

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME
3 HOURS

DATE: February 3, 1998

SUBJECT: Observer Program

ACTION REQUIRED

Final action on third party, joint partnership agreement (JPA).

BACKGROUND

In December you reviewed the EA/RIR for the JPA observer program structure and released the document for public review with a final decision scheduled for this meeting. This program is expected to be in place in time for the 1999 fisheries, at which time industry would obtain their observers through the Pacific States Marine Fisheries Commission (PSMFC) - the existing program will remain in place through 1998 with vessels and plants dealing directly with the observer contracting companies. The Council also initiated re-development of a fee system to fund the observer program, with the expectation that previous problems and issues would be addressed and resolved. With a target implementation in the year 2000, staff will be working over the next two years to develop that fee system, with the assistance of the Council's Observer Advisory Committee (OAC). Effort will also need to be directed to putting the finishing touches on the JPA, assuming Council approval of this program.

Item C-1(a) is the draft EA/RIR, prepared by NMFS and PSMFC, for the third party, JPA observer program structure. While some of the administrative and logistical details of the JPA will remain to be resolved by NMFS and PSMFC, the document describes the main features of the JPA program including: total costs projections; updated projections of relative costs to various industry sectors; respective roles of NMFS, PSMFC, and contracting companies; and, how industry will go about procuring observer services. While the document contains three alternatives for the JPA structure, and options for assignment of work among the contractors, 'Preferred Alternatives' have been identified for both. In the document this is labeled Alternative 3, Option 3.

Staff reviewed these issues in December and the OAC reports to the Council are under Item C-1(b). Essentially, the OAC recommended approval of the JPA, and re-development of a fee-based funding mechanism, which would begin immediately and dovetail with the JPA structure. NMFS and Council staff intend to begin this process following this meeting and resolution of the JPA program.

Recent comments received are under Item C-1(c).

OBSERVER ADVISORY COMMITTEE

Report to the Council on the Third Party/JPA Observer Program Structure

[November 24, 1997]

Members present: Chris Blackburn (Chair), Michael Lake, Arni Thomson, John Winther, Paul MacGregor, Kim Dietrich, Teresa Turk, Jerry Nelson, Paula Cullenburg, Gary Westman, Lauri Bowen

Agency staff present: Bill Karp, Sue Salvesson, Dave Hanson, Al Didier, Chris Oliver, Earl Krygier, Heather Weikert

Others: Al Burch, Doug Wells, John Gauvin, Dave Fraser, Brent Paine, Bob Mikol, Dave Benson, Steve Drage

Overview

The Committee met on November 24 to review the EA/RIR, prepared by NMFS and PSMFC, for a 'preferred alternative' for the third party (JPA) observer program structure. The OAC had previously reviewed the JPA alternatives in early September (see attached report dated September 8, 1997) and many of the same issues and discussion points were reiterated at our November meeting. However, further refinement of the JPA alternatives and options, coupled with other developments, has allowed the OAC to now make a more specific overall recommendation to the Council. The following motion was adopted by the OAC by an 8-1 vote (5 members were not in attendance).

Motion is to recommend approval and development of JPA Alternative 3, with Option 3 regarding assignment of work, for ASAP implementation for the groundfish fisheries, and that development of a blended fee plan begin concurrently, recognizing that separate approval would be required, and that implementation may not be concurrent. This blended fee plan would be limited to a 2% cap, with supplemental observer coverage being potentially available through the PSMFC for programs such as CDQs, IFQs, or VBAs (this would need to be explicitly defined). Crab fisheries inclusion in the fee plan would be optional, pending implementation of their cost recovery plan. The OAC recommends that a TAC-based cost recovery mechanism (similar to the State's proposed BSAI crab plan) also be explored for groundfish.

The OAC, during discussion of this motion, emphasized that all observer coverage for open access fisheries was intended to be covered under the fee plan. The fee plan was also to cover vessels with individual allocations, as long as the coverage requirements were the same as those in the open access fisheries. Any coverage requirements for individual vessel programs above that required in the open access fishery would be paid by the vessel since the vessel itself was the sole beneficiary of the individual allocation.

During these discussions, the OAC also referred to the fee plan as the 'Modified Research Plan' to signal that the OAC felt that the elements in the earlier plan voted down should be reviewed, and revisions made to eliminate problems found in the first version of the Research Plan.

