

# **DECISION DOCUMENT**

for

## **Omnibus Industry-Funded Monitoring Amendment**

### **OMNIBUS ALTERNATIVES**

## **New England Fishery Management Council Council Meeting January 26-28, 2016**

Section 2.1 in Draft EA - Omnibus Alternatives (Sept. 2015)  
Refer to Discussion Document - Omnibus Alternatives (Jan. 11, 2016)

<b>OMNIBUS ALTERNATIVES</b>	
<p><b>Objective:</b> Omnibus Industry-Funded Monitoring Amendment would allow industry funding to be used in conjunction with available Federal funding to pay for additional monitoring (beyond SBRM) to meet FMP-specific coverage targets. Under Omnibus Alternative 2, this action would prioritize the allocation of available Federal funding across monitoring programs when available funding falls short of the total need. If there is no available Federal funding, there would be no additional monitoring to meet FMP-specific coverage targets. <i>Refer to Purpose and Need - Discussion Document, page 3.</i></p>	
<b>Alternatives Under Consideration</b>	<p><b>Description</b></p> <p>Choose one alternative (Omnibus Alt.1 or Alt.2). If Omnibus Alternative 2 is selected, the Council may choose one of Omnibus Alternatives 2.1 through 2.5 (prioritization process) and may also select Omnibus Alternative 2.6 (monitoring set-aside).</p>
<b>Omnibus Alternative 1</b>	<p>No action. <i>Refer to Discussion Document, pages 5-6.</i></p>
<b>Omnibus Alternative 2 Observer Committee Preliminary Preferred Alternative</b>	<p>Standardized process to allow industry funding to be used, in conjunction with Federal funding, to pay for fishery monitoring (beyond SBRM) to meet FMP-specific coverage targets. <i>Refer to Discussion Document, page 7.</i></p> <p>Omnibus Alternative 2 has the following components (not to be voted on separately):</p> <ul style="list-style-type: none"> <li>• Standard cost responsibilities (<i>Discussion Document, pages 13-14</i>);</li> <li>• Allowing for additional FMP-specific industry-funded monitoring programs to be implemented via a future framework adjustment action (<i>Discussion Document, pages 17-18</i>); and</li> <li>• Standard administrative requirements for industry-funded monitoring service providers, based on existing provider requirements (<i>Discussion Document – Appendix 3, pages 89-101</i>).</li> </ul> <p><b>Selection of the Omnibus Alternative 2 would codify NMFS cost responsibilities for industry-funded monitoring into regulation for all New England and Mid-Atlantic FMPs, but it would not change NMFS cost responsibilities for the industry-funded monitoring programs currently established in the scallop fishery or multispecies fishery (groundfish).</b></p> <p>Selecting Omnibus Alternative 2 would establish standards for industry-funded monitoring service providers (based on existing observer, at-sea monitor, and electronic monitoring service provider requirements). However, future development of an IFM program for an FMP could modify the monitoring service provider requirements for that particular IFM program, but the requirements must comply with Federal mandates including the Fair Labor Standards Act. A list of noteworthy service provider requirements that can and cannot be altered by a future FMP action is found on pages 4-5 of this document.</p>
<b>Omnibus Alternatives 2.1 - 2.5</b>	<p><b>Prioritization Process Alternatives (choose one):</b></p> <p>These options would establish a prioritization process to allocate Federal funding for IFM programs when a Federal funding shortfall is expected.</p> <p><b>Alternative 2.1 - NMFS-led Deliberative Prioritization Process.</b> NMFS prepares analysis and prioritization in consultation with the Councils. May require future rulemaking to establish a specific prioritization approach that would apply to IFM programs. <i>Refer to Discussion Document, pages 25-26.</i></p> <p><b>Alternative 2.2 - Council-led Deliberative Prioritization Process.</b> Council prepares analysis and recommends priorities to NMFS. Would require future rulemaking to establish a specific prioritization approach unless the Council adopts the prioritization procedure currently in the amendment (minor changes to the proposed weighting scheme are possible, but would require NEPA consultation). <i>Refer to Discussion Document, pages 26-27. The proposed weighting scheme is described in the Discussion Document, pages 28-33.</i></p>

