

MEMORANDUM

TO: Council, SSC, and AP

FROM: Clarence G. Pautzke
Executive Director

DATE: September 30, 1998

SUBJECT: Observer Program



ESTIMATED TIME 4 HOURS

ACTION REQUIRED

Receive progress report and provide direction as necessary.

BACKGROUND

In late 1995 the Council voted to repeal the Research Plan and proceed with development of a modified pay-as-you-go program utilizing a third party contractor as an interface between industry and the observer contracting companies. Fees collected in 1995 were refunded following the repeal of the Research Plan. At the same time the Council also requested that mechanisms be explored to address the cost differential issue under pay-as-you-go which results in some operators paying a disproportionate amount of gross revenues in observer costs. Options included a fleet-wide surcharge, observer pooling, and adjustments to observer coverage requirements for these vessels. The Council also requested that the development of the third party program take into account consistency and compatibility with the shellfish observer program.

This process evolved into development of a joint partnership agreement (JPA) between NMFS and the Pacific States Marine Fisheries Commission throughout 1996 and 1997. During that time the Council was involved in development of the JPA program structure, ultimately recommending adoption of the JPA, with certain qualifications. Among those was that efforts be devoted to re-development of a fee-based funding mechanism which could be used to fund the program, under either the JPA or some other administrative structure. In late 1997 the Council also voted to resume development of a fee-based funding mechanism, following completion of the JPA program structure. During the same period ADF&G began development of its own funding mechanism for the shellfish program, which would set aside a portion of the guideline harvest levels (GHLs) to be harvested to pay for the costs of placing observers in the crab fisheries. Also during this time the Association of Professional Observers (APO) was formed and unionization of the observers was effected in 1997. Because observer compensation was a major issue relating to costs of the program, the unionization has resulted in some resolution of the overall cost issue. In the meantime, the existing pay-as-you-go program was kept in place, with minor changes, through 1998.

Contracting issues, as well as issues relating to the respective roles of NMFS and the PSMFC, resulted in the demise of the JPA concept, requiring Council action in June 1998 to once again rollover the existing pay-as-you-go program for an additional two years (through 2000). It is possible that a fee plan could be developed in this time frame, with year 2000 being the start-up period for initial fee collection with full implementation in 2001. At the June 1998 meeting the Council agreed that a broad re-examination of observer program issues would be undertaken, within the scope of re-development of a fee-based program. It was recognized that fundamental to this effort would be an assessment of the overall goals and objectives of the program and an assessment of necessary coverage levels to achieve those goals and objectives. While the Council has given standing direction

to re-develop a fee-based funding mechanism, they also concurred with NMFS recommendations this past June to take a broader look at overall program objectives, and a broader look at potential program structures to support the program.

With that in mind we scheduled a meeting of the Observer Advisory Committee (OAC) for September 24-25 in Seattle to begin that process. In preparation for that meeting Council staff prepared a discussion paper intended to facilitate discussions by the (OAC) and Council in their efforts to re-develop the North Pacific Fisheries Research Plan, or a similar fee-based funding mechanism, to support observer placement in the North Pacific groundfish fisheries. The paper included: (1) a background summary of the original Research Plan development and subsequent events, (2) a recap of the major issues and impediments to final implementation of that plan, and (3) a discussion of options of how to proceed from here in developing a funding plan for the program. Because several attachments relating to previous discussions make the overall document quite large we have not copied it for your notebooks.

We also, along with PSMFC and NMFS, have set up a public Observer Program Workshop to be held in Seattle next month (November 12-13) to gather broad industry input into this process. It is intended to be a forum for discussion of critical program issues including contracting, cost distribution, observer sampling and working conditions, coverage requirements, and any other issues relating to the program development. Results of that workshop are expected to feed into both the Council's efforts and NMFS' efforts to resolve the direction of the observer program. Item C-5(a) is a recent letter from NMFS describing their proposed plan of attack to get to that point. That letter appears consistent with the process envisioned by the Council, though it will likely require more time than originally envisioned. Essentially the letter suggest that NMFS will undertake an extensive program review, utilizing outside review panels with persons of appropriate expertise, in a formal review process. The need for public and industry perspectives in this review process is recognized in the letter from NMFS, and the OAC meeting and the planned workshop in November provide mechanisms for that input.

