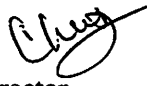


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

ESTIMATED TIME 1 HOUR
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DATE: September 24, 2002

SUBJECT: Observer Program

**ACTION REQUIRED**

Review Observer Advisory Committee report and provide further direction

**BACKGROUND**

The Observer Advisory Committee convened on January 18-19 in Seattle to consider the need to restructure the North Pacific Groundfish Observer Program (Observer Program), based on direction from the Council and issues stemming from NMFS, industry, observer providers, and observers. The meeting agenda is attached as Item C-8(1). The purpose of the meeting per Council direction was as follows:

*"The Council also tasked the Observer Advisory Committee (OAC) to discuss long-term changes to the Observer Program at their upcoming meeting on July 18-19. The Council would like the committee to report on whether the Council and NMFS should begin a formal scoping process to initiate an analysis to restructure the Observer Program. The Council would like the committee to include discussion of a problem statement, goals and objectives, cost equity issues across fishing sectors, and consideration of the Research Plan and other past Council efforts to restructure the program."  
(Council newsletter, April 2002)*

The committee reviewed the primary issues from each stakeholder group, attempted to identify whether any of the issues overlap, and considered what type of change would best address those issues. This discussion centered around the need for an overall program design change versus incremental changes within the current framework. During the meeting, the committee reviewed the Observer Program's goals and objectives and a condensed version of a previous discussion paper: "Re-Development of Options to Fund the Domestic Groundfish Observer Program in the EEZ Fisheries off Alaska" (September 1998), in an effort to consider past efforts and obstacles to restructuring the Observer Program. The committee was also presented with information on observer costs by fishing sector (1999 and 2000), the percentage of total observed catch by fishing sector (1997, 2000, 2001), and potential changes to the Magnuson-Stevens Act that could influence the nature and direction of the restructuring of the Observer Program. The committee also received

information on indirectly related issues such as the ongoing Digital Observer Project and observer insurance coverage. The committee's full report is attached as Item C-8(2).

Overall, the committee supported full Federal funding of the Observer Program but agreed that a process should be undertaken to develop a program design(s) that would include a blend of Federal funding and a fee plan. In order to facilitate further progress, the committee generally supported allowing NMFS and Council staff to work on some of the preliminary information needs and receiving Council direction in October. Should the Council choose to formally initiate an analysis of the effects of a new program design, the next likely steps would be to formalize a problem statement and determine specific alternatives for analysis. The Council may want to initiate these steps by providing additional direction to the committee. December may be a more appropriate meeting to make this issue a major Council agenda item.

Lastly, because of recent changes to the representative membership of the Observer Advisory Committee, a list of current committee members is attached as Item C-8(3).

# North Pacific Fishery Management Council

David Benton, Chairman  
Chris Oliver, Executive Director

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## Observer Advisory Committee – Meeting Agenda

**July 18-19, 2002**

Alaska Fisheries Science Center  
7600 Sand Point Way, NE, Seattle  
Building 4, Room 1055  
8:30 am - 5 pm

**I. Review and approve agenda: 8:30 - 8:45 am**

Purpose of meeting per Council direction (from the April 2002 newsletter):

“The Council also tasked the Observer Advisory Committee (OAC) to discuss long-term changes to the Observer Program at their upcoming meeting on July 18-19. The Council would like the committee to report on whether the Council and NMFS should begin a formal scoping process to initiate an analysis to restructure the Observer Program. The Council would like the committee to include discussion of a problem statement, goals and objectives, cost equity issues across fishing sectors, and consideration of the Research Plan and other past Council efforts to restructure the program.”

**II. Digital Observer Project presentation, Mark Buckley: 8:45 - 9:30 am**

**III. Review and discuss the following materials as provided (see page 2 of agenda)**

- A. Condensed version of 1998 discussion paper: “Re-Development of Options to Fund the Domestic Groundfish Observer Program in the EEZ Fisheries off Alaska”
- B. Matrix of uses of observer data by fishery
- C. Magnuson-Stevens Act reauthorization update

**IV. Update on observer insurance issues, Michael Lake: Friday, 1:00 - 1:30 pm**

**V. Identify issues to be addressed by changes to the North Pacific Observer Program**

- A. Review list of issues and concerns identified by NMFS
- B. Develop and prioritize list of issues identified by the OAC
- C. Discuss strategy: ‘one shot’ vs. ‘incremental’ changes

