

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

DAVID E. FRULLA

DFrulla@KelleyDrye.com

ANDREW E. MINKIEWICZ

AMinkiewicz@KelleyDrye.com

BRET A. SPARKS

BSparks@KelleyDrye.com

NEW YORK, NY
LOS ANGELES, CA
HOUSTON, TX
CHICAGO, IL
SAN DIEGO, CA
STAMFORD, CT
PARSIPPANY, NJ
BRUSSELS, BELGIUM
AFFILIATE OFFICE
MUMBAI, INDIA

June 29, 2020

Michael Pentony
NOAA Regional Administrator
55 Great Republic Drive
Gloucester, MA 01930

Re: Concerns with Resumption of the Regional Observer Program During COVID-19:

Dear Administrator Pentony:

On behalf of the Fisheries Survival Fund (“FSF”), we write to voice our concerns regarding NOAA Fisheries’ decision to resume observer coverage of fishing vessels in the Greater Atlantic Region beginning July 1. As you know, FSF represents the majority of limited access scallop vessels homeported from Massachusetts to North Carolina.

Namely, we are alarmed by the limited protocols in-place for observers following their initial 14-day quarantine period. For instance, once an observer has returned to port from his or her first trip, it is unclear whether that observer will be required to quarantine for an additional 14 days before boarding another vessel. Our country continues to grapple with the impacts and uncertainties of COVID-19’s spread. Resuming the observer program too quickly and without appropriate protocols in place would put our crewmembers at a heightened and unnecessary risk of exposure to the virus.

It is also unclear how a captain or boat owner should respond in a situation where the observer demonstrates symptoms of infection (*i.e.*, elevated temperature, respiratory symptoms, etc.) upon arriving at the vessel for the trip. Obviously we would not allow the observer onto the vessel, but it is unclear under the current protocol whether it is appropriate to report the symptoms of the observer to NMFS and embark without an observer, or if a vessel is required to remain docked until a new observer can be assigned. The former is consistent with how NMFS has

KELLEY DRYE & WARREN LLP

Michael Pentony, NOAA Regional Administrator

June 29, 2020

Page Two

handled similar situations where an observer fails to report, in which case the vessel is allowed to embark on the trip without an observer. NMFS should likewise allow a vessel to depart if an observer is unable to board because of symptoms.

We would request that NMFS address these concerns and explain the renewed observer protocol as a whole in more detail before the waiver is lifted. Therefore, we would also request an extension of the waiver until such time that these issues can be addressed. We understand the need for observer coverage in our fisheries, and we appreciate the valuable information these observers provide for bycatch data and other research endeavors. However, our priority will always be the safety and well-being of our crews. Given the uncertainty surrounding this pandemic, we would expect NMFS to proceed with the utmost abundance of caution in all forthcoming measures.

* * *

Thank you for the opportunity to submit this letter and for your consideration of these critical issues. Please do not hesitate to contact us if you have questions or require any additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'D. Frulla', with a long horizontal line extending to the right.

David E. Frulla

Andrew E. Minkiewicz

Bret A. Sparks

Counsel for Fisheries Survival Fund