Your OAC met in September and the report from that Committee is under Item C-5(b). OAC Chair Chris Blackburn is available to provide that report to the Council. Attached to that report is an additional item which was reviewed by the OAC - a matrix illustrating current, effective coverage levels by fishery. Item C-5(c) contains recent comments and proposals submitted relevant to the observer program, and Item C-5(d) contains a specific list of regulatory amendment proposals from observers, industry, and NMFS. These proposals represent potential changes to the current system which will be in place at least through the year 2000. The Council may wish to provide direction on these proposals at this time, or address them within the context of overall staff tasking under Agenda Item D-6 where they are also summarized. The OAC report contains recommendations on these proposals. The one observer program proposal which was not addressed by the OAC, but which is included under D-6, was a proposal from FVOA suggesting that vessels >60' harvesting sablefish have 30% of their IFQs observed, as opposed to the present quarterly requirements.

At this time it appears that consideration of proposed changes to the current program may be the primary task at hand for the Council. In-depth discussion and resolution of the bigger issues of program structure and fee-based funding mechanisms will likely benefit from the proposed work at the agency and staff level, taking into account the OAC recommendations, the results of the November workshop, and any general direction from the Council.



UNITED STATES DEPARTMENT OF
National Oceanic and Atmospheric
Administration
National Marine Fisheries Service
P.O. Box 21668

Juneau, Alaska 99802-1668
September 22, 1998

AGENDA C-(5)(a) E
OCTOBER 1998

Mr. Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RECEIVED
SEP 28 1998
N.P.F.M.C

Dear Rick:

During the last few years, NMFS and the Council have worked together to address fundamental concerns regarding the design of the North Pacific Groundfish Observer Program (NPGOP). This process has been frustrating because of the complexity of the program, concerns regarding appropriate responsibilities for observers, and differences in perspective regarding program funding and observer procurement. Following our unsuccessful attempt to address the observer procurement issue through a Joint Partnership Agreement with Pacific States Marine Fisheries Commission, we find ourselves struggling to devise new solutions but still unable to answer some of the basic questions regarding issues such as, for example, program scope, program structure, coverage, and cost distribution.

Before embarking on another attempt to address these issues, the Alaska Region has decided to conduct a comprehensive review of its North Pacific Groundfish Observer Program. The review will focus on program related authorities and organizational structure, program goals and objectives, coverage levels, cost distribution, and the support system required to ensure that observers are able to carry out their duties.

We will convene a panel of reviewers with expertise in the various facets of the program. Because we intend to establish a formal review process of the type that has been employed to evaluate our stock assessment activities, we must ensure that industry perspectives and concerns are made known to the reviewers.

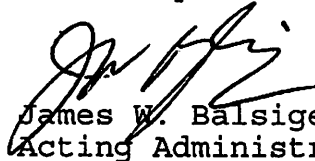
Staff have scheduled a meeting which will take place in Seattle on November 12-13, 1998, to provide the public with an opportunity to provide input. The meeting will consist of panel discussions and question-and-answer sessions, and a written report of the meeting will be provided to the reviewers. We seek written comments and suggestions from the industry and the public in general. We are particularly keen to solicit perspectives from the Council and its Observer Advisory Committee. This information along with staff input will be provided to the review panel. I am asking staff to use the results obtained from this process to construct recommendations that address key



programmatic issues. A complete proposal implementing recommendations will be provided to the Council prior to the end of 1999.

While we understand that the Council would like to proceed quickly to implement major changes in the Observer Program, we must engage in a process that ensures all issues are considered thoroughly. I ask that the Council support this process. Staff will provide updates to the Council during the coming months.

Sincerely,



James W. Balsiger
Acting Administrator,
Alaska Region

Report of the
Observer Advisory Committee

September 24-25, 1998

The OAC met on September 24-25 in Seattle with the following in attendance:

OAC members: Chris Blackburn (Chair), John Iani, Arni Thomson, Don Goodfellow, Paul MacGregor, Greg Morgan (for Paula Cullenburg), Gary Westman, Lauri Bowen, John Winther, Nancy Munroe, Michael Lake, Doug Wells

Agency: Chris Oliver, Bill Karp, Sue Salvesson, Martin Loefflad, Seth Macinko, Kent Lind, Bridgette Mansfield, Shannon Fitzgerald, Gary Stauffer, Galen Tromble