**VI. Scheduling and other issues**

- A. Future meeting agenda and schedule
- B. Presentation at October Council meeting

**Materials Enclosed:**

Condensed version of 1998 discussion paper: "Re-Development of Options to Fund the Domestic Groundfish Observer Program in the EEZ Fisheries off Alaska"

***Attachments***

- 1: NMFS list of concerns and issues to be addressed
- 2: NPGOP Goals and Objectives
- 3: Table 3.1: Number of vessels and plants with observers, observer deployment days, and estimated observer costs by year and type of operation, 1999 and 2000  
Table 3.2: Observer costs as a percent of ex-vessel revenue for catcher vessels and as a percent of gross product revenue for at-sea processors by vessel type and length, 1999 and 2000.

***Separate Items***

- 4: (Table) Percentage of BLEND total catch that was observed by gear type and fishery in 2001, 2000, and 1997.
- 5: Potential changes to the Magnuson-Stevens Act that could influence the nature and direction of the restructuring of the North Pacific Groundfish Observer Program
- 6: Letter from Paul Anderson to Michael Lake re: Alaskan Observers - General, dated 2/5/02

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## Observer Advisory Committee Report

July 18-19, 2002

Alaska Fisheries Science Center  
7600 Sand Point Way, NE, Seattle  
Building 4, Room 1055  
8:30 am - 5 pm

### Executive Summary

The Observer Advisory Committee considered the need to restructure the North Pacific Groundfish Observer Program, based on direction from the Council and issues stemming from NMFS, industry, observer providers, and observers. The committee reviewed those issues, attempted to identify whether any of the primary issues of each stakeholder group overlap, and considered what type of change would best address those issues (an overall program design change versus incremental changes within the current framework).

#### Committee conclusions:

- The committee would like NMFS and Council support, to the extent possible, on an initiative to obtain full Federal funding for the NPGOP. The committee recognized that resolving the issues identified and discussed to restructure the program could warrant a change in the current service delivery model (SDM) and funding mechanism.
- The committee supports full Federal funding, but agreed that a process should be undertaken to develop a program design(s) that would include a blend of Federal funding and a fee plan.
- The committee believes that the nature of the funding mechanism to support the program will dictate, to a large degree, the overall program design.
- The committee believes that the driving forces for restructuring the program should be the scientific and data needs to enhance fishery management rather than the agency's perceived conflict of interest issue.
- The committee agreed that in the interim, until a funding mechanism is identified, the Council should focus on addressing the primary issues of observer coverage levels in the unobserved and 30% fleet, which may or may not necessitate a change in the current SDM and program funding mechanism. The committee believes that if appropriate coverage levels are established and adjusted real time by NMFS, and an equitable funding mechanism to support them could be agreed upon, the concerns that industry, the agency, and the public have with the current program would be ameliorated.
- There was committee consensus that any restructuring of the program must encourage flexibility and adaptability in accordance with a dynamic fisheries environment.
- The committee agreed to consider whether another meeting is necessary to develop more specificity before the October Council meeting. The committee generally supported allowing staff to work on some of the preliminary informational needs between now and October and receiving further Council

direction at the October Council meeting. As part of a separate halibut monitoring proposal, the agency is currently looking at coverage levels in the longline and H&G fleets, and it anticipates that the committee would also have an opportunity to review this analysis.

The committee is ever mindful that the Council family has made two previous attempts to change the current observer program, and both have failed. Another attempt will likely fail if the funding mechanism issue is not resolved equitably, meaning it must include Federal funding and a degree of financial relief for those in economically marginal fisheries, especially in the Gulf of Alaska. Equitable resolution to the funding mechanism issue will most likely affect the current SDM. Once the funding issue is resolved, significant program changes could be made to update the science employed and the data obtained by the program, as well as enhance the public perception of the program. These program changes could be made in a manner that would preserve the responsiveness of the current SDM, protect and improve relationships between industry, observers, observer providers, and NMFS, control costs, and minimize conflict of interest concerns.

