



## New England Fishery Management Council

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# FINAL MEETING SUMMARY

## Observer Policy Committee

Sheraton Colonial Hotel, Wakefield, MA

August 19, 2014

The Observer Policy Committee held its first meeting on August 19, 2014 in Wakefield, MA to: discuss Terms of Reference (TOR) and the general charge to the Observer Committee; review progress regarding development of NMFS-led Omnibus Industry-Funded Monitoring (IFM) Amendment, which will establish provisions for industry-funded monitoring across all Council-managed fisheries; and to discuss the details of the Omnibus IFM Amendment alternatives and develop related Committee recommendations.

**MEETING ATTENDANCE:** Terry Stockwell (Chairman), Pete Kendall, Mary Beth Tooley, Jeff Kaelin, Peter Christopher, Wendy Gabriel, Paul Parker, Gerry O'Neill, Peter Hughes, Rick Usher, Bruce Lambert, Doug Brander (12 of 13 Committee members present, Terry Alexander absent); Lori Steele (NEFMC staff); Melissa Hooper, Carrie Nordeen (NMFS GARFO staff); Mitch MacDonald (NOAA General Counsel); Michael Lake (Alaskan Observers, Inc.), Jenna Rockwell (Fathom Research), Amy Martins (NEFOP), Don Frei (NMFS OLE), Greg Wells (Pew Charitable Trusts), Shaun Gehan, JP Bilodeau (F/V Providian), Ryan Raber (F/V Providian), Erica Fuller (EarthJustice).

*In addition, several individuals listened to the Committee meeting online via GoToMeeting.*

### KEY OUTCOMES

The Observer Committee reviewed the details of the Omnibus IFM Amendment alternatives and addressed specific questions raised in the August 5, 2014 Report from the Industry-Funded Monitoring Fishery Management Action Team/Plan Development Team (FMAT/PDT).

- The Committee recommended that Alternative 2.1.2.4, Cost-Based Prioritization, be eliminated (considered but rejected) from the Omnibus IFM Amendment.
- Through several motions and consensus items, the Committee developed recommendations for modifying the other prioritization options under consideration in the Omnibus IFM Amendment.
- The Committee was not comfortable providing specific recommendations about standards for service providers at this time but agreed to revisit this issue at a future meeting. There was agreement that the Omnibus IFM Amendment should establish standards for all service providers.

- The Committee unanimously recommended that an alternative be developed in the Omnibus IFM Amendment that would allow for the direct contracting between a vessel/fishing business and a NMFS approved at-sea monitoring and/or electronic monitoring provider to meet the coverage levels identified by the Council and help achieve the catch monitoring goals of the FMP.
- The Committee recommends that the Council ask the Agency to develop a mechanism to accept funding for monitoring from outside sources, and to review the proposed division of cost responsibilities with the goal being a 50-50 IFM cost-sharing outcome.

Detailed minutes of the August 19, 2014 Observer Committee meeting are provided below.

***INTRODUCTIONS, GROUND RULES, REVIEW OF AGENDA AND TERMS OF REFERENCE (TOR)***

As the meeting began, each member of the Observer Committee introduced themselves and provided a brief background regarding their involvement in fisheries and monitoring programs as well as their interest in participating on the Committee. Mr. Stockwell then reviewed the Terms of Reference with the Committee:

1. Provide input regarding the continued development of the NMFS-led omnibus Industry-Funded Monitoring (IFM) Amendment and recommend ***Preferred Alternatives*** for the Council to consider during the selection of final measures for this amendment;
2. Upon completion of the omnibus Industry-Funded Monitoring (IFM) Amendment, provide input regarding issues related to observer coverage and catch monitoring, at the request and discretion of the Council.

Mr. Stockwell encouraged members of the Observer Committee to focus on the omnibus elements of the IFM Amendment, i.e., the alternatives in the document that will apply to all fisheries managed by the New England and Mid-Atlantic Councils.

***PRESENTATION: OMNIBUS INDUSTRY-FUNDED MONITORING AMENDMENT – BACKGROUND AND CONTEXT (STEELE)***

Ms. Steele provided the Committee with a presentation summarizing the background regarding the development of the Omnibus IFM Amendment. Following the presentation, there was some brief discussion regarding the notion that monitoring costs must be split in only one way (infrastructure/at-sea) and always shared by the government and industry. Mr. Parker questioned the need for government-supported infrastructure (and related costs) for IFM programs. He suggested that this may be a primary reason why costs continue to be high, and he asked why a IFM program cannot be developed that would allow the industry to pay for 100% of the cost. Mr. Macdonald stated that the cost delineation comes from the Department of Commerce General Counsel and relates to what is determined to be an inherent governmental function. The government receives data from observers and uses that data for management purposes. Mr. Macdonald noted that data that are collected by fisheries monitors are similar to vessel trip reports and dealer reports in that the infrastructure must exist to process these data and utilize it for fisheries management purposes. Mr. Parker encouraged the Committee members to continue to test the boundaries established by this legal interpretation of cost delineation in order to ultimately build a more cost-efficient system.