Public: Bob Alverson, John Gauvin, Liz Mitchell, Brian Belay, Mike Symanski

OVERVIEW

The OAC first reviewed and discussed the September 22, 1998 letter from NMFS regarding their plan of action with regard to the observer program development. This letter proposes that the agency conduct a comprehensive review of the observer program over the next year, including the use of outside review panels. This process will examine overall program goals and objectives, authorities, organizational structure, and cost and coverage levels, and will incorporate input from the Council and industry. The OAC concurs with this approach and feels that it is consistent with the industry and Council's desire to resolve these same issues, though the implications are that the first year implementation of a fee-based funding mechanism will likely be delayed beyond the Council's year 2000 target date.

Several issues related to redevelopment of a fee plan are still unresolved and the process proposed by NMFS should address these issues. Foremost among those issues are identification of baseline program objectives and associated coverage levels, by fishery, necessary to meet those objectives. Identification of baseline coverage levels will likely be complicated by ongoing events, such as SB 1221 provisions, and redevelopment of any fee program will require separation of baseline needs from 'supplemental' coverage needs (coverage beyond that supported by a 2% fee). While the OAC discussed several options for a fee program structure, as reflected in the discussion below, the ultimate direction will likely depend to a large extent on the review process proposed by NMFS.

This meeting of the OAC provided an opportunity for initial discussion of many of these issues, and the public Observer Workshop scheduled for November 12-13 appears to be a positive second step in this process. It is expected that results of that workshop will assist NMFS, and the OAC and Council, in this development process. Several information requests were made by the OAC and are expected to be useful to both the Workshop and to further discussions by the OAC and Council. These include: (1) continued work by NMFS in identifying baseline coverage needs (should include assessment of whether and to what extent some current observer coverages may be unwarranted), as well as a hierarchy of program goals and objectives from NMFS perspective; (2) revised cost

estimates, revenue estimates, and fee percentage projections, associated with 1997, 1998, and 1999 (projected) fisheries, both with and without crab fisheries included (for comparison). The objective of this request is to see where we are currently relative to a 2% fee assessment, or, how much of a TAC set aside would be required to fund current coverage levels; (3) a breakout of current, effective, coverage levels by vessel length, as well as by gear type and fishery; and, (4) legal advice on statute changes necessary to implement a TAC-based cost recovery program (as opposed to a direct fee), and on the implications of separate crab and groundfish programs as that relates to statutory fee authority.

The OAC recognizes that not all of this information will be available in time for the November workshop, though the revised cost, revenue, and fee percentage projections will be particularly germane to the Workshop discussions. Our recommendation is to let this process unfold for the remainder of this fall, and convene the OAC once again prior to either the February or April 1999 Council meeting. At that time the process may be evolved to the point where it can be more productively scheduled as a major Council agenda item. While the NMFS review process will not be complete by that time, there may be enough evolution of information to enable the Council to provide some direction and focus to the OAC regarding which type of fee-based program structure appears most viable.

SUMMARY OF OAC DISCUSSIONS

The OAC reviewed a discussion paper provided by Council staff titled 'Redevelopment of Options to Fund the Domestic Groundfish Observer Program in the EEZ Fisheries off Alaska' - this paper summarized the history of the original Research Plan development, identified the primary issues of concern with that program, and outlined some potential program structures for consideration. While that paper, and the OAC, recognize the Council's existing direction to redevelop a fee-based funding mechanism, a variety of options and alternatives were discussed. These are summarized below.

Primary issues for resolution

As noted in the discussion paper, the primary issues which caused the demise of the Research Plan remain unresolved and include:

(1) **resolution of necessary baseline coverage levels by fishery-** the OAC received a report from NMFS which provided some initial information relative to this issue. While there have been analyses done in the past, these analyses were largely aimed at specific catch estimation procedures in specific fisheries (such as the Versar Report and NMFS statistical analyses regarding coverage levels for specific goals). Additional information was provided at this meeting which illustrated the current, effective coverage levels by fishery and gear type in the GOA and BSAI. This information was useful and provided the basis for much discussion, but still does not answer the question of what the effective coverage levels should be in these fisheries.

