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December 29, 2009

Patricia A. Kurkul  
NMFS Northeast Regional Administrator  
Northeast Regional Office (NERO)  
One Blackburn Drive  
Gloucester, MA 01930

**RE: Clarifications on Proposed Rules RIN 0648-AW72 and RIN 0648-XS55**

Dear Patricia Kurkul:

This letter includes an updated summary of our queries originally sent in a letter to Amy Van Atten; Branch Chief; Fisheries Sampling Branch; Northeast Fisheries Science Center (NEFSC) on December 24<sup>th</sup>, 2009 in regards to clarifications on the Proposed Rule for Amendment 16 (0648-AW72) and the Proposed Rule for 2010 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements (RIN 0648-XS55). From Amy's response to us on December 27<sup>th</sup>, 2009, we gather that it may take several different individuals from the Northeast Regional Office (NERO), Northeast Fisheries At-sea (and Dockside/Roving) Monitoring Program management, and catch share policy folks to properly respond to our queries. Though this request is addressed to you, we are including all others who we feel may play a role in providing the appropriate responses to our itemized questions.

We are requesting for a complete (written) response to our inquiry (preferably ordered by each numbered-question) to be returned to us by Friday January 8<sup>th</sup>, 2009 (preferably by one point of contact) to give us the time to properly analyze these proposed rules and consider the response for drafting our comments. Please provide specific resources (with page numbers of documents if applicable) that answer each of the questions below, or provide your reasoning why you may not be able to fully answer a specific question at this time. To avoid redundancy, we are including comments that Amy Van Atten has already provided to us with follow-up questions.

Questions:

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1. Who (name) will manage the new Northeast Fisheries At-sea (and Dockside/Roving) Monitoring Program?

**Amy's Response:** "I will be responsible for the at-sea portion of the monitoring and the training of both at-sea and dockside monitoring. The dockside monitoring program will be managed by the NERO - specifically, you could contact John Witzig or Greg Power."

**Follow-up Question to #1:** Who (name) will manage the dockside monitoring program?

2. Please define the professions "At-sea Monitor" and "Dockside/Roving Monitor" in comparison with the standards of Fisheries Observers, as described in such documentation as the Magnuson Stevens Fishery Management and Conservation Act (MS Act) and International Fisheries Observer and Monitoring Conference (IFOMC) proceedings. Will the information that is collected by At-sea Monitors and Dockside/Roving Monitors be more comparable to "vessel self-reporting" or the information collected by "observers" as defined by the Office of the Inspector general (OIG)<sup>1</sup>?

**Amy's Response:** Amy has provided us with a reference document entitled "NEFAMP vs NEFOP" which describes in a basic sense what the differences between the NEFAMP monitors and the NEFOP observers will be.

**Follow-up Question to #2:** We would ask you to please still answer this question as best you can, describing how these new professions will fit in with the established standards set by such documentation as the MS Act, IFOMC proceedings, and the 2004 OIG report "NMFS Observer Programs Should Improve Data Quality, Performance Monitoring, and Outreach Efforts" and the "Draft NOAA Catch Share Policy"<sup>2</sup>.

3. According to the proposed rule on Sector Plans<sup>3</sup>, FR page 68023, "an observer from the NMFS Observer Program is required to gather **more** data than an at-sea monitor." What information will At-sea Monitors and Dockside/Roving Monitors be tasked/authorized to collect, and what information will they be limited/restricted from collecting? From your response, we hope to clarify data collection authorities of the three professions, in relation to the differing objectives and employment standards amongst the professions. Please, be specific as possible here.

**Amy's Response:** This question is also in part answered with the reference documents "NEFAMP vs NEFOP" and "ASM FactSheet" that Amy has provided to us. The "NEFAMP vs NEFOP" document describes many of the differences among the two programs, including certain data collection limitations for NEFAMP monitors (i.e. no

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<sup>1</sup> NOAA-IPE 2004, Report #15721: "NMFS Observer Programs Should Improve Data Quality, Performance Monitoring, and Outreach Efforts", page 1. <http://www.oig.doc.gov/oig/reports/2004/NOAA-IPE-15721-03-04.pdf>

<sup>2</sup> "Draft NOAA Catch Share Policy"; section 4.2- Observer program design; page 16: [http://www.nmfs.noaa.gov/sfa/domes\\_fish/catchshare/docs/draft\\_noaa\\_cs\\_policy.pdf](http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/draft_noaa_cs_policy.pdf)

<sup>3</sup> Northeast Multispecies Fishery; 2010 Sector Operations Plans and Contracts, and Allocation of Northeast Multispecies Annual Catch Entitlements: <http://www.nero.noaa.gov/nero/regs/frdoc/09/09mul2010SecOpsPlansContractsAllocationsEntitlements.pdf>

“Biological Sampling” and no “Supplemental Research Projects”. The “ASM FactSheet” says that “At-sea monitors collect scientific, management, compliance, and other fisheries data onboard commercial fishing vessels through interviews of vessel captains and crew, observations of fishing operations, photographing catch, and measurements of selected portions of the catch and fishing gear.”

**Follow-up Question to #3:** This description of At-sea monitors appears to be very close to the description of a Fisheries Observer, and especially for programs outside the region that may not at this moment include “Biological Sampling” as an observer duty. Observer programs oftentimes begin with humble objectives and duties, which may greatly increase over time. We imagine that this may hold true for the NEFAMP. Please answer for us, what exactly among the program objectives and duties you feel justifies the decreased eligibility and training standards of the NEFAMP in comparison to the NEFOP? Where exactly is the line drawn between the two professions?

