

MEMORANDUM

TO: SSC, AP and Council Members

FROM: Chris Oliver *CO*
Executive Director

ESTIMATED TIME
8 HOURS

DATE: June 1, 2010

SUBJECT: Observer Program

ACTION REQUIRED

- (a) Initial review of analysis for restructuring the North Pacific Groundfish Observer Program; action as necessary
- (b) Review Observer Advisory Committee report; action as necessary

BACKGROUND

- (a) Initial Review of analysis for restructuring the North Pacific Groundfish Observer Program; action as necessary

The existing North Pacific Groundfish Observer Program (Observer Program), in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. Vessels and processors contract directly with observer providers to procure observer services to meet coverage levels in regulation. In the past several years, the Council, NMFS, and the Observer Advisory Committee (OAC) have been working to develop a new system for observer funding and deployment in the Observer Program. The concept previously proposed was often called 'observer restructuring.' In general, the program would be restructured such that NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, disproportionate cost issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

The last attempt to restructure the observer program was in 2006. Due to specific cost and statutory issues, at the time of final action in June 2006, the Council approved an extension of the current program, by removing the December 31, 2007 sunset date in existing regulations, as opposed to restructuring the observer program. This action was also recommended to the Council by NMFS and the OAC, given the need for continuing the program in the short-term and the lack of control over Congressional authority and cost issues

In December 2008, upon review of a discussion paper,¹ the Council initiated a new observer restructuring analysis (EA/RIR/IRFA), with a revised problem statement and suite of alternatives. The Council motion specified that the analysts first work on a description of how NMFS would deploy observers under a restructured observer program (i.e., an implementation plan), recognizing that this fundamental component

¹http://www.fakr.noaa.gov/npfmc/current_issues/observer/ObserverRest1208.pdf

would eventually be folded into the overall analysis. The motion also stated that the OAC should convene to review the implementation plan, prior to completion of the overall analysis.

The draft implementation plan was first reviewed by the Council in October 2009, along with an OAC report. In October, the Council approved further revisions to the alternatives, and concurred with the OAC recommendations for further development, discussion, and expansion of several sections of the restructuring implementation plan,² prior to the development and review of the overall analysis. The Council reviewed a revised version of the implementation plan in February 2010, as well as another OAC report.

While a formal motion was not deemed necessary in February, the Council noted progress made on the implementation plan and concurred with the OAC recommendations, which generally requested additions to the plan. An additional Council recommendation in February focused on encouraging NMFS to conduct outreach meetings in coastal communities, specifically with members of the small boat and halibut sectors, so as to inform the sample design, vessel selection process, and logistical issues related to deploying observers in those sectors. In April, NMFS reported on the progress of those outreach meetings, which occurred in March in Seattle, Juneau, Petersburg, Sitka, Homer, and in late April, Kodiak. The Council also approved another OAC meeting, with the primary purpose to review the initial review draft analysis and provide recommendations to the Council (see part (b) below).

The initial review draft analysis was provided to the OAC, Council, SSC, and AP via email on May 19, and it was posted on the Council website. A hardcopy was mailed on May 24. The executive summary, including the suite of alternatives, is attached as **Item C-4(a)**. The Council's review of the initial review draft analysis, with action as necessary, is scheduled for this June meeting. While the Council could provide direction on any aspect of the analysis in June, staff has identified several key assumptions and approaches that may warrant Council feedback at this time. If no further direction is provided on these components in June, staff would proceed as proposed in the initial review draft analysis:

1. Development of standardized ex-vessel prices to apply to landings to determine the ex-vessel value based fee liability. This includes the use of COAR pricing data, and the proposed approach to determining prices by: individual species, as opposed to species complex; fixed, pelagic trawl, and non-pelagic trawl gear types; individual ports if possible and then by aggregating surrounding ports if necessary for confidentiality; and the weighted average of all delivery and disposition codes. Refer to Section 2.9.2.2.1, pp. 49 - 60.
2. The analysis evaluates the use of a rolling average ex-vessel price as opposed to an annual price, in order to account for variability and volatility in the fisheries. The Council could provide input as to whether it wants to use a rolling average standardized ex-vessel price, and if so, over what time period (e.g., 3 years, 5 years, 7 years, etc). Refer to pp. 69 – 71.
3. The assumptions and calculations used to determine the daily observer rate under the status quo (Alternative 1) and the daily fee under a restructured program (Alternative 4). Refer to Appendix 6.
4. Observer ex-vessel fee revenue estimates are provided in Section 2.10, p. 75. Assumptions, which are policy decisions, had to be made to develop the tables in this section. The Council may wish to provide guidance on these issues. For example:
 - When processors have 100% coverage and they take deliveries from catcher vessels that are not 100% covered, should the processor be required to pay both a daily fee and the ex-vessel value fee? Staff developed the tables such that these processors only paid a daily fee and did not pay an ex-vessel value fee.

²See Section VI of the September 2009 OAC report: www.fakr.noaa.gov/npfmc/current_issues/observer/909_OACreport.pdf

- Should catcher vessels that deliver unsorted cod ends to motherships be exempt from both daily and ex-vessel fees under Alternatives 3 and 4? Staff developed the tables such that these vessels would be exempt, which mirrors the status quo.
 - Should catcher processors be defined for the 100% coverage stratum based on their license operation designation (CP vs CV) or actual historic activity?
5. The approach to collecting start-up funds, absent Federal funding, which is the same as that proposed in 1995 under the Research Plan. Fees would be collected from industry in the year prior to the implementation of a restructured program in order to fund year-1. Under a proposed 2% fee, in year-0, a vessel or processor would pay the difference between the 2% fee assessment and their actual year-0 observer costs under the status quo. Refer to Section 3.1, pp. 99 - 102.
 6. The analysis proposes to assess a 2% ex-vessel fee (applicable under Alternatives 2 – 5) until start-up funding is collected, the maximum allowed under the MSA. (The revenue tables in Section 2.10, which show the amount of fees collected and the number of observer days funded, are also based on a 2% ex-vessel fee.). The analysis assumes that regulatory action would be required to amend the proposed 2% fee percentage. If the Council wants to revise this approach, it could provide direction at initial review.
 7. Observer deployment on vessels and in processors: which fisheries/sectors are proposed to be in the partial coverage stratum (<100%) versus the full coverage stratum (≥100%). Refer to pp. 119 - 123.
 8. The rationale for the proposed stratification within the partial coverage (<100%) stratum in the first year of the program: fixed gear catcher vessels ≥58' LOA and trawl catcher vessels would be subject to a call-in (trip) selection system; fixed gear catcher vessels <40' to <58' LOA would be subject to a vessel selection system (random approach to selecting a vessel to be observed for all fishing operations in a specified duration); and fixed gear catcher vessels ≤40' LOA, jig, and troll vessels would have no selection. Refer to p. 116 – 118, 120 - 121.
 9. The Council may want to provide input on a process for consultation with NMFS (e.g., annual report) regarding how observers are deployed and fee proceeds are used.

Note that final action is tentatively scheduled for October 2010. The current schedule, if action is recommended by the Council and subsequently approved by the Secretary of Commerce, provides for implementation no sooner than 2013.

(b) Review Observer Advisory Committee report; action as necessary

As requested by the Council, the OAC met May 25 – 26 at the Alaska Fisheries Science Center, with the primary purpose of reviewing and providing feedback on the initial review draft analysis for restructuring the observer program. The OAC report is attached as **Item C-4(b)**, and the recommendations of the committee are provided below:

1. The OAC recommends that the Council release the June 2010 draft analysis for public review.
2. The OAC recommends expanding the implementation section (p. 118 – 119) to include examples of operational control rules that NMFS could implement within the sample design (not regulations) to address the 'observer effect'.
3. The OAC recommends providing a section in the analysis that details when and how NMFS would provide information to the SSC and Council related to how NMFS deployed observer resources in the previous year and how fee proceeds were used. The approach discussed for consultation was an annual report under an existing item (e.g., NMFS B report, research priorities, etc). The analysis should describe the types of

4. The OAC recommends that the Council support development of a voluntary pilot program for monitoring on small vessels in the near-term, or on any operational aspects that would assist observer providers in testing a new system prior to implementation. While the committee recognizes that this type of program could be undertaken on a voluntary basis between vessels and observer providers, it recommends the Council promote such efforts and relay that support to NMFS.
5. The OAC recommends that the Council request that NMFS request funding for start-up costs of the restructured program.
6. The OAC recommends that it convene to review the public review draft analysis prior to the Council's scheduled final action (currently October 2010).

Executive Summary

This draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) examines the environmental and economic effects of BSAI Amendment 86 and GOA Amendment 76 to change the service delivery model for the North Pacific Groundfish Observer Program (Observer Program). The proposed action is intended to address a variety of longstanding issues associated with the existing system of observer procurement and deployment. The proposed action would replace the existing observer service delivery model, in which industry contracts directly with observer providers to meet observer coverage requirements in Federal regulations, with a new system (i.e., restructuring) in which NMFS contracts directly with observer providers and determines when and where observers are deployed. Vessels and processors under the restructured observer program would pay either a fee based on a percentage of ex-vessel revenue (not to exceed 2%), or a daily observer fee, to fund the program.

At its December 2008 meeting, the Council approved the following problem statement for restructuring the Observer Program:

BSAI Amendment 86/GOA Amendment 76 Problem Statement

The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990 and do not include observer requirements for either the <60' groundfish sector or the commercial halibut sector. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

Proposed Alternatives

The alternatives under consideration are described in this section. In addition to the no action alternative, four action alternatives to restructure the observer program are evaluated. The four restructuring alternatives are distinguished primarily by which fisheries or sectors would be included in the restructured program and the structure of the fee mechanism used.

Alternative 1. Status quo; continue the current service delivery model.

Alternative 2. GOA-based restructuring alternative. Restructure the program in the GOA, including shoreside processors; and include all halibut and <60' vessels participating in groundfish fisheries in the GOA and BSAI. Vessels in the restructured program would pay an ex-vessel value based fee. Retain current service delivery model for vessels \geq 60' and shoreside processors in the BSAI.

- Alternative 3. Coverage-based restructuring alternative. Restructure the program for all fisheries and shoreside processors with coverage of less than 100 percent. Vessels in the restructured program would pay an ex-vessel value based fee. Leave vessels and processors with at least 100 percent coverage under the current service delivery model.
- Alternative 4. Comprehensive restructuring alternative with hybrid fee system. Restructure program for all groundfish and halibut fisheries off Alaska. Vessels and shoreside processors with 100 percent or greater coverage would pay a daily observer fee; vessels and shoreside processors with less than 100 percent coverage would pay an ex-vessel value based fee.
- Alternative 5. Comprehensive restructuring alternative that would assess the same ex-vessel value based fee on all vessels and shoreside processors in the groundfish and halibut fisheries in the GOA and BSAI.

Table E-1 provides a summary of the vessels and processors included under each restructuring alternative.

Table E-1 Vessels and processors included under Alternatives 2 – 5

<i>Area</i>	<i>Vessel/Processor class</i>	<i>Alt. 2 (GOA-based)</i>	<i>Alt.3 (coverage-based)</i>	<i>Alt. 4 (comprehensive with ex-vessel & daily fees)</i>	<i>Alt. 5 (comprehensive with ex-vessel fee)</i>
GOA	Halibut vessels	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	Groundfish CVs (all gears and sizes classes)	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	Non-AFA inshore processors	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	Pot CPs	Ex-vessel fee		Daily fee	Ex-vessel fee
	Trawl CPs <125'	Ex-vessel fee		Daily fee	Ex-vessel fee
	Hook-and-line CPs <125'	Ex-vessel fee		Daily fee	Ex-vessel fee
	Trawl CPs ≥125'	Ex-vessel fee		Daily fee	Ex-vessel fee
	Hook-and-line CPs ≥125'	Ex-vessel fee		Daily fee	Ex-vessel fee
	Rockfish Pilot Program	Ex-vessel fee		Daily fee	Ex-vessel fee
BSAI	Halibut vessels	Ex-vessel fee	Ex-vessel fee for CVs; status quo system for CPs	Ex-vessel fee for CVs; daily fee for CPs	Ex-vessel fee
	Groundfish vessels <60'	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	Non-AFA CVs ≥60'		Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	Pot CPs			Daily fee	Ex-vessel fee
	AFA CVs <125'			Daily fee	Ex-vessel fee
	non-AFA inshore processors		Ex-vessel fee	Ex-vessel fee	Ex-vessel fee
	AFA CVs ≥125'			Daily fee	Ex-vessel fee
	Non-AFA trawl & hook-and-line CPs 60' - <125'			Daily fee	Ex-vessel fee
	Non-AFA trawl & hook-and-line CPs ≥125'			Daily fee	Ex-vessel fee
	AFA & CDQ pollock inshore processors			Daily fee	Ex-vessel fee
	Motherships			Daily fee	Ex-vessel fee
	AFA CPs			Daily fee	Ex-vessel fee
	CDQ vessels	Ex-vessel value fee for halibut	Ex-vessel value fee for halibut	Ex-vessel value fee for halibut; Daily fee for other	Ex-vessel fee

Note: Shaded cells represent inclusion in the restructured program.

Coverage requirements

The issue of coverage levels arises with the implementation of a program that rescinds the current coverage levels based on vessel length and processing volume and replaces them with one in which NMFS has more flexibility to decide when and where to deploy observers. This is because some type of organizational structure is still necessary to categorize vessels and processors for the purpose of determining coverage levels. The establishment of uniform criteria for determining coverage requirements will also assist the Council in determining what levels of coverage are necessary when new management programs are proposed. As a replacement for the existing vessel length-based categories, the following two tier system of coverage is proposed. Vessels and processors would either be in the category of <100% coverage or ≥100% coverage, based on their fishery and operating mode. The ≥100% category

includes: (a) all CPs and motherships, and (b) CVs fishing within a management system that uses prohibited species caps in conjunction with catch share programs (Table E-2). The determination of which fishery sectors are placed into which category is a decision point at final action under any of the restructuring alternatives (Alternatives 2 – 5).