For example, effective coverage in the BSAI Pacific cod trawl fisheries is about 52%, while the same fishery in the GOA has about 15% effective coverage. Is one too high, or is the other too low? The answer depends on the goal of that coverage. For shoreside delivery harvests, the primary goal is likely PSC accounting, while for offshore processing the goal is also total catch accounting (in

addition to stock assessment related data). Further, within the category of vessels for which PSC accounting is the primary goal, there is considerable variability in PSC rates by area and season. This variability in PSC bycatch will likely be a major factor to consider in arriving at appropriate coverage levels by fishery.

What is apparent from these discussions is that the answer lies only partially in statistical analyses, and partially in more practical considerations. Some type of optimization approach which incorporates various goals and objectives, by fishery, is likely the best approach. Because most of the other concerns listed below circle back to the issue of appropriate coverage levels, it remains the fundamental issue for resolution. Because the issue of observer program goals and objectives are related to the observer's duties/priorities at sea, the OAC would have requested that one of the observer trainers be present at the next meeting to provide information in that regard.

(2) **overall cost uncertainty** - There is no guarantee that even baseline needs would now be covered by a 2% fee. Then there is the issue of Supplemental coverage and what observer coverage would have to be obtained and paid for above and beyond the 2% fee. Agency budgets and required coverage levels also relate directly to overall cost and there was a mechanism within the Research Plan to address those annually; however, the first year of that plan did not allow for these issues to be fully addressed as that first year maintained existing coverage levels. As noted above, necessary baseline coverage will define what is 'supplemental', and therefore relates directly to the overall cost issue.

(3) **cost inequity** - some operators do not pay at all, and some operators pay a disproportionately high percentage of gross income in observer costs. The OAC feels that the under 60' category should be part of the observer program, either through payment of costs or carrying some level of coverage, or both. The OAC also recognizes that addressing the cost inequity issue may be next to impossible as long as we are under the pay-as-you-go program, and will simply have to await implementation of some type of fee system.

(4) **use of standard prices** - the use of standard, as opposed to actual, prices was a source of concern by the industry under the original plan and remains. Work being done now with regard to the IFQ/CDQ fee program has some promise for resolving that issue.

(5) **complex and burdensome accounting for processors** - this was and remains a large issue relevant to the accounting and collection structure of any fee-type program. The option of a TAC-based funding mechanism would alleviate this area of concern (see discussion below).

(6) **multiple sources for observers** - with the ADF&G/BOF pursuing a GHL-based set aside to fund the crab observer program, it appears likely that any program developed for groundfish would be separate and result in two different observer procurement sources. The potential Supplemental program coverage could result in yet a third source, though there may be ways to incorporate that within the overall groundfish structure.

(7) **contracting issues** - the most significant remaining contracting issues relate to the 'arms length relationship' which still does not exist between contractors and vessels/plants. As with cost equity, this issue will likely remain under the pay-as-you-go system. A variety of other contracting related

issues were at least partially resolved previously, while some remain and will have to be addressed as this process unfolds.

Potential program structures for further consideration

(1) **Federally funded program** - the discussion paper provided by staff included summaries of other U.S. observer programs, the most notable aspect being that they are virtually all federally funded (with the exception of the North Pacific which enjoys partial federal support). While other programs may be very specifically aimed at specific biological/marine mammal issues, the OAC is still not convinced of the 'equity' of this situation. One idea raised in our discussion of this issue was the possible use of 'Dinkam-Sands' money in support of our observer/research program.

(2) **Cost recovery program through TAC set-aside** - this is essentially the same approach being developed by ADF&G and the BOF to fund observer coverage in the crab fisheries. The OAC discussed this option at length and feels that it has considerable promise and merits further exploration. One of the primary issues discussed was 'how much of a TAC set-aside would be required to fund the program?' If one assumes that the exvessel price would be bid, then it becomes the same question as 'what fee would be required to fund the program under a direct fee system?' However, while some fisheries may generate bids in excess of the average exvessel price, others may generate bids lower than exvessel, or generate no bids at all. A fundamental question is whether such a program would be limited to 2% of the TAC (is there a cap?), and related to that is what statutory change would be required, if any, to authorize this type of cost recovery.

