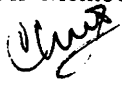


MEMORANDUM

TO: Council and AP Members

FROM: Chris Oliver 
Executive Director

ESTIMATED TIME 16 HOURS

DATE: October 1, 2010

SUBJECT: Observer Program

ACTION REQUIRED

- (a) Review Observer Advisory Committee report; action as necessary
- (b) Final action on restructuring the North Pacific Groundfish Observer Program

BACKGROUND

- (a) Review Observer Advisory Committee report; action as necessary

As requested by the Council, the OAC met September 28 – 29 at the Hilton Hotel in Anchorage. The primary purpose of the meeting was to review and provide feedback on the public review draft analysis for restructuring the observer program, prior to the Council's action in October. Note that all of the recommendations from the May OAC meeting have been addressed in the revised analysis. The September OAC report will be provided at the Council meeting.

- (b) Final action on restructuring the North Pacific Groundfish Observer Program

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. For many 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 proposed is 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 would eventually be folded into the overall analysis. Two iterations of an implementation plan were reviewed both by the OAC and the Council, at the October 2009 and February 2010 Council meetings. During those reviews, 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 initial review draft analysis was reviewed by the OAC in May 2010, and reviewed by the SSC, AP, and Council in June 2010. In June, the Council released the analysis for public review, subject to several revisions and direction to address the SSC and OAC recommendations to the extent practicable. Most notably, the Council added two options for consideration in the analysis, both of which could be selected under any action alternative. Option 1 would assess an ex-vessel value fee on halibut IFQ landings and landings by groundfish vessels either <40', <50', or <60', equal to *half* of that selected under the general alternative that would apply to other sectors. Option 2 would require NMFS to release a draft observer program sampling design and deployment plan annually by September 1, to be available for review and comment by the Groundfish Plan Team and SSC, and subject to approval by the Council. The current suite of alternatives and options is included in the June Council motion, provided as **Item C-1(b)(1)**.

The public review draft analysis was provided to the OAC, Council, SSC, and AP via email on September 13, and it was posted on the Council website. A hardcopy was mailed on September 14. The executive summary is attached as **Item C-1(b)(2)**. The Council's review of the public review draft analysis and final action on the proposed action is scheduled for this October meeting. The current schedule, if action is recommended by the Council in October and subsequently approved by the Secretary of Commerce, provides for implementation no sooner than 2013.

While the Council could provide direction on any aspect of the proposed action in October, staff has identified the primary decision points for the Council relevant to this action. **The primary decision point is to select a preferred alternative from the alternatives proposed (Alternatives 1 – 5).** If an action alternative is selected, a second decision point is whether to select Option 1 and/or Option 2 in conjunction with that alternative. In addition, each action alternative has associated decision points, which include:

1. **Ex-vessel value fee percentage.** If an action alternative (Alternatives 2 – 5) is selected as the preferred alternative, one of the fundamental decision points is to select the ex-vessel value fee percentage to be assessed, the maximum of which can be 2% under current law. If Option 1 is selected under Alternatives 2 – 5, it would assess an ex-vessel value fee equal to half of that selected under the overall alternative, on halibut landings and groundfish landings from vessels either <40', <50', or <60' length overall. The Council would need to select a length criterion on which to apply Option 1.
2. **Two tier system for general coverage categories.** Vessels and processors are proposed to be in the category of <100% coverage or ≥100% coverage, based on their fishery and operating mode. These

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

two coverage categories would be established in regulation, but the deployment strategy and allocation of observer days within the <100% coverage category would not be in regulation, and would instead be determined on an annual basis by NMFS. The $\geq 100\%$ (full coverage) category is proposed to include: (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). All other sectors, including the halibut and sablefish IFQ fisheries, would be in the <100% coverage category. The determination of which sectors are placed into which category is a decision point at final action under any of the restructuring alternatives (Alternatives 2 – 5).