Table E-2 Summary of vessels, shoreside plants, and management programs included in the $\geq 100\%$ coverage stratum

Stratum
Full-coverage ($\geq 100\%$)
All catcher processors and motherships ¹
All catcher vessels fishing cooperatives with transferable quotas. ^{2,3}
Shoreside processors taking deliveries of AFA and CDQ pollock

¹Includes FV Golden Fleece.

²Includes all trips conducted by AFA eligible CVs in the Bering Sea (regardless of intent or realized catch) and existing Central GOA Rockfish Pilot Program.

³An exception to this category is the halibut and sablefish IFQ fisheries, which would be less than fully observed under the proposed action.

This analysis does not propose an annual mechanism through which a fishery would change from one category to another if it is determined that coverage levels need to be increased or decreased. Currently, all coverage levels are established in regulation and any changes to existing coverage requirements must be implemented through notice and comment rulemaking. This analysis assumes that formal rulemaking would also be necessary to change fisheries or sectors from one category to another (<100% versus $\geq 100\%$) under the new system. Agency flexibility would still be substantially increased through the proposed system, however, as the coverage levels for fisheries within the <100% category could be shifted and modified on an inseason basis.

Funding mechanism

All of the restructuring alternatives contained within this analysis could accommodate direct Federal funding if available. Federal funding may be necessary to get the program started, fund some direct coverage costs if industry fees are inadequate, and fund agency costs associated with implementing and maintaining the program. Therefore, any decisions related to the type of user fee would not preclude the possibility of obtaining Federal funding to cover observer deployment costs. There are several decisions related to the funding mechanism under each restructuring alternative. Section 2.9 of the analysis outlines the primary issues and concepts relevant to the funding mechanism.

Types of user fee

Two primary types of fee programs are authorized under the MSA and proposed under the restructuring alternatives. Vessels and processors not included in the restructured program would remain in the existing regulated (pay-as-you-go) service delivery model and contract directly with observer providers to receive observer services (e.g., daily rate paid directly to observer providers).

Ex-vessel value fee. An ex-vessel value fee is proposed to fund coverage for many sectors under Alternatives 2 – 4, and for all sectors under Alternative 5. Fees based on the ex-vessel value of landed catch are the most common type of fee currently used in the North Pacific. The maximum ex-vessel value fee authorized under Section 313 of the MSA for observer coverage is 2%. Under the ex-vessel value fee program, the fee amount would be paid by both vessels and processors. Catcher processors that both harvest and process their catch would pay the entire fee percentage, and catcher vessels delivering

shoreside would split the fee 50:50 with the shoreside processor. This is the same approach taken under the original research plan in 1995.

Daily coverage fee. A daily observer fee is proposed to fund coverage for those sectors that require at least 100% coverage under Alternative 4. This approach would to some extent mirror the existing 'pay-as-you-go' program, except that vessel owners and shoreside plants would be billed by NMFS for their coverage instead of contracting directly with an observer provider. Such a fee could be designed to exactly match the direct costs of observer coverage, as is currently the case with the existing pay-as-you-go program, or the fee could be set at a lower level than actual coverage costs if Federal funds become available to support the program.

Setting the fee levels

If a restructuring alternative (Alternatives 2 – 5) is selected, one of the most important decision points for the Council is setting an initial fee percentage for those sectors that will operate under an ex-vessel value based fee, and establishing the daily fee for sectors that will operate under a daily fee. The fee percentage (and the level of Federal funding, if available) would determine the program's budget and would directly affect coverage levels in the fisheries covered by the program and costs paid by industry. Some of the major assumptions and decision points associated with the ex-vessel fee are:

1. Ex-vessel fees would be based on standardized ex-vessel prices calculated using data derived from COAR using the methodology developed by the CFEC for their gross earnings estimates.
2. For the groundfish fishery, the time required to collect, analyze, and apply price data to the eLandings system would result in 2-year old prices being applied to the harvest data.
3. For IFQ species, the fee would be billed based on previous year's prices. However, it may be possible to more closely link the fee to the current halibut and sablefish IFQ cost recovery program and increase the percentage of ex-vessel value that is paid by the permit holder. The portion of the fee owed by the registered buyer would be billed separately.
4. It is anticipated that when an ex-vessel fee is assessed that the harvester would pay half of the fee and the processor would pay the other half. The processor would collect the harvester's portion of the fee at the time of landing. Under Alternatives 3 and 4, catcher vessels that deliver unsorted cod ends would not be subject to an ex-vessel fee and would not be subject to the daily fee. Catcher vessels that deliver sorted catch to a catcher processor or mothership would be subject to paying their half of the ex-vessel fee and it would be collected by the processor at the time of the landing.
5. Standardized ex-vessel prices would be set for species, port of landing, and gear. Because of data confidentiality issues, data must be aggregated if there are fewer than 3 entities in a price category. It is proposed that the prices would be set for fixed gear, pelagic trawl gear, and non-pelagic trawl gear. Ports and species would be aggregated as needed to preserve confidentiality.
6. A rolling average price is expected to stabilize fee revenue. Based on the data used in this analysis, it appears that a 3-year rolling average would provide the most stable fee. The Council could choose to use this approach.
7. Nominal prices could be adjusted by the Producer Price Index to help remove some inflation affects when prices from previous years are used to determine the fee.

Contracting process

Under all of the alternatives under consideration, private observer companies would continue to be the source of observers deployed under the restructured program. The main difference under the restructuring Alternatives 2 – 5 is that NMFS would be the entity responsible for contracting for observer coverage rather than the vessel owner. Complex regulations and procedures already govern the Federal contracting process. Therefore, this analysis does not examine alternatives to the process that would govern direct Federal contracting for observer services. The existing Federal contracting process is described in Section 3.2, to provide the Council and the public with an understanding of how the program would operate, should one of the restructuring alternatives be adopted. This section also explores the role of contractors under a new program, and whether single or multiple contracts, and single or multiple contractors, are preferable.

Several different contract modules are possible but are difficult to develop until the scope of work is defined. In essence, there are several ways to accomplish any task and distribute work. Contracting is flexible and will accommodate various desired scenarios. For example, the work can be broken into components regionally (BSAI or GOA), by gear type, or by vessel size class. Various combinations are possible. It is also possible to develop different types of work modules. One module could be for overall coverage planning and another for the provision of observers to obtain that coverage. Once the scope of work and funding are identified, NMFS can further develop alternative contract modules for consideration.

Because Federal contracting must follow well-established procurement processes, there are no Council decisions related to the contracting process in this amendment. Rather, NMFS would keep the public and the Council informed of the process as the scope of work becomes better defined.

Primary decision points for Council consideration

The primary decision point for the Council in this amendment is to select a preferred alternative. Four alternative approaches (Alternatives 2 – 5) for restructuring the observer program are analyzed in addition to the no action alternative (Alternative 1). The primary difference between the action alternatives is the scope of the restructured program (which vessels and processors are included) and the fee mechanism employed. Should the Council choose one of the restructuring alternatives as its preferred alternative, each has associated decision points, which include:

1. **Assignment of fishery sectors (vessels and processors) into two coverage categories: <100% or ≥100%.** NMFS has provided initial recommendations for the assignment of sectors into these coverage categories (refer to Sections 3.3.7 and 3.3.9). Generally, all CPs, motherships, catcher vessels fishing cooperatives with transferable quotas, and shoreside processors taking deliveries of AFA and CDQ pollock would be in the ≥100% category. An exception to this category is the halibut and sablefish IFQ fisheries, which would be less than fully observed (<100% coverage category) under the proposed action. All other catcher vessels and shoreside processors would also be in the <100% coverage category. Because all coverage classifications would be established in regulation, it is appropriate for the Council to review the proposed coverage categories and either endorse them or make alternative recommendations.
2. **Establishing fee levels.** Alternatives 2 – 5 employ an ex-vessel value based fee to varying extents, as authorized under the Magnuson-Stevens Act. The MSA allows for an ex-vessel value based fee to be a maximum of 2%. It is proposed that the first year(s) of the program would require a 2% fee until sufficient startup funding is generated to contract with observer providers for the restructured sectors. After the startup funding is in place, the ex-vessel fee could be

reduced through rulemaking, if there are enough funds to contract with observer providers to place observers in the newly defined strata at NMFS assigned coverage levels. The Council could also establish the daily fee for sectors that would operate under a daily fee, which is only applicable under Alternative 4.

3. **Variable or fixed fee.** Because harvest levels, prices, and coverage costs vary annually, the Council may wish to consider establishing a variable fee that self-adjusts upwards or downwards based on multi-year running average. A 3-year running average is considered in Section 2.9.2.2.4. Alternatively, the Council may choose to establish a fixed fee percentage in regulation that would require subsequent Council action and regulatory amendment to adjust.

Summary of economic effects

This amendment considers the status quo management (no action) as well as four action alternatives to restructure the observer program for the halibut IFQ fishery and all or parts of the BSAI and GOA groundfish fisheries. Vessels that are assigned to an FFP and fish in a Federal or parallel fishery (both State and Federal oversight) would be covered under this amendment. Vessels that are not assigned an FFP and fish in parallel fisheries and vessels that only fish in State managed fisheries are not included in this amendment. Alternative 1 would maintain the status quo. Based on 2008 fishery data, a total of 464 observers worked 39,344 days on 296 vessels and in 21 plants. Each observer day was estimated to cost \$366, for a total observer cost of \$14.4 million to the harvesters and processors in the North Pacific. Halibut vessels and registered buyers, as well as vessels <60' LOA, are not required to carry observers under the status quo and currently do not have observer expenses related to this program.

Alternative 2 would restructure the observer program for all halibut IFQ holders, GOA harvesters and processors, and catcher vessels <60' LOA when harvesting BSAI groundfish. BSAI CVs that are ≥60' LOA would remain under the current status quo observer requirements. Vessels and processors subject to the restructured observer program would pay an ex-vessel value based fee that must not exceed 2% of their ex-vessel revenue. The revenue estimates for each action alternative in the RIR are based on the maximum ex-vessel value fee of 2%, as this analysis proposes that the first year(s) of the program would require a 2% fee until sufficient startup funding is generated to contract with observer providers for the restructured sectors. Section 2.10.2 provides a detailed description of the costs to industry. The ex-vessel fee is projected to cost industry about \$6.7 million per year in 2008 dollars. Halibut and sablefish IFQ account for about 75% of the total ex-vessel fee revenue (\$5.1 million). Shorebased groundfish deliveries account for most of the remaining ex-vessel revenue. The \$6.7 million would fund about 15,000 observer days, based on an observer cost of \$450/day. Industry members that remain under the status quo were estimated to use 35,594 observer days at a cost of \$12.6 million. The total estimated (mean) observer cost under Alternative 2 was \$19.4 million. That represents an increased cost to the fleet and processors of about \$5.0 million per year relative to the status quo. The increased costs would provide increased pay and benefits, on average, for observers in the restructured program. Restructuring the GOA fishery is expected to reduce sampling bias and expand coverage to improve data collected. Members of the halibut fleet would be subject to some level of coverage, but likely less than the days they fund. However, they should also benefit from improved catch accounting for other segments of the industry.

Alternative 3 would restructure the observer program for vessels with less than 100% coverage (see Section 2.10.3). These are catcher vessels and shorebased processors that are not participating in the Bering Sea pollock fishery or the GOA Rockfish Pilot Program. All catcher processors and motherships would remain in the status quo pay-as-you-go fishery. The costs to the halibut fleet would differ only slightly under Alternative 3 compared to Alternative 2. Catcher vessel costs and coverage would remain the same, but halibut catcher processors would be subject to 100% coverage. Including catcher processors in the 100% coverage class is expected to decrease halibut ex-vessel fee revenue by \$0.1

million; the vessels that would be exempt from the ex-vessel fee would be required to pay the pay-as-you-go coverage fee. The total ex-vessel fee revenue under Alternative 3 is projected to be about \$7.2 million. That fee is paid exclusively by catcher vessels and shorebased processors. Catcher processors and motherships are projected to use 34,477 observer days (based on 2008) at a cost of \$12.6 million. The total mean observer cost under Alternative 3 is about \$19.8 million or a \$5.4 increase over 2008. Restructuring vessels and processors in the <100% coverage category would be expected to improve observer collected information, similar to the benefits predicted for the GOA under Alternative 2.

Alternative 4 is structured the same as Alternative 3 in terms of which sectors pay the ex-vessel fee and the daily fee (Section 2.10.4). Therefore, the ex-vessel fee projections are the same under both alternatives. Catcher processors and motherships are also restructured under Alternative 4. They are required to pay a daily observer fee to NMFS for each day of coverage. An observer coverage day under the restructured program is estimated to cost \$450. Because the daily observer coverage rate is higher under Alternative 4, the total estimated cost of the program is also higher. In total, Alternative 4 is projected to cost industry members \$22.7 million, which represents an increase of about \$8.3 million per year over the status quo. Data improvements should be similar to those projected under Alternative 3.

Alternative 5 would include all industry sectors under the restructured program and they would pay a fee based on a percentage of ex-vessel revenue. It is projected that the cost of observer coverage would be about \$19.5 million (ex-vessel fee revenue) or an increase of \$5.1 million over the status quo. Section 2.10.5 of this analysis provides a more detailed discussion of Alternative 5.

Advantages of an ex-vessel value fee include:

- *Equity.* An ex-vessel value fee is perhaps the most equitable method of funding observer coverage because it is based on the benefits received from the fishery.
- *Broad-based approach.* An ex-vessel value fee is the simplest to apply on a universal basis to all participants in the restructured observer program.
- *Predictability.* A fee that is withheld at the time of landing is likely easier for fishermen in terms of the ability to predict costs, and it would only require processors set aside sufficient funds to pay NMFS for coverage fees since harvesters pay at the time of landings.

