UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
NORTHEAST REGION
One Blackburn Drive
Gloucester, MA 01930-2298

**MEMORANDUM**

**DATE:** March 6, 2015

**TO:** New England Fishery Management Council
Mid-Atlantic Fishery Management Council

FROM: Industry-funded Monitoring Plan Development Team/Fishery Management Action Team

SUBJECT: Industry-funded Monitoring Omnibus Amendment Development

1. The PDT/FMAT met in person on March 3, 2015, to continue development of the Industry-funded Monitoring Omnibus Amendment. PDT/FMAT participants included Aja Szumylo, Carrie Nordeen, Katie Richardson, Kelly Denit (NMFS GARFO), Andrew Kitts, Kiersten Curti, Wendy Gabriel (voting member of the NEFMC Observer Policy Committee), Amy Martins (NMFS NEFSC), Jason Didden (MAFMC), and Lori Steele (NEFMC), and several members of the public.

2. **Revised Amendment Timeline**

   The PDT reviewed a proposed revised timeline for development and rulemaking. The timeline will be included in revised Action Plan and presented to the Executive Committee in April 2015.

| Date | Meeting/Deadline | Action |
|---|---|---|
| **March 3, 2015** | PDT/FMAT Meeting, Gloucester | |
| **Early April 2015** | PDT/FMAT Meeting, Virtual? | |
| **April 16, 2015** | Observer Policy Committee Meeting | |
| **Early May 2015** | PDT/FMAT Meeting, Virtual? | |
| **May 27, 2015** | MAFMC Briefing book deadline | Revised EA complete for release |
| **June 8, 2015** | Joint Herring/Observer Policy Committee Meeting | |
| **June 9 – 11, 2015** | MAFMC Meeting | MAFMC selects preferred alternatives |
| **June 16 – 18, 2015** | NEFMC Meeting | NEFMC selects preferred alternatives |
| **July/August 2015** | | 30-day comment period on draft EA |
| **September 29 – October 1, 2015** | NEFMC Meeting | NEFMC takes final action |
| **October 6 – 8, 2015** | MAFMC Meeting | MAFMC takes final action |
| **Late October/Early November 2015** | | EA finalized, proposed rule drafted |
| **November 2015** | | Proposed rule publishes with 30-day comment period |
| **December 2015** | | Comment period ends, final rule drafted |
| **January 2016** | | Final rule publishes |
| **February 2016** | | Final rule effective |

The group also discussed the possibility of a joint Herring/Observer Policy Committee meeting in mid-September to form recommendations for final action at the September/October NEFMC meeting.

**3. Development of herring at-sea monitoring options and related analysis**

In response to the NEFMC motion regarding the addition of industry-funded third-party at-sea monitoring options for Category A and B Atlantic herring vessels, Council staff compared the components of the seaday costs for both NEFOP observers and groundfish at-sea monitors to develop the structure and relative costs of an at-sea monitoring program for the herring fishery.

The regulatory language from Herring Amendment 5 and MSB Amendment 14 defines slippage as "any catch not made available to the observer for sampling." Further clarification is necessary regarding the sampling objectives specified in the New England Council motion. The motion currently states that at-sea monitoring should document "all fish not retained on board for any reason, including detailed accounting of full and partial slippage events." Some PDT members were under the impression that the motion intended for at-sea monitors to focus on quantifying slippage events, while other believed the motion described monitors quantifying slippage and additionally sampling (e.g., species composition, length, age) all other discarded catch. The intent of the motion will affect sampling design, and, consequently, seaday costs; therefore, it needs to be clarified. If the at-sea monitoring program is intended to collect information regarding species composition and biological data, then NEFOP level training will be necessary for the at-sea monitors.

The at-sea monitor comparison identifies a range of options for reducing seaday costs for herring at-sea monitoring, including building on existing sampling protocols for documenting discards in high volume fisheries and carefully defining the patterns of the herring fishery for service providers. Service providers will likely want observers/monitors to be trained to sample in multiple fisheries, so limiting the training necessary for certification may not result in cost saving for an at-sea monitor for the herring fishery. The final analysis will not provide an actual seaday rate for the herring at-sea monitoring program, but rather compare potential costs with other types of monitoring. The at-sea monitoring alternative analysis will ultimately be extended to address a similar motion made by the MAFMC regarding at-sea monitors for midwater trawl and Tier 1 small-mesh bottom trawl vessels targeting mackerel. In contrast to the New England Council motion, the Mid-Atlantic Council motion specifics that at-sea monitors should sample for river herring and shad consistent with the high volume fisheries training for NEFOP observers. If identical monitoring programs (i.e., at-sea monitors or NEFOP-level observers) are selected by both Councils for mackerel and herring, there is the potential to increases the number of seadays a service provider would need to staff, which could ultimately reduce costs.