Renewed support for the fee-based plan is based partly on new, higher costs which are projected for future observer coverage, thereby exacerbating the disproportionately high costs for some operators, particularly those smaller vessels in the 30% coverage category. Overall the OAC feels that a fee-based plan represents the best approach to address major issues of data integrity, cost equalization, and flexibility in placing observer coverage most efficiently. We recognize that such a program cannot be re-developed and implemented in the short time frame facing the Council. Getting the basic JPA structure in place is still an immediate priority, also recognizing that the resulting third party structure is compatible with a future, fee-based funding mechanism.

Specific Discussion Points

Following is a summary of some of the major issues discussed by the OAC at the November 4, 1997 meeting. Many of these are also discussed in the previous minutes dated September 8, 1997.

Disproportionate cost issue - Regarding cost as a percentage of gross, the OAC was presented with updated projections which incorporate new assumptions on observer costs. These projections indicate that the costs as a percentage of gross will be very high for many operations. The OAC would like to see a further break-down by specific fishery (for example June GOA pollock; gulf rockfish; 4th quarter GOA flatfish fishery, etc.). This will allow further resolution of which fisheries (and which fishermen) will be most impacted.

Conflict of interest issue - and whether it would be fully resolved by having the PSMFC as the sole observer source - Response is that (a) PSMFC is not a private, for profit business, (b) there is no optional place for industry to get an observer, so the 'leverage factor' is eliminated and, (c) there's not a negotiation process, it's a bid process.

Observer compensation - the context of this point is how the PSMFC would deal with compensation barring a negotiated settlement, or in the presence of non-union contractors. It is clarified that the Services Contract Act would not apply. Establishing a minimum salary at this time is not envisioned by the PSMFC. Rather, that would be dealt with via the review of bids, stipulations for minimum % of prior observers (time in grade coupled with performance ratings), or other means.

Science vs compliance - The OAC feels that under any program structure an attempt should be made to separate observer compliance monitoring duties from basic scientific information collection. While these are difficult to separate in many cases, such an analysis may help in future determinations of optimal distribution of observer coverage.

Efficient placement of observers under the JPA - consistent with previous minutes, the OAC is still concerned that the JPA arrangement, which will assign modules of observer coverage (by fishery for

example), may not allow for optimum cost efficiency. The current system allows for industry to make efficient use of observers, particularly among 30% vessels. Modules also present issue of overall fixed cost being factored (frontloaded) into bids submitted by contractors. The issue of observer specialization is also integrally related to this issue - cross trained observers would obviously facilitate flexibility and efficiency.

Potential waivers - another issue which generated a lot of discussion is what will happen if PSMFC, as the only source for observers, is unable to provide an observer to a vessel? Will NMFS waive them? Should there be a specified advance notice time? PSMFC should be able to resolve the issue because they have the whole pool of observers to pull from, and likely several contractors to go to. While this situation is not likely, industry wants some assurance they would not be precluded from fishing if the situation does arise.

Criteria for 'grading' observers - the OAC discussions reflect a desire by industry to participate in future development of these criteria. It is recognized by NMFS and the PSMFC that this will need to be resolved in the final details of the JPA arrangement.

OBSERVER ADVISORY COMMITTEE

Report to the Council on the Third Party/JPA Observer Program Structure
[September 8, 1997]

Members present: Chris Blackburn, Michael Lake, Kim Dietrich, Teresa Turk, Paula Cullenburg, Mandy Merklein, Lauri Bowen, Nancy Munro, Arni Thompson, Paul MacGregor, Don Goodfellow

Staff: Chris Oliver (NPFMC), Bill Karp, Shannon Fitzgerald, Sue Salvesson, Martin Loefflad, Sarah Gaichas (NMFS), Al Didier, Dave Hanson (PSMFC), Larry Boyle (ADF&G)

Others: Jerry Rubin, Mark Coles, Jill Bowman

Overview

The OAC received reports from NMFS and the PSMFC regarding progress on the Joint Partnership Agreement (JPA) structure for the observer program. The reports included: (1) summary and comparison of 3 optional JPA structures; (2) Summary and comparison of costs associated with each JPA option, and comparison under two observer salary scenarios; (3) overall rating of each JPA option relative to program goals and objectives; and, (4) discussion of options for determining assignment of work - how will the available work be distributed among the observer contracting companies. An updated discussion paper on the issue of groundfish observer costs by sector and vessel size was provided by NMFS, though the OAC did not have time to review or discuss this issue at this meeting. The OAC also received a report from Larry Boyle (ADF&G) regarding status of the State's shellfish observer program.

The role of the OAC in the process was perceived to be one of review and comment, as opposed to trying to choose a particular JPA alternative at this time. The Committee's primary focus was to help define the details of each, alternative JPA structure, with the expectation of a final decision in December. The OAC commends the work developed thus far and unanimously recommends further development of the JPA structure by NMFS and the PSMFC this fall. The JPA structure, in general, appears to be cost effective and provides, under any option, for continuation of existing services to the industry.