Disadvantages of an ex-vessel value fee include:

- *Fee revenues not directly linked to coverage costs.* Because the fee revenues would not be directly related to observer coverage costs, it is highly likely that the program would experience revenue shortfalls or surpluses relative to the amount of observer coverage desired. Some participants may also feel they are being charged too much for the observer coverage they need.
- *Data limitations.* Data that are currently available would require past years' ex-vessel prices to be applied to current year's catch. Using past prices would result in a different fee estimate than using actual revenue. Data limitations also preclude estimating seasonal standardized prices within a year. Depending on when a person harvests the fish, it could impact the difference between their actual ex-vessel revenue and the estimated revenue the fee was based upon.
- *Fee percentages could not be adjusted inseason.*

Advantages of a daily observer fee based on coverage levels

- *Revenues could exactly match costs.* If the daily costs of observer coverage are known in advance (as they would be if NMFS entered into long-term contracts with observer providers) then a daily observer fee could be designed to exactly match the costs of coverage.
- *Fees more closely match monitoring requirements.* An ex-vessel value fee charges everyone based on their revenues without regard to differences in monitoring requirements in different fisheries. A fee based on coverage means that everyone pays for the coverage they receive.

Disadvantages of a daily observer fee based on coverage levels

- *Does not address disproportionate cost issues.* One disadvantage to such an approach is that it does not address the problem of disproportionate costs

Net benefits to the Nation

Alternative 1 would have no effect on net benefits to the Nation. The status quo observer program would continue for the groundfish fleet without modification by this amendment, and halibut and <60' vessels would remain exempt from observer coverage requirements. Alternatives 2 through 5 would slightly increase net benefits to the Nation for the portion of the fleet that is restructured. Restructuring the observer program would increase the cost of a day of observer coverage the fleet must pay. That increased cost would primarily go to observers as higher salaries and benefits. The restructured program is expected to reduce bias by placing observers in fisheries that would provide the greatest benefit. It would also facilitate observers being placed on vessels that have low profit margins without substantially increasing their costs. Reducing the bias in the catch data is expected to improve NMFS inseason management decisions and policy decisions for groundfish and halibut in the North Pacific.

Environmental assessment

An environmental assessment (EA) is intended, in a concise manner, to provide sufficient evidence of whether or not the environmental impacts of the action is significant (40 CFR 1508.9). Three of the four required components of an environmental assessment are included in Section 3. These include brief discussions of: the purpose and need for the proposal, the alternatives under consideration, and the environmental impacts of the proposed action and alternatives. The fourth requirement, a list of agencies and persons consulted, is provided in Section 8.

The net effect of Alternatives 2 – 5 is to change the system under which observers are deployed on vessels and processors, the determination of coverage on vessels and processors, and the way vessels and processors pay for observer coverage. Effects on target species should not be significant under Alternatives 2 – 5. The TACs are determined annually based on the biomass of the fish species, and effective monitoring and enforcement would continue to ensure that the overall TACs are not exceeded. Therefore, regardless of the observer deployment system in place, the total allowable catch of the target species would not increase under the proposed action. To the extent that the proposed changes to the Observer Program will provide managers with better estimates of target and incidental harvest and bycatch, increase flexibility in deploying observers, and ensure harvest rates remain within TAC levels, impacts to the target species or species groups are predicted not to be significant for target fish stocks. Consequently, no adverse impact to target or incidental catch species is anticipated from the alternatives, compared to the status quo.

Changes in interactions with other fish species, including prohibited species, are tied to changes in target fishery effort. To the extent that overall fishing effort in the groundfish and halibut fisheries is not

expected to change due to the proposed action, effects on mortality levels of prohibited species are not expected to be significant. Changes to the deployment of observers will likely provide managers with better estimates of incidental and directed take of prohibited species and serve to ensure harvest rates will remain below PSC limits, thus ensuring that the groundfish fisheries would not reasonably be expected to cause a conservation concern for PSC species.

Given that an overall increase in fishing activity is not expected under Alternatives 2 - 5, and there are measures currently in place to protect the physical and biological environment, the potential effect of the action on an ecosystem scale is very limited. As a result, no significant adverse impacts to marine mammals, seabirds, habitat, or ecosystem relations are anticipated.

Initial Regulatory Flexibility Analysis

The IRFA is provided in Section 5. The IRFA addresses the statutory requirements of the Regulatory Flexibility Act (RFA), and evaluates the potential adverse economic impacts on small entities directly regulated by the proposed action. Under the alternatives with the largest scope (Alternatives 4 and 5), there are 1,891 entities estimated to be directly regulated by the proposed action, based on 2008 data. Large entities are categorized as such for the purpose of the RFA due to the principles of affiliation, as part of harvesting and processing cooperatives, or because they meet the \$4.0 million threshold.¹ The only entities considered large in this analysis are AFA vessels, BSAI Amendment 80 catcher processors,² AFA shoreside processors (and additional processors owned by the same companies), and individual vessels that had more than \$4 million in ex-vessel revenues in 2008. In sum, there are an estimated 155 large entities and 1,736 small entities, as defined under the RFA, directly regulated by the proposed action.

An IRFA also requires a description of any significant alternatives to the proposed action(s) that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. This section of the IRFA will be completed when the Council selects a preferred alternative.

¹A business involved in both the harvesting and processing of seafood products is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has combined annual gross receipts not in excess of \$4.0 million for all its affiliated operations worldwide.

²Note that three of the catcher processors that qualified under Amendment 80 have subsequently sunk, and one was sold to Russia and cannot re-enter U.S. fisheries. However, a recent court decision (*Arctic Sole Seafoods v. Gutierrez*, May 19, 2008) ruled that a qualified owner of an Am. 80 vessel may replace a 'lost' vessel with a single substitute vessel, thus, there is the potential for 28 vessels to apply for Am. 80 quota in any given year.

Observer Advisory Committee – Meeting Report

May 25 - 26, 2010

Alaska Fisheries Science Center

7600 Sand Point Way, NE, Seattle

Building 4, Traynor Conference Room

8:30 am – 4:30 pm (Thurs); 8:30 am – 12:30 pm (Fri)

Committee present: Denby Lloyd (Chair), Bill Tweit (co-Chair), Bob Alverson, Christian Asay, Jerry Bongen, Julie Bonney, Richie Davis, Matt Hegge, Michael Lake, Todd Loomis, Paul MacGregor, Brent Paine, Theresa Peterson, Kathy Robinson, Anne Vanderhoeven. (Not present: Kenny Down, Tracey Mayhew.)

Council and NMFS Staff: Nicole Kimball (NPFMC), Martin Loefflad (AFSC), Craig Faunce (AFSC), Sue Salveson (AKR), Chris Oliver (NPFMC), Tom Meyer (NOAA GC), Patti Nelson (AFSC), Darrell Brannan (NPFMC, consultant), Bob Maier (AFSC), Doug DeMaster (AFSC).

Other participants: Jason Anderson (Best Use Cooperative), Dave Benson, Karla Bush (ADF&G), Tom Casey, Tim Carroll (Saltwater, Inc.), Ruth Christiansen (ADF&G), Ruth Finch (Freezer Longline Coalition), John Gauvin, Stacey Hansen (NWO, Inc.), Jan Jacobs (American Seafoods), Stefanie Moreland (ADF&G), Peggy Parker (Halibut Association of North America), Glenn Reed (PSPA), Mary Schwenzfeier (ADF&G), Troy Quinlan (Techsea International), Gregg Williams (IPHC), Dave Wood (U.S. Seafoods).

Agenda

- I. Review and approve agenda
- II. Update on status of observer regulatory packages
- III. Review February 2010 Council action
- IV. Update on outreach meetings with small boat/halibut sectors
- V. Review initial review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)
- VI. Discuss feedback and/or recommendations on the analysis
- VII. Scheduling and other issues

I. Review and approve agenda

Introductions were made, and the agenda was approved. Staff outlined the schedule for the analysis and confirmed that the purpose of the meeting is to provide feedback to the Council on the initial review draft analysis for the June 2010 Council meeting, including any new data requests, additional analysis, revisions to the approach, etc.

II. Update on status of proposed rule for regulatory changes the Council approved in 2008

On September 30, NMFS published a proposed rule for an observer regulatory amendment previously approved by the Council in April 2008 (74 FR 50155). In November, NMFS sent a letter to the Council outlining four changes NMFS was considering to the proposed rule as it proceeds to the final rule. Two of those changes are related to the requirement for observer providers to submit invoices, and two address observer conduct regulations. The only significant change is to require observer providers to submit monthly invoices every year, as opposed to every third year, as was originally approved by the Council. As these changes differ from the Council motion, NMFS is required to consult with the Council per Section 304(b)(3) of the MSA, and did so at the December 2009 Council meeting. The Council approved a motion that concurred with NMFS' proposed changes, and the final rule is in regional review with

NOAA GC. NMFS expects publication of the final rule in late June, with the effective date likely in the fall. One committee member noted that because the rule includes changes to the definition of a fishing day (30% coverage by quarter), an effective date at the beginning of a quarter would be preferable.

III. Review February 2010 Council action

Staff reviewed the February 2010 Council action, in which the Council reviewed a revised version of the implementation plan for restructuring and the January 2010 OAC report. While a formal motion was not determined necessary, the Council concurred with OAC recommendations regarding further development of the implementation issues for June, recognizing that the next iteration of the implementation plan would be provided as part of the initial review draft analysis. The Council also recommended that the upcoming analysis provide information such that the public and Council can understand the implications of excluding vessels with FFPs participating in State-managed, State water fisheries from the Federal observer restructuring plan. In addition, the Council encouraged NMFS to conduct outreach meetings in coastal communities, specifically with members of the halibut and small boat sectors, in order to help inform the sample design, vessel selection process, and logistical issues related to deploying observers in those sectors. NMFS conducted outreach meetings in March and April, and provided a progress report to the Council at its April meeting (see agenda item IV). In February, the Council also directed the OAC to convene and provide feedback on the initial review analysis, prior to the Council's review in June 2010.

IV. Update on outreach meetings with small boat/halibut sectors (March/April 2010)

Martin Loefflad (AFSC) provided an overview of several outreach meetings conducted with various fishing associations in Seattle and Alaska. The organizers and locations of the outreach meetings include: Fishing Vessel Owners Association in Seattle; United Fishermen of Alaska in Juneau; the Alaska Longline Fishermen's Association in Sitka, the Petersburg Vessel Owners Association in Petersburg; K-Bay Fisheries and the North Pacific Fisheries Association in Homer; and several organizations (Alaska Groundfish Data Bank, Alaska Marine Conservation Council, and United Fishermen's Marketing Association) in Kodiak. Martin also noted that there is interest in outreach in Alaska Peninsula communities, but further in the process.

Martin provided an overview of the primary categories of questions and comments received: fee issues; the rationale for observer coverage; feasibility of deploying observers in various sectors; and the implementation and logistics associated with the proposed program as a whole. The AFSC committed to responding to several of these concerns in the initial review draft analysis.

Bill Tweit questioned whether committee members attending the outreach meetings heard any feedback from the community on their effectiveness. One member noted that the Kodiak meeting served to reduce confusion over the proposed action, and it was especially worthwhile for the small boat fleet, which has not had observer coverage requirements in the past. Participants appeared more receptive to working within the process to help develop a program that would work for their sector. Most participants provided input on deployment logistical issues specific to their sectors, and highlighted the differences among various fleets within the same port. The IFQ fleet emphasized the need for accommodations for small boats and the variability within the IFQ sector. One member stated that it was important for the larger vessels to have their input solicited prior to Council action. In sum, regardless of whether participants agreed with the proposed action, members confirmed that the outreach meetings were useful and clarified many outstanding questions.

V. Review initial review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)

NMFS and Council staff (Nicole Kimball, Darrell Brannan, Bob Maier, Martin Loefflad, Craig Faunce) provided a detailed presentation of the initial review draft analysis, focused primarily on the economic impact analysis in the Regulatory Impact Review (Chapter 2); start-up funding (Chapter 3); and changes to the sample design and deployment logistics (Chapter 3). The committee limited its discussion on the first day to brief statements and clarifying questions, with the intent to have more in-depth discussion and develop recommendations the following day (agenda item VI).

Chapter 1 outlined the layout of the analysis. Staff then presented **Chapter 2 (RIR)**, starting with the purpose and need for action, problem statement, and the proposed alternatives. Staff presented the primary analytical assumptions, including the scope of the action (i.e., which fisheries/sectors are included in restructuring). As part of the assumptions, the committee reviewed a revised section on the limited authority of NMFS to place observers (and assess a fee) on vessels in State waters, and data on the number of vessels and amount of groundfish that would be excluded from the restructured program because they are fishing State managed (GHL) fisheries in State waters. Staff also reviewed the legal guidance surrounding many of the issues associated with the language in the Magnuson Stevens Act that grants the authority to restructure the observer program such that NMFS: contracts directly with observer providers for observer services; has control over when and where observers are deployed, based on a scientifically valid sample design; and pays for such a program through a fee system.

The next significant section presented was Section 2.9, which outlines the two types of fees proposed under restructuring: a daily fee that represents actual costs and an ex-vessel value based fee (maximum 2%). This section also outlines the estimates of the existing cost of an observer day under the status quo. Staff presented the numerous assumptions and methods associated with the ex-vessel value based fee, including the strengths and weaknesses of the available data sources for landings and prices, and the methods used to establish standardized ex-vessel prices (by species, gear type, and port/area) to apply to landings in order to determine fee amounts. This section also outlines the impact of a two-year time lag in the groundfish price data (Commercial Operator's Annual Report, or COAR), which represents the best available information without requiring additional industry reporting. Staff also presented the effects of using a 3-, 5-, or 7-year rolling average price in order to reduce the annual variation in prices.