3. **Use of a rolling average ex-vessel price versus an annual price, to calculate the annual ex-vessel fee.** The percentage ex-vessel value fee would be fixed in regulation (e.g., 2%), which would require subsequent Council action and a regulatory amendment to adjust. However, because harvest levels, prices, and coverage costs vary annually, the Council may wish to consider using a rolling average price to reduce the annual variation in prices, and thus, revenues. The longer the period of time used to create the rolling average price, the less effect a price that is substantially different from other years has on the average price. Using fewer years for the rolling average allows the price to respond more quickly to increases or decreases in ex-vessel price (which may or may not be linked to changes in the TAC). A 3-year, 5-year, and 7-year running average are considered in Section 2.9.2.2.4.
4. **Exclusion of State water GHL fisheries.** The proposed program excludes vessels fishing in the State managed GHL groundfish fisheries in State waters from observer coverage requirements and associated fees under the restructured program, even if they have a Federal Fisheries Permit (FFP). This represents a policy decision, as NMFS may have the legal authority to collect an observer fee from FFP vessels participating in the State-managed GHL fisheries; however NMFS' policy recommendation is not to exercise this authority. Section 2.5 addresses this issue and shows the number of vessels that participate in these fisheries, as well as the level of harvest that would potentially be excluded from the program.
5. **Whether catcher vessels that deliver unsorted cod ends to a mothership are subject to the ex-vessel fee under the alternatives is a policy decision.** Catcher processor and mothership vessels are included in the Alternative 3 and Alternative 4 ex-vessel value fee tables because of their mothership activity when catch delivered to them was made by a catcher vessel that is not included in the $\geq 100\%$ coverage category. In those cases, a 1% ex-vessel fee was charged for only the catcher vessel portion of the fee, since the mothership falls under the $\geq 100\%$ coverage category and would be subject to the daily fee. The Council should determine whether the catcher vessels that deliver *unsorted cod ends* to a mothership are subject to the ex-vessel fee under these alternatives. For the purposes of the analysis, staff assumed that they would be exempt from fees because they are (both currently and under the proposed action) exempt from observer coverage. Fixed gear catcher vessels (pot and longline) that deliver sorted catch to a mothership would be subject to observer coverage and required to pay the ex-vessel fee for their deliveries.
6. **How to define a catcher processor.** Should catcher processors be defined for the $\geq 100\%$ coverage stratum based on their Federal Fisheries Permit designation, license operation designation (CP vs CV), or actual historic activity for a designated time period? Based on direction from the Council in June 2010, the analysis uses historic activity to determine how to treat the vessel (CP vs CV) for analytical purposes. *Upon implementation of the proposed action, analysts recommend using the Federal Fisheries Permit designation.* That method would allow the permit applicant to choose their designation for future fishing years (the 3 year permit period). This issue is discussed in Section 2.10.3. If historic activity is selected as the basis for the basis of the CP designation, NMFS would need to review how the vessel operated for some period of time to determine the designation. Both the

length of time considered to make the determination, and whether the designation would be in perpetuity, would need to be determined.

7. **Development of standardized ex-vessel prices to apply to (non-IFQ) groundfish landings to determine the ex-vessel value based fee liability.** The Council could confirm or modify the proposed approach in its final motion. The proposed approach includes the use of COAR pricing data, and a method of 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. (The Council also requested that statewide average prices developed by the State of Alaska to collect the State Fishery Resource Landing Tax be evaluated. If statewide average prices are selected, the Council may wish to consider whether the ex-vessel observer fee should only be applied to retained catch that is sold, since that is how that State tax is calculated.)
8. **Apply the annual IFQ price, developed for the cost recovery program, by port or port group from the previous year to determine IFQ ex-vessel observer fees.** This is the approach proposed in the analysis; the Council should confirm or modify this approach.
9. **Start-up funding.** Absent Federal funding, the approach to collecting start-up funds is the same as was proposed in 1995 under the Research Plan. Fees would be collected from industry in the year(s) 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. Alternatively, the Council could recommend deferring implementation of the program until Federal start-up funds are available. The estimates of start-up funding required, and the amount of time it would take to generate sufficient start-up funds to implement the program, are discussed in Section 3.3.

Also as part of its June motion, the Council agreed to write a letter to NOAA HQ to request Federal funds for start-up funding to implement a restructured observer program in the North Pacific, as well as an annual appropriation of up to 50% of the cost of placing observers in any catch share program fisheries. This letter was sent on June 30 from Eric Olson, Council Chair, to Eric Schwaab, NOAA Assistant Administrator. The response from NOAA was received on August 30. Both letters are attached as Item C-1(b)(3) and Item C-1(b)(4), respectively.