Things that are not directly addressed by the JPA at this time, but should be the subject of future discussions include: (1) disproportionate costs, (2) flexibility of putting observers where we need them (state program funding mechanism solves this problem for crab fisheries), (3) how to monitor observer work and overtime hours, (4) efficiency issues, particularly with 30% vessels, (5) specialization by observers, and whether this should be promoted, (6) re-opening of fisheries - short turnaround and high cost, (7) number of field coordinators required, (8) technical criteria for performance evaluations. A critical, and so far unresolved, aspect of the JPA structure is the question of how the PSMFC will distribute the work among the existing, or future, observer contracting companies.

A summary of Committee discussions is provided below:

Optional JPA Structures

The options for JPA structure essentially involve trade-offs regarding the respective roles of the existing contractors and PSMFC. For example, Option 1 leaves the contractor structure intact and PSMFC acts only as the 'arms length' factor, while Option 3 would shift many of the current contractor functions to the PSMFC, and make the contractors more like employment agencies. Option 2 is somewhere in between. It is assumed that observers would remain employees of the contractors under all JPA options, though this issue is listed among the legal questions raised by the OAC.

The OAC's primary discussions centered around the administrative and logistical aspects of the alternative structures; i.e., the specifics of what a vessel/plant would need to do to get their observer, payments for that observer, who they contact in the event of a problem, etc. The particular functions of the PSMFC, the contractors, and NMFS, also need to be clearly specified. Within this general discussion, several specific issues or questions were raised and are summarized below (these may overlap with cost or assignment of work issues discussed later):

- * need for a port coordinator in Kodiak, either in addition to or in lieu of, Dutch Harbor.
- * what is role (necessity) of port coordinator under JPA options 1 and 2? Could it be combined with NMFS field personnel?
- * how does an observer get treated in terms of assignments (specializing in shore plants, or fixed gear vessels, for example). Can NMFS specify, thru the PSMFC, a particular grade of observer for a particular fishery? YES - this flexibility could be written into the JPA if necessary
- * can JPA agreement require a certain percentage of prior observers? Yes, if necessary.
- * To the extent pre-payment is required, how will PSMFC estimate the necessary pre-payment amount? Length of season and other factors would be used to project expected observer costs.

Cost comparisons

Costs were presented from two perspectives: (1) comparisons among the JPA options, and (2) under two observer salary assumptions - the current compensation structure and an assumed increase roughly equivalent to a GS-5. Under the column for the assumed increase, the costs reflect both an increase per day, and a projected increase in the number of days which are paid. Overall cost per observer day does not differ much across the JPA options, nor does it increase with the addition of the third party (PSMFC) in the process. Significant cost increases are associated with an assumed salary increase, independent of any third party/JPA arrangement.

The following issues or questions were raised by the OAC during discussions of program costs:

- * Short notice fishery openings will be another consideration which will impact costs, likely raising projected costs.
- * Cost of air fare in the projections assumes a mix of regular fare and 14 day discount fares, but likely underestimates total travel 'occurrences', thereby likely underestimating overall travel costs.
- * It is understood by the OAC that, in the absence of a union negotiated salary level, the PSMFC can stipulate salary requirements in their contracts with the existing contractor companies.
- * Port coordinator requirements could affect cost projections - for example, necessity for coordinator

in Kodiak, in addition to Dutch Harbor, may increase cost projections. Also, interactions with existing NMFS staff need to be further researched and may impact port coordinator projections.

*Overall cost projections will be affected by how a "cruise" is defined (number of days, when it starts and ends, etc), and the extent to which overtime hours are actually worked. Related issue is how observer work hours will be monitored.

*Regarding the issue of differential pay (incentives) for observers based on experience level- Who would establish those differentials and what would they be? Current projections make an assumed, relatively small differential between experience levels. Resolution of this question does not affect the overall cost *comparisons* among JPA options, because those assume set proportions, but may affect *absolute* cost figures.

*Underlying assumptions for various cost-related projections need to be clearly spelled out and explained in future iterations for OAC and Council review.

*Additional costs associated with coordinator support may need to be factored in, particularly under Option 2, but would increase relative costs of that Option only slightly.