The OAC had several clarifying questions on the development of and need for standardized prices. One member questioned whether the agency should simplify the process and use the State landings tax list of standardized prices. The State of Alaska uses the COAR data to establish a statewide average price for each species and compares it to the data reported by businesses on their tax forms. Discussion ensued regarding the disadvantages of such an approach, even though the primary data source (COAR) is the same as that proposed in the restructuring analysis. The State of Alaska assesses the landing tax based on a statewide price by species, as opposed to a more refined price by area/port/gear type. In addition, only CPs and floating processors are assessed the State landing tax; thus, standardized prices are not currently developed for, or apply to, CV landings.

The committee also discussed the details of the fee remittal process (e.g., how would the processor know the fee amount to submit to NMFS?). Because the fee percentage and the list of standardized prices would be established, at the time of landing each operation should know its fee assessment (e.g., 1% of landings based on \$5/lb). It was noted that fee liability would be automated through eLandings, which spurred questions about whether there are processors (registered halibut buyers) that do not use eLandings. The committee also asked several questions about the level of aggregation of the price data, with regard to species and species complexes, gear types, area/port, and disposition codes. A member of the CP sector

also asked about the impacts of including discards in the total catch on which a fee is assessed for CPs. Staff responded that because discards receive a 'zero' price, but are counted in the metric tons on which the fee is assessed, it serves to lower the overall price for that species. So while it does not affect how much revenue is generated by the fee, it does have distributional impacts within a sector (i.e., affects the overall average price for that species and gear type).

As part of this discussion, staff presented its estimates of the daily observer cost under the status quo system (\$366/day) and the daily fee under Alternative 4 of the restructured system in which NMFS contracts directly with observer providers (\$450/day). The calculations to determine these estimates are detailed in Appendix 6. The committee requested that staff add discussion in the analysis about how a wage increase for observers in one area (e.g., GOA) under a contracted system could affect the daily wage for observers that remain under the status quo (and potentially subject to a collective bargaining agreement). Observer providers noted that their overhead may also increase with higher wages. In response to questions, staff noted that the daily wage estimate of \$450/day under a contracted model is in the range of estimates developed for other regions currently operating under a similar model.

Upon presentation of the assumptions and methods used to determine the fee estimates, staff presented the cost to industry under the status quo (Alternative 1) compared to the various restructuring alternatives (Alternatives 2 – 5). The baseline for comparison under status quo is the 2008 fishing year. The average 2005 – 2008 price and catch data was used to estimate the ex-vessel fees under the action alternatives. The increase in total estimated (mean) observer costs to industry under the action alternatives ranges from \$5 million to \$8.3 million above the status quo (\$14.4 million annually). This section also provides the number of observer days that would be funded under each alternative, which ranges from an increase of 4,000 to 11,000 observer days¹ above the status quo (39,000 observer days).

AFSC staff presented **Chapter 3 (Implementation Issues)**, focusing on new information on start-up funding needs and changes to the sample design. The estimates of start-up funding (Section 3.1) are based on the assumption that Federal funding is not available to fund observer deployment, beyond what is currently provided to fund agency costs. The approach to collecting start-up funding is the same as was implemented under the Research Plan in 1995; fees would be collected from industry in the year prior to the implementation of a restructured program in order to fund year-1. Under a proposed 2% fee, in year-0, a vessel or processor would pay the difference between the 2% fee assessment and their actual year-0 observer costs under the status quo.

Staff provided a retrospective analysis to show the estimates of the 2% ex-vessel value fee, the revenue needed to fund observer costs for the restructured portion of the industry, and the estimated fee surplus on an annual basis. This analysis results in the estimated number of years required to acquire start-up funding under this approach, which ranges from 6 months under Alternatives 2 and 3, to 3.5 years under Alternative 4, to 10 years under Alternative 5 (Table 46). Committee members asked clarifying questions and expressed frustration that funding for observer coverage under new limited access privilege programs in the Northeast and Pacific (west coast) regions are 100% and 90% Federally funded, respectively.

Staff then provided an overview of the sample design section (Section 3.3), including an analysis of bias in the 2008 catcher vessel sectors (Appendix 8). The analysis shows that the deployment of observers in Alaska is non-random and that there is a significant deployment effect (i.e., the selection of trips to be observed under industry control are not representative of unobserved fishing trips). To a lesser extent, analyses also demonstrated that in some fisheries, an observer effect is also present (i.e., a change in fishing behavior by individual vessels was evident when they were observed compared to when they were not observed).

¹Based on the mean estimate of ex-vessel revenues 2005 – 2008.

Staff focused the presentation on changes to the proposed observer deployment in the sectors that require <100% coverage, particularly an analysis that guides further stratification within that stratum. Because the primary sample unit is the individual fishing trip, staff conducted an analysis of trips with similar total weights that could be identified by characteristics known before a trip begins (Appendix 9). At the request of the committee and public input, staff also evaluated landings data to determine whether there is a vessel size class below which onboard observers may not be required (Appendix 10). The result is a proposed further stratification in the <100% coverage category for the first year of the program: fixed gear catcher vessels $\geq 58'$ LOA and trawl catcher vessels would be subject to a call-in (trip) selection system; fixed gear catcher vessels $<40'$ to $<58'$ LOA would be subject to a vessel selection system (random approach to selecting a vessel to be observed for all fishing operations in a specified duration); and fixed gear catcher vessels $\leq 40'$ LOA, jig, and troll vessels would have no selection in the first year of the program. Staff noted that vessels in the 'no selection for one year' category are not exempt from the restructured program; they would be subject to the observer fee and NMFS would retain the authority to put an observer on the vessel if necessary. To maximize efficiency and the probability of success of the deployment of at-sea observers in a restructured program, for the first year at least, these vessels would expect to have zero probability of being selected to carry an observer.

The committee observed that the analysis supporting delineation between the vessel selection and trip selection systems resulted in a $<57.5'$ LOA criterion, but the sample design section proposed rounding to a $<58'$ LOA criterion (p. 121). Members recommended using the $<57.5'$ LOA criterion. Another member stated that vessel size categories are problematic in general, and establishing a new criterion for any purpose based on vessel length becomes confusing. Staff noted that the further stratification in the partial coverage stratum is not proposed to be in regulation and would be expected to change as new data become available.

A committee member representing the IFQ fishery expressed concern with the trip selection system and the potential for vessels to 'game the system.' If a vessel is selected to carry an observer, the permit holder can decide to fish his IFQ on another vessel that has not been selected for that trip or time period. He emphasized that selecting a vessel in the IFQ fishery to carry an observer should be based on the amount of IFQ pounds held by the permit holder and fished, not vessel length. Members also noted that the analysis should specify the duration expected under the vessel selection system (e.g., a month, a season, etc.)

Staff briefly reviewed the environmental assessment (**Chapter 4**) and the Initial Regulatory Flexibility Analysis (**Chapter 5**).

VI. Discuss feedback and/or recommendations on the analysis

Staff summarized the primary components of the analysis that were presented, and the committee focused its discussion and recommendations on significant issues.

One member of the CP sector requested a better explanation in the analysis of how an ex-vessel value fee (under Alternatives 2 and 5) would be applied to total catch for the CP sector, and the impact of including discards which receive a 'zero' price. Staff agreed to add this discussion to the analysis, outlined an example, and reiterated the reasons for using the same data (total catch, with discards derived from observer estimates) as is used for catch accounting and debiting quotas. Members also questioned how NMFS would determine an ex-vessel value price for CPs. Staff responded that if the species and gear are well represented in shoreside information, that price is applied to CPs. If not, the ex-vessel price is based on a fraction of the wholesale price (40% is used by NOAA in the Economic SAFE).

The committee also asked staff to clarify their assumptions in the situation in which a processor is under the pay-as-you-go (status quo) program and the CV delivering to it is subject to the ex-vessel value fee. Staff assumed that the processor would not pay twice for observer coverage: the processor would pay the daily rate under the status quo and the CV would pay half of the ex-vessel fee (e.g., 1% if the total fee is 2%). Members noted that this appears to be a policy decision, and that the Council and NMFS may want to charge the full 2% fee in this case, in order to provide additional resources to put toward monitoring in the plant. This situation would only arise if a CV in the partial coverage stratum (<100%) was delivering to a shoreside processor at a time it is in the full coverage stratum ($\geq 100\%$); the only processors in the full coverage stratum are those receiving pollock deliveries. Staff committed to providing discussion in the analysis outlining this assumption and the limited cases in which it may apply.

One committee member questioned whether the MSA mandates that NMFS fund shoreside plant observers through the fees authorized under Section 313. Staff responded that the MSA allows for different fees and fee systems to apply to various sectors, including shoreside processors. The Council could undergo a separate action in the future to exclude shoreside processors from the fee system, or it could change the current suite of alternatives to exclude shoreside processors (i.e., they would remain under pay-as-you-go). Staff noted that Council action in October 2009 explicitly included shoreside plants under all of the action alternatives, and the only shoreside plants in the full coverage stratum are those taking Bering Sea (AFA and CDQ) pollock deliveries.

The committee generally agreed with staff's recommended approach to aggregating price information in order to develop standardized prices. These include determining prices by: individual species, as opposed to species complex; fixed, pelagic trawl and non-pelagic trawl gear types; individual ports if possible and then by aggregating surrounding ports if necessary for confidentiality; and the weighted average of all delivery and disposition codes. One member also noted that ports like Sand Point and King Cove should be aggregated with Dutch Harbor and Akutan, as opposed to the Central Gulf, if individual port prices cannot be reported. Overall, the proposed approach increases the sensitivity of the price information compared to the Alaska Department of Revenue process.

The committee also discussed the potential use of a rolling average price as opposed to an annual price, in order to account for variability and volatility in the industry. Most members agree a 7-year rolling average is too long, but endorsed use of a rolling average to provide a level of predictability. Variations in the TAC are also a significant factor in creating stable revenues. If there is a relationship between price and quantity in some fisheries, a shorter rolling average (e.g., 3-year) responds more quickly.

Several committee members recommended that the analysis include 2009 data, as they reflect a much different scenario from the high prices of 2008. Staff committed to providing 2009 data where applicable in subsequent drafts, if it is available within the timeframe the Council establishes. The 2009 data are expected to be completed and available in the fall.

One member of the IFQ sector emphasized that using a trip selection process would not work in the IFQ fisheries, primarily because these vessels can choose when to fish under an IFQ system. He expressed that the IFQ sector should be selected for an observer based on the permit holder's IFQ poundage. In addition, he recommended mandating logbooks for the IFQ sector, so that NMFS could verify discard data eventually collected through the observer program. He also endorsed developing a pilot program for electronic monitoring. Staff concurred that it is difficult to correct for the observer effect; the primary objective of the new sample design is to correct for the deployment effect. Staff also noted that only fixed gear CVs >58' LOA would be subject to the trip selection system; vessels under this size threshold would be subject to the vessel selection system, in which the vessel would be required to carry an observer for all trips within a fixed, specified time period. The length of time one must carry an observer under the vessel selection system (e.g., one month, one quarter, etc.), as well as the probability of an IFQ vessel

being selected, mitigates some potential manipulations of the system. The committee recommended that NMFS explore and analyze some potential measures to mitigate the observer effect, such as 1) increasing the probability of a vessel being selected again if they have very little (non-representative) harvest on an observed trip; and/or 2) providing a definition of a representative sample size or trip. Such measures would be within the sample design, and not fixed in regulation.

Another member endorsed the use of NMFS observer staff to solve sampling or logistical problems or be available for deployment on a vessel that appears to be fishing in a non-representative manner when a regular observer is onboard (i.e., formerly the NMFS cadre). NMFS noted that it has this authority on vessels currently subject to observer requirements (vessels $\geq 60'$), and there is nothing proposed under this action that would preclude NMFS staff or a contractor from this kind of work. Under restructuring, NMFS would also add the explicit authority to deploy staff on $<60'$ vessels. Some members expressed interest in: 1) placing NMFS staff on $<60'$ and halibut vessels on a voluntary basis, during the next few years prior to restructuring implementation; and 2) adding a NMFS staff program within the sample design in a restructured program. Staff stated that this authority is implicit in the proposed sample design, but discussion could be added to the analysis to explicitly state that NMFS would be able to use fee proceeds to place NMFS staff on vessels to resolve sampling issues and facilitate the collection of unbiased data. The committee also discussed which vessels have VMS requirements, as VMS could be used to determine whether the vessel is fishing in the same general location with and without an observer.

It was also expressed that the fee structure essentially provides NMFS a pool of funding to pay for observers, and the analysis does not provide an idea of the level of observer coverage proposed for the various sectors in the $<100\%$ coverage stratum. NMFS has not made coverage level decisions at this juncture, and the primary goal of restructuring is to provide flexibility such that the agency can adjust coverage levels based on conservation and management needs. One member endorsed a flexible system, but recommended establishing a minimum (baseline) observer coverage level for each fishery in order to collect adequate data. Another member expressed concern at establishing a minimum coverage level prior to program restructuring, and alternatively endorsed collecting unbiased data in the first few years of a new program, and then consider whether a minimum coverage level is appropriate. This type of information could be included in an annual report from NMFS to the Council.

The committee also discussed whether it would be appropriate to recommend a preliminary preferred alternative to the Council at this time, in order to allow staff to focus its analysis on the implementation issues and sample design associated with that alternative. One member suggested that Alternative 3 currently appeared the most feasible, while also meeting the objectives of the problem statement. Alternative 3 would allow for a restructured program on all segments of the industry that are required to have $<100\%$ coverage. Estimates also show that under current revenue streams and absent Federal funding, it would take about half a year to collect start-up funds to implement. Alternatives 4 and 5 are estimated to take significantly longer.

The public was also provided an opportunity for comment at the meeting. One participant emphasized the need for statistically valid and unbiased data resulting from the observer program, stating that the program should focus on obtaining data from the sectors most responsible for halibut bycatch. He also asked the committee to recommend the Council petition NMFS AKR to request as much funding as possible through the National Observer Program budget.

