



New England Fishery Management Council

50 WATER STREET | NEWBURYPORT, MASSACHUSETTS 01950 | PHONE 978 465 0492 | FAX 978 465 3116
John F. Quinn, J.D., Ph.D., *Chairman* | Thomas A. Nies, *Executive Director*

June 26, 2020

Mr. Michael Pentony
Regional Administrator
NMFS/GARFO
55 Great Republic Drive
Gloucester, MA 01930

Dr. Jonathan Hare
Science and Research Director
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543

Dear Mr. Pentony and Dr. Hare:

I am writing to inform you of the serious concerns that the New England Fishery Management Council has over the planned resumption of at-sea observer deployments on July 1, 2020. The Council discussed this issue during our June, 2020 Council meeting. It is not clear to the Council what procedures will be followed for deployments and whether they are adequate to protect the health of both fisherman and observers during the current COVID-19 pandemic. As a result of its discussion, the Council passed the following motion:

Motion: that the Council task staff to write a letter expressing the Council's concern regarding the redeployment of the observer program on July 1. Include observer testing protocols and medical waivers.

While I know both of you were present for the Council's discussion, I thought it may be useful to highlight some of the issues that were raised. This is not a complete summary, but does attempt to identify the issues that seemed to draw the most comment. I would like to first note the general concern over whether there has been a careful analysis as to whether the benefits of observer deployments outweigh the health risks to both fishermen and observers. The Council understands that – under normal circumstances - observer data provide important information for both monitoring the fishery and assessing fish stocks. These are not normal times. Fishery surveys also provide important information, yet we do not believe the agency is resuming surveys on July 1. Perhaps there could be an explanation of how the agency justifies the need for observer data in light of the serious health risks the program may cause. This might include a clear explanation of the impact that a lack of observer data may have on future catch limits.

Moving on to specific issues raised during the discussion, the Council heard concerns from the industry that they were not consulted as the agency considered how to restart the program. This was primarily heard from Northeast Multispecies fishermen who participate in the sector program. Since sectors contract with observer providers for at-sea monitor services (ASM), these fishermen believe that they should have been more involved in discussions between the agency and the provider companies. They complain that this lack of transparency made it difficult to prepare for the July 1 start date. The Council is sympathetic to this concern and urges you to work closely with the industry as the program is finalized.

There were a number of questions that the Council asked concerning the detailed procedures that will be followed. If observer data is truly essential, then the program should be designed to minimize health risks as much as possible. It is clear the agency is making efforts to do so by trying to minimize observer travel, reducing the number of observers that deploy on each vessel, etc., but there may be additional practices that could further reduce risk. Emphasizing again that I am not summarizing all of the concerns, I would like to highlight a few of them:

- **Observer testing:** It is unclear whether observer providers will require COVID-19 tests for their employees, and if so, how frequently they will be performed. Frequent testing might provide additional comfort that the health risks are lower. The Council believes this decision should not be left to the discretion of individual providers, but should be standardized across the program.
- **Medical waivers:** As is the case for the general public, some fishermen may be more at risk from COVID-19 due to age or pre-existing conditions. The Council was told that there isn't a process for requesting and granting a medical waiver that would exempt a trip from carrying an observer. The Council believes this is a serious short-coming. Without a waiver process, is a fishermen who sails after refusing to carry an observer because of additional risk factors subject to the civil penalty process?
- **Quarantine practices:** There should be clear guidance on whether observers must quarantine before or after a trip. This situation is complicated by the mobile nature of the fishery and quarantine guidance that differs from state to state. Frequent testing may reduce the need for quarantine.
- **On-board practices:** Observers have a number of standard procedures that must be followed, some of which involve handling of vessel safety equipment or gear. These should be examined carefully to determine if they can be reduced in order to minimize the risk of transmitting the virus through contact with an infected surface.

Another topic raised was concern over the liability of vessel owners and operators should an observer contract COVID-19 while deployed on a fishing vessel, or infect a crewmember while deployed. The replies received on this question were murky, at best. The Council heard that vessel underwriters are explicitly excluding COVID-19 coverage from their policies. It is also not clear whether Jones Act injury provisions will allow a

crewmember who is infected by an observer to sue the vessel owner. How these liability questions interface with observer provider responsibilities should be clearly explained.

The Council recognizes that your staff worked hard to re-constitute a safe observer program during the pandemic. Nevertheless, we believe there is a need for additional work before deployments resume. We hope our comments provide information on issues the industry believes need further development. National Standard 10 places a responsibility on each of us to insure our regulations promote the safety of life at sea. . Recent news articles highlight that this pandemic is not yet conquered and we need to do our utmost to prevent its spread to our fishermen, observers, and their families.

Please contact me should additional information be needed.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Nies".

Thomas A. Nies
Executive Director

cc: Dr. Christopher Moore, MAFMC