***PRESENTATION: OMNIBUS INDUSTRY-FUNDED MONITORING AMENDMENT– MANAGEMENT ALTERNATIVES UNDER CONSIDERATION (HOOPER)***

Melissa Hooper (GARFO staff) provided a detailed presentation to the Observer Committee about the omnibus alternatives under consideration in the Omnibus IFM Amendment. Following the presentation, Committee and audience members asked clarifying questions and discussed several issues:

- Mr. Parker asked how the prioritization options respond to new fisheries/new programs. Dr. Gabriel explained that the formulaic options simply add another fishery to the equation; the discretionary options may include scoring/ranking criteria that would be evaluated for each fishery requiring IFM. Mr. Parker then expressed concern that the alternatives in the amendment appear to be reactive in that they respond to limited funding by reducing observer coverage because it's expensive. He said that the industry supports monitoring to create better data and wants to move in a direction that does not appear to be supported by the alternatives in this amendment.
- Mr. Kendall asked for more information regarding the infrastructure costs. Dr. Gabriel cited some data from a presentation she recently made to the Council, which was distributed to the Committee. She noted that most of the costs are related to infrastructure and labor; labor costs are in data processing.
- Mr. Kaelin questioned the equity of the cost-sharing breakdown proposed in the IFM amendment and also wondered if/how the language requiring consideration of waivers could be incorporated into the omnibus elements of the amendment. He also suggested that there be more focus in the document on other types of monitoring programs like dockside and electronic monitoring.
- Mr. Brander asked for more information regarding the \$1,200 estimate of the cost of an observer per day at sea. This estimate includes both infrastructure and at-sea costs.

Dr. Gabriel provided some details regarding the infrastructure costs, which total about \$5 million annually; these costs are distributed over the total sea days per year, which fluctuate from year to year. This is how the average infrastructure costs are estimated.

The at-sea costs are paid to service providers; providers are invoiced for at-sea time, travel, salary, land days, and meals. In aggregate, the Northeast Fisheries Observer Program (NEFOP) paid \$2.6 million for about 5,000 sea days in 2013, which equates to about **\$542 per sea day** for at-sea costs. In 2011, the NEFOP spent \$4.8 million for about 6,500 sea days, so the at-sea cost in 2011 was **\$746 per sea day**. This variability is why it is difficult to estimate the costs per sea day of IFM programs. She also noted that the timing of the allocation of Federal funds varies from year to year, further complicating the process.

- Mr. O'Neill asked how the requirement for 100% observer coverage on Atlantic herring vessels fishing in the groundfish year-round closed areas would be funded given the projected 45 sea days that will be covered under the standardized bycatch reporting methodology (SRBM) amendment allocations next year. Ms. Hooper responded that any additional observer days beyond the 45 SBRM days would have to be industry-funded through the program that will be established in the IFM amendment, if any additional government funds are available to support IFM programs. Otherwise, herring vessels will be prohibited from fishing in the groundfish closed areas unless they are on one of the SBRM

trips with an observer on board. Mr. Macdonald added that a statutory change would be needed to allow the industry to pay for 100% of the costs of these additional closed area trips. Ms. Hooper agreed to follow-up with GARFO staff regarding efforts to develop a mechanism to allow for the industry to pay for 100% of the monitoring costs. Ms. Fuller expressed concern that the amendment does not appear to be making any progress to address this issue.

- Mr. Parker emphasized the need to consider another structure that allows the government and industry to work together to reduce the overall cost of monitoring programs. He stated that the industry should be able to seek competitive pricing and reduce costs, and the government should oversee the product that comes out of this competitive service. He feels that the government does not need to own a fraction of the costs in order for the programs to support fisheries management.
- Several Committee members further discussed issues associated with at-sea costs. Mr. Hughes estimated that the industry is averaging about \$750 per DAS for a scallop observer. Mr. Usher stated that his company's costs are significantly lower but noted that it is all very relative. Ms. Tooley expressed frustration that obtaining specific and clear cost information about IFM seems to be very challenging. She asked whether long-term contracts with observers are limited in the Northeast, and she suggested that any limitations on observer contracts be evaluated to determine how costs can be reduced.