Summary Comparison of JPA options

The OAC reviewed a summary comparison (prepared by staff) of the JPA options, measured against a set of 8 major goals and objectives for an improved observer program. While the OAC found this a useful exercise, we were not yet ready to make a recommendation for a specific JPA Option at this time. The numbers in the comparison sheet are somewhat subjective in nature and are meant to reflect only relative direction. The Committee notes, and the staff concurred, that a 'phase-in' could occur, from Option 1 into Option 2, and even to Option 3, if that is determined to be desirable.

Assignment of Work Options

The OAC received a report from PSMFC regarding options for distributing the workload among the existing contractors, as well as potential additional contractors in the future. This was the most difficult aspect of the proposed new program that the OAC discussed, and it remains largely unresolved. One aspect of the dilemma is how to maintain any competitive aspect of the observer procurement process, within a JPA structure that attempts to address other concerns, such as to minimize the direct relationships between contractors and vessels/plants. Options proposed by PSMFC include basing the work assignments to some extent on the existing percentages held by each contractor, with potential for the remainder to be distributed based on competitive bid, along with various combinations of fixed versus competitive assignments. This will be a critical aspect of the program and will affect, to some extent, the administrative and logistical details for industry, if not costs to industry.

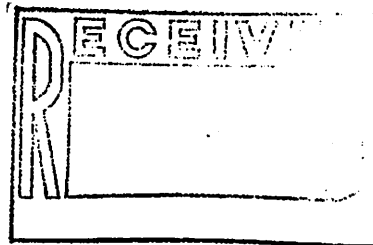
Legal questions were raised relative to this issue, including: (1) Can we, or should we, limit the number of contractors in business; (2) Can we, or should we, maintain a minimum number of contractors in business; (3) Will there be problems charging some vessels more than others for similar observer coverage, if costs are different among the contractors (recall that PSMFC will determine which contractor a vessel receives); (4) To the extent costs per observer day are similar across all contractors, does this 'standardized' pricing create a legal problem?; (5) Have we created a situation where, legally, the observer is now an employee of the contractor and the PSMFC (joint employer)?; and, (6)

Depending on the assignment of work option chosen, contractors could be 'guaranteed' some amount of business - does this raise any legal problems?

The OAC feels that these issues need to be further explored before significant progress on the JPA structure can be realized. In addition to the legal aspects involved, the assignment of work issue generated significant discussion among the OAC members. Some of the issues raised overlap with other concerns raised under the JPA options discussions - for example, the OAC feels that the issue of observer support is a critical consideration. Depending on the JPA option chosen, as well as the assignment of work option chosen, the support infrastructure for observers could be compromised. The contractors provide a network of logistical support for observers, the importance of which should not be overlooked. Related to this was a general observation that maintenance of a professional core of observers, as well as ensuring that a pool of observers is available to the fisheries at any given time, may be dependent on maintenance of a professional core of contracting companies. Other concerns are noted below:

- *Under some options (fully competitive), observers could be put in a position of uncertainty, unless observers were 'employees' of all contracting companies at the same time.
- *Fishery 'module' concept, as envisioned under the Research Plan, may be applicable here, in terms of rationale blocks of observer coverage to bid on.
- *How will this decision ultimately get made? Can, or should, the OAC and Council provide policy guidance on this issue? Is it a NMFS/PSMFC decision? Barring direction, the PSMFC and NMFS will develop a position for OAC and Council review this fall.
- *Regarding contractor (de)certification, both NMFS and PSMFC want to maintain NMFS in the certification role.
- *A company/vessel may have to deal with multiple contractors, instead of one, under some work assignment options.
- *If salaries are standardized, the competitive aspect of contracting comes down (largely) to minimizing overhead, which will tend to decrease the support and service functions of the contracting companies.
- *The issue comes down to what the role is, or should be, of the contracting companies. We need to identify those tasks that we want the contractors to maintain.
- *Frontloading of costs by contractors - If contractors are guaranteed some level of business, and have to bid on the remainder, then all contractors will tend to frontload their full year's overhead costs into the initial contract. Result is industry paying more than they otherwise would (under a fully competitive process).
- *Objective criteria for evaluating contractor performance and PSMFC performance must be specified.
- *Maintenance of competition vs. other goals. Technical aspects of the review will be critical in accommodating competition. Need to establish objective criteria to 'grade' contractors for future work allotments
- *Sensitivity to disparity of individual industry operators' needs must be considered. Whatever we do must have mechanisms for dealing with grievances by observers, contractors, or industry. Each party needs to know who to contact, and where the resolution lies, in such instances.

