



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802-1668

September 11, 2024

Angel Drobnica, Chair
North Pacific Fishery Management Council
107 West 3rd Ave., Suite 400
Anchorage, Alaska 99501

Dear Ms. Drobnica:

In light of substantial public interest in the status of fishery observer programs following the recent U.S. Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, the National Marine Fisheries Service (NMFS) offers the following summary pertinent to the North Pacific Observer Program's requirement that vessels in the full coverage category directly pay for observers. At present, the New England Industry-Funded Monitoring Rule remains in effect pending further court action to revisit NMFS's authority under the Magnuson-Stevens Fishery Conservation and Management Act without the *Chevron* interpretive framework. We maintain that the Magnuson-Stevens Act authorizes the agency to require fishing vessels to pay for the costs of carrying observers on board their vessels.

It is worth noting that when the North Pacific Council was developing the two observer coverage categories (full and partial), the Council considered whether the Observer Program should be funded entirely under section 313 of the Magnuson-Stevens Act. For a variety of reasons, the Council recommended the current approach to fund the partial coverage category under section 313 and the full coverage category under the agency's more general authority in the Magnuson-Stevens Act.

Regardless, section 313 authorizes the Council, in consultation with the Secretary, to prepare a fisheries research plan for any fishery under its jurisdiction, except a salmon fishery, which requires the use of on-board observers and establishes a system of fees to pay for the fisheries research plan. Thus, while the Council and NMFS previously relied on section 313 only for the partial coverage category, the Council could consider amending the Observer Program to collect fees from the full coverage vessels and use those fees to pay for observers. However, at this point no change is expected or needed. We will inform the Council of the outcomes of ongoing litigation and if a change is warranted.

Sincerely,

Jonathan M. Kurland
Regional Administrator