Council staff suggested that the herring at-sea monitoring options should document all discarded catch, i.e., any catch that is not landed, including slippage and other catch that is discarded after being brought aboard the vessel. To help clarify this in the document, several PDT members are working together to develop a "decision tree" that will outline the kinds of sampling programs to

document discarded catch not brought on board and other catch that may be brought aboard the vessel and then discarded; the decision tree will also outline specific types of information that could be collected in a herring/mackerel at-sea monitoring program. PDT members will also work on a comprehensive description of herring and mackerel fleet and fishery patterns to provide to service providers, which will hopefully allow for an accurate estimate of the costs for the at-sea monitoring program.

The PDT discussed a number of issues regarding how current relationships with monitoring service providers may affect the proposed at-sea monitoring program. Regarding the options for NEFOP-level industry-funded observer coverage in the IFM amendment, the question arose whether the fact that there is only one service provider currently providing NEFOP-level observation (through a government contract) could 1) prevent the current service provider from offering lower seaday rates to industry; or 2) create a situation where industry would have no leverage to negotiate costs because there is only one service provider available. The observer program noted that the current observer program contract lasts for 5 years, and there was an open competition for the contract every 5 years. In addition, there are multiple service providers for the groundfish at-sea monitoring program, which builds experience for regional monitoring across service providers. The implication is that establishing industry-funded monitoring programs with NEFOP-level observer requirements could lead to an expansion of the number of providers approved to provide observer coverage; however, there would be an initial cost to service providers for the additional training that would be required to certify observers for NEFOP-level sampling in the herring fishery. The PDT also discussed concerns about the potential for industry collusion with service providers under options that allow for waivers in the event that an observer cannot be provided. The observer program pointed out that relationships form between industry and service providers in any industry funded program. In the past, NMFS has asked permission to view any contracts developed between industry and service providers. The group discussed that industry/service provider contracts could include seaday price, requests for a fixed number of days, and other details that aren't prescribed in the regulations.

The PDT discussed different options for herring at-sea monitoring service provider approval. Existing groundfish at-sea monitoring providers could be approved as service providers for the herring at-sea monitoring program upon implementation, and would then re-apply annually (subsequent applications are less complex than initial applications, which could keep administrative costs for the herring at-sea monitoring program low relative to other programs). In contrast, scallop monitoring service providers receive an open-ended approval. The group agreed to recommend that the at-sea monitoring program for herring/mackerel should require annual reapplication for service providers, consistent with the provisions for the Groundfish ASM program.

The 2012 MRAG comparison of at-sea monitoring programs with 100% coverage discussed that Federally funded programs must comply with the Service Contract Act (SCA) and Fair Labor Standards Act (FLSA), and estimated that complying with these requirements adds approximately $50-$100 to seaday costs. Among other things, these Acts govern minimum wage requirements, overtime pay, and fringe benefits (e.g., holidays, insurance). The MRAG report implies that

programs that are industry funded are less expensive because they do not have to adhere to the requirements in these Acts. These requirements are not currently included in the groundfish at-sea monitoring service provider requirements, but are included in the costs of groundfish at-sea monitoring seadays to-date because the program has always received full Federal funding. NEFOP noted that FLSA requirements apply regardless of whether industry or NMFS contracts with the service providers. NEFOP also noted that in other regions, observers organize/unionize to obtain certain employment standards, and that organization in the absence of SCA and FLSA requirements could also lead to seaday cost increases. The PDT will consult with General Counsel regarding whether the SCA and FLSA requirements extend to service providers when industry is paying directly for monitoring coverage. We will also expand the descriptions of the SCA and FLSA in the EA. The group will revisit this issue when developing estimates of sea day costs for the herring ASM options.

There was discussion of recommendations to industry to reduce seaday costs, including:

- Minimize deployment logistics (limit to a few months out of the year, limit the number of ports you'd be leaving from, etc.).
- Allow for the negotiation of less significant costs (e.g., meals for monitors).
- Encourage industry to negotiate for partial seaday rates, if appropriate. NEFOP used partial day billing and saw initial cost savings, but later discovered that invoicing for partial days is much more complex, resulting in additional administrative burden. In addition, there was a lot of on-land work that the observers were doing that they were no longer being compensated for, so NEFOP had to add in an hourly land rate. The switch to partial seaday billing was a difficult shift for current observers, who were used to a certain rate and had a hard time adapting to wage changes with the partial day structure.