#### ***DISCUSSION OF OMNIBUS INDUSTRY-FUNDED MONITORING ALTERNATIVES***

Following the morning discussion, the Observer Committee walked through the details of the Omnibus IFM Amendment alternatives and addressed the questions raised in the August 5, 2014 FMAT/PDT Report.

- The Committee discussed the timing/process associated with each prioritization alternative and felt that the concepts are generally clear, but the timing of budget allocations and funding is so variable and unclear that it is not possible to really understand how the processes would work in a given year, or how the IFM prioritization process would coincide with the SBRM process. Mr. Kaelin suggested that the document more clearly address the relationship between the SRBM and IFM amendments.
- Mr. Kaelin and other Committee members expressed general support for the matrix concept proposed by the FMAT/PDT under the discretionary prioritization options. Ms. Steele noted that the matrix needs more development/discussion.

## **1. MOTION: TOOLEY/PARKER**

To recommend that Alternative 2.1.2.4, Cost-Based Prioritization, be eliminated (considered but rejected)

**Discussion on the Motion:** Observer Committee members acknowledged that this motion is consistent with comments made by the FMAT/PDT (August 5, 2014) regarding this option, although the FMAT/PDT did not formally recommend that it be eliminated from consideration at this time. The Committee felt that the cost-based prioritization proposed in this option lacks rationale and would likely not support the goals/objectives of IFM monitoring programs established by the Council.

**MOTION #1 carried unanimously.**

### ***OBSERVER COMMITTEE CONSENSUS***

*The Observer Committee agreed by consensus to support further development of the prioritization matrix discussed by the FMAT under Alternatives 2.1 and 2.2 (NMFS-led and Council-led prioritization process).*

*The Observer Committee agreed by consensus to recommend further development of the catch-ratio alternative (Alternative 2.5) to allow for the ratio to be calculated/applied in both directions.*

The Committee members briefly discussed what may be an appropriate forum for prioritizing fisheries under the two discretionary options. Ms. Tooley stated that she does not support the Northeast Region Coordinating Committee (NRCC) as the appropriate forum for making prioritization decisions and suggested a joint Committee between the New England and Mid-Atlantic Councils. Mr. Kaelin suggested that prioritization decisions should come before both Councils for formal decision-making. Dr. Gabriel noted that the scoring/ranking matrix suggested by the FMAT/PDT may be a good way to reconcile differing priorities between the two Councils.

Mr. Parker asked how industry initiatives can be accommodated under the proposed prioritization options and asked for clarification regarding consideration of future experimental fisheries that may need observer coverage. Ms. Steele and Ms. Hooper agreed to flag this issue for the FMAT/PDT.

The Committee identified the fisheries that would be subject to a prioritization process for IFM during Year 1 under the omnibus amendment: groundfish (sector monitoring), Atlantic herring, and Atlantic mackerel. It was noted that because of requirements within the Northeast Multispecies Fishery Management Plan (FMP), groundfish monitoring would be prioritized first.

## **2. MOTION: KAELIN/HUGHES**

To Amend Section 2.1.2, Prioritization sub-options, to add a waiver/no waiver alternative to each sub-option

**Discussion on the Motion:** Ms. Nordeen asked for clarification as to how the provisions to require consideration of waivers fit into the prioritization options in the omnibus amendment. Ms. Hooper responded that this language could be added under the discussion of general requirements for monitoring programs under Alternative 2.

### **MOTION #2 PERFECTED:**

To Amend Section 2.1.2, Omnibus Alternative 2, to include language to require consideration of waivers with coverage targets in industry-funded monitoring programs

### **PERFECTED MOTION #2 CARRIED UNANIMOUSLY.**

The Observer Committee discussed issues related to establishing universal standards for service providers. Ms. Steele noted that the SBRM amendment already proposes to apply the scallop observer service provider requirements to observer service providers in all fisheries and clarified that the IFM amendment proposes to extend those requirements to providers of other monitoring services, including at-sea monitoring (ASM, different from observer coverage), dockside monitoring, and electronic monitoring. She also pointed out that the Multispecies (Groundfish) FMP includes requirements/standards for at-sea monitors, which differ from observer service provider standards in that the at-sea monitors are not required to have a college degree. She suggested that the Observer Committee consider the differences between the two sets of requirements and provide a recommendation regarding the proposed standards for all service providers in the IFM Amendment.

- Mr. Usher expressed support for requiring a college degree for observers. He stated that in his experience, there is a significant difference in terms of retention and data quality. Mr. O'Neill agreed. Mr. Hughes noted that there are highliners in the industry who have not even graduated high school and he questioned the need to restrict people who do not have a college degree from observing catch, counting and measuring fish, and filling out reports.
- Ms. Tooley pointed out that there does not appear to be a cost savings from eliminating the requirement for a college degree in the groundfish ASM program.