Recommendations

1. The OAC recommends that the Council release the June 2010 draft analysis for public review.
2. The OAC recommends expanding the implementation section (p. 118 – 119) to include examples of operational control rules that NMFS could implement within the sample design (not regulations) to address the ‘observer effect’.
3. The OAC recommends providing a section in the analysis that details when and how NMFS would provide information to the SSC and Council related to how NMFS deployed observer resources in the previous year and how fee proceeds were used. The approach discussed for consultation was an annual report under an existing item (e.g., NMFS B report, research priorities, etc). The analysis should describe the types of information to be reported and how it would be reported.
4. The OAC recommends that the Council support development of a voluntary pilot program for monitoring on small vessels in the near-term, or on any operational aspects that would assist observer providers in testing a new system prior to implementation. While the committee recognizes that this type of program could be undertaken on a voluntary basis between vessels and observer providers, it recommends the Council promote such efforts and relay that support to NMFS.
5. The OAC recommends that the Council request that NMFS request funding for start-up costs of the restructured program.
6. The OAC recommends that it convene to review the public review draft analysis prior to the Council’s scheduled final action (currently October 2010).

VII. Scheduling and other issues

The committee reviewed the timeline for implementation (Section 3.7), which details the Council, rulemaking, and contracting timeline associated with observer restructuring. Council initial review of the analysis is scheduled for June 2010. Council final action is tentatively scheduled for October 2010, with the associated rulemaking developed through 2011. Contract development for a contract of this projected scope is about two years to completion, with the potential implementation of a newly restructured observer program in 2013. A key issue for the implementation schedule would be determining when start-up funds would be available to initiate contract task orders.

Polar Star, Inc.

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June 1, 2010

Eric Olson, Chair
North Pacific Fishery Management Council

RE: Agenda item C-4a, Observer Program Restructuring

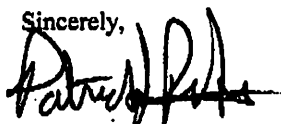
Dear Chair Olson:

I own and operate the 58-foot F/V Polar Star, which fishes for salmon, sablefish, Pacific cod, halibut and Tanner crab here in the Gulf of Alaska. I believe that the design of the current observer program is flawed. I support the council moving forward with a restructuring plan, but I would ask that the council keep the following points in mind as it moves forward.

- **Reducing the impacts of unobserved catch.** I am greatly concerned about the impacts of bottom trawling on the stocks of halibut and Tanner crab in the GOA. The current observer program does not provide for an adequate level of observer coverage, and the flaws in its design permit vessels to effectively game the system, resulting in underreporting of the actual PSC catch levels. The new observer program should be designed and implemented so that any gaming, by all participants, is curtailed. I can not support observer program restructuring if it does not include concrete measures in the deployment model that will achieve this goal. I urge the council, in consultation with NMFS, to develop specific measures in the alternatives and options concerning observer deployment for each sector before final action, and not leave such an important part of observer restructuring for later development.
- **Variable ex-vessel value fee.** I support giving NMFS authority to vary the ex-vessel value fee as appropriate. For many in the <60 boat fleet, an additional 2% ex-vessel value fee on top of other fees already levied will be a significant drain on their income. If NMFS determines that the 2% fee is generating an excess of money, then that fee should be reduced in a timely fashion without having to resort to the full council process.
- **Equity between sectors.** While I recognize that the observer program is designed to benefit everyone involved in the fisheries through better catch accounting for all sectors, I am concerned that there will be a significant imbalance when the halibut fishery is brought in to the program. The analysis indicates that the revenue generated from a 2% ex-vessel value fee on the halibut fishery may greatly exceed the observer costs. If it is determined after the startup funds are generated that any sector is contributing a significantly disproportionate amount of money to the observer program, there should be some mechanism to bring some balance amongst the sectors. This could be accomplished by permitting different ex-vessel value fee percentages for different sectors, with percentages based on NMFS' projections of the costs for observing that sector and the likely fee revenues to be generated based on recent fish prices.
- **The <60 foot sector should be in the pilot observer program.** There are going to be many difficulties bringing in the <60 sector into the observer program. Many, if not most, of the <60 foot vessels simply do not have the room to accommodate an observer. In many of the smaller operations, it would be difficult for the observer to do their job safely. Many in the Kodiak fleet use tenders for the Pacific cod fishery, and can be out of port fishing for several weeks rather than a few days as is common in the >60 fleet. Thus, I think it would not be feasible to lump the <60 fleet in the same observer class as the current >60 fleet.

Thank you for your consideration.

Sincerely,



Patrick J. Pikus
Polar Star, Inc.



Alaska Longline

FISHERMEN'S ASSOCIATION

Post Office Box 1229 / Sitka, Alaska 99835 907.747.3400 / FAX 907.747.3462

NPFMC
605 West 4th Avenue, Ste. 306
Anchorage, AK 99501

May 31, 2010

Dear Chairman Olson and Council Members,

I am providing these comments on Agenda Item C-4, restructuring of the NOAA observer program, on behalf of the Alaska Longline Fishermen's Association (ALFA).

ALFA's membership DOES NOT support release of the existing document for initial review. ALFA is not satisfied that the analysis contains appropriate alternatives, nor are we satisfied that the analysis has sufficient information to allow fixed gear vessel owners to assess impacts of the program on their businesses. Until these deficiencies are corrected, we cannot support the program moving forward.

ALFA representatives have participated in observer committee and Council meetings addressing the restructuring alternatives for the past twelve months. During that time, we have voiced our support for restructuring the observer program to provide NMFS the necessary flexibility to deploy observers when and where they are needed, but have consistently asked for more detail on incorporation of the small boat fixed gear fleet into the observer program. In particular, ALFA has asked NMFS to provide: objectives for observer coverage on the halibut/sablefish IFQ fleet; details for selecting vessels less than 60 feet to carry an observer; an alternative to a ride along observer for small boats (e.g., electronic monitoring); an economic impact assessment of levying a 2% -ex-vessel fee on the IFQ fleet; and an alternative that includes accommodations for the IFQ fleet that already pays a management fee of up to 2%. This analysis contains a brief paragraph summarizing NMFS objectives for coverage of the sablefish/halibut fleet (all of which can be satisfied through logbooks and electronic monitoring) but fails to provide workable alternatives or adequate information to evaluate which vessels between 40 and 60 feet will be tasked with carrying a ride along observer.

ALFA members recognize that the Council's intent is to address identified problems with the existing service-based deployment system and to create a funding mechanism for the restructured program. ALFA supports these objectives. However, these alternatives go far beyond that stated intent. Alternatives 2-5 expand the observer program to include over 10,000 additional observer days (an increase of approximately 25% from 2008 levels), vests NMFS with the authority to place observers on 1400 vessels that have never

carried an observer (without providing detail on how NMFS will make safety and suitability determinations or providing alternatives to ride along observers), and shifts up to 75% of the costs for the new program to the halibut/sablefish IFQ fleet (without any accommodations to that fleet for the existing management tax). Although we recognize both the resource and our membership will benefit from improvements to the observer program, we cannot support a dramatically expanded observer program when the need for that expansion still has not been defined, nor can we support a program that shifts 75% of the cost of a federal observer program to the small boat fixed gear fleet.

Because the analysis does not explain the economic impacts of the additional fee to the sablefish/halibut fixed gear fleet, ALFA asks the Council to consider current economic conditions in these fisheries. Quotas in all areas have been reduced over the past five years, with quotas in the Southeast area for both species cut by over 50% (for sablefish the reduction has taken place over the past 10 years). Two-thirds of existing QS holders has purchased some or all of the quota they currently hold, and many are facing payments beyond the ex-vessel value generated by purchased quota. The full 2% observer tax will drive consolidation in the small boat fleet, to the detriment of the coastal communities that depend on these fisheries. The lack of clarity in the current alternatives relative to selection of vessels in the 40 to 58' strata to carry ride along observers will also contribute to consolidation. Such consolidation is contrary to Council objectives in creating the IFQ program and contrary to Magnuson-Stevens Act standards to promote the small boat fleet and fishery dependent communities.

Before releasing this document for initial review, ALFA recommends that the Council:

- Add an alternative that makes expansion of observer coverage beyond 2008 levels, both in terms of days at sea and the number of vessels covered, dependent on securing federal funding to off-set the costs of both start up and on-going program operations;
- Include an option to allow vessels between 40 and 58 feet to choose an alternative to a ride-along-observer such as electronic monitoring or a chaser boat. Direct staff, working with NMFS office of enforcement, to specify the criteria that will be used to determine which vessels can safely carry an observer, and which vessels will be given the option of alternative monitoring approaches.
- Include an option to existing alternatives that more equitably levies ex-vessel fees on the halibut/sablefish fleet in acknowledgment of the ex-vessel federal management fee already assessed.

In closing, ALFA recognizes the importance of restructuring the observer program to provide NMFS with greater deployment flexibility and to address existing inequities in the current cost structure. ALFA does not support creating a program that dramatically expands the observer program at the expense of the small boat fixed gear fleet, and reminds the Council that the alternatives specified in this analysis trade existing inequities in the cost structure for new, and more exaggerated disparities. The restructuring analysis identifies the inequity, but fails to assess the impact and lacks an alternative to address it. Before moving ahead with this program, ALFA recommends the

Council take time to provide adequate alternatives and sufficient assessment of program impacts.

Thank you for your attention. ALFA representatives will attend the June Council meeting to provide comment.

Sincerely,



Linda Behnken
(Director, ALFA)

June 1, 2010

Eric Olson, Chair
North Pacific Fishery Management Council
605 W. Fourth Ave.
Anchorage, AK 99501

RE: Agenda Item C-4 Observer Program Restructuring

Dear Chairman Olson,

Alaska Marine Conservation Council (AMCC) appreciates the Council's commitment to move forward with a restructured observer program in Alaska. The initial review provides a myriad of material from which informative decisions can be made to develop a program that meets the problem statement.

The cost to the fleet outlined in all the alternatives is substantial and merits the best possible program structure that can be achieved.

Of concern is the monitoring of the observer effect once a vessel has been selected to carry an observer. There is little in the document to correct for this effect. Once a vessel leaves the dock with an observer they can fish however they want. NMFS needs to have the ability to respond to identified problems. Perhaps a percentage of the additional coverage days could be allocated to problem solving. A set of operational control rules or definition of a minimal effective sampling defined in the analysis would help to establish criteria from which to measure. While it is widely recognized that gaming the current system, for whatever reasons, does take place, there is no definition of what gaming is.

We recognize the observer effect is difficult to quantify and address, however, to insure we have the best possible program and to build credibility, the issue needs to be further defined and addressed.

Sincerely,



Theresa Peterson
Alaska Marine Conservation Council
Kodiak Outreach Coordinator

Southeast Alaska Fishermen's Alliance

9369 North Douglas Highway

Juneau, AK 99801

Phone: 907-586-6652 Email: seafa@gci.net

Fax: 907-523-1168 Website: <http://www.seafa.org>



June 1, 2010

North Pacific Fishery Management Council

605 West 4th Avenue, Suite 306

Anchorage, AK 99501

RE: C-4 Observer Program Restructuring

Dear Chairman Olson and Council Members,

Southeast Alaska Fishermen's Alliance (SEAFA) does not find the draft initial analysis adequate for a commercial fisherman to determine the effects this action will have on his operation nor sufficient detail or alternatives suitable for the wide variety of small vessels contained in the under 60 foot category that would be included in all of the alternatives 2-5. Therefore we do not believe that this document should be released for initial review at this time.

SEAFA is aware of the need for restructuring the observer program to provide some flexibility, provide some coverage in fisheries that aren't currently covered, minimize the bias created by allowing the vessel owner to determine which trips an observer will be on when the vessel is less than 100% covered.

SEAFA strongly supports the need to pursue federal funding for the Alaska restructured observer program for the expansion of coverage beyond the vessels and days at sea provided for in 2008.

At a minimum, the analysis needs to provide some information on the statistically needed coverage levels by fishery. I.e. what is the minimum amount of coverage in the halibut fishery that will provide any valid statistical information that can be used across the fishery for the unobserved vessels? Does that need to be based on trips observed or a percentage of the allowable harvest? Another way to look at the data is if you have x number of observer days for the year, what is the approximate percentage that each fishery would be allocated and what percentage would be held in abeyance to address specific issues, management concerns for the year and provide for flexibility within the program?

The analysis fails to provide any data on the effect to the halibut fleet of assessing an additional 2% fee for vessels that are already struggling under

reduced quotas (particularly Area 2C) to the point where they are unable to meet their loan payments and costs to harvest the halibut and will now be faced with an additional cost. For many of these fishermen they are in a difficult situation where the money generated from the quota shares no longer covers the cost nor can they sell the quota share and recover enough funds to clear the debt associated with the QS. The analysis does not provide any data on how this additional fee may affect the number of individuals forced out of business, possible consolidation effects etc.

The analysis fails to acknowledge that the observer program envisioned has the possibility of changing current fishing patterns. For instance in Area 2C, many fishermen start out with the plans for a salmon trip which isn't going very well will switch to longlining some of their quota to make the overall fishing trip successful. With a requirement of 72 hour call in - they will have to change their fishing pattern and style significantly. This is just one example of how the observer program may change fishing patterns that is not discussed and can bias the information of what has occurred in the past and future. For many of these fishermen this requirement may be the final straw to cause them to leave the fishery.

Both of these last two paragraphs are describing the commercial fishermen that are the backbone of small coastal communities and the effects on the fishermen affect the communities.

SEAFAs has questions regarding the ex-vessel value fee sections of this analysis.