## Report of the NPFMC Observer Advisory Committee

Committee: Joe Kyle (Chair), Kim Dietrich, Susan Robinson, Kathy Robinson, Peter Risse, LeeAnn Beres, Bob Mikol, Arni Thomson

Not present: Julie Bonney, John Gauvin, Trevor McCabe, Rocky Caldero

Staff: NPFMC - Chris Oliver, Nicole Kimball  
NMFS - AFSC - Dan Ito, Martin Loefflad, Shannon Fitzgerald, Joe Terry, Bob Maier, Bill Karp, Jerry Berger, Jennifer Ferdinand, Mark Kirkland  
NMFS AK region - Kent Lind  
NMFS National Observer Program - Vicki Cornish  
NOAA GC AK - Tom Meyer  
USCG - Phil Thorne

Other participants: Al Burch (for Julie Bonney), Greer Cowan, Duke Bryan, Lori Swanson (for John Gauvin), Michael Lake, Dave Money, Paul MacGregor (for Trevor McCabe), John Bruce, Anne Vanderhoeven, Dave Benson, Thorne Smith

### I. Review and approve agenda

The chairman gave a brief overview of the agenda, introduced members, and reviewed general Observer Advisory Committee (OAC) ground rules. The committee also reviewed the purpose of the meeting to discuss long-term program changes per Council direction at the April Council meeting.

### II. Video Monitoring and the Digital Observer Project: presentation by Mark Buckley

The committee received a presentation by Mark Buckley on the progress of the Digital Observer Project. As the committee begins to consider whether a restructuring of the Observer Program is necessary, it seemed appropriate to review current technological developments related to observer program needs. The mission is to supplement or replace human observers on commercial fishing vessels (longliners) with a combination of camera systems and custom software.

Mr. Buckley stressed that there are multiple options for the configuration of the equipment, depending on the data needs. The information (images) is saved in hard discs and then shipped shoreside, so that the data can be interpreted off the vessel. The committee asked several questions regarding the accuracy of the species identification and weight estimates. The project currently uses NMFS length-weight tables to extrapolate for weight estimates. Cost was also an issue for the committee; the project estimates that the cost would be one-third to one-half of the cost of a human observer (current observer costs are \$300-350 per day). The equipment would cost \$15,000 - \$25,000, and installation costs are additional. To date, the project has worked exclusively with longliners and costs cannot be extrapolated to other gear types.

The research plan is to continue to develop image recognition software, test sensors and software integration, test progressive scan digital cameras, develop and test auto wiper system, test a backlit chute, develop chute wash, test compressed video images versus uncompressed images in image recognition software. In response to a question, the Canadian system employs the basic concept but has not furthered the technology to include these additions. Mr. Buckley emphasized that this is a work in progress and that further coordination with NMFS is necessary to ensure that the technology is designed to meet their data needs.

### III. Review and discuss the meeting materials

- A. Condensed version of 1998 discussion paper: "Re-Development of Options to Fund the Domestic Groundfish Observer Program in the EEZ Fisheries off Alaska" (9/9/98)

Chris Oliver referenced the above discussion paper and gave a general overview of past attempts to restructure the observer program. This was in the context of the Council's direction to the OAC from the April Council meeting:

The Council also tasked the OAC to discuss long-term changes to the Observer Program at their upcoming meeting...The Council would like the committee to report on whether the Council and NMFS should begin a formal scoping process to initiate an analysis to restructure the Observer Program. The Council would like the committee to include discussion of a problem statement, goals and objectives, cost equity issues across fishing sectors, and consideration of the Research Plan and other past Council efforts to restructure the program." (April 2002 Council newsletter)

Chris emphasized that the need to consider restructuring the program stemmed from both agency concerns and a host of issues identified by industry, observer providers, and observers. The purpose of the meeting is to review those issues, attempt to identify whether any of the primary issues of each stakeholder group overlap, and decide what type of change would best address those issues. If it is determined that an overall program design change is necessary to address the identified problems, then the committee needs to focus on what type of design change would be most appropriate and what steps are necessary (and in what sequence) to get there. By contrast, the committee may conclude that an overhaul of the program design is not necessary to resolve the committee's primary concerns, and in that case, the committee would need to identify the incremental changes necessary to resolve the problems within our current program framework.

The committee reviewed the problems the research plan attempted to resolve as well as the issues that contributed to the demise of the research plan. Several of the same issues exist today and would need resolution before a fee-based plan could be implemented. Overall cost uncertainty was likely the primary reason the plan was repealed: the possibility of a supplemental program if/when the 2% fee didn't cover observer coverage needs or specific programs (individual vessel accounting) necessitated higher coverage levels. The committee also reviewed potential future program structures, including: a fee (2% or other) based on ex-vessel revenues, TAC set-aside, pay-as-you-go with a surcharge or subsidy, Federally funded program, a fee based on observer days, and the status quo (pay-as-you-go).

