

**STANDARDIZED BYCATCH REPORTING
METHODOLOGY
OMNIBUS FRAMEWORK ADJUSTMENT
TO THE
FISHERY MANAGEMENT PLANS
OF THE MID-ATLANTIC AND NEW ENGLAND
REGIONAL FISHERY MANAGEMENT COUNCILS**

SEPTEMBER 2017



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Framework Adjustment X to the Atlantic Bluefish Fishery Management Plan (FMP);
Framework Adjustment X to the Atlantic Herring FMP;
Framework Adjustment X to the Atlantic Salmon FMP;
Framework Adjustment X to the Atlantic Sea Scallop FMP;
Framework Adjustment X to the Deep-Sea Red Crab FMP;
Framework Adjustment X to the Mackerel, Squid, and Butterfish FMP;
Framework Adjustment X to the Monkfish FMP;
Framework Adjustment X to the Northeast Multispecies FMP;
Framework Adjustment X to the Northeast Skate Complex FMP;
Framework Adjustment X to the Spiny Dogfish FMP;
Framework Adjustment X to the Summer Flounder, Scup, and Black Sea Bass FMP;
Framework Adjustment X to the Surfclam and Ocean Quahog FMP; and
Framework Adjustment X to the Tilefish FMP

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1.0 EXECUTIVE SUMMARY

[TBD]

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3.0 INTRODUCTION AND BACKGROUND

3.1 Goal

The goal of this action is to refine the existing bycatch monitoring of the federal lobster pot fishery. This action would reduce potential sources of bias in sampling and discard estimates for the New England and Mid-Atlantic lobster pot fleets, as soon as practical, while minimizing the administrative burden on affected vessels.

3.2 Background

The Standardized Bycatch Reporting Methodology (SBRM) uses Vessel Trip Reports (VTR) to identify how many fishing vessels are active in a fleet and determine the amount of fishing activity occurring throughout the year. The federal lobster permit does not require a vessel to submit VTRs. However, many lobster pot vessels do submit VTRs as a condition of another federal permit. Under the current process, these are the only lobster pot vessels included in the SBRM analysis. These vessels may not be a truly representative cross section of the overall lobster pot fleet in federal waters. Although this discrepancy was identified in the SBRM Omnibus Amendment, increased observer coverage assigned to the New England lobster pot fleet in 2015 highlighted the limitations of the current process. In October 2015, the Atlantic States Marine Fisheries Commission (ASMFC), individual states, Northeast Fisheries Science Center (NEFSC), and Greater Atlantic Regional Fisheries Office (GARFO) convened a workshop on several issues related to lobster monitoring, including the potential impact of the VTR-based SBRM selection criteria.

The workshop led to the development of an expanded SBRM lobster sampling frame that uses permit information and dealer data to identify all active lobster pot vessels, regardless of whether the vessels submit VTRs. This approach ensures that all trips made by vessels with federal lobster permits are in the sampling frame for the lobster pot fleets. As a result, it provides a more representative sample of the fishery, which in turn would result in less potential for bias in estimates of bycatch in lobster pot gear. This also spreads the burden of carrying an SBRM observer over more vessels and so reduces the inconvenience on any single vessel.

However, analysis within the SBRM Omnibus Amendment specifically states the Amendment would not apply to vessels with only a lobster permit that do not submit VTRs. Although the expanded sampling frame is widely agreed to be an improvement to the process, the language in the SBRM Omnibus Amendment means the public may not have been able to adequately foresee and comment on the potential application of SBRM observer coverage to the entire universe of federal lobster pot vessels. As a result, we continue to use the original, narrower lobster sampling frame until a permanent solution can be implemented.

This action seeks to clarify the Councils' intent for the SBRM process to monitor bycatch of federally managed or protected species from the entire active lobster pot fleet. This action would allow the NEFSC to include fishing activity and catch data (*e.g.*, trip length, date, pounds kept, port of landing, etc.) for all active lobster pot vessels in the annual SBRM analyses, and to assign Northeast Fishery Observer Program (NEFOP) coverage to any federal lobster pot vessel, regardless of whether the vessel is required to submit VTRs. The precise method for identifying active lobster vessels may need to be adjusted in the future; for example, if the ASMFC modifies reporting requirements for lobster vessels.