(3) **Fishery specific fee systems** - The OAC discussed the idea of segregating the fleet into subsectors that each fund their own observer requirements through a fee system. While each sector may realize disproportionate costs under such a system, inclusion of the <60' fleet in the lower sector tier would alleviate, to some extent, the high disproportionate costs currently experienced by many in the 30% coverage sector. Definitions of sectors (for example, by size, gear, area, fishery, delivery mode, etc.) would be an important aspect of this type of system. Administratively, both NMFS and the processors would have multiple fee plans to account for. One theme expressed in our discussions was that additional complexities will make it more difficult to develop and implement any type of fee program.

(4) **A fee only on vessels <60'** - The OAC discussed the idea of a fee system on only those who don't carry observers (the under 60' boats) and using that NOT as a subsidy, but as a fund for NMFS to put observers wherever and whenever they feel appropriate. This would be only for observer coverage above and beyond that required by regulation, otherwise there would be contention over who gets the 'free' coverage. This would serve the purpose of providing a mechanism for NMFS to put observers where they want, and would make those who are also benefitting from the observer program contribute to its overall funding. It would not address the cost equity issue, nor would it address a variety of other issues. The main purpose would be to let NMFS put observers where they think they need for scientific reasons. A problem would be that some observers would be Union compensated and these others would fall under the SCA. An additional option discussed was to simply lower the length limit to 55' for 30% coverage, and thereby get some coverage in this sector. There was an OAC consensus that the under 60' fleet should somehow be part of the observer program, either through carrying observers or paying a fee for NMFS to place observers.

(5) **Fee based on observer days** - Another idea discussed which seemed to have a lot of merit is to base a fee not on exvessel value of fish landed, but to base it on observer days for a given vessel. While such an approach may not result in exact proportionality, the OAC agreed that it did address cost equity to some extent and warrants further examination.

(6) **2% Fee (Research Plan type system)** - This is the primary alternative currently being considered by the OAC and Council and warrants continued examination and development. Revised cost and revenue estimates need to be provided, both with and without crab fisheries inclusion for comparison. This basic fee structure could work with or without a Supplemental program.

(7) **Status quo** - The OAC discussed whether a fee program really was where we wanted to go. Is industry going to accept it in the end or will we arrive at another impasse? Different definitions of 'equity' will confound the answer to this question, but the OAC agreed it was worth consideration to simply remain with the status quo, and recognize that disproportionate costs were part of that situation.

Continued status quo may be a viable option for the industry and Council to consider, and we certainly will have this system in place for another year or two at least. The Committee has requested a projection of (roughly) what level of fee would be required to make sure no one pays more than 2%. This is pursuant to the subsidy concept where, for example, the program collects only a .5% fee and redistributes that back to those who pay more than that. This would address the cost equity issue to some extent. Accounting complexities (who gets how much of the subsidy for example) make this a potentially cumbersome approach.

Modifications to current pay-as-you-go program

The OAC discussed several proposed changes to the current program, recognizing that cost equity, flexibility, and conflict of interest (data integrity) are still problems under the current program. There was particular discussion on the arms length relationship issue, and whether conflict of interest at that level was real or perceived. Collusion is one issue, while coercion (at the observer level) is yet another, and the latter we cannot address under any program structure. The collusion aspect (between contractors and vessels) is still an issue for NMFS, though members of the OAC do not necessarily agree that it is a real problem. To the extent either form of conflict is an issue, it was noted that it will only get worse as we put observers in the position of individual vessel accounting.

A formal grievance process (which works both ways) is one thing the OAC discussed as a way to help address the related issue of when problems arise between observers and vessels - this is not really the conflict issue, but came up as an ancillary discussion. The following specific proposals were addressed by the OAC (see attached list).

Establish minimum 65% retention rate for observers: the OAC feels that this is being addressed via the union contracts, and does not need to go into regulation, which may adversely affect flexibility. If there is a rule promulgated, industry needs to be involved, but it is now premature.

Distribution on personal information on observers: OAC agrees that it should not be released. NMFS proposes to make their policy into regs, though other federal regs may already be in place to disallow

this. On the related issue of the vessel owner automatically getting copies of the observer's debriefing report (instead of having to file a FOIA request), the OAC recommends that NMFS explore this further with NOAA GC.