#### B. Matrix of uses of observer data by fishery

Kent Lind reviewed a table (Item 4) prepared by NMFS showing a matrix of uses of observer data by fishery and the percentage of total catch (blend data) that was observed by gear type and fishing in 2001, 2000, and 1997. Kent clarified that only the uses for the primary data set were included in the table and that additional uses do exist (e.g., marine mammal observations). Amid positive feedback from the committee on the value of this table, the committee noted that it needs further work to avoid misinterpretation. For instance, the percentage of total catch observed should be further split among catcher vessels and catcher processors in the trawl and longline gear categories to account for the way the BSAI Pacific cod TAC is divided. The most startling revelation from the table was the unexpectedly low percent of observations in the Gulf of Alaska. Kent also clarified that these numbers show the percentage of hauls that were *observed* in the total sets--it does not reflect the percentage of sets in which an observer was on board. Those percentages would be expected to be much higher, as the observer doesn't observe all hauls while onboard. The table also does not purport to indicate any new duties for observers; it only shows that the *use* of the information collected by observers has expanded considerably.

#### C. Potential changes to the Magnuson-Stevens Act (MSA)

Vicki Cornish reported on potential on-going changes to the Magnuson-Stevens Act that may be expected this year. Vicki referenced a paper provided on potential changes that could influence the nature and direction of the restructuring of the Observer Program (Item 5) and a separate handout provided at the meeting. The current version of Representative Gilchrest's HR 4749 does not provide for a national observer program, but it does require a study to develop a report to Congress on the need for such a program. A national observer program means providing Secretarial authority to place observers where the agency determines they are needed to meet science and management needs, although the same program design may not be employed in every region. Currently, that authority lies with the Council, and changes to the Observer Program are implemented through FMP amendments.



The committee had several questions regarding funding and comparable program costs in other regions. It was clarified that only two observer programs are currently funded by industry: the North Pacific and the Northeast scallop closed area fishery. Neither system is established by law or legislative authority, however Section 313 of the MSA provides the authority to collect funds explicitly in the North Pacific to pay for an observer program. H.R. 4749, as currently proposed, does not amend or revoke Section 313 of the MSA. The North Pacific program costs about \$16 million (\$3 million provided by NMFS, \$13 million by industry). Approximately \$18 million is used to fund all other observer programs across the country combined. It was also noted that where NMFS fully funds observer programs, there is often a general acknowledgment that the industry/fishery that necessitates coverage could not support the cost of the observer program.

Vicki also reviewed the observer amendments being proposed by NOAA. The two primary amendments would: 1) broadly extend funding options for observer beyond the research plan currently authorized for the Council, and 2) prohibit the authorization of any new observer program funded through direct contractual agreements between the vessel/processor and an observer contractor. The proposed amendments would require the North Pacific program to be evaluated and amended within 6 years to address conflict of interest concerns.

Uncertainty continues regarding whether reauthorization of the MSA would occur this year, but several bills (Sen. Kerry, Rep. Inslee) continue to circulate and may also be proposed in the near future. It was also noted that not only would Congressional action influence the direction of the observer program but also the Council's action on major rationalization programs (e.g., crab, gulf rationalization). The committee agreed that regardless of ongoing efforts to amend the MSA, it must continue with its charge to review the program and consider potential program design changes to meet the needs of the agency, observers, providers, and industry.

#### **IV. Identify issues to be addressed by changes to the NPGOP**

##### **A. Review list of issues and concerns identified by NMFS**

Dan Ito presented seven major issues (Attachment 1) identified by the AK Region and the NPGOP. These issues include: conflict of interest, funding mechanisms, disproportionate costs, appropriate coverage levels, random placement/bias, non-compliance in the 30% fleet, and observer availability. The agency related that all of the identified issues, with the exception of appropriate coverage levels, are symptoms of the current service delivery model (SDM). The agency noted that the regulatory amendment approved by the Council in April did not resolve the conflict of interest concerns spurred by the contractual relationship between industry and the observer providers.