- The analysis does not thoroughly describe why assessing the fee at the current price paid at time of delivery and withholding the assessment from any retro, future payments etc. that are paid is not an acceptable alternative. Using the current years harvest amounts and a two year old standardized 3 year rolling average seems awkward, could severely impact a small fishing vessel based on price and quota fluctuations if the right combination occurs. We believe the assumption being used is that it will average out over time to 2% or less but no retrospective analysis was done to show that assumption is indeed true as the price and harvest fluctuates. This alternative would be consistent with the 2006 principals of fee assessment described in section 2.9.2.2 (page 46). On page 47 it states that this type of alternative "would be unfeasible from an agency implementation standpoint." It is feasible for the State of Alaska fishery business tax and landing tax by requiring a tax return to be filled out with the payment of the taxes dues. Why would this system not be acceptable for NMFS? Indeed this data from the State is the underlying data they intend to use for 2 year old price data. This alternative also addresses the issue brought up on page 51 regarding seasonal prices. Why couldn't the Council recommend that a regulation be established that requires on federal

groundfish fisheries and halibut that price be listed on the state fish ticket?

- The document states, "The analysis of the various alternatives under consideration provides some guidance on the appropriate fee percentage required to attain the requisite coverage days. However, until start-up funding is collected, the 2% maximum fee is proposed to be charged." Why isn't an alternative or decision point for the NPFMC provided that allows a maximum fee be charged for the necessary time period for start up which is analyzed and then the appropriate fee percentage to attain the requisite coverage days (which we did not see analyzed) rather than a "trust me" we will reduce the fee later in a regulatory amendment. This would allow affected fishermen to understand the long-term affect to their income. Unless the intent is to maintain a maximum 2% assessment forever into the future and allow that to determine the number of observer days in which case be honest and state that.

Assumption #5 states that the processor will pay 50% of the 2% fee and the harvester will pay 50% but the analysis no where recognizes that in all actuality this ends up being a 2% adjustment to the price paid to the fisherman. If the processor has to pay the tax he will adjust the price paid to the fishermen to reflect their cost of doing business. To assume that the processor absorbs this cost and does not pass it on is unrealistic.

Page 9 of the analysis states that one of the primary concerns to address in the restructuring of the observer program is the disproportionate revenue paid by some sectors but the analysis is not very reassuring that this is not instead putting the burden on a different sector of the fishing industry - halibut and sablefish fishermen where 75% of the new fees are coming from. There is not any indication or guarantee that any or even a minimal amount of observation will be conducted on the halibut and sablefish fishermen. For all we know in reading this analysis, it will just collect fees from the halibut fishermen.

Page 35 provides what is meant to be a snapshot of the halibut and sablefish fishery in section 2.8.2. To SEAFA members, this is totally misleading of the halibut fishery. For us the halibut fishery is generally made up of small vessels under 60 feet that hold a small amount of halibut quota, some also hold a small amount of sablefish and participate in state fisheries such as salmon. These are not fishermen that have high net income levels but with the combination of fisheries are able to just make a living and live in the coastal communities. The picture provided by the analysis description is of the few halibut vessels that are capped out and not the average halibut fishermen. The average halibut fishermen in Area 2C has less than 3,000 lbs of QS now. What does the albacore fishery have to do with this observer program or the majority of halibut fishermen? The vessels we represent for the most part are not suitable to even pursue the albacore fishery. Note table 15 shows a decline in total halibut revenues from 2006 at \$208

million to \$133 million in 2009. This is a 37% reduction in value. This is the reality of the fishermen that you are asking to pay an additional 2% assessment fee.

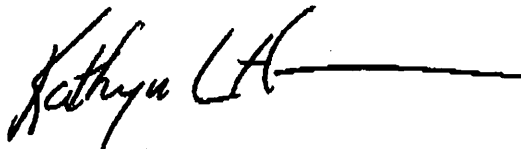
Another issue that was raised during the outreach meetings and the observer committee was that the vessels between 40 and 60 ft that will be picked through a vessel selection system might have some issues that were slightly addressed by allowing a vessel to apply for an exemption but what wasn't addressed is what happens when you have a majority of the vessels applying for exemptions to where you don't meet the minimum necessary for statistical valid sampling. Depending upon the vessel an additional person might change the necessary safety equipment necessary for the vessel such as life rafts - going from not needed any life raft to needing one; Coast Guard courtesy exams are not always readily available, and just simply having a bunk available for the observer to use.

Please take a hard look at the issues we raised regarding this analysis at a minimum along with addressing the contradictions you have between sections of the document.

In summary before releasing this document for initial review, SEAFA recommends the following:

- Add an alternative that makes expansion of observer coverage beyond 2008 levels, both in terms of days at sea and the number of vessels covered, dependent on securing federal funding to off-set the costs of both start up and on-going program operations;
- Include an option as discussed in the outreach meetings that allows a vessel between 40 and 58 feet to choose an alternative that best meets their vessel design - observer, chase boat or electronic monitoring;
- Include an option to existing alternatives that more equitably levies ex-vessel fees on the halibut/sablefish fleet in acknowledgment of the ex-vessel federal management fee already assessed.
- Relook at options for how the ex-vessel fee is generated or determined:
and
- The statistical needed coverage levels by fishery.

Sincerely,



Kathy Hansen
Executive Director

June 1, 2010

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

RE: Observer Program Restructuring

Dear Chairman Olson and Council Members,

After reading the initial draft on restructuring the observer program, I find it deficient in thought as to how this will impact the Alaska commercial longline fleet and other fisheries.

Let me first start by saying that it is very interesting to note that there are other states that have observer programs, but Alaska will be the only state to have an observer program that will NOT be paid for by the Federal Government. Instead, NOAA would like to enact an up to 2% tax on a commercial fishers ex-vessel longline catch. While the intent is 1% paid by the fisherman & 1% paid by the processors equates to a 2% tax against the fisherman.

The reasoning behind this observer tax is to see how commercial fishermen intermingle with the wildlife and to observe what species are harvested and retained and what is discarded. For cost effectiveness, how about holding meetings with fishers or require logbooks (using the information provided this time) so that you gather the information you are seeking. Most fishermen will be willing to give you all of the information and then some for the purpose of the sustainability of the stock. I think commercial fishermen have proven this point by their willingness to undergo complete and total regulation of this fishery by the Federal Government since 1995 and the quota cuts that we have endured. This also brings up other questions...why do we need this tax now? Why have we not had an observer program since implementation?

I don't think NOAA has taken into consideration the other "fees" commercial fishermen pay and how this affects other fisheries and our net income. Many fishermen with IFQ use their earnings in the spring to finance their salmon fishery. A fisher involved in these two fisheries will pay an up to 3% NMFS enforcement

tax, a 3% aquaculture tax, state permit fees (which vary from year to year) and a possible 2% federal observer fee on top of that. Alaskan commercial fishermen will pay these fees while ALL of their stocks are in decline. It also needs to be mentioned that Southeast Alaska salmon seiners will be voting, at some future date, whether or not to assess themselves an up to 3% tax for a federally funded permit buyback program because of the decline in stocks and the plethora of permits. You add these fees and possible taxes up and it is a heavy burden for those fishers who have watched their quota shares decline every year.

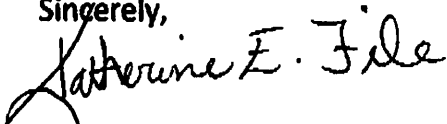
I would like to see NOAA think about assessing an observer tax on the recreational, sport and charter sectors since they allowed use of commercial fishing gear (jiggers, power reels etc..) NOAA could then look at how ALL fisheries are intermingling with the wildlife and other species and discard mortality and not place a disproportionate burden on the commercial sector.

The liability of having an "observer" on the boat is a huge concern to many fishers. Having an extra bunk and feeding an extra mouth will cut into a crew's share which depletes every year or possibly creates the loss of a crew job. The crew is not particularly thrilled with the aspect of having to watch after an observer on the deck. In the longline fishery things happen fast and there is not always time to explain how things SHOULD work.

I was shocked to see appendix 6. There are estimates on what a daily cost of an observer would be. The minimum wage, overtime, meals, airfare, ground transportation, health and welfare, holidays and vacation time. These observers would go in knowing what they will receive. Yet the commercial fisher has no assurance of his amount of quota, price or even if they will be allowed to fish from year to year with the stocks in such a steep decline.

It seems to me that the commercial fishermen are again being asked to take all the risks. What will they get in return? If past history stands, one thing is for sure less then they have now.

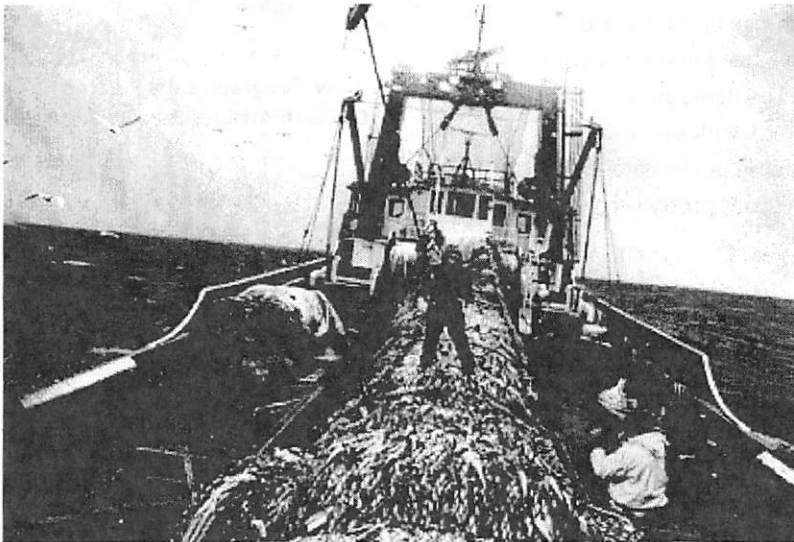
Sincerely,



Juneau, Alaska

by Bruce Barcott

ISSUE: Summer 2010, FEATURE STORIES | May 27, 2010



[Click for full-size image](#)

The crew of the Pacific Prince, a 149-foot pollock trawler, use innovative net design and a cutting-edge data feedback system to catch fewer unwanted fish.

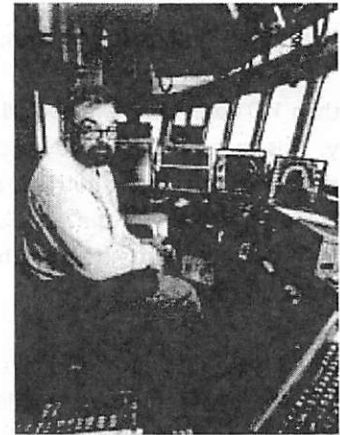
Corey Arnold

In the frigid Bering Sea, the Pacific Prince tries to take only the fish it needs - and leaves the ocean healthier.

Deep within the bowels of the *Pacific Prince*, a 149-foot pollock trawler, 28-year-old biologist Monica Brennan stands in her orange rain gear, holding an empty plastic laundry basket, waiting for the fish. Two years ago Brennan quit her job as a groundwater specialist in Phoenix. She wanted to try something new. Something adventurous. So she signed on as a fisheries observer. And here she is on a two-and-a-half-month stint on the *Pacific Prince*. It's 1:00 a.m. on a stormy winter night in the middle of the Bering Sea off Alaska. The boat is bucking like a rodeo bull. Wind chill factor outside: 12 below.

Up in the wheelhouse, Captain Jack Jones watches his crew pull the net aboard. Bering Sea pollock boats tow cone-shaped nets that sieve the water a few hundred feet above the ocean floor, where pollock congregate in massive schools. Imagine a fishnet stocking the size of a boxcar, stuffed with wriggling fish. A crewman opens the net's side zipper and sends thousands of pollock, a fish with a trout's sleek body and a cod's wide-mouth head, sluicing down a

NRDC: Saving Our Fisheries
A conversation with NRDC's
Brad Sewell [MORE](#)



Captain Jack Jones filters information from VHF radios, an echo sounder, two sonars, chart plotters, and a radar screen.

Corey Arnold



hopper. If you've ever eaten Mrs. Paul's frozen fish sticks, a basket of Long John Silver's fish and chips, or a McDonald's Filet-O-Fish sandwich, you've eaten Alaska pollock.

One deck below, the fish crash onto a conveyor belt that whizzes past Brennan. A mist of saltwater and fish slime fogs the air. Brennan keeps her eye on a cheap wristwatch buckled to her clipboard. Six minutes into the conveyor run, she signals Jamie Buskirk, the ship's chief engineer, to swing aside a gate that diverts a random sample of the catch into her laundry basket. Then Brennan gets down to business: recording the raw data on the makeup of the net's bycatch -- those troublesome other species that get caught up in the net -- that may ultimately save or doom the largest single-species food fishery in the world.

Brennan is one of more than 700 frontline biologists who sign up for hazardous duty on America's high seas for meager pay. Most observers are in their twenties and early thirties. Few pursue it as a long-term career. The hours are long, and the conditions can be cramped and lonely. Observers go to work every day among rough people and in rougher conditions. The purpose of the data they collect is to make sure everyone plays by the rules, which are pretty simple, really: catch legal fish in legal places.

More than 120 observers work aboard 110 vessels in the Bering Sea pollock fishery. This year the U.S. fleet will catch 813,000 metric tons of pollock, worth more than \$1 billion, in the nutrient-rich waters between Alaska and Russia. That's about 40 percent of the world's total whitefish catch. And unlike most fisheries around the world, this one has an observer on hand to observe the vast majority of all catches.

As the *Pacific Prince* heaves and rolls, Brennan works quickly with a steak knife and a pencil. She measures each pollock in her basket and sometimes removes an otolith, a fingernail-size ear bone. "You can read these like tree rings to determine the age of the fish," she explains. She has to shout to be heard over the roaring conveyor belt, which is moving 200 tons of fish into the ship's holding tank. Age data are critical in determining the overall health of the pollock stocks: the younger the caught fish, the smaller the future breeding pool.