Safety Policy and refusing to board a vessel: This relates to the national level policy passed earlier this year. No OAC recommendation, except that NMFS continue to work with USGC to clarify these issues, and to recommend that this issue be addressed as part of the USCG boarding school orientations. Question was raised - 'at what point can an observer declare a vessel unsafe?' It appears to be vague and open-ended. The way it is proposed is that an observer can call a coast guard officer if he thinks there is a problem- then it will be worked out between the coast guard and vessel skipper and observer.

Standards for observer housing at shore plants: Should such standards be established in regs? The OAC recommends that yes it should, except use of the word 'quiet' may be a little hard to define/enforce. Transportation should be provided between plants as well.

Sharing of plant observers and monitoring shoreside deliveries: Should observer be limited from covering more than one 100%, or two 30%, plants? Some feel that the plant coverage is often unnecessary, and observer should be doing multiple plants. NMFS feels the observer is necessary, in order to respond to existing regulations to count salmon, for example. The issue is really relevant only to the pollock fisheries, so the OAC recommends to restrict this limitation to pollock.

A related proposal is NMFS recommendation to ensure that shoreside deliveries are adequately monitored. Requiring the vessel observer to stay through the sorting is likely unreasonable. Primary role of vessel observer is at the offload - this discussion is symptomatic of the larger issue of where the observer is best used. It's also related to the proposal to revise basis for shoreside plant coverage requirements. Restructuring of the pollock fishery currently underway may also affect this. So, OAC has no specific recommendation at this time.

Guidelines for observer sampling stations: OAC agrees with NMFS that this is premature. Whatever guidelines or regs are ultimately adopted need to take into account differences by vessel size.

Deployment of observer program staff at NMFS' discretion: This relates to the Observer Corps concept, and so NMFS will need such authority at some point in time. NMFS will continue to work on this concept, as they further develop the 'corps' concept.

Require contractual link between NMFS and contractors: OAC concurs with NMFS that this is not viable under the present system and is part of the much larger issue of program structure.

Revise shoreside requirements from monthly based to weekly reporting period: One disadvantage of this proposal would be the loss of scientific data, on some of the low volume unobserved fisheries, that would no longer be collected. The extra costs to the plants however may not justify this data collection. NMFS may be able to use existing NMFS personnel to make periodic observations on these fisheries. It does not make fiscal sense. Also, there may be instances where short notice for an observer may be difficult to fill. OAC recommends proceeding with this adjustment.

Require catcher vessels to purchase computers for observer: Extra cost may be less than what would be otherwise incurred with extra debriefing time. Good data helps ensure we don't have erroneous closures. On other hand, an additional computer in the wheelhouse may be impractical, or even impossible. It was also noted that perhaps NMFS should provide the computers, or that the contractors or observer themselves should provide their own (tools of the trade argument and that they would likely be better taken care of by the individual owner). The OAC did not reach a specific recommendation on this issue.

Increase coverage requirements for true motherships: Since the OAC does not have a rep from this sector, we declined comment.

Clarify definition of fishing day: Abuse is occurring. NMFS has no specific remedy at this time but is soliciting ideas. The problem is not limited to just pot boats but that seems to be the major problem area. - maybe define a 'day' as having pulled a certain minimum number of pots. No specific recommendation on this proposal from the OAC.

90 day rule: Proposed that some flexibility be built into the regulation that an observer be at sea for no more than 90 days, for cost and practicality reasons. NMFS feels that 90 days in itself is a compromise, and that 90 days is a long time. They also have allowed some flexibility in 'emergency' situations. This however imposes subjectivity into the process and they are more rigidly applying the reg. So, NMFS is opposed to changing this reg. The OAC concurs with NMFS.

The OAC did not address a proposal from FVOA to reduce coverage on the over 60' IFQ fishery vessels.

Documentation of Observer Coverage Matrices

September 18, 1998

Fishery data from the 1996 BSAI and GOA groundfish fisheries were analyzed to illustrate actual levels of observer coverage. A general view of the amount of observer coverage in a fishery can be obtained by examining the types of rates used in the prohibited species catch (PSC) estimation system. Tables 1 and 2 contain summaries of the percent of the halibut mortality estimates in the GOA and BSAI made with six different rate types. The rate types are summarized in Table 3. The data are stratified by processing sector, gear, and target fishery. Target fishery codes are defined in Table 4.

Interpreting the Rate Type Data

The best observer data to use in making a PSC estimate are data collected on vessels using similar gear, targeting the same species, in temporal and spatial proximity to the fishing activity for which PSC is being estimated.