The observer program also emphasized, and NOAA GC concurred, that rulemaking and regulations are inefficient ways to manage programs to gather essential information. Regulations are a cumbersome method to manage observers and observer providers. The program has several rulemakings in progress which have taken substantial staff time and resources as well as time to develop and publish. This complicates an already slow and burdensome method by which to manage data collection.

The committee commented on some of agency's identified problems and questioned whether a few others were also unaffected by the SDM. The committee requested further details and evidence as to the nature of the problem with the 30% fleet, noting that it appeared to be an enforcement issue. NMFS enforcement reported that there exists a range of noncompliance associated with the 30% fleet, varying from one or two days of missed coverage to no coverage whatsoever. The NMFS enforcement report from the June Council meeting was provided. The committee noted that it needs more information on how the 30% regulation works (30% of your fishing days must be observed in each fishery by quarter) and make a specific committee recommendation to address the problem. One member suggested that it would be valuable for the committee to see the effective coverage rate in the 30% fleet species by species, i.e., how much of the catch attributable to 30% fleet was observed. The committee also discussed and agreed that observer availability is not a significant problem, as it was in previous years, other than last minute requests.

The committee also questioned the meaning of 'conflict of interest' and whether a different SDM will comprehensively address the problem as identified by NMFS. The committee agreed that there will always be some potential conflicts regardless of the SDM, in that observers are paid by the day and may have individual incentive to under-report in order to extend the season. The committee addressed the real versus perceived nature of the problem several times during the meeting, and requested evidence of the problem. The MRAG recommendation to eliminate the contractual relationship between the industry and the contractors was discussed at length. Overall, while the committee remained unconvinced of a real problem, it recognized that the agency has serious concerns with the perception of a conflict of interest to the extent that the agency strongly believes in changing the SDM.

#### B. Develop and prioritize list of issues identified by the OAC

The committee confirmed and amended the issues they identified at the March 2001 OAC meeting to the following:

<u>Industry</u>	<u>Observers</u>	<u>Observer Providers</u>
appropriate coverage levels	conditions of employment	observer retainment
effective sampling design	lack of NMFS oversight/vesting	flexibility/planning ability
quality of observers	question of employer	communication with NMFS
observer availability/operational efficiency	data integrity	vessel safety
compatibility with individual vessel accounting		retaining contractor competition
cost containment/disproportionate costs		data integrity
data integrity		

The committee found four issues similar to the agency's concerns: cost containment, appropriate coverage levels (and flexibility to deploy where needed), data integrity, and observer availability. It was noted that a program design that addresses these issues, would likely, by default, address the conflict of interest issue. The committee did not agree, however, whether addressing those issues necessitated a change to the current SDM. The committee generally agreed that the issues identified by the 'observer' and 'observer provider' groups would not be addressed by a change to the SDM, recognizing that cost is indirectly related to their concerns regarding the observer and their working conditions. However, the pressure on observers, especially as more individual vessel accountability programs are implemented, would not change with a different funding mechanism or SDM.

The committee also reviewed the agency's mission, goal, and five primary objectives, with several activities under each objective (Attachment 2). The agency included two of the committee's five recommendations to amend the goals and objectives by 1) modifying an activity to read: "Work with enforcement personnel to by monitoring compliance and enforce regulations." and 2) adding an activity to read: "Provide a progress report to the OAC each year."

#### C. Discuss strategy for making changes to the Observer Program

The committee continued to discuss the conflict of interest problem and how the program might work if the SDM was changed to give NMFS direct control over which contractors are employed by which vessels/fleets. The committee needed more details on how the program might work if the current contractual relationship between observer contractors and industry was eliminated. The committee noted that it is difficult to characterize and solve such a problem when it is based primarily in perception. An agency member noted that while there is disagreement as to whether the conflict of interest is a real problem, the committee could focus on what we want the program to be in the future. Generally, the ideal program would have individual observers who are objective and have integrity. With that, we would also want alignment of the observer reporting chain, so observers know exactly who they are working for and why. In addition, we would want a high profile program with high integrity.

Given the overall disagreement on the conflict of interest issue, the committee shifted focus to three inter-related primary issues: 1) the SDM, 2) observer coverage levels, and 3) the funding mechanism.