**4. Portside and electronic monitoring**

The PDT discussed the approach for describing portside and electronic monitoring in the industry-funded monitoring EA. The group agreed that a general description of portside and electronic monitoring program costs and drivers based on a range of existing programs would suffice for the Omnibus alternatives.

The group also discussed providing additional detail/development for portside and electronic monitoring for a combined portside monitoring/electronic monitoring program for the herring and mackerel fisheries, discussing a range of coverage levels, and any necessary retention provisions (i.e., maximized or full retention). Example costs for a portside monitoring program for herring and mackerel can be based on the existing Massachusetts Department of Marine Fisheries/Maine Department of Marine Resources programs, and focus on the collection of data to monitor the current river herring and shad catch caps in the herring and mackerel fisheries. Council staff also noted that requirements for portside monitoring could be established as requirements for dealers in order to purchase fish, or requirements for vessels in order to land fish. The EA would explore both possibilities. GARFO staff is also working on a report summarizing the costs and cost drivers for an example electronic monitoring program for groundfish and Atlantic herring. The cost estimates are based on information from three service providers. The PDT discussed the

general approach in the report, but finalized costs estimates are not complete yet. Cost estimates should be complete in time for the April Observer Policy Committee meeting.

The discussion of Federal funding in the EA will be expanded to identify the groups/offices responsible for the administrative aspects of the range of monitoring programs considered in this action. For example, the administrative aspects of monitoring programs collecting biological data may logically fall to NEFSC, while the administrative aspects of a program for quota monitoring may fall to GARFO. The group discussed that administrative costs for an industry-funded portside monitoring program may not need to be funded through the same budget lines as at-sea monitoring programs. Given the cost-effective nature of portside monitoring for fisheries like herring and mackerel, the PDT expressed support for investigating other possible ways to fund the administrative components of these programs. The PDT will continue to discuss whether this warrants adjustment to the prioritization process (e.g., should administrative costs for at-sea monitoring and portside monitoring be prioritized separately? Should the end use of the data collection dictate prioritization?). The group also discussed that if an industry-funded monitoring program has multiple components (i.e., a portside and electronic monitoring component), it may make sense to prioritize those components as a package.

**5. Economic impacts analysis**

The PDT discussed ways to expand and groundtruth the economic analysis currently presented in the EA, including reaching out directly to industry to collect trip cost information, and expanding the discussion of the methodology for deriving net revenue reductions in the body of the document (currently only detailed in full in an appendix).

A question arose about whether it was necessary to assume some level of SBRM coverage in the economic analysis. For example, if a 100% coverage level is selected, and NEFOP can pay for observers for 20% of trips through SBRM, then industry would only be responsible for paying for the at-sea costs for 80% of the trips. In terms of the economic analysis, the group agreed that it seems safest to analyze each coverage level with the assumption that industry is responsible for paying for the full cost, rather than assuming any level of SBRM coverage. The analysis in the EA would represent the upper bound of industry contribution but will note that observer days covered by the SBRM have not been removed from the cost estimates.

There have been several requests during the development of this action for ways to scale the relative economic impact of industry-funded monitoring requirements across fisheries, and for ways to assure that the Councils appropriately consider the economic impacts when designing industry-funded programs. In response to this, the PDT discussed ways to present the relative economic impacts of industry-funded programs. The 2012 MRAG comparison of at-sea monitoring programs with 100% coverage presented observer cost as a percentage of fishery revenue, and an index comparing the daily cost of an observer for every $1000 of fishery revenue. The PDT discussed the limitation of presenting these types of figures, but ultimately agreed that, some type of relative metric could be useful. One option could be to use an MRAG-type approach if the caveats of this type of comparison are well explained in the document, they could

provide the public with a relative sense of scale of the costs of regional monitoring. The PDT will work on adding this type of analysis to the EA. This type of figure could be added as one of the elements for considering costs to industry in the weighting approach in the prioritization process.

**6. Wing vessel alternative**

The PDT discussed the Council's motion to allow wing vessel that does not take on fish in a pair trawl operation to be exempt from observer coverage as a clarification of the New England Council's intent regarding industry-funded monitoring. However, discussions among GARFO staff after the meeting determined that, because there are economic impacts associated with prohibiting the wing vessel from taking on fish (i.e. reductions in cost for not having to carry an observer, but costs associated with transit and the lost opportunity to take fish aboard), that it is necessary to discuss this motion as a distinct alternative rather than as a clarification.