<p style="text-align: center;"><b>Omnibus Alternatives 2.1 - 2.5 (Continued)</b></p>	<p><b>Alternative 2.3 - Proportional Prioritization Process.</b> Shortfalls in Federal funding would be distributed proportionally among industry-funded monitoring programs. Does not require future rulemaking, because this approach is formulaic. <i>Refer to Discussion Document, page 36.</i></p> <p><b>Alternative 2.4 - Coverage Ratio-Based Prioritization Process.</b> The amount of funding would be allocated to each FMP by sequentially eliminating coverage in fleets that have the <b>highest</b> ratio of coverage days (needed in the coming year) to effort (days fished from the previous year). This alternative would favor coverage for the FMPs that don't need much additional coverage to meet targets and the most active FMPs with IFM programs. Does not require future rulemaking, because this approach is formulaic, but <b>because prioritization would only vary based on coverage days in coming year and effort in past year, the priorities will vary year to year and may not reflect Council management priorities.</b> <i>Refer to Discussion Document, pages 36-37.</i></p> <p><b>Alternative 2.5 - Coverage Ratio-Based Prioritization Process.</b> The amount of funding would be allocated to each FMP by sequentially eliminating coverage in fleets that have the <b>lowest</b> ratio of coverage days (needed in the coming year) to effort (days fished from the previous year). This alternative would favor coverage for the FMPs that need more coverage to meet targets and the least active FMPs with IFM programs. Does not require future rulemaking, because this approach is formulaic, but <b>because prioritization would only vary based on coverage days in coming year and effort in past year, the priorities will vary year to year and may not reflect Council management priorities.</b> <i>Refer to Discussion Document, page 38.</i></p>
<p><b>Omnibus Alternative 2.6</b> <b>Observer Committee Preliminary Preferred Alternative</b></p>	<p><b>Monitoring Set-Aside Option</b></p> <p>This option would allow the development of a monitoring set-aside program via a future framework action to each FMP-specific IFM program. No monitoring set-aside program specific to any particular FMP would be created through this action. <i>Refer to Discussion Document, pages 39-45.</i></p>
<p><b>Prioritization Process Tradeoffs</b></p>	
<p>Omnibus Alternatives 2.1 to 2.5 apply a prioritization process that considers standardized weighing approach to prioritize monitoring coverage for IFM programs when there is a shortfall in Federal funding to support NMFS' administrative cost responsibilities in any given year.</p>	
<p><b>The standardized prioritization process (Omnibus Alt. 2.1 to 2.5) would not apply to the existing IFM programs established for the northeast multispecies fishery and Atlantic sea scallop fishery.</b></p>	
<p>The major differences between the alternatives for the prioritization process are:</p>	
<p style="text-align: center;"><b>Omnibus Alternatives 2.1 and 2.2</b></p> <p>Require a separate rulemaking to inform the public of the prioritization process for IFM programs (unless the proposed weighting approach identified in the amendment is adopted by the Council or NMFS).</p>	<p style="text-align: center;"><b>Omnibus Alternatives 2.3, 2.4, and 2.5</b></p> <p>Do <b>NOT</b> require a separate rulemaking to inform the public of the prioritization process for IFM programs because the process is formulaic.</p>
<p>Use a deliberative approach to the prioritization process, which allows the Council (Alt. 2.2) or NMFS (Alt. 2.1) to utilize its <b>discretion</b> to determine priority for each IFM program based on an established set of weighing criteria (Omnibus Alternative 2.1) or another set of criteria developed by the Council (Omnibus Alternative 2.2).</p>	<p>Use a formulaic approach to the prioritization process and <b>do not allow for discretion</b> to determine priority for each IFM program.</p>
<p><b>Figure 1</b> includes a flowchart to guide the Council through deliberations regarding the prioritization process alternatives.</p>	

### Service Provider Requirements for Industry-Funded Monitoring Programs

If Alternative 2 is implemented under the Omnibus Industry-Funded Monitoring (IFM) Amendment, the existing service provider requirements would serve as a default set of standards for any future IFM program developed through an FMP action. If Omnibus Alternative 2 is not selected by the Councils, service provider requirements for industry-funded monitoring programs would be developed and implemented through individual FMPs.