### Service delivery model

The committee discussed potential scenarios in which the SDM would be changed to allow NMFS control over the assignment of the observer contractors. Many members noted the logistical difficulties with assigning a contractor on a fishery-by-fishery basis, in that most vessels engage in several fisheries throughout the year and thus would be required to use several different contractors in the same fishing year. Another idea discussed was that of assigning a contractor a fleet of vessels (e.g., in the 30% fleet) with the understanding that at any one time, that fleet needs to be covered 30%. Observers could be randomly distributed within that fleet, and everyone pays a daily rate whether or not they take an observer that day. The committee expressed general concern with the availability of NMFS staff should they assume the responsibility of assigning contractors and/or deploying observers on a real-time basis.

The committee also expressed concern that a change to the SDM would only serve NMFS needs to address the direct contractual relationship between the observer contractors and industry. The committee did not agree as to whether the status quo represented a better system than one in which NMFS had direct control over the contractors used by different vessels and fleets. The Bering Sea industry expressed some level of satisfaction with the current system, with no significant problems that could be resolved through a change to the SDM. The committee generally agreed that the most acute concerns are in the unobserved and 30% fleet, and specifically in the Gulf of Alaska. The process to rationalize the Gulf fisheries is likely several years from completion and will impact the status quo in the Gulf even if no observer program changes are made.

### Coverage levels

The committee generally agreed there needs to be a focus on re-evaluating the 30% coverage requirements, so that coverage levels can be determined on a fishery by fishery basis depending on the data needs for the specific fishery. There was not consensus as to whether that necessitates a change in the funding mechanism or the SDM, although several members noted that changing coverage levels would be difficult under the direct, pay-as-you-go system. The committee agreed that our current regulatory system is not sufficiently flexible to adapt quickly to future program and data needs.

### Funding mechanism

The committee continues to support full Federal funding of the NPGOP. Federal funding would appear to solve the majority of the issues identified by the committee as well as potentially resolve NMFS' conflict of interest concerns. In that light, the committee requests that the Council support, to the extent that it can, industry's initiative to obtain full Federal funding from Congress. The committee also agrees that the Council should examine alternative funding mechanisms (as described previously in this report and in past program reviews) and include Federal funds as one component of that analysis. NMFS staff noted that the current SDM has no built-in mechanism to accommodate Federal funding.

The committee discussed the possibility of segregating the basic requirements for observer coverage from programs that necessitate higher levels of coverage. Some members supported having industry provide funds to meet the basic objectives (cost contained) and having NMFS provide funds over and above that level. Other members supported having the agency provide funds for a minimum level of coverage (what is mandated in the MSA), and having industry pay for a minimum level of additional coverage that is assessed fleet-wide (based on either a percent of ex-vessel revenues, flat fee, number of fishing days, etc.). Specific fisheries that demand extra coverage, such as individual vessel accounting, would be assessed a higher fee. It was noted, however, that in our current management environment, the observer objectives are not clearly segregated. This design would also necessitate addressing fishery-specific coverage levels to meet the specific objectives of each fishery (biological and program management). This type of blended federal funding/fee system would necessitate a change to the SDM and funding mechanism. The committee also discussed alternatives to the status quo and federal funding, such as an expanded license fee or TAC set-aside. The committee also noted that the financial and managerial responsibility of a cooperative to monitor its catch reduces NMFS management costs; and thus any fee system should take that into account.

Given that it is clear to the committee that the agency is attempting to move away from the current service delivery model, the committee, while supporting full Federal funding, could support blending a fee assessment with supplemental Federal funding. The concerns are that the industry portion needs to be capped. Stated another way, industry would prefer to see the government risk any additional, unforeseen program costs. Some members expressed concern with industry lobbying Congress for full or partial Federal funding without also having a detailed proposal for a restructured program. The agency noted that it would be in a better position to support full or partial funding if the Council was simultaneously attempting to restructure the current program to more fully account for its needs. Others were concerned with the time it may take to design a program before the money is requested. In addition, it was noted that a program designed with the assumption of Federal funding would likely look very different from a program designed with a different funding mechanism. The committee would like to avoid developing a program dependent upon full Federal funding, only to have it rejected and have to re-develop a program based upon a different funding mechanism. It is axiomatic that the funding mechanism will dictate the program structure.

#### Committee conclusions

Overall, the committee would like agency and Council support on an initiative to obtain Federal funding for the NPGOP. The committee recognized that resolving the issues identified and discussed to restructure the program could warrant a change in the SDM and funding mechanism. Recognizing that the committee is in full support of full Federal funding, the committee agreed that a process should be undertaken to develop a program design(s) that would include a blend of Federal funding and a fee plan. The committee also expressed that the driving forces for restructuring the program should be the scientific and data needs to enhance fishery management rather than the agency's perceived conflict of interest issue.