4.0 ALTERNATIVES UNDER CONSIDERATION

4.1 No Action

This alternative would maintain the current lobster pot sampling frame. Therefore, only vessels that submit VTRs as a condition of holding other federal permits are included in the SBRM analysis and only these vessels are eligible to be assigned at-sea observers under the SBRM. Vessels that have only a federal lobster permit that do not submit VTRs would not be included in the SBRM analysis.

4.2 Include Non-VTR Lobster Pot Vessels in the SBRM

This alternative would stipulate that the SBRM New England and Mid-Atlantic lobster pot fleets include all active vessels that use this gear in federal waters. This could be accomplished using the expanded sampling frame method already developed. If necessary, NMFS could modify the method for identifying and incorporating active fishing vessels that do not submit VTRs for all fishing trips to better reflect the lobster fleet. NMFS would notify the Councils of any such change, but no further FMP action would be necessary.

4.3 Require All Federal Lobster Permit Holders Submit VTRs

This alternative would require all vessels that hold a federal lobster permit to submit a VTR for every fishing trip. This would not be a change to the SBRM, as the current language specifies the sampling frame includes lobster pot vessels that submit a VTR. However, it would necessitate changes to the recordkeeping and reporting requirements of the federal lobster permit and could require modifications to the ASMFC's American Lobster FMP and complimentary federal regulations. Implementation of this requirement would require additional time and expense for both the industry and the federal government.

5.0 CONSEQUENCES OF ALTERNATIVES

In the 2017 SBRM analysis, based on vessels that submit VTRs, 92 percent of active Mid-Atlantic lobster pot vessels submitted VTRs and were included in the SBRM (Table 1). However, the New England lobster pot fleet represented only 27 percent of the active vessels in that region. Including the active vessels that do not submit VTRs in the SBRM analysis would result in a substantial increase in the number of vessels and the number of fishing trips in the data set. This framework action would not increase or decrease the total number of observer sea days assigned to the New England or Mid-Atlantic lobster pot fleets, but would spread coverage over a larger number of vessels.

Table 1. Number of active vessels and trips by region for vessels that submit vessel trip reports (VTR) or have only a federal lobster permit, based on 2017 SBRM analysis.

	Vessels	Trips
Mid-Atlantic - VTR	46	1,484
Mid-Atlantic – lobster only	4	77
New England - VTR	406	27,956
New England – lobster only	1,080	89,048

5.1 Biological Impacts

Because the alternatives considered deal primarily with the process by which observer coverage is allocated across lobster pot fishing vessels, none of the alternatives would affect the level of fishing activity, fishing operations, the species targeted, or areas or times fished in the Greater Atlantic Region. The differences between the alternatives would be in how many vessels are included in the SBRM analysis and are eligible to be assigned an observer. In some fisheries vessel operators may alter their behavior in the presence of a fishery observer (*e.g.*, to avoid a bycatch “hot spot” when an observer is present), then there may be some tangential impacts to some species. However, this is minimized in the lobster pot fishery because fishing trips typically haul gear that was deployed on a previous trip when they would not know they would be carrying an observer on a future trip when the gear is hauled. Therefore, there are no direct or indirect impacts on biological resources (including fishery resources, protected resources, and other non-fishery resources) associated with any of the alternatives. As there are no biological impacts associated with these alternatives.

5.2 Habitat Impacts

Because neither the no action alternative nor the other alternatives would directly impose or likely result in any changes in fishing effort or behavior, fishing gears used, or areas fished, there are no potential impacts to the physical environment (including EFH) associated with the alternatives under consideration.

5.3 Socioeconomic Impacts

Because the no action and the expanded sampling frame alternatives primarily deal with the process by which observer coverage is allocated across lobster pot fishing vessels, there are minimal socio-economic impacts associated with these alternatives. *[Additional detail to be added regarding whether change might increase dockside safety inspections, and if that has a cost]*

The alternative to require all federally permitted lobster pot vessels to submit VTRs would impose a socioeconomic impact associated with the time and expense of this additional recordkeeping and reporting requirement. *[Additional detail to be added on time and cost burden of adding VTR to over 1,000 additional vessels].*