Below is a list of noteworthy service provider requirements that would serve as the default service provider requirements for any future IFM program developed through an FMP. However, this is not a comprehensive list of the default service provider requirements. This section identifies aspects of the service provider requirements that can and cannot be altered in a future FMP-specific IFM program. *For a comprehensive list of service provider requirements, please refer to Appendix 3 to the discussion document, pages 89-101.*

Each FMP must also consider the impacts to altering service provider requirements. Alterations to service provider requirements should not jeopardize the goals of an FMP and its IFM program. Changes to the default service provider requirements should consider the utility of the data being collected under an IFM program, and the cost-savings associated with alterations to the default service provider requirements.

Elements of default service provider requirements that can be altered by an FMP in the future, in order to meet the needs of an FMP-specific IFM program:

1. Educational requirement for at-sea monitors - High School Diploma or its equivalency
  - Educational requirement for at sea monitors can be altered by an FMP in the future
2. Deployment Plans - Vessel selection protocol for at-sea monitoring, electronic monitoring, and portside sampling
  - Service provider must develop a formal vessel-selection protocol to deploy at-sea monitors and electronic monitoring equipment in a statistically random manner consistent with the coverage levels.
    - Vessel selection protocol **can** be altered by an FMP in the future for coverage beyond SBRM requirements
  - Waivers in specific circumstances, including how waivers would be requested, assessed, and recorded.
    - Consideration of waivers **can** be altered by an FMP in the future
  - Re-deployment of any observer for no more than two consecutive multi-day trips and for no more than two times in any particular month for multi-day trips.
    - Limitations regarding the redeployment of observers on multi-day trips **can** be altered by an FMP in the future
3. Service providers **can** refuse to deploy an observer on a requesting vessel if:
  - There are no available observers/monitors within 48 hours of receiving a request for an observer from a vessel
  - Vessel is deemed unsafe (i.e. safety deficiency due to expired safety inspection decal or inadequate safety equipment)
  - Vessel failed to pay for previous deployments
  - This provision can be altered by an FMP in the future

Elements of default service provider requirements that cannot be altered by an FMP in the future:

1. Educational Requirement for observers - a Bachelor's degree for observers, with some exceptions based on appropriate work experience
  - This educational requirement for Northeast Fishery Observers **cannot** be altered by an FMP action in the future because this is a nation-wide Observer Program Policy
2. Salaries for employees must comply with Fair Labor Standards Act for non-exempt employees
  - This requirement **cannot** be altered by an FMP in the future.
3. Service Provider must have adequate insurance coverage for injury, liability, and accidental death.
  - Adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested (§ 648.11).

- This requirement **cannot** be altered by an FMP in the future.

#### **Other Important Considerations/Draft EA References**

There are two existing mechanisms by which NMFS may accept outside resources for monitoring. First, the Magnuson-Stevens Act established a Fisheries Conservation and Management Fund for electronic monitoring. Second, NMFS may accept resources and facilities for observer training from state, university, and any appropriate private nonprofit organizations on a limited basis.

The SBRM Amendment established a prioritization process for SBRM observer coverage that cannot be changed via this action (*Oceana v. Locke*). The prioritization process for industry-funded monitoring programs would differ from the SBRM prioritization process.

#### **Observer Committee Recommendations**

December 17, 2015 Observer Committee Meeting Motions:

The Observer Policy Committee recommends that the Council select Omnibus Alternative 2 (Standardized Structure for IFM Programs) as their preliminary preferred alternative for the IFM Amendment.  
Motion passed 12/0/0.

The Observer Policy Committee recommends that the Council select Omnibus Alternative 2.6 (Monitoring Set Aside) as their preliminary preferred alternative for the Industry-Funded Monitoring Amendment.  
Motion passed 12/0/0.

The Observer Policy Committee recommends that the Council adopt the following guiding principles for Industry Funded Monitoring Programs implemented by GARFO.