4. Who (name) will be approving the service providers?
5. Will there be any limitations on the number of service providers that could be “NMFS Approved”?
6. Besides the required reporting, exactly how does NMFS intend to oversee the performance of At-sea Monitors and Dockside/Roving Monitoring Program service providers? How often will NMFS be doing Provider performance reviews and what will those reviews entail? How does NMFS intend to address the increased accountability objectives?
7. What are the exact criteria by which At-sea Monitors and Dockside/Roving Monitors will be certified and decertified by NMFS? How will these criteria differ from certifying and decertifying Fishery Observers in the NEFOP?

**Amy’s Response:** Amy has led us to references that describe the basic training differences.

**Follow-up Question to #7:** Can you please address all differences that may exist between the process for formally certifying and decertifying NEFOP observers vs. NEFAMP monitors?

8. What authority exactly will Sector Managers have over employing At-sea Monitors and Dockside/Roving Monitors and how exactly will NMFS account for and prevent conflicts of interest and avoid sample and data biases on an inter and intra sector basis? We would like to compare these with the standards used by the NEFOP, so please provide information that contrasts with accountability measures among the NEFOP.
9. What will be the grievance and/or feedback protocols for At-sea Monitors and Dockside/Roving Monitors regarding the performance of their service provider and/or the sector management where they work (in comparison to

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10. Will permit holders of the two Sectors that chose not to provide operations plans, sector contract and EA (GB Cod Hook Sector and NE Fishery Sector I, pg. 68016), be allowed to fish without providing these documents to NMFS?
11. What are the criteria for approving at-sea Electronic Monitoring (EM) systems as an alternative to At-sea Monitoring? If these criteria are still being developed, how will the public be included in NMFS determining EM approval criteria?
12. Will the public be able to attend provider workshops?
13. To what extent will the data from all three professions (NEFOP, the At-sea Monitoring and Dockside/Roving Monitoring Programs) be available to the public? How will the confidentiality provisions of the updated MS Act be applied to sectors and how will these differ from those fishing in the Common Pool? Specifically, to what extent will NMFS aggregate the monitoring data from all three monitoring programs to protect the confidentiality of each sector vs. protecting the confidentiality of individual vessels. How will these confidentiality standards differ than those prior to approval of Amendment 16?

Lastly, please provide to us all resources (and/or direct links to on-line resources) that detail the standards and approval criteria for implementing the Northeast Fisheries At-sea (and Dockside/Roving) Monitoring Program, including:

- Any documentation that exhibits the specific terms for employing At-sea Monitors and Dockside/roving Monitors, especially in contrast to employing NEFOP observers;
- Any documentation that exhibits the specific criteria by which At-sea (and Dockside/Roving) Monitoring providers will be approved and disapproved by NMFS
- Any documentation that describes what the “NMFS-required training” for At-sea (and Dockside/Roving) Monitors will entail, in relation to NEFOP observer training. Please, provide Program Manuals (drafts or final, training and field operations, training curriculum) for all three programs (NEFOP, At-sea Monitoring Program, Dockside/Roving Monitors).
- Any documentation that describes what type of employment package a service provider will be required to provide to At-sea and Dockside/Roving Monitors. (i.e. wages and benefits, professional support). Specifically we would like to know Provider responsibility for Health, Safety and Welfare of these new professions and how NMFS intends to oversee this.

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- For all documents provided we wish to compare with the NEFOP. Therefore, please provide any information that will help us to clarify all of the different standards of the Northeast Fisheries At-sea (and Dockside/Roving) Monitoring Program in comparison to the NEFOP.
- Any documents and handouts given to participants of the August 2009 Groundfish Sector Monitoring Provider Workshop<sup>4</sup> would be helpful.

**Amy's Response:** Amy has provided us with following documents: 1. "NEFAMP vs NEFOP", 2. "ASM FactSheet", "Dockside Monitoring Standards", and "NEFAMP Logs All". She stated that the NEFAMP manuals and logs are still "underdevelopment".

**Follow-up:** Please provide to us any pertinent documents or links in addition to the ones provided by Amy.

Please let us know at your earliest convenience if you will be able to respond by January 8<sup>th</sup>. If we need to follow-up further with you for clarification to any of your responses after that, we may wish to then arrange a conference call with interested parties the following week (starting on Jan. 11th). We have been somewhat hampered by the task of reviewing all the documentation provided with the Amendment 16 EIS and the two related proposed rules (3700+ pages of proposed rules and associated documents) while trying to gather the necessary information from NMFS during the holidays, when many are on vacation. Therefore, we also request an extension on the deadline of at least the proposed rule, RIN 0648-XS55.

Thank you for your time and consideration into clarifying the details of these two proposed rules.

Sincerely,

Keith Davis; APO Secretary

Liz Mitchell; APO President

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<sup>4</sup> Groundfish Sector Monitoring Provider Workshop , August 2009:  
[http://www.nero.noaa.gov/sfd/sectordocs/Sector\\_Provider\\_Workshop\\_Agenda\\_07312009.pdf](http://www.nero.noaa.gov/sfd/sectordocs/Sector_Provider_Workshop_Agenda_07312009.pdf)