

of the mis-calibrated trawl warps used in eight *R/V ALBATROSS IV* bottom trawl surveys between winter 2000 and spring 2002 in view of (i) the results of the ‘intervention’ analyses conducted at the Groundfish Assessment Review Meeting (“GARM”) on 8-11 October 2002 and (ii) the recently completed experimental cruise in which the effects of unequal trawl warp lengths on survey catches of various species were evaluated at sea; and (2) the appropriateness of the biological reference points developed for groundfish stocks developed by the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish which met 12-14 February 2002, as well as the updated assessments conducted during the GARM in October 2002. Additionally, this declaration provides information on the status of the Freedom of Information Act (“FOIA”) request referred to in the cross motion filed by Northeast Seafood Coalition to obtain a wide range of documents regarding the use and calibration of equipment utilized in the Northeast Fishery Science Center trawl surveys, including documents relating to the discrepancy in the length of trawl warps used by the agency’s research vessel.

3. The information considered at the GARM did not indicate any systematic reduction in trawl survey fish catch efficiency due to the trawl warp discrepancy. See Section 4 on page 460 of the GARM located on the agency’s web site at nefsc.noaa.gov/nefsc/publications/crd/crd0216/. The agency, however, is committed to doing further analysis and review on this issue, and, accordingly, intends to conduct additional workshops and an independent peer review of the effect of the discrepancy on trawl survey data.

4. To provide the time to conduct such a peer review was a primary reason the National Marine Fisheries Service (“NMFS”) joined with the Plaintiffs in the submission of the Joint Stipulation to extend the deadline to implement Amendment 13 to no later than May 1, 2004. NMFS has determined that such peer review must be completed on or about the beginning of March, 2003, in order to ensure that the peer review can be incorporated into and used in the

development of Amendment 13, in a timely manner, under the proposed extended deadline.

5. In preparation of the peer review, NMFS is planning on conducting at least two workshops in January. One workshop will deal with a recently completed experimental cruise in which the *R/V ALBATROSS IV* fished with two different gear configurations, which were believed to represent a likely maximum difference in gear configurations in recent years. This included the effects of equal vs. unequal trawl warp lengths. (A commercial fishing vessel provided a consistent index of fish abundance during the experiment, as a covariate.). The workshop is intended to provide a discussion and review of the statistical analysis of the data collected on the cruise to help determine the significance of the difference in catchability of fish between the two different research gear configurations. The second workshop will deal with reviewing the biological reference points developed for groundfish stocks by the Working Group on Re-Evaluation of Biological Reference Points for New England Groundfish, as well as the updated groundfish stock assessments conducted at the GARM. Both workshops are intended to provide all of the parties to this litigation and any other interested person with the opportunity to present their opinions, interpretations and recommendations concerning the issues to be covered.

6. Once the workshops are completed, the results of the workshops and issues described in paragraph 2 will be presented to an independent peer review panel. The independent review panel will be requested to provide its findings to NMFS and the New England Fishery Management Council (“Council”) no later than the beginning of March, 2003.

7. To ensure flexibility and openness in establishing the workshops and independent review panel, NMFS, intentionally, has not finalized the specific terms of reference for the workshops and independent review panel, nor, has NMFS determined the process for selecting who should participate on the independent review panel. NMFS believes that these matters should be decided on, in the next few weeks, in cooperation with the parties to this litigation, the

Council, the fishing industry, the scientific community and any other interested persons, with the understanding that the deadlines for completing the independent review must be met.

8. As to the FOIA request, NMFS, on November 22, 2002, sent a letter to the requester specifying the cost estimates for complying with the request. If the requester agrees to pay such costs, NMFS will provide the non-exempted documents as soon as possible thereafter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Ipswich, Massachusetts, on this 25th day of November, 2002.

_____/s/_____

Patricia A. Kurkul

Regional Administrator, Northeast Region, NMFS