The 'P' rate is considered the best rate for processor vessels. It represents the sampling done by an observer aboard a particular processor vessel. The best rate for the shoreside sector is the 'F' rate, which combines sampling from observers on catcher vessels delivering to shoreside processors in a 3-week moving average if at least 10 observer reports exist during that period.

The 'S' rate, derived from prior years observer data, is used only when no current observer data are available matching the gear, area and target fishery within a three week period. The 'Z' rate is the rate of last resort, and averages current year observer data from vessels using the same gear type, but lacks specificity in target fishery or time. Fisheries with a high percentage of 'S' rate use could be considered poorly observed.

Catcher Vessel Coverage Levels

Fishticket data from 1996 was processed to correspond with federal code systems, and each ticket was assigned to target fishery with the same algorithm used for observer and processor data. Observer coverage in the shoreside sector fisheries is examined in Table 5. This table compares numbers of trips from fishticket data with the corresponding observer reports, and is sorted in descending order based on the percentage of trips with matching observer reports. The number of observer reports shown in the table is somewhat lower than the true number of observed trips due to weekly aggregation in the observer data. The comparison of observed versus fishticket weight provides another view of the level of observer coverage, and corresponds well with the trip counts for most fisheries.

1996 GOA Halibut Mortality (percentage) by Rate Type

Table 1

MODEL	GEAR	TARGET	Groundfish Mtl	P	C	F	A	S	Z	TOTAL
Shoreside	HAL	C	5,194				19.9%	78.5%	1.6%	100.0%
	HAL	K	558					100.0%		100.0%
	POT	C	12,199			52.2%	20.4%	26.4%	0.9%	100.0%
	TRW	B	5,633				46.6%	53.4%		100.0%
	TRW	C	36,447			61.9%	37.7%	0.4%		100.0%
	TRW	D	1,642				81.5%	18.5%		100.0%
	TRW	H	12,549			29.9%	55.7%	14.4%		100.0%
	TRW	K	7,387			95.1%		4.9%		100.0%
	TRW	L	1,296				10.7%		89.3%	100.0%
	TRW	P	42,810			86.3%	8.1%	3.9%	1.7%	100.0%
	TRW	S	125					100.0%		100.0%
	TRW	W	2,561				55.6%	44.4%		100.0%
	TRW	X	91				100.0%			100.0%
	Mothership	TRW	C	2,086	18.6%			81.4%		
CP	HAL	C	5,279	41.2%			53.4%	5.4%	0.0%	100.0%
	TRW	A	1,530	85.2%			14.8%			100.0%
	TRW	C	4,475	68.1%	11.3%		20.6%			100.0%
	TRW	D	1,141	84.1%				15.9%		100.0%
	TRW	H	2,286	53.4%			37.8%	8.8%		100.0%
	TRW	K	12,006	96.1%			1.5%	2.3%		100.0%
	TRW	L	2,156	65.9%					34.1%	100.0%
	TRW	S	189	100.0%						100.0%
	TRW	W	9,742	84.1%	1.3%		13.9%	0.7%		100.0%
	TRW	X	15,520	52.5%	11.2%		9.5%	26.2%	0.6%	100.0%