## **3. MOTION: PARKER/WITHDRAWN**

To support standard requirements for service providers across fisheries

**Discussion on the Motion:** Ms. Tooley said that she is unclear about which standards to support because she cannot tell how costs are impacted by the requirements. Mr. Parker stated that he supports standard requirements across fisheries but was not ready to move this motion forward given the ongoing discussion at the meeting. He further emphasized that the business aspect of providing observers should be decoupled from the government to allow for a more competitive marketplace and lower costs.

**MOTION #3 was withdrawn.**

Through further discussion, Ms. Martins (Northeast Fisheries Observer Program, NEFOP) highlighted several points for the Committee:

- In recent program evaluations, the retention rate was a lot higher with at-sea monitors that have a college degree (about a 40% difference).
- The minimum wage in the Commonwealth of Massachusetts is about \$8/hour. The requirement for contractors to meet this wage is a minimum requirement, and many service providers go above and beyond this wage. This is determined individually by the providers.
- Portside samplers probably don't need as much training as observers.
- Deployment issues can affect cost, i.e., how fast you have to turn around an observer and what kinds of options the providers have to get observers to the vessels.

Ms. Tooley and several other Committee members indicated that they are not comfortable providing specific recommendations about standards for service providers at this time. However, there was agreement that the omnibus IFM amendment should establish standards for all service providers. The Committee agreed to revisit this issue at a future meeting (October 2014). Ms. Hooper agreed to distribute the requirements for ASM for comparison purposes.

Mr. Parker urged the Committee to continue to emphasize the importance of developing a mechanism to allow the industry to pay 100% of monitoring costs in some circumstances. He offered a motion for consideration.

#### **4. MOTION: PARKER/KAELIN**

To include for analysis in the omnibus amendment an alternative that would allow for the direct contracting between a vessel/fishing business and a NMFS approved at-sea monitoring and/or electronic monitoring provider to meet the coverage levels identified by the Council and help achieve the catch monitoring goals of the FMP

**Discussion on the Motion:** Mr. Parker stated that his rationale is to craft an alternative that improves the opportunity for the industry to seek pricing efficiency for monitoring services. He suggested that NMFS reassess its current assumptions regarding which cost responsibilities may be covered by the government and by the industry to determine of a more efficient structure exists than the one currently proposed in the IFM Amendment. Mr. Kaelin expressed support for the motion and emphasized the importance of this issue. Mr. Kendall also expressed support for further consideration of this issue. Mr. Parker suggested that at the very least, a more specific rationale should be provided regarding the legal constraints that are preventing this approach. He encouraged further debate of the legal interpretation of the applicable laws.

**MOTION #4 CARRIED 10/0/1.**

**5. MOTION: KENDALL/HUGHES**

To request that the Council ask the Agency to develop a mechanism to accept outside funding for monitoring purposes

**Discussion on the Motion:** The Committee acknowledged that this motion directly relates to the previous motion and that outside funding sources may extend beyond the fishing industry.

**MOTION #5 CARRIED 9-0-2.**

**6. MOTION: KAELIN/HUGHES**

To request the Council ask the Agency and the FMAT/PDT to review the proposed division of cost responsibilities (p. 6 of Discussion Document) with the goal being a 50-50 IFM cost-sharing outcome

**Discussion on the Motion:** Mr. Kaelin expressed support for achieving a 50-50 split between costs for which the government and industry are responsible. Mr. Parker expressed support for the intent of the motion and concern about restricting the outcome to a 50-50 split. Mr. Kendall agreed and expressed similar concern. Ms. Fuller expressed support for a substantive examination of costs but opposed the 50-50 restriction and encouraged the Committee to prioritize the other issues/motions discussed at the meeting.

**MOTION #6 CARRIED 8-0-3.**

***OTHER ISSUES***

The Observer Committee briefly discussed issues related to the economic analyses to be developed for the Omnibus IFM Amendment. Ms. Hooper stated that the analyses will provide information about the range of costs to each of the affected fisheries under different coverage levels since the available funding and coverage levels in Year 1 cannot be determined at this time. Mr. Kaelin suggested that the document provide information about what percentage of profits the industry may lose to support IFM and what the limitations on fishing businesses may be. Ms. Tooley emphasized the importance of understanding the economic impacts before making final decisions regarding the alternatives in the IFM Amendment.

The Observer Committee agreed to meet again on Thursday, October 23, 2014, to review further work on the Omnibus IFM Amendment.