NORTH PACIFIC FISHERIES COUNCIL
CLARENCE PAUTZKE
605 WEST 4TH AVE., SUITE 306
ANCHORAGE, AK 99501



12/16/97

SIR,

MY NAME IS STEVEN EVAVOLD AND I AM A GROUND FISH OBSERVER WITH ALMOST 400 SEA-DAYS LOGGED. ALL UNDER CONTRACT WITH ROGER WOODS AT DATA CONTRACTOR'S INC.. LAST WEEK I ATTENDED THE MEETINGS CONCERNING THE OBSERVER PROGRAM AT THE HILTON. IT SEEMS THAT A LOT OF DECISIONS ARE GOING TO BE MADE CONCERNING OBSERVERS WITHOUT ALL OF THE INFORMATION IN. I LISTENED TO MR. DIDIER FROM PSMFC BOTH THURSDAY AND FRIDAY AND STILL DON'T UNDERSTAND THE FIGURES HE GAVE YOU GUYS FOR IMPLEMENTING THIS THIRD PARTY PROCUREMENT PROGRAM. HE SAID SOMETHING ABOUT "BEING EXPENSIVE, BUT CHEAPER." DID YOU CATCH THAT? LISTENING TO HIM, MR. KARP, OAC, AND MIKE LAKE FROM AO; I FELT THERE WAS MORE ICING AND SNOW ON THE ISSUES THAT AFFECT ME THAN WHAT I'LL BE SEEING ON THE BOW THIS FEBRUARY.

SINCE THE REPRESENTATIVES FROM THE OAC USED TO WORK FOR MR LAKE, AND MR. LAKE IS PART OF THE OAC, IT'S EASY TO SEE THE REASON FOR THE BIASED COOPERATION THERE. THE OAC DRILLED THE FISHERMEN WITH QUESTIONS, BUT NOT MR. LAKE THE CONTRACTOR? OF COURSE NOT, HE'S A MEMBER OF THE OAC. HOW ON EARTH? I THINK THERE'S A PERCEIVED "CONFLICT OF INTEREST" SOMEWHERE IN THERE; DON'T YOU? AND NO QUESTIONS FOR MR. KARP? I NOTICED HE WAS AS CLEAR ON THE ISSUES AS MR DIDIER. YOU COULD TELL WHO WAS NOT CONCERNED ABOUT THE IMPACT ON THE INDUSTRY. THE OAC DOES NOT SPEAK FOR ME OR ANY OF THE LONG-TIME OBSERVERS I'VE SPOKEN TO. BUT THEN, THE PEOPLE I'VE TALKED TO ARE FROM OTHER CONTRACTORS. WE ARE CONCERNED WITH THE IMPACT ON THE FISHERMEN. "WE" WILL HEAR ABOUT IT THE MINUTE WE STEP ON A BOAT. YOU WON'T, NMFS WON'T, OAC WON'T. I HOPE THAT ANY DECISION YOU MAKE WILL BE MADE WITH MORE FACTUAL KNOWLEDGE THAN THE BIASED BS THAT WAS PRESENTED TO YOU LAST WEEK.

I DON'T BELIEVE THAT YOU PEOPLE ALLOWED MR LAKE TO BLOW HIS HORN AND MARKET HIS BUSINESS AS YOU DID. YOU BASICALLY ALLOWED THE BELIEF THAT HE'S GOING TO BE THE ONLY CONTRACTOR AROUND IN JANUARY TO TAKE CARE OF BUSINESS. NOW THAT INFORMATION IS SPREADING LIKE WILD-FIRE OUT THERE. WHAT IMPACT IS THAT GOING TO HAVE ON THE OTHER CONTRACTORS? I MAY BE OUT OF A JOB SOON. THANK YOU VERY LITTLE. AND NOW THERE'S A STRONG RUMOR FLOATING AROUND THAT MR. LAKE MAY HAVE REACHED A TENTATIVE VERBAL AGREEMENT WITH THE UNION AND THE OAC, BUT HASN'T SIGNED ANYTHING YET. IS THIS TRUE? WAS THIS A SCHEME CREATED BY THE OAC, AO, NMFS, AND MR. COLES? IS THIS A WEB OF DECEIT OR WHAT?

I'M ALREADY SURROUNDED WITH PEOPLE GUNNING FOR ME, I DON'T NEED ANOTHER AGENCY. I ALREADY HAVE A SKIPPER ON ONE SIDE, THE DECKHANDS ON ANOTHER, AND NMFS WITH ALL OF THEIR DEMANDS BREATHING DOWN MY BACKSIDE. AND SOON THERE WILL BE A UNION REP AFTER ME. THE CONTRACTORS AS YOU KNOW HAVE BEEN COORDINATING/DIRECTING, ETC. WITH MORE THAN ACCEPTABLE EFFICIENCY FOR A LONG TIME. DO YOU REALLY THINK A NEW ENTITY STEPPING IN CAN DO IT MORE SO?