1996 BSAI Haliibut Mortality: Percentage by Rate Type

Table 2

MODE	GEAR	TARGET	Groundfish MT	P	C	F	M	A	S	Z	TOTAL
Shoreside	HAL	C	318					31.4%	68.6%		100.0%
	HAL	T	307					99.5%	0.5%		100.0%
	POT	C	22,192			45.4%		42.7%	11.8%		100.0%
	TRW	B	5,372			50.0%		45.7%	4.3%		100.0%
	TRW	C	57,773			86.9%		10.4%	2.8%		100.0%
	TRW	P	369,164			65.6%		0.1%	34.3%		100.0%
	TRW	Y	5,914			28.3%		71.7%			100.0%
Mothership	POT	C	2,699	50.7%				26.7%	22.7%		100.0%
	TRW	B	22,110	100.0%							100.0%
	TRW	C	24,637	97.1%				2.9%			100.0%
	TRW	P	195,893	98.0%			1.5%	0.5%			100.0%
	TRW	Y	1,789	95.9%					4.1%		100.0%
CP	HAL	C	108,790	92.5%	6.2%			0.7%	0.6%		100.0%
	HAL	T	3,824	72.7%	2.6%			24.7%			100.0%
	POT	C	8,719	43.4%				25.0%	31.7%		100.0%
	TRW	A	119,290	93.2%	6.2%			0.5%			100.0%
	TRW	B	78,802	95.1%	2.0%			3.0%			100.0%
	TRW	C	31,096	74.3%	9.3%			14.8%	1.6%		100.0%
	TRW	F	8,495	100.0%							100.0%
	TRW	K	19,670	91.7%				4.2%	4.1%		100.0%
	TRW	L	24,619	93.3%	0.5%			5.3%		1.0%	100.0%
	TRW	P	520,330	89.1%	2.3%			8.6%	0.0%		100.0%
	TRW	R	44,741	95.2%	3.4%			0.9%	0.5%		100.0%
	TRW	S	105	100.0%							100.0%
	TRW	T	772	57.8%					42.2%		100.0%
TRW	Y	166,514	92.9%	6.0%			1.0%	0.0%		100.0%	

Table 3 PSC Rate Types

- A: 3-week average rate of all observer data for a "cell"*
 - F: 3-week average rate of all observer data from shoreside delivering boats for a "cell"*
 - M: 3-week average rate of all observer data from mothership observers for a "cell"*
 - C: 3-week average rate of all observer data from catcher-processor observers for a "cell"*
 - P: Observer data for a particular week from the Catcher-Processor's own observer
 - S: Observer data for a "cell" from prior year observer data
 - Z: Average rate of all observer data for a gear and target fishery in a management area (BSAI/GOA)
- *A "cell" is a unique combination of week, reporting area, gear and target fishery

Table 4 Target Fishery Codes

- | | |
|--------------------------------------|---------------------------------|
| A: Atka mackerel | P: Midwater pollock |
| B: Bottom pollock | R: Rock sole (BSAI only) |
| C: Pacific cod | S: Sablefish |
| D: Deep-water flatfish (GOA only) | T: Greenland turbot (BSAI only) |
| H: Shallow-water flatfish (GOA only) | W: Arrowtooth flounder |
| K: Rockfish | X: Rex sole (GOA only) |
| L: Flathead sole | Y: Yellowfin sole (BSAI only) |
| O: Other | |

Table 5

Analysis of observer coverage of catcher vessels delivering to shoreside processors

Records are sorted by the % of trips observed in descending order

EMP	GEAR	TARGET	Tickets	Landings (mt)	# Observed	Observed hauls (mt)	Observed	
							% Trips	% Vt
BSA	TRW	Y - yellowfin sole	26	5,776	24	4,076	92.3%	70.6%
BSA	TRW	P - midwater pollock	1305	382,429	815	249,792	62.5%	65.3%
BSA	TRW	C - pacific cod	1021	65,008	530	26,206	51.9%	40.3%
GOA	TRW	X - rex sole	7	112	3	49	42.9%	43.6%
BSA	POT	C - pacific cod	636	18,599	263	5,105	41.4%	27.4%
BSA	TRW	B - bottom pollock	206	25,638	84	10,266	40.8%	40.0%
GOA	TRW	K - rockfish	72	5,610	29	1,803	40.3%	32.1%
GOA	TRW	D - deepwater flatfish	40	1,535	15	490	37.5%	31.9%
GOA	TRW	P - midwater pollock	361	44,223	129	14,905	35.7%	33.7%
GOA	TRW	H - shallowwater flatfish	347	10,988	99	1,943	28.5%	17.7%
GOA	TRW	B - bottom pollock	59	3,494	15	526	25.4%	15.1%
GOA	TRW	W - arrowtooth flounder	49	1,754	9	277	18.4%	15.8%
BSA	HAL	T - greenland turbot	38	277	6	36	15.8%	12.9%
GOA	TRW	C - pacific cod	663	36,684	96	5,834	14.5%	15.9%
GOA	TRW	L - flathead sole	34	781	4	63	11.8%	8.0%
BSA	HAL	S - sablefish	196	760	23	203	11.7%	26.7%
GOA	POT	C - pacific cod	963	15,884	75	755	7.8%	4.8%
GOA	HAL	S - sablