between FMPs, but also require more analysis and resources. The primary difference between these two alternatives is who (NMFS or Councils) would lead the prioritization process and analysis. Alternatives 2.3 – 2.5 use formulaic approaches, eliminating much of the discretion and analytical burden of Alternatives 2.1 and 2.2. However, these formulaic approaches in Alternatives 2.3 - 2.5 may reduce the effectiveness of the resulting outcome. If Omnibus Alternative 2 was not selected by the Councils, available Federal funding would be allocated toward industry-funded monitoring on an FMP-by-FMP basis.

Due to legal and budgetary constraints described in the Introduction, NMFS cannot approve and implement monitoring requirements for which it does not have the Federal funding to cover NMFS cost responsibilities. Omnibus Alternative 2 includes a prioritization process to allocate available Federal funding across FMPs to cover NMFS cost responsibilities for coverage targets above and beyond SBRM and independent from ESA and MMPA requirements.

When target monitoring coverage levels exist for multiple FMPs, the Councils and NMFS must decide how to allocate available Federal funding available across FMPs. Available Federal funding refers to any funds in excess of those allocated to meet SBRM or other existing

monitoring requirements. The allocation of available Federal funding to cover NMFS cost responsibilities would determine which FMPs had additional monitoring for a given year and which would not. Under all of the options described below, the industry would be responsible for covering its cost responsibilities, unless it was determined that Federal funds were also available to be used to offset industry cost responsibilities.

2.1.2.1 Omnibus Alternative 2.1: NMFS-led Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.1, the Regional Administrator and Science and Research Director would determine, in consultation with the Councils, how to allocate NMFS available resources to support NMFS cost responsibilities required to achieve coverage targets for industry-funded monitoring coverage. After those costs are funded, NMFS would also determine, in consultation with the Councils, the allocation of any remaining funding available to offset industry costs established in this amendment for the Herring and MSB FMPs and other FMP actions. The costs would be defined as described by Omnibus Alternative 2. Funding for SBRM, ESA, and MMPA observer coverage would not be changed by this measure. Any funding for industry-funded monitoring programs would be allocated separate from any funding for SBRM or other statutory requirements and any coverage would be above and beyond coverage for SBRM or other statutory requirements.

The prioritization process would have the following steps:

- 1) NMFS would develop a proposed allocation of Federal resources across FMPs with industry-funded monitoring programs. If available funding in a given year is sufficient, this distribution would be based on the allocation necessary to fully implement the industry-funded monitoring coverage targets specified in each FMP. If available funding is not sufficient to fully fund all industry-funded monitoring programs, then NMFS would recommend an allocation of resources across FMPs that would include:
 - The total amount of funding and seadays necessary to meet the coverage targets specified by each FMP if each FMP were fully funded, including each FMP's share of the total;
 - The coverage level for each FMP if each FMP maintains its percentage share of the total funding (e.g., a fishery with a bigger proportion of the total funding would absorb a bigger proportion of the shortfall);
 - The coverage levels that incorporate the recommended prioritization; and
 - The rationale for the recommended prioritization.

NMFS' recommendation would be based upon a consideration of:

- Any restrictions on the appropriations;
- Funding necessary to meet mandatory coverage levels or standards in any FMPs or other legal mandates (i.e., required sector at-sea monitoring coverage in the NE multispecies fishery);

- Objectives of the individual industry-funded monitoring programs established by FMPs;
- The statistical basis for the FMP coverage target, including an evaluation of the basis for the coverage target (i.e., why the specified coverage level is necessary);
- Coverage already available in a fishery from other sources (e.g., if SBRM coverage in a given year provides sufficient information, additional industry-funded monitoring coverage may not be necessary);
- The extent to which proposed coverage or combinations of coverage would benefit management of fisheries or fleet types operating under multiple FMPs;
- The cost of coverage in each fishery, including the marginal cost and benefit of different coverage levels;
- Available funding to offset industry costs;
- Data needs of upcoming fishery management actions;
- Status of the stock of interest (i.e., coverage of a stock in poor condition would be prioritized over coverage of a stock in better condition);
- Risk to management based on fishery performance (e.g., a stock for which the quota is consistently under harvested is unlikely to face the same management risk as one with a constraining quota);
- The minimum level of coverage defined in the FMP that would provide sufficient information to meet the FMP's objectives for additional monitoring; and
- Any other criteria identified by NMFS and/or the Councils.

Some of the information above would be defined or analyzed in the original FMP action that created the industry-funded monitoring program. NMFS would first look to the original FMP action for information and update or supplement this information as necessary.

- 2) At the Spring Northeast Region Coordinating Council (NRCC) meeting, NMFS and the Councils would review NMFS's proposed allocation of funding and recommend any modifications to the prioritization.
- 3) Following this discussion, NMFS would provide the Councils, at the earliest practicable opportunity: (1) The estimated industry-funded monitoring coverage levels that incorporate the recommended prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including the reason for any deviation from the NRCC's recommendations. The Councils may recommend revisions and additional considerations to be made by the Regional Administrator and Science and Research Director.

The process is outlined above as an annual process. However, an annual process could be time intensive and strain Council and NMFS resources. The prioritization process could be in effect for longer than one year by remaining as specified until revised.

The Councils may choose to form a joint committee or hold a joint Council meeting instead of using the NRCC as the forum for the prioritization process.

Step 3 allows the Councils and NMFS to discuss any final revisions to the distribution, which might be necessary if the final budget is not known at the time of initial prioritization and is less than expected.

2.1.2.2 Omnibus Alternative 2.2: Council-led Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.2, the Regional Administrator and Science and Research Director would inform the Councils of NMFS's available funding to achieve coverage targets for industry-funded monitoring coverage, including supporting NMFS's infrastructure costs and/or any offset of industry costs established in this amendment for the Herring and MSB FMPs and other FMP actions. If available funding in a given year is sufficient, this distribution would be based on the allocation necessary to fully implement the industry-funded monitoring coverage targets specified in each FMP. If available funding is not sufficient, the Councils would determine the best allocation of available funding across FMPs with industry-funded monitoring programs to meet regional priorities and make recommendations to NMFS. NMFS and industry's costs would be defined as described by Omnibus Alternative 2. Funding for SBRM, ESA, and MMPA observer coverage would not be changed by this measure.

The prioritization process would have the following steps:

- 1) If available funding is not sufficient to fully fund all industry-funded monitoring programs, the Councils would form a PDT/FMAT to help develop a proposed allocation of resources across FMPs with industry-funded monitoring programs that would include:
 - The total amount of funding and seadays necessary to meet the coverage targets specified by each FMP if each FMP were fully funded, including each FMP's share of the total;
 - The coverage level for each FMP if each FMP maintains its percentage share of the total funding (e.g., e.g., a fishery with a bigger proportion of the total funding would absorb a bigger proportion of the shortfall);
 - The coverage levels that incorporate the recommended prioritization; and
 - The rationale for the recommended prioritization.

The PDT/FMAT's recommendation would be based upon a consideration of:

- Any restrictions on the appropriations;
- Funding necessary to meet mandatory coverage levels or standards in any FMPs or other legal mandates (i.e., required sector at-sea monitoring coverage in the NE multispecies fishery);

- Objectives of the individual industry-funded monitoring programs established by FMPs;
- The statistical basis for the FMP coverage target, including an evaluation of the basis for the coverage target (i.e., why the specified coverage level is necessary);
- Coverage already available in a fishery from other sources (e.g., if SBRM coverage in a given year provides sufficient information, additional industry-funded monitoring coverage may not be necessary);
- The extent to which proposed coverage or combinations of coverage would benefit management of fisheries or fleet types operating under multiple FMPs;
- The cost of coverage in each fishery, including the marginal cost and benefit of different coverage levels;
- Available funding to offset industry costs;
- Data needs of upcoming fishery management actions;
- Status of the stock of interest (i.e., coverage of a stock in poor condition would be prioritized over coverage of a stock in better condition);
- Risk to management based on fishery performance (e.g., a stock for which the quota is consistently under harvested is unlikely to face the same management risk as one with a constraining quota);
- The minimum level of coverage defined in the FMP that would provide sufficient information to meet the FMP's objectives for additional monitoring; and
- Any other criteria identified by NMFS and/or the Councils.

Some of the information above would be defined or analyzed in the original FMP action that created the industry-funded monitoring program. The PDT/FMAT would first look to the original FMP action for information and update or supplement this information as necessary.

- 2) At the Spring NRCC meeting, NMFS and the Councils would review the PDT/FMAT's proposed allocation of funding for NMFS's infrastructure costs and offsets for industry costs. The NRCC would make any modifications and recommend a prioritization to NMFS.
- 3) NMFS would provide the Councils, at the earliest practicable opportunity: (1) The estimated industry-funded monitoring coverage levels that incorporate the recommended prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including the reason for any deviation from the NRCC's recommendations. The Councils may recommend revisions and additional considerations to be made by the Regional Administrator and Science and Research Director.

Again, the process outlined above could be annual or the allocation of resources could remain as specified unless revised.

2.1.2.3 Omnibus Alternative 2.3: Proportional Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.3, the amount of Federal funding available to support industry-funded monitoring in each FMP would be reduced by the same percentage as the funding shortfall. If the available Federal funding falls short, the amount of the shortfall would be deducted from the total amount of funding to be allocated to each FMP, proportional to that FMP's share of the total funding need. For example, an FMP that represents 20% of the total funding need would absorb 20% of the total funding shortfall.

There could be a scenario where the available Federal funding for a given FMP would produce a coverage level below the coverage target defined by the FMP as providing sufficient information to meet an FMP's objectives for monitoring. For example, an additional 10 observed trips may provide additional data, but not sufficient data to provide a robust estimate of bycatch of the species of interest. In this case, that FMP would not receive additional coverage and the funding for that FMP would be re-allocated proportionally to other FMPs.

NMFS would determine and provide the Councils with: (1) The estimated industry-funded monitoring coverage levels that incorporates the proportional adjustments, based on available funding; and (2) the rationale for the recommended prioritization, including how it deviates from the fully funded coverage levels across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs \$3 million, FMP 2 needs \$5 million, and FMP 3 needs \$2 million to fully implement their coverage targets. The total funding need is \$10 million, with FMP 1 needing 30%, FMP 2 50%, and FMP 3 20% of the total. If there is only \$8 million in Federal funds for the coming year, then there is a \$2 million shortfall. Using the proportional prioritization process, NMFS would allocate the \$8 million such that each FMP maintains its share of the total. FMP 1 would get 30% of \$8 million, or \$2.4 million, FMP 2 would get 50% of \$8 million, or \$4 million, and FMP 3 would get 20% of \$8 million, or \$1.6 million. These would be the total funds available to the FMPs to fund NMFS's costs for coverage days above SBRM.

2.1.2.4 Omnibus Alternative 2.4: Cost-based Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.4, the Federal funding would be assigned to each FMP by sequentially eliminating coverage in FMPs that have the highest funding need until the available funding is sufficient to meet the funding needs of the FMPs remaining. This process would prioritize fisheries with the least expensive programs first. NMFS would determine and provide the Councils with: (1) The estimated industry-funded monitoring coverage levels that incorporates the prioritization, based on available funding; and (2) the rationale for the

recommended prioritization, including how it deviates from the fully-funded coverage target across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs \$3 million, FMP 2 needs \$5 million, and FMP 3 needs \$2 million to fully implement their coverage targets. The total funding need is \$10 million, with FMP 1 needing 30%, FMP 2 50%, and FMP 3 20% of the total. If there is only \$8 million in Federal funds for the coming year, then there is a \$2 million shortfall. Under the cost-based prioritization approach, NMFS would eliminate the FMP with the highest cost first, FMP 2. Because total funding need of the remaining programs, \$5 million, is less than the available Federal funds, \$8 million, coverage for FMP 1 and FMP 3 would be fully funded. FMP 2 would receive no additional coverage. This leaves \$3 million in unused Federal funds, or this amount could be put toward achieving some coverage for FMP 2.

2.1.2.5 Omnibus Alternative 2.5: Coverage Ratio-based Prioritization Process for Industry-funded Monitoring Programs

Under Omnibus Alternative 2.5, the amount of funding would be allocated to each FMP by prioritizing coverage in fisheries that have the lowest coverage needs (based on projections for the coming year) relative to effort (based on vessel trip reports from the previous year). In practice, this would mean that fisheries with the highest ratio of coverage to effort would be sequentially eliminated until the available Federal funding is sufficient to meet the coverage targets of the remaining FMPs. NMFS would determine and provide the Councils with: (1) the estimated industry-funded monitoring coverage levels that incorporate the prioritization, based on available funding; and (2) the rationale for the recommended prioritization, including how it deviates from the fully funded coverage levels across all FMPs. This could be done on an annual basis or the allocation of resources could remain as specified unless revised.

Example FMP 1 needs \$3 million, FMP 2 needs \$5 million, and FMP 3 needs \$2 million to fully implement their coverage targets. The total funding needed is \$10 million, but there is only \$8 million in Federal funds for the coming year, so there is a \$2 million shortfall. Under the coverage ratio-based prioritization approach, NMFS would calculate the following ratio for each FMP:

$$\text{Coverage Ratio} = \frac{\text{Projected coverage days needed in the coming year}}{\text{Level of effort in the previous year}}$$

If FMP 1 had a ratio of 0.1, FMP 2 a ratio of 0.08, and FMP 3 a ratio of 0.2, FMP 3 would be eliminated from coverage first. Because the total funding need of the remaining programs, \$8 million, can be met by the available Federal funding, \$8 million, coverage for FMP 1 and FMP 2 would be fully funded. FMP 3 would receive no additional coverage in the coming year.

2.1.3 Considered But Rejected Omnibus Alternatives

The January 2014 version of the Discussion Document contained a Vessel Cancellation Charge Option. That option included discussion of a fee to be paid by the vessel to the at-sea observer service provider when vessels are a “no show” or when they cancel trips less than 12 hours before the scheduled departure time. That option also discussed that payment of fees would be a vessel permit requirement and that outstanding fees would result in non-renewal of vessel permits.

As the PDT/FMAT further developed this option, the Department of Commerce Office of General Counsel advised that the government may not dictate the terms of a private transaction such as this fee. As a result, the Vessel Cancellation Charge Option is likely not legal because it involves the terms of a private business contract between a vessel and an observer service provider. While an observer service provider or a vessel could specify a cancellation fee as part of a contract, thereby eliminating the necessity of increasing the base rate that all vessels pay, it is unlikely that NMFS could legally require or specify the amount of such a fee.

2.2 ATLANTIC HERRING MONITORING ALTERNATIVES

As described in the Introduction, the New England Council is interested in increasing monitoring in the Herring FMP to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring is above and beyond coverage required through the SBRM, the ESA, or MMPA. The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between NMFS and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically Atlantic Herring Amendment 5. This amendment is intended to remedy the industry-funded monitoring disapproval in Herring Amendment 5 by establishing (1) a process by which available Federal funding could be allocated to the Herring FMP and (2) a monitoring coverage target for the industry-funded monitoring to achieve on an annual basis to meet Herring FMP objectives.

Using the process established in this amendment, the realized coverage level for the Herring FMP in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the Herring FMP in a given year (above and beyond SBRM) would fall anywhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this amendment **WOULD NOT** automatically allow for higher coverage levels in the herring fishery. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in the herring fishery when Federal funding is available.

Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage in the herring fishery, even if industry is able to fully fund their cost responsibilities.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional NEPA analysis may be required for any subsequent Herring FMP framework adjustment action modifying the industry-funded monitoring program.