NMFS IS WHAT OBSERVERS LOSE SLEEP OVER, NOT CONTRACTORS. THEY DON'T TRUST US, THEY PICK APART OUR WORK THROUGH EXTENDED DEBRIEFINGS, TREAT US LIKE AN UNWANTED CHILD, AND WANT ONLY DISTANCE BETWEEN US. WHY ELSE WOULD THEY WANT ANOTHER STEP BETWEEN THE BOATS AND THE CONTRACTORS? ESPECIALLY ONE THAT REPORTS AND ANSWERS DIRECTLY TO THEM?

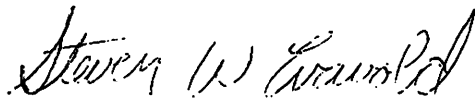
DON'T LET THE EXCUSE OF "PERCIEVED CONFLICT OF INTEREST" SWAY YOU IN YOUR THINKING. THAT IS A SLAP IN THE FACE TO ALL PROFESSIONAL OBSERVERS AND "GOOD" CONTRACTORS. IT'S INSULTING TO OUR INTELLIGENCE AND PROFESSIONALISM. AND I'M SURPRISED THAT NOBODY QUESTIONED IT AT THE MEETINGS. THE DOWNWARD SPIRAL OF OBSERVER MORAL IS FROM NMFS; NOT FROM CONDITIONS, BOATS, OR CONTRACTORS AS THEY WOULD HAVE YOU BELIEVE. DO YOU KNOW THAT ALL DUAL-CERTIFIED OBSERVERS WOULD MUCH RATHER DO ADF&G CRAB BOATS THAN HAVE TO DEAL WITH NMFS AND GROUND FISH BOATS? WHY IS THAT?

MORAL IS NOT COMPLETELY RELATED TO THE LOW WAGES ISSUE AS OAC CLAIMS. I WOULD THINK THAT BY NOW SOMEONE WOULD REALIZE THAT THE REASON SOME OF US DO THIS FOR SO LONG IS BECAUSE WE LOVE THE WORK! IF IT WAS FOR THE MONEY, THERE WOULDN'T BE VERY MANY PRIORS. DON'T YOU THINK? OF COURSE A LITTLE EXTRA MONEY IN ANY JOB DOESN'T HURT. BUT I WONDER IF THE DATA ISN'T GOING TO BE WORSE OUT THERE WITH MORE "BAD" NEW OBSERVERS MAKING MORE MONEY WITH NO INCLINATION TO QUIT. A "CATCH 22" ISN'T IT?

IF THE COUNCIL WANTED SOME "REAL-TIME" INFORMATION AND ANSWERS YOU'D SEND OUT A QUESTIONNAIRE TO ONLY CURRENT OBSERVERS WITH 200 OR MORE SEA-DAYS. I'M SURE YOU'D BE SURPRISED WITH THE ANSWERS.

I WANTED TO STAND UP AND PRESENT TO YOU MY VIEWS AND THE VIEWS OF OTHER OBSERVERS THAT I'VE HEARD, BUT I DON'T THINK I COULD HAVE BEEN AS CLEAR AS PUTTING THEM IN WRITING. SIR, I'M NOT SURE HOW MUCH LONGER I'M GOING TO TAKE DATA FOR NMFS. WHAT CONFIDENCE I HAD IN THEM IS GONE. BUT I STILL LOVE THE SEA AND THE ACTUAL WORK, SO I'LL CONTINUE OBSERVING. MAYBE I'LL GO GET MY CRAB CERTIFICATION AND JUST DO CRAB BOATS FOR ADF&G.

STEVE EVAVOLD



C/O DCI
4606 GARFIELD
ANCHORAGE, AK 99503

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Feb. 1, 1998

Mr. Rick Lauber, Chairman
Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
Post Office Box 103136
Anchorage, Alaska 99510

Re: Observer Plan EA/RIR

Dear Rick,

The EA/RIR on the observer program does not provide answers to things that should be known by the council and the public before adopting the JPA alternative, such as:

- What is the notice time required to get an observer?
- Can PSMFC unilaterally modify the notice time requirement or does it require a regulatory action?
- Does failure to provide an observer when advance notice has been given result in an automatic waiver?
- Aside from transportation costs, will the daily rate charged to the boat owner always be the same throughout the year?
- Will the daily rate be the same for 100% and 30% boats?
- Will the daily rate be the same for a long opening (A-season) and a short opening (a 4 day June pollock opening?)
- How does the "bid module" process really work?
- What if all contractors bid aggressively on early business and only one contractor bids on a June opening? What if nobody bids on a June opening? What if the bid is double the A-season rate?
- What if contractors front load A-season bids to cover fixed costs and B-season bids are significantly lower?
- If PSMFC has set an annual daily rate and collects too much or too little how does it deal with underages or overages in it's collections?
- Is PSMFC allowed to carry over a budget surplus? How does it deal with a deficit?
- How does a contractor bid on a module without knowing how many observers it will actually have to supply?
- How can PSMFC tell a contractor what number of observers it will actually have to supply until boats have given notice of intent to participate?
- What happens if a boat gives notice of intent to participate (requests an observer) and changes its mind and doesn't fish? How much notice is required to avoid being charged?
- How can a boat decide to enter a fishery until it knows the cost per observer day? (return to question # 1 and enter repeating DO_LOOP)

- If NMFS decides to not fund their observer training program (as was threatened under the research plan), can it pass this cost through to PSMFC to be pro-rated over the cost of an observer day? Could it do so through a regulatory amendment? A technical amendment?
- Can the percentage of overhead charged by PSMFC change without a plan amendment? Regulatory amendment? Technical amendment?
- What information does NMFS currently use to determine if a vessel has complied with the 30% coverage requirement?
- Why does the EA/RIR assume that 30% boats never exceed 30% coverage in estimating the costs under status quo or the JPA? How much does the assumption that airfares are \$25/observer day bias or underestimate the costs for 30% vessels?
- What are the actual levels of coverage achieved in various fisheries by 30% vessels (BSA pollock, GOA June pollock, GOA rockfish), especially in fisheries where season duration is uncertain?
- Can the coverage level requirements be altered as a part of this plan amendment? (i.e.: revised to 50% for vessels >125' in shoreside MW pollock, & fixed gear P.Cod, 10% for vessels <125' in shoreside MW pollock and fixed gear P.Cod)

The Goals of the Observer Plan Are Not Met by JPA

The goals and objectives for an observer plan go beyond those listed for the JPA. If the only objective was reduction of the conflict of interest, JPA wins out over the current program. However, many of the real goals which have been established by NMFS and the Council have been excluded from this document, and the analysis suffers accordingly.

Section 1.2.2 lists eight objectives of the JPA, within the context of a goal of collecting quality observer data. Previous work on the observer program identified at least six other objectives of equal or greater importance, which are not met by the JPA.:

- Provide *flexibility* to deploy observers in fisheries where they are most needed.
- Provide an *equitable cost distribution* mechanism that recognizes that the benefits of any given vessel carrying an observer do not accrue solely to the observed vessel.
- *Cap total costs* of the observer program funded by industry at the 2% limit authorized by the MS_FCMA.
- Prevent the cost of carrying an observer from being an *allocation* issue, (i.e.: being the determining factor in who can participate in a fishery.)
- Eliminate the ability of an operator in a 30% fishery to *bias the data* by manipulating which trips get coverage.
- Achieve a *unified observer corps* groundfish and crab.

Clearly the Research Plan is superior to the Alt. 3 in meeting these six objectives and equal to the JPA in the meeting the other objectives detailed in the analysis.

If the Council intent is to foster a fishery made up of only supertrawlers and vessels less than 60', Alt. 3 should be the preferred option. *If there is a desire to retain a diverse fleet including fixed gear vessels, and mid sized shorebased trawlers, the Council must renew it's commitment to timely implementation of a fee based observer program.*

The most important decision about the future of the observer program is not whether to use PSMFC as a buffer between industry and contractors. *The most important decision is whether to continue with a Pay-as-You-Go - 0/30/100% coverage program, or to address the specific problems with the Research Plan and implement it.* There is no statutory authority for anything other than a fleetwide fee based program to address this issue.

Conclusion

The industry went to Congress and had the FCMA amended to provide for a program that was based on a fee. This issue is as critical as any other issue relating to the observer program, including the appearance of conflict of interest. The Council must avoid committing to a program that will resolve one issue at the expense of the other.