In the interim, the committee agreed the Council should focus on addressing the primary issues of observer coverage levels in the unobserved and 30% fleet, which may or may not be linked to the current SDM and program funding mechanism. The committee believes that if appropriate coverage levels are established and adjusted real time by NMFS, and an equitable funding mechanism to support them could be agreed upon, the concerns that industry, the agency, and the public have with the current program would be ameliorated. Lastly, there was committee consensus that the fishery is very dynamic and that our observer program is very static in comparison – primarily due to the fact that the program is managed via regulation (and in some cases statute). Any restructuring of the program must encourage flexibility and adaptability in accordance with a dynamic fisheries environment.

#### **V. Other Issues**

##### Seabird monitoring [Not on agenda]

Thorne Smith discussed issues related to the observer program and seabird monitoring. The primary concern expressed was the need for 'real-time' information to be available to the captain of a vessel if an observer identifies a problem.

##### Observer insurance

Michael Lake related some ongoing concerns regarding observers' regulatory status as seamen and how that affects their insurance coverage. The Federal Employee Compensation Act (FECA) exempted seamen from insurance coverage until an observer was injured and filed a FECA claim. FECA allows the seamen to sue the provider or the underwriter to cover the FECA costs paid out to the observer. Vicki Cornish reported that the agency is currently working on a legislative package entitled the Fisheries Observer Compensation Act so that in the event of injury or death claims, observers would not be covered under FECA but solely under the provisions of the Longshoremen's and Harbor Workers' Compensation Act.

A few concerns were noted, in that the draft legislation does not cover non-work related illnesses and the cost is uncertain. Of specific interest to vessel owners is Section 6(b): "Prohibition of negligence claims against vessel," which states that a fishery observer who suffers injury or death aboard a vessel to which he is assigned to perform duties as an observer shall have no cause of action against that vessel for negligence or otherwise, except in the cases where the vessel acted willfully in causing the injury or death. There is not currently any authority for providing that

type of indemnification. This is a draft package and Vicki would appreciate informal feedback in the next month (via email) before it is sent to Congressional committee for consideration.

#### **VI. Future meeting agenda/schedule**

Given the committee's conclusions and requests, there are a couple of steps that can be taken to facilitate progress before the October Council meeting. The agency and the Council are starting to address observer coverage levels in the H&G fleet and flatfish fishery, in the context of developing a halibut monitoring program to replace IR/IU, and anticipate that the committee would have an opportunity to review this analysis. NMFS would likely provide a draft after the summer and request feedback before the October Council meeting. The agency and Council can also engage in discussions about what informational pieces may be needed to consider changes to the program design in a future analysis and look into potential contract options in the interim.

The committee agreed to allow some time to reflect on the meeting and consider whether another meeting is necessary to develop more specificity before the October Council meeting. The committee generally supported allowing staff to work on some of the preliminary informational needs between now and October and receiving further Council direction at the October Council meeting. There is also potential to have staff draft a problem statement, based on the outcome of this meeting, to be reviewed by the committee prior to October, and/or the Council in October.

**OBSERVER ADVISORY COMMITTEE**

Reconstituted 12/99

Joe Kyle (Chair)  
Pacific Associates

Trevor McCabe  
At-Sea Processors Assn.

LeeAnne Beres  
Save Our Wild Salmon

Gillian Stoker (Alternate for K. Dietrich)  
Observer

Julie Bonney  
Alaska Groundfish Databank

Bob Mikol  
Ocean Logic

Peter Risse  
North Pacific Fisheries Observer Training Center

Kathy Robinson  
Saltwater, Inc.

Kimberly Dietrich  
Observer

Susan Robinson  
Fishermen's Finest

John Gauvin  
Groundfish Forum

Jeff Stephan (pending replacement)  
United Fisherman's Marketing Assn.

Rocky Caldero  
UniSea, Inc.

Arni Thomson  
Alaska Crab Coalition

PUBLIC TESTIMONY SIGN-UP SHEET FOR  
AGENDA ITEM C-8 Observer Program

PLEASE SIGN ON THE NEXT BLANK LINE.  
LINES LEFT BLANK WILL BE DELETED.

	<i>NAME</i>	<i>AFFILIATION</i>
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