Additionally, after the specified target coverage levels are effective for 2 years, this amendment gives the New England Council the choice to either (1) require that target coverage levels expire or (2) examine the results of any higher coverage in herring fishery, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired actions, subsequent action to adjust the coverage targets could be accomplished via specifications, a framework adjustment, or an amendment to the Herring FMP, as appropriate.

2.2.1 – 2.2.2.4 RANGE OF HERRING MONITORING ALTERNATIVES

Atlantic Herring Monitoring Alternatives	Target Coverage Level	Coverage Category	Effects on Fishing Effort	Comments
Herring Alternative 1: No Coverage Target	No additional coverage above SBRM, ESA, and MMPA	SBRM allocates observer coverage based on gear and area	No effect	No target level specified
Herring Alternative 2: Coverage Target Specified	Target coverage level specified for industry-funded monitoring above SBRM, ESA, and MMPA	Coverage target specified by permit and/or gear	Effects vary by alternative	Ability to target coverage level is variable
Herring Alternative 2.1: Up to 100% Coverage	<i>Up to</i> 100% coverage on Category A and B vessels	Category A and B vessels	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met
Herring Alternative 2.2: 100% Coverage	100% coverage on Category A and B vessels	Category A and B vessels	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met
Herring Alternative 2.3: Up to Specified Confidence Interval Coverage	<i>Up to</i> specified confidence interval around RH/S catch	Category A, B, C, and E vessels are subject to RH/S catch caps	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met; aligns with Mackerel Alternative 2.3
Herring Alternative 2.4: Confidence Interval Coverage	Specified confidence interval around RH/S catch	Category A, B, C, and E vessels are subject to RH/S catch caps	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met; aligns with Mackerel Alternative 2.4

2.3 ATLANTIC MACKEREL MONITORING ALTERNATIVES

As described in the Introduction, the Mid-Atlantic Council is interested in increasing monitoring for the mackerel fishery in the MSB FMP to assess the amount and type of catch, to monitor annual catch limits, and/or provide other information for management. This increased monitoring is above and beyond coverage required through the SBRM, the ESA, or MMPA. The amount of available Federal funding to support additional monitoring and legal constraints on the sharing of costs between NMFS and the fishing industry have recently prevented NMFS from approving proposals for industry-funded monitoring in some fisheries, specifically MSB Amendment 14. This amendment is intended to remedy the industry-funded monitoring disapproval in MSB Amendment 14 by establishing (1) a process by which available Federal funding could be allocated to the MSB FMP and (2) a monitoring coverage target for the industry-funded monitoring to achieve on an annual basis to meet MSB FMP objectives.

Using the process established in this amendment, the realized coverage level for the MSB FMP in a given year would be determined by the amount of Federal funding available to cover NMFS cost responsibilities a given year. The realized coverage level for the MSB FMP in a given year (above and beyond SBRM) would fall somewhere between no additional coverage above SBRM and the specified coverage target. Establishing monitoring coverage targets would allow NMFS to approve and implement new industry-funded monitoring programs, without committing to support coverage levels above appropriated funding or before funding is determined to be available.

However, this amendment WOULD NOT automatically allow for higher coverage levels in the mackerel fishery. This amendment establishes tools that NMFS and the Councils could use to provide additional monitoring in the mackerel fishery when Federal funding is available. Therefore, during years when there is no additional funding to cover NMFS cost responsibilities above funding for SBRM, the tools developed in this amendment would not be used and there would be no additional monitoring coverage in the mackerel fishery, even if industry is able to fully fund their cost responsibilities.

Under Omnibus Alternative 2, the details of any industry-funded monitoring program, including at-sea, dockside, or electronic monitoring, may include, but are not limited to: (1) Level and type of coverage target, (2) rationale for level and type of coverage, (3) process for vessel notification and selection, (4) fee collection and administration, (5) standards for monitoring service providers, and (6) any other measures necessary to implement the industry-funded monitoring program. Additional NEPA analysis may be required for any subsequent MSB FMP framework adjustment action modifying the industry-funded monitoring program.