Sincerely yours,

david fraser
F/V Muir Milach
PO Box 771
Port Townsend, Washington

Feb. 1, 1998

Mr. Rick Lauber, Chairman
Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
Post Office Box 103136
Anchorage, Alaska 99510

Re: Observer Plan EA/RIR

Dear Rick,

The EA/RIR on the observer program does not provide answers to things that should be known by the council and the public before adopting the JPA alternative, such as:

- What is the notice time required to get an observer?
- Can PSMFC unilaterally modify the notice time requirement or does it require a regulatory action?
- Does failure to provide an observer when advance notice has been given result in an automatic waiver?
- Aside from transportation costs, will the daily rate charged to the boat owner always be the same throughout the year?
- Will the daily rate be the same for 100% and 30% boats?
- Will the daily rate be the same for a long opening (A-season) and a short opening (a 4 day June pollock opening?)
- How does the "bid module" process really work?
- What if all contractors bid aggressively on early business and only one contractor bids on a June opening? What if nobody bids on a June opening? What if the bid is double the A-season rate?
- What if contractors front load A-season bids to cover fixed costs and B-season bids are significantly lower?
- If PSMFC has set an annual daily rate and collects too much or too little how does it deal with underages or overages in it's collections?
- Is PSMFC allowed to carry over a budget surplus? How does it deal with a deficit?
- How does a contractor bid on a module without knowing how many observers it will actually have to supply?
- How can PSMFC tell a contractor what number of observers it will actually have to supply until boats have given notice of intent to participate?
- What happens if a boat gives notice of intent to participate (requests an observer) and changes its mind and doesn't fish? How much notice is required to avoid being charged?
- How can a boat decide to enter a fishery until it knows the cost per observer day? (return to question # 1 and enter repeating DO_LOOP)

- If NMFS decides to not fund their observer training program (as was threatened under the research plan), can it pass this cost through to PSMFC to be pro-rated over the cost of an observer day? Could it do so through a regulatory amendment? A technical amendment?
- Can the percentage of overhead charged by PSMFC change without a plan amendment? Regulatory amendment? Technical amendment?
- What information does NMFS currently use to determine if a vessel has complied with the 30% coverage requirement?
- Why does the EA/RIR assume that 30% boats never exceed 30% coverage in estimating the costs under status quo or the JPA? How much does the assumption that airfares are \$25/observer day bias or underestimate the costs for 30% vessels?
- What are the actual levels of coverage achieved in various fisheries by 30% vessels (BSA pollock, GOA June pollock, GOA rockfish), especially in fisheries where season duration is uncertain?
- Can the coverage level requirements be altered as a part of this plan amendment? (i.e.: revised to 50% for vessels >125' in shoreside MW pollock, & fixed gear P.Cod, 10% for vessels <125' in shoreside MW pollock and fixed gear P.Cod)

The Goals of the Observer Plan Are Not Met by JPA

The goals and objectives for an observer plan go beyond those listed for the JPA. If the only objective was reduction of the conflict of interest, JPA wins out over the current program. However, many of the real goals which have been established by NMFS and the Council have been excluded from this document, and the analysis suffers accordingly.

Section 1.2.2 lists eight objectives of the JPA, within the context of a goal of collecting quality observer data. Previous work on the observer program identified at least six other objectives of equal or greater importance, which are not met by the JPA.:

- Provide *flexibility* to deploy observers in fisheries where they are most needed.
- Provide an *equitable cost distribution* mechanism that recognizes that the benefits of any given vessel carrying an observer do not accrue solely to the observed vessel.
- *Cap total costs* of the observer program funded by industry at the 2% limit authorized by the MS_FCMA.
- Prevent the cost of carrying an observer from being an *allocation* issue, (i.e.: being the determining factor in who can participate in a fishery.)
- Eliminate the ability of an operator in a 30% fishery to *bias the data* by manipulating which trips get coverage.
- Achieve a *unified observer corps* groundfish and crab.

Clearly the Research Plan is superior to the Alt. 3 in meeting these six objectives and equal to the JPA in the meeting the other objectives detailed in the analysis.

If the Council intent is to foster a fishery made up of only supertrawlers and vessels less than 60', Alt. 3 should be the preferred option. *If there is a desire to retain a diverse fleet including fixed gear vessels, and mid sized shorebased trawlers, the Council must renew it's commitment to timely implementation of a fee based observer program.*

The most important decision about the future of the observer program is not whether to use PSMFC as a buffer between industry and contractors. *The most important decision is whether to continue with a Pay-as-You-Go - 0/30/100% coverage program, or to address the specific problems with the Research Plan and implement it.* There is no statutory authority for anything other than a fleetwide fee based program to address this issue.

Conclusion

The industry went to Congress and had the FCMA amended to provide for a program that was based on a fee. This issue is as critical as any other issue relating to the observer program, including the appearance of conflict of interest. The Council must avoid committing to a program that will resolve one issue at the expense of the other.

Sincerely yours,

david fraser
F/V Muir Milach
PO Box 771
Port Townsend, Washington