6.0 APPLICABLE LAW

6.1 Magnuson-Stevens Fishery Conservation and Management Act

The actions currently proposed to be implemented through this amendment are focused primarily on the procedures and mechanisms by which observers are allocated to federally permitted lobster vessels. The preferred alternative identified in this amendment does not propose to modify any of the management measures previously implemented under any of the FMPs to be amended through this action, which were found to be fully in compliance with all national standards of the Magnuson-Stevens Act. The preferred alternatives are intended to improve the measures in all Greater Atlantic Region FMPs that ensure compliance with the requirement in § 303(a)(11) of the Magnuson-Stevens Act to “establish a standardized bycatch reporting methodology to assess the amount and type of bycatch occurring in a fishery.” This action is consistent with national standards and bycatch objectives of the Magnuson-Stevens Act. Due to the nature of the measures in the proposed action, there would be no direct impacts on any habitat or EFH; therefore, an EFH consultation is not required.

6.2 National Environmental Policy Act (NEPA)

Cumulative effects of this action are negligible because they only involve placement of observers on lobster vessels and not management of any fishing activities. Additionally, this action does not involve any of the twelve extraordinary circumstances listed in Section 4 of the Companion Manual for NAO 216-6A. Therefore, this action would be categorically excluded from requirements to prepare either an Environmental Impact Statement or and Environmental Assessment.

6.3 Endangered Species Act (ESA)

Section 7 of the ESA requires federal agencies conducting, authorizing, or funding activities that affect threatened or endangered species to ensure that those effects do not jeopardize the continued existence of listed species. Based on the nature of the action; the Councils have determined preliminarily that there would be no direct or indirect impacts on protected resources, including endangered or threatened species or their habitat.

6.4 Marine Mammal Protection Act

Based on the nature of the action, the Councils have concluded preliminarily that there would be no direct or indirect impacts on marine mammals, that the preferred alternatives appear consistent with the provisions of the MMPA, and that the preferred alternatives would not alter existing measures to protect the species likely to inhabit the management units of the subject fisheries.

6.5 Coastal Zone Management Act

Section 307(c)(1) of the Federal CZMA of 1972 requires that all federal activities that directly affect the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. However, because of the nature of this action, the preferred alternatives associated with this action do not directly affect the coastal zone of any state. In addition, pursuant to the CZMA regulations at 15 CFR 930.33(a)(2) and 930.35, a

negative determination is not required, and coordination with the state coastal zone management agencies under section 307 of the CZMA is not necessary.

6.6 Administrative Procedure Act

Section 553 of the APA establishes procedural requirements applicable to informal rulemaking by federal agencies. The purpose of these requirements is to ensure public access to the federal rulemaking process, and to give the public adequate notice and opportunity for comment. At this time, the Councils are not requesting any abridgement of the rulemaking process for this action.

6.7 Section 515 (Data Quality Act)

[Text pending]

6.8 Paperwork Reduction Act (PRA)

The purpose of the PRA is to control and, to the extent possible, minimize the paperwork burden for individuals, small businesses, nonprofit institutions, and other persons resulting from the collection of information by or for the Federal Government. The preferred alternative currently associated with this action does not propose to modify any existing collections, or to add any new collections; therefore, no review under the PRA is necessary.

6.9 Executive Order (E.O.) 13132

This E.O. established nine fundamental federalism principles for federal agencies to follow when developing and implementing actions with federalism implications. The E.O. also lists a series of policy making criteria to which federal agencies must adhere when formulating and implementing policies that have federalism implications. However, no federalism issues or implications have been identified relative to the measures under consideration in the SBRM Omnibus Lobster Framework Adjustment. This action does not contain policies with federalism implications sufficient to warrant preparation of an assessment under E.O. 13132. The affected states have been closely involved in the development of the proposed management measures through their representation on the Councils (all affected states are represented as voting members of at least one Regional Fishery Management Council). Thus far, no comments were received from any state officials relative to any federalism implications that may be associated with this action.

6.10 Regulatory Impact Review

6.10.1 Executive Order 12866

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be significant. A “significant regulatory action” is one that is likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, safety, or state, local, or tribal Governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

A regulatory program is “economically significant” if it is likely to result in the effects described above. Because none of the factors defining “significant regulatory action” are triggered by this proposed action, the action has preliminarily been determined to be not significant for the purposes of E.O. 12866.

6.10.2 Economic Impacts on Small Entities

Based on the information and analyses provided in earlier sections of this document, it is expected that this action would not have a significant economic impact on a substantial number of small entities, and that certification under the Regulatory Flexibility Act (RFA) is warranted.

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