Additionally, after the specified target coverage levels are effective for 2 years, this amendment gives the Mid-Atlantic Council the choice to either (1) require that target coverage levels expire or (2) examine the results of any higher coverage in mackerel fishery, and consider if adjustments to the coverage targets are warranted. Depending on the results and desired

actions, subsequent action to adjust the coverage targets could be accomplished via specifications, a framework adjustment, or an amendment to the MSB FMP, as appropriate.

2.3.1 – 2.3.2.4 RANGE OF MACKEREL MONITORING ALTERNATIVES

Atlantic Mackerel Monitoring Alternatives	Target Coverage Level	Coverage Category	Effects on Fishing Effort	Comments
Mackerel Alternative 1: No Coverage Target	No additional coverage above SBRM, ESA, and MMPA	SBRM allocates observer coverage based on gear and area	No effect	No target level specified
Mackerel Alternative 2: Coverage Target Specified	Target coverage level specified for industry-funded monitoring above SBRM, ESA, and MMPA	Coverage target specified by permit and/or gear	Effects vary by alternative	Ability to target coverage level is variable
Mackerel Alternative 2.1: Up to Target Coverage Levels	<i>Up to</i> 100% coverage on limited access MWT & Tier 1 SMBT; 50% coverage on Tier 2 SMBT; 25% on Tier 3 SMBT	Limited access MWT and SMBT	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met
Mackerel Alternative 2.2: Target Coverage Level	100% coverage on limited access MWT & Tier 1 SMBT; 50% coverage on Tier 2 SMBT; 25% on Tier 3 SMBT	Limited access MWT and SMBT	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met
Mackerel Alternative 2.3: Up to Specified Confidence Interval Coverage	<i>Up to</i> specified confidence interval around RH/S catch	Limited access MWT and SMBT	Vessels fish under waivers when Federal funding limits observer coverage	Target coverage level is likely not met; aligns with Herring Alternative 2.3
Mackerel Alternative 2.4: Confidence Interval Coverage	Specified confidence interval around RH/S catch	Limited access MWT and SMBT	Vessels cannot fish without an observer when Federal funding limits observer coverage; effort is reduced to match observer coverage	Target coverage level is met; aligns with Herring Alternative 2.4

3.0 DESCRIPTION OF THE AFFECTED ENVIRONMENT

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3.1.2 NON-TARGET AND BYCATCH SPECIES

3.1.3 PHYSICAL ENVIRONMENT AND ESSENTIAL FISH HABITAT

3.1.3.1 PHYSICAL ENVIRONMENT

3.1.3.2 ESSENTIAL FISH HABITAT

3.1.4 ENDANGERED AND OTHER PROTECTED SPECIES

3.1.4.1 SPECIES PRESENT IN THE AREA

3.1.4.2 SPECIES POTENTIALLY AFFECTED

3.1.5 HUMAN COMMUNITIES

3.1.5.1 ATLANTIC HERRING AND MACKEREL VESSELS AND PERMIT CATEGORIES

3.1.5.2 ATLANTIC HERRING AND MACKEREL FISHERY SPECIFICATIONS AND LANDINGS

3.1.5.3 ATLANTIC HERRING AND MACKEREL FISHERY REVENUES

3.1.5.4 ATLANTIC HERRING AND MACKEREL FISHERY COMMUNITIES

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4.2 IMPACTS TO NON-TARGET SPECIES AND BYCATCH SPECIES,

4.3 IMPACTS TO THE PHYSICAL ENVIRONMENT AND EFH

4.4 IMPACTS TO ENDANGERED AND OTHER PROTECTED SPECIES

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- 5.2 NON-TARGET AND BYCATCH SPECIES
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6.10.8.6 Economic Impacts on Small Entities Resulting from the Proposed Action

7.0 LITERATURE CITED

8.0 LIST OF PREPARERS

9.0 AGENCIES CONSULTED