The wide net of the *Pacific Prince* catches other species besides pollock. When Brennan pulls a flounder out of her sampling basket, she hooks it on a hanging scale and records its weight on a specially coated data sheet, which is spattered with fish slime.

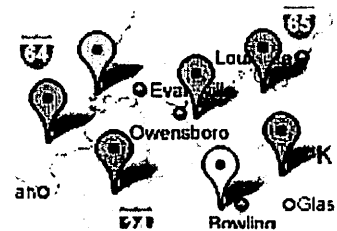
"Bycatch," she says, tossing the flounder back on the belt.

Bycatch is everything a fisherman doesn't want, and it's a big problem. The accelerating loss of ocean biodiversity has raised alarms about a future marine world bereft of all but saltwater and jellyfish. There's no mystery about the main cause. "In 50 years we've taken -- we've eaten -- more than 90 percent of the big fish in the sea," the oceanographer Sylvia Earle remarked last year.

We've also *not* eaten an enormous amount of the collateral damage. Bycatch has been a nuisance ever since early humans began casting nets, but few realized the

Every time you eat Mrs. Paul's fish sticks, Long John Silver's fish and chips, or a McDonald's Filet-O-Fish sandwich, this is what you're getting: Alaskan pollock.

Corey Arnold



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extent of the damage it was causing to marine ecosystems until 1994, when a team of scientists with the United Nations Food and Agricultural Organization (FAO), the U.S. National Marine Fisheries Service (NMFS), and Britain's Directorate of Fisheries Research ran the numbers. They found that bycatch made up an astonishing 26 percent of the world's total commercial catch. Every year 27 million metric tons of fish, birds, and marine mammals were being caught, killed, and tossed aside as trash.

Spurred by that report, governments and commercial fleets have made efforts to reduce bycatch through a combination of tougher regulations, equipment changes, design innovations (like the turtle excluder, which screens turtles from Gulf Coast shrimp trawl nets), and technological advances like sonar imaging. By 2004, global bycatch had begun to decline. One FAO report put it as low as 10 percent of all landings that year, though many marine biologists say the true figure is closer to 20 percent.

While the U.S. fishing fleet has made significant progress in the past decade in reducing the bycatch of birds, turtles, and marine mammals, its record on fish bycatch is atrocious. The latest tally of fish bycatch in America is more than 22 percent, driven mostly by shrimpers on the Gulf Coast and the groundfish fleet in the Northeast.

The key to improving this dismal record is the presence of impartial observers like Monica Brennan and the bycatch data she records on her fish-splattered sheet. "If you don't know how much bycatch is incurred in a specific fishery, you're powerless to bring about the regulations needed to reduce all that waste," says marine biologist Jeffrey Moore of Duke University's Center for Marine Conservation. "And observers are the critical component in that. They're the only way to gather information with any degree of accuracy."

This article was made possible by a generous grant from the Josephine Patterson Albright Fund for Special Features

Continued...

Pages: 1 | 2 | 3 | 4 | 5

Steven Earl Salmony wrote on May 30, 2010, 08:32AM : ▶

The lack of response to repeated efforts to communicate a perspective concerning something vital about the complex world we inhabit like collapsing fish stocks or the colony collapse disorder of bees appears similar to the silence with which scientific evidence of human population dynamics has been met during the last "lost" decade of denial.

The growth of the human species worldwide could be the proverbial mother of all human-induced global challenges. If that is so, then failing to courageously acknowledge and humanely address this predominant challenge will render efforts of humanity to overcome other human-driven, increasingly complex challenges to human wellbeing and environmental

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-4. Observer Program

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
X 1	Robert Alverson	FVOA - Seattle
X 2	Wendy Alderson	F/V Katie J Sotka
X 3	Tory O'Connell	F/V Cherokee
X 4	Steve Fish	F/V Kariel
X 5	RICHIE DAVIS	SEAFOOD PRODUCERS CO-OP
X 6	Kathy Hansen	SEAK Fishermens Alliance
X 7	MIKE MAND	F/V Coral Lee
X 8	CALE LA DUKE	
X 9	Nick Nekeferoff	
X 10	JEFF FARLAND	F/V Saltlick
X 11	Noah Mayo	F/V Sea Dog
X 12	Todd Loomis	Cascade Fishing Inc
X 13	Alan Mayo	F/V Coral Lee
X 14	John Bob Bruce	F/V Sea Dog Ginny C
X 15	Bob Krueger	Alaska Whitefish TRAWLERS ASSOC.
X 16	DAN FAZUEY	F/V MYRIND
X 17	Julianne Curry	Petersburg Vessel Owners Assoc
X 18	Steve Fish	F/V Kariel
X 19	Paul Mae Geyer	Off-Shore Processors Assn.
X 20	Glenn Reed	PSAA
X 21	Bert Bergman	F/V Minke
X 22	Walt Pasternak	F/V Christi - Rob
X 23	Linda Behnken	ALEA
X 24	Kenny Down	Freezer Longline Coalition
X 25	BRENT PAINIE ^{pass}	UCB

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-4 Observer Program

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1) Mike Red	FV Sea Roamer
2) Julia Benmy	AGPB
3) Kent Barkhau	FV Woodstock
4)	
5)	
6)	
7)	
8)	
9)	
10)	
11)	
12)	
13)	
14)	
15)	
16)	
17)	
18)	
19) <i>pass</i>	
20)	
21)	
22)	
23)	
24)	
25)	

NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

**FISHING VESSEL OWNERS' ASSOCIATION
INCORPORATED**

ROOM 232, WEST WALL BUILDING • 4005 20TH AVE. W.
SEATTLE, WASHINGTON 98199-1290
PHONE (206) 284-4720 • FAX (206) 283-3341

SINCE 1914

June 8, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th, Suite 306
Anchorage, AK 99501-2252

Dear Chairman Olson:

The members of the Fishing Vessel Owners' Association (FVOA) request the Council send out the current Environmental Assessment/RIR amending the current observer program for public review. The Association, however, is concerned about how fishing trips will be scientifically assessed for being statistically reliable and the lack of coverage for the next four years in areas currently identified as being a problem. The proposed changes to the observer program have an emphasis primarily on observer deployment, i.e. what vessel will be chosen for observer coverage. The EA/RIR focuses on a scientific approach for a randomized protocol with known selection probability for observer deployment. We do not agree that this is or has been the biggest problem of the current observer program, though the EAR/RIR seems to suggest this.

The members of the Association that have taken observers and myself, as a member of the Observer Committee, concur that the weakest part of the current observer program is what is known as the "observer effect," which is related to whether a vessel's observed operations are providing a statistically acceptable sample of fishing activity. The biggest problem that confronts the current program in the GOA is the ability of a vessel to not provide a representative fishing trip once an observer is deployed.

As a member of the Observer Committee, chaired by Joe Kyle, the committee heard repeatedly about water hauls by trawlers and hauling of empty pots from the representative of the observer union. There is little in the existing EA/RIR to correct for the "observer effect" in our opinion. On page 116, the EA/RIR states relative to "observer effects," "Two potentially viable primary sample units for observer deployment (effort) are the: (1) vessel for a predetermined time period, and (2) the fishing trip. In both cases bias introduced by non-representative fishing (i.e. the observer effect) is possible. Therefore, attempts should be made to reduce these potential negative effects in the design."

Based on alternative 3 the Sablefish & Halibut IFQ fleets will be paying 69% of the cost of the new observer program or close to \$5 million annually. The new program should not repeat the design errors of the previous program for such a high annual cost. It is unacceptable not to have more structured observer requirements that mitigate the “observer effects,” which have been the biggest complaint of the current program. Observer deployment has not been the biggest objection to the current program.

If the EA/RIR does not include specific regulations that reduce the “observer effects” this will require the Council to develop yet another new plan amendment to address future problems. As difficult as it may be, the Council needs to define a non-representative fishing trip. If the new observer program is going to be based on a trip, such a definition is needed otherwise, it cannot be mitigated. We question whether this can be accomplished.

Table 36 Alternative 3 estimated ex-vessel fees based on 2005-2008 prices and catch

	-1 StDev	Mean	+1 StDev
Shorebased Groundfish Deliveries	\$1,583,514	\$2,209,359	\$2,835,204
Motherships and catcher processors	\$ 5,474	\$ 25,671	\$ 45,869
Sablefish IFQ	\$1,131,803	\$1,272,490	\$1,413,178
Halibut IFQ	\$3,394,901	\$3,674,071	\$3,953,241
Total	\$6,115,691	\$7,181,591	\$8,247,492

FVOA is supportive of a comprehensive Observer Program where all pay equally, similar to Option 3. We do not have a problem with the development procedure suggested in the EA/RIR. However, without a good definition of what makes up a reasonable statistically significant trip, we see the proposed changes as no change to the status quo. It is not acceptable to impose such high costs on the fleet and its crews to replicate the same problem as the current program has. We do not believe that the deployment requirements have been a problem to the current program. The problem with the current program is the ability for a vessel operator to not provide a representative fishing trip once the observer is on board.

To correct the proposed changes, we have suggested observer deployments without notice to the vessel for when the observer will leave the vessel; we have supported the IFQ halibut and sablefish fisheries to be observed for a set amount of directed harvest; and for the short GOA pollock or cod fish fishery, have an observer deployed for the entire short season. None of these are options in the current program. These options should be available to the observer programmer. The EA/RIR should provide for these options to be available.

In summary, the problem with the current Observer Program is the ability for a vessel operation not to provide a representative fishing trip once an observer is on board. We do not see an adequate response to the current “observer effects” that have been the major problem with the current Observer Program.

The second issue is that the current problems will continue for at least another four years. We request the council to ask NMFS to address the current shortfalls that NMFS has

identified along with previous Observer Committees beginning in 2011 with a supplemental observer pilot program, the authority of which is currently provided for in the existing observer program.

Sincerely,



Robert D. Alverson
Manager

RDA:cmb

I move that:

The Council request that NMFS develop a pilot observer program within the current authority provided to NMFS, that addresses the shortfalls in the current observer program which have been identified by the NMFS observer program managers, and by the Observer committees of the Council. The focus of the shortfalls are in the GOA and the AP request the council to ask NMFS for this help.

Rational

1. If the Council fails to ask for this assistance there is a presumption that the problem is not significant enough to deal with and no solution will be attempted by NMFS. The issues is significant evidenced by the Council having almost 10 years of observer committee meetings to address the problems and a major rewrite of the program.

2. It is the Councils responsibility to advise where help is needed. It is the opinion of the AP that help is needed.

3. If NMFS is not requested to assist then the Council owns this problem. It is time to ask for help from NMFS. The Council/s current observer program allows NMFS to place observer as needed on the over 60 foot fleet.

4. It is unclear when a new observer program will take affect and it is wrong to wait 4 or more years before the problems that have been identified, "gaming issues of the current program, are addressed.

Rich Davis
Seafood Producers Cooperative
507 Katlian
Sitka, AK 99835

June 11, 2010

Eric Olson, Chair and Council Members

Based upon NOAA and industry's need for a reliable observer placement program that will function for the as yet unobserved IFQ halibut/Sablefish fleet: Representatives and participants of the fixed gear IFQ fleet still **STRONGLY** caution against application of a vessel based observer deployment program.

Quota share (IFQ) for longline halibut/sablefish are issued to individuals. No vessel is specifically required or certain to fish. For the halibut/sablefish quota share fleet, direct the staff to develop an option that annually assigns observer coverage to the individual quota share holder for all or a percentage of that person's quota share:

- **I.E. Use the NMFS person ID numbers to randomly select quota share holders for annual observer program inclusion, regardless of the boat(s) on which that person's quota share will be fished.**

Sincerely,



Rich Davis



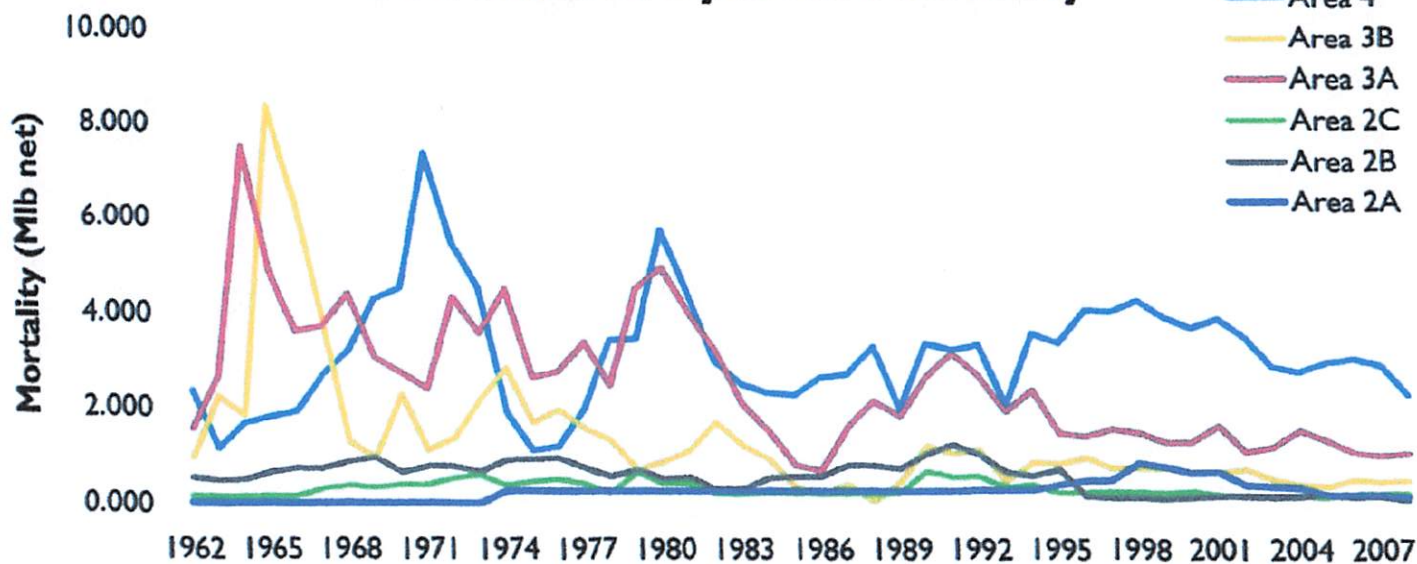
Trawl bycatch in January 2010 (note size of halibut)

IPHC data shows...