Data collection programs for the estimation of fishery discards should:

- Be fit for purpose- The reason, or clear need, for data collection should be identified to ensure objective design criteria.
- Affordable- The cost of data collection programs should not diminish net benefits to the Nation, nor threaten the continued existence of our fisheries. However, essential data collection is needed to assure conservation and sustainability, and is reason to seek less data intensive ways to assess and manage fisheries on the economic margins.
- Apply Modern Technology- Data collection should prioritize the utilization of modern technology to the extent possible to meet our data collections needs, while recognizing an affordable robust program is likely to need a mix of data collection by people and technology.
- Incentivize reliable self-reporting.

Motion passed 10/0/2.

The Observer Committee did **not** recommend any preliminary preferred alternatives for the Council's consideration of the prioritization process alternatives, based on the following concerns:

- Lack of Council discretion for Omnibus Alternatives 2.3 (Proportional Prioritization), 2.4 (Lowest Coverage Ratio-Based Prioritization), and 2.5 (Highest Coverage by ratio-based prioritization process);
- Need for flexibility to alter the prioritization process through a future action;
- Feasibility regarding the completion of a framework action to set up a prioritization process for Federal funding of IFM programs for a particular year when a Federal funding shortfall is expected; and
- NMFS' budgetary shortfalls may be unknown at the start of the fishing year (May 1 for most FMPs).

In general, there are no direct impacts on biological resources (target, non-target, and protected species) related to either Omnibus Alternative 1 (No Action), or the various permutations of Omnibus Alternative 2. These alternatives are entirely focused on the process of developing industry-funded monitoring programs, and thus do not directly affect the level of fishing activity, fishing operations, the species targeted, or areas fished in the Greater Atlantic Region. The indirect impacts of the various aspects of the Omnibus Alternatives on biological resources is summarized in Table 1 below.

**Table 1 - Summary of indirect impacts for Omnibus Alternatives**

Omnibus Alternatives	Target Species Non-Target Species Protected Species	Human Communities
<b>Alternative 1: No Industry-Funded Monitoring Programs (No Action)</b>	Potential low negative impact related to allocating funding to industry-funded monitoring programs on a first come, first served basis (rather than aligning to Council priorities)	Potential low negative impact related to continued uncertainty about true discard rates (could lead to overly cautious management)
<b>Alternative 2: Industry- Funded Monitoring Programs (Action Alternative)</b>	Negligible impact related to standardized cost responsibilities and process for future industry-funded programs implemented via framework  Potential low positive impact related to standardized service provider requirements and process to prioritize additional monitoring	Negligible impact related to standardized cost responsibilities and process for future industry-funded programs implemented via framework  Potential low positive impact related to establishing service provider requirements, and process to prioritize additional monitoring
<b>Alternative 2.1: NMFS- Led Prioritization Process</b>	Potential low positive impact because all industry-funded programs are considered; compared to other prioritization processes allows an evaluation of program need/design when assigning priority	Potential low positive impact because all industry-funded programs are considered; compared to other prioritization processes allows an evaluation of program need/design when assigning priority
<b>Alternative 2.2: Council- Led Prioritization Process</b>		
<b>Alternative 2.3: Proportional Prioritization Process</b>	Potential low positive impact related to information collection because process considers all industry-funded programs	Potential low positive impact related to information collection because process considers all industry-funded programs
<b>Alternative 2.4 and 2.5: Coverage Ratio-Based Prioritization Process</b>	Does not allow for prioritization based on program need/design	Does not allow for prioritization based on program need/design
<b>Alternative 2.6 Monitoring Set-Aside</b>	Negligible impact related to standardized process for monitoring set-asides implemented via framework	Negligible impact related to standardized process for monitoring set-asides implemented via framework
<b>Impacts to physical environment were not discussed in this table because they are negligible. These alternatives will not alter fishing behavior, or directly impact fishing regulations (gears used or areas fished).</b>		

**Figure 1: Flowchart on the Prioritization Process – Omnibus Alternatives 2.1 to 2.5 in the IFM Amendment.**

