



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 GREATER ATLANTIC REGIONAL FISHERIES OFFICE
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 Gloucester, MA 01930-2276

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E.F. "Terry" Stockwell III, Chair
 New England Fishery Management Council
 50 Water Street, Mill 2
 Newburyport, MA 01950

Richard B. Robins, Chair
 Mid-Atlantic Fishery Management Council
 800 North State Street, Suite 201
 Dover, DE 19901

Dear Terry and Rick:

The New England Fishery Management Council's Observer Policy Committee adopted a series of motions at its August 19, 2014, meeting regarding the Omnibus Amendment to Address Industry-Funded Monitoring Programs. The New England Council was scheduled to consider these motions at its September meeting, but the discussion was later postponed. My staff has been discussing the Committee's motions with the Offices of General Counsel for the Northeast (GC-NE) and the Department of Commerce (DOC-GC) and I want both Councils to know of our progress to date.

MOTION 5: To request that the Council ask the Agency to develop a mechanism to accept outside funding for monitoring purposes.

We have identified two ways, under current law, in which NOAA's National Marine Fisheries Service (NMFS) may accept outside resources for monitoring:

- Section 208 of the Magnuson-Stevens Fishery Conservation and Management Act established a Fisheries Conservation and Management Fund, which may be funded through quota set-asides, appropriations, states or other public sources, and private or nonprofit organizations. This fund may be used to expand the use of electronic monitoring, and at least 5 percent of any money contributed to this fund must be apportioned to each region. There have been inquiries about the fund over the years, but to date no contributions have been made.
- Section 403(b) of the Magnuson-Stevens Act allows for NMFS to accept resources and facilities for observer training from state, university, and any appropriate private nonprofit organizations on a limited basis. This provision has not been previously implemented and may have limitations that might undermine its utility for our fisheries.

MOTION 4: 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.


MOTION 6: 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.

Motions 4 and 6 both seek to allocate observer costs between the industry and the government to different degrees. I believe the intent of Motion 4 was to consider a fully industry-funded monitoring program with little to no NMFS-associated costs. For example, the service provider would be responsible for both data collection and quality assurance, funded by the fishing industry, and would simply provide complete, packaged data to NMFS for use in management. Motion 6 seeks an equal cost allocation between the industry and government, expressly seeking a 50-50 cost sharing goal. This motion's cost apportionment goal is similar to the cost apportionment that was disapproved in Atlantic Herring Amendment 5 and Squid, Mackerel, Butterfish Amendment 14. Notwithstanding this potential shortcoming, developing and considering either motion will require further analysis of respective cost responsibilities.

Up to this point in the development of this amendment, we have been working with a definition of cost responsibilities that has cleared legal review as consistent with our legal obligations, including the Magnuson-Stevens Act and the Antideficiency Act. The definition differentiates between NMFS responsibilities to ensure data quality and manage the fisheries with costs for services provided to the industry to meet their regulatory requirements. The definition is also consistent with cost responsibilities used in other regions. There may be room for re-interpretation of these definitions, but revisiting them would require our development of a national policy that could be applied consistently across regions. Consequently, considering changes to these definitions as proposed in the Committee's motions will require further development and analysis that likely would take several months, and it may not result in any change to our current guidance.

I hope that the Councils find this advice useful as we continue development of this action. As always, please do not hesitate to contact me or my staff if you would like additional clarification or have other questions.

Sincerely,



John K. Bullard
Regional Administrator