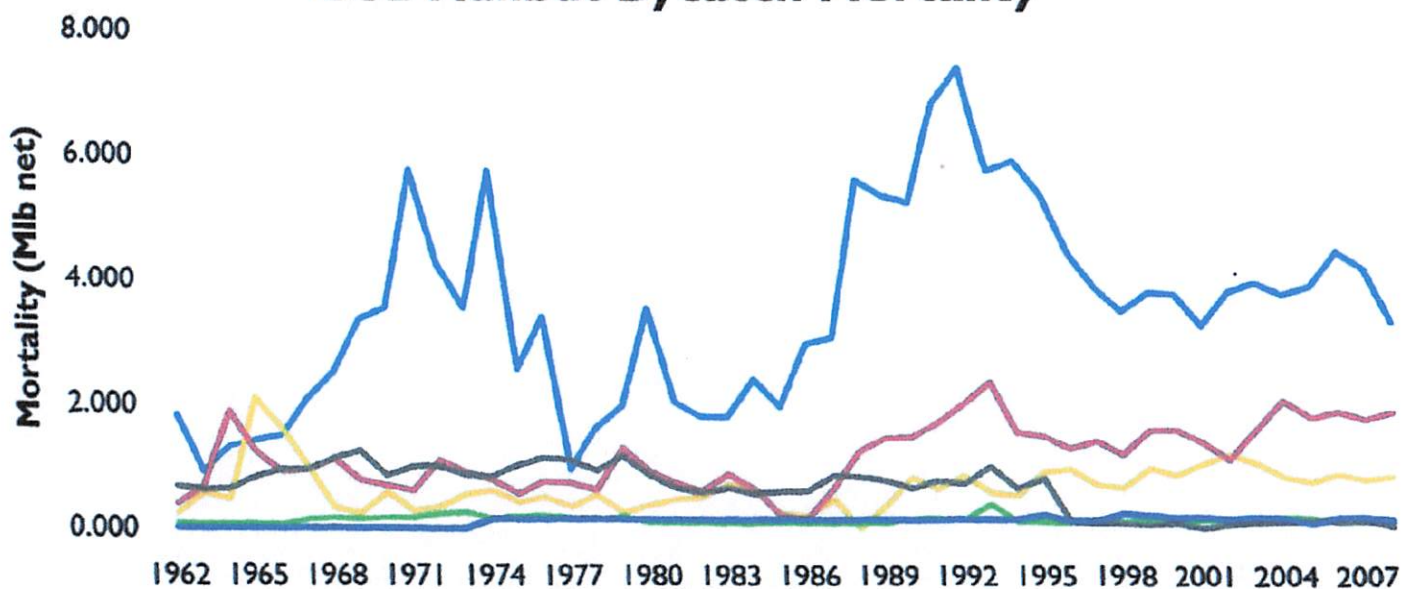
- In the Gulf of Alaska, approximately 80% of halibut bycatch is trawl caught
- Approximately 60% of GOA total halibut bycatch are U32 (under 32 inch)
- This effects the resource in two ways: (see attached)
 - 1) Loss of spawning potential (lost egg production)
 - 2) Reduced yield to directed setline fishery

*Also notice Salmon bycatch, lower left corner. Miscellaneous crab parts throughout.

O32 Halibut Bycatch Mortality *



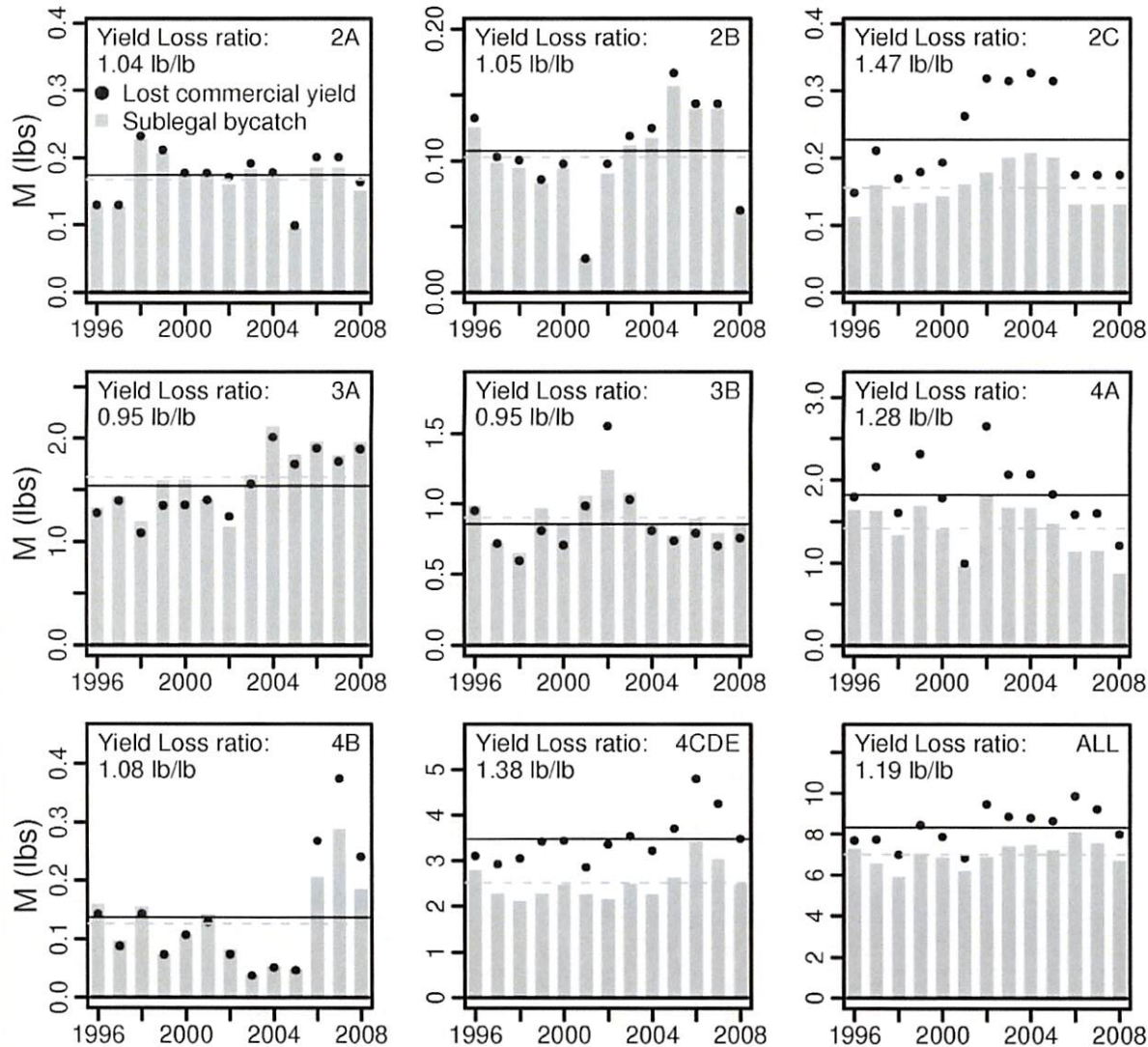
U32 Halibut Bycatch Mortality *



O32 = over 32" length

U 32 = under 32" length * International Pacific Halibut Commission Bycatch Workshop Fall 2009

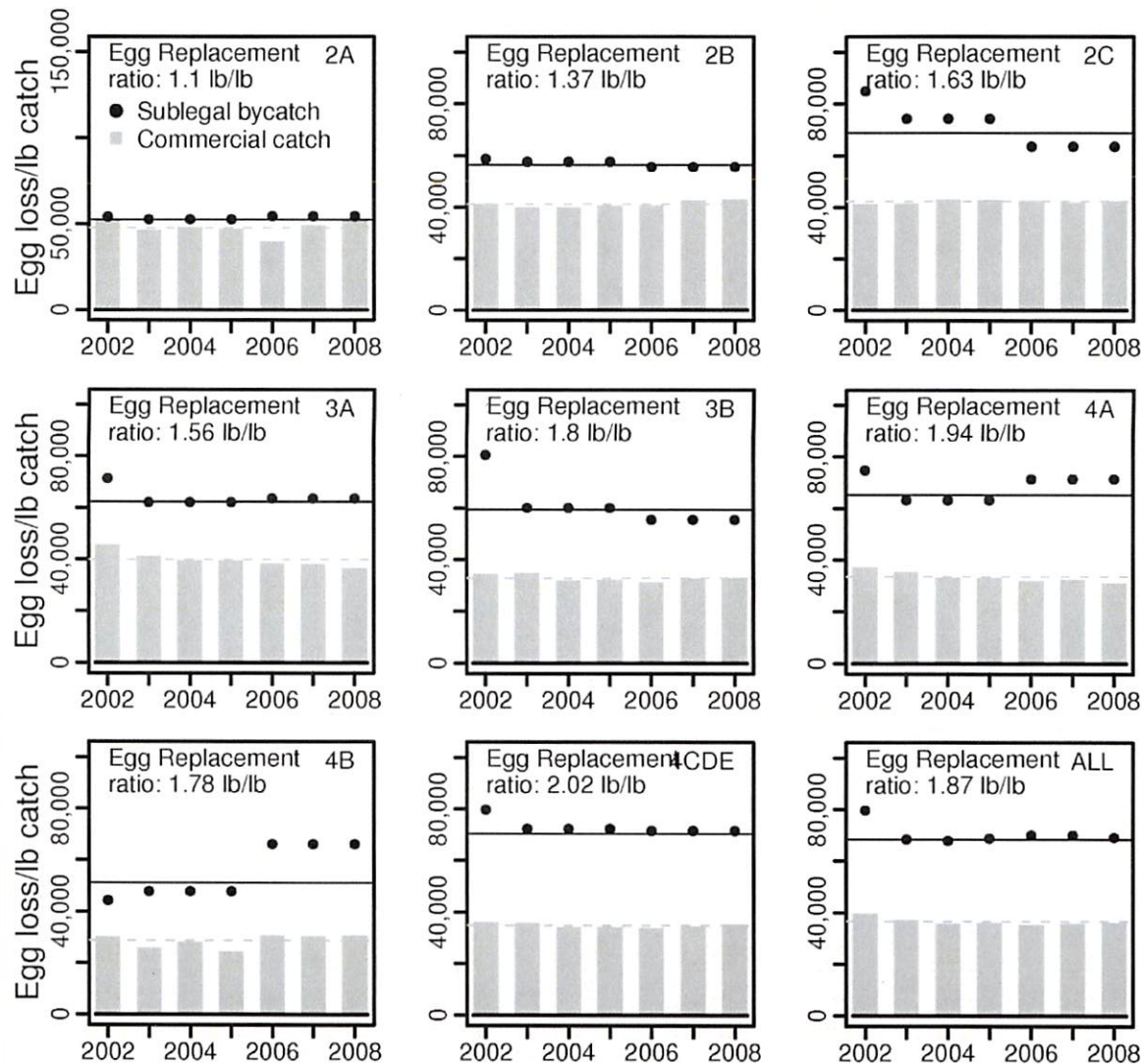
Estimates of lost yield from U32 bycatch



Yield Loss ratio is how much commercial catch is lost (in the future) due to each pound of bycatch.

- Bars show weight of U32 bycatch in that area
- Dots show Yield Loss due to that wt of U32 bycatch

Estimates of lost egg production and ER ratios due to U32 bycatch



Replacement ratio is how much commercial catch – per pound of bycatch - must be foregone to replace lost egg production (or Spawning Biomass)

- Bars show egg production per lb of commercial catch
- Dots show egg production per lb of U32 bycatch

C-4 Observer program motion

The Council directs staff to include new options (underlined below), address SSC and Observer Advisory Committee recommendations to the extent practicable, and release the analysis for public review.

Alternatives

Alternative 1: Status quo; continue the current service delivery model.

Alternative 2: GOA-based restructuring alternative. Restructure the program in the GOA, including shoreside processors; and include all halibut and <60' vessels participating in groundfish fisheries in the GOA and BSAI. Vessels in the restructured program would pay an ex-vessel value based fee. Retain current service delivery model for vessels ≥60' and shoreside processors in the BSAI.

Alternative 3: Coverage-based restructuring alternative. Restructure the program for all fisheries and shoreside processors with coverage of less than 100 percent. Vessels in the restructured program would pay an ex-vessel value based fee. Leave vessels and processors with at least 100 percent coverage under the current service delivery model.

Alternative 4: Comprehensive restructuring alternative with hybrid fee system. Restructure program for all groundfish and halibut fisheries off Alaska. Vessels and shoreside processors with 100 percent or greater coverage would pay a daily observer fee; vessels and shoreside processors with less than 100 percent coverage would pay an ex-vessel value based fee.

Alternative 5: Comprehensive restructuring alternative that would assess the same ex-vessel value based fee on all vessels and shoreside processors in the groundfish and halibut fisheries in the GOA and BSAI.

Option (Alternatives 2-5): For halibut fishery landings and landings by vessels less than 60' participating in groundfish fisheries (fisheries and sectors not currently subject to the observer program), vessels and shoreside processors would pay one half the ex-vessel value based fee established under the alternative.

Option (Alternatives 2-5): The agency shall release a draft observer program sampling design and deployment plan annually by September 1, available for review and comment by the Groundfish Plan Team at their September meeting. The SSC and Council shall review and approve the plan annually.

40,50 & 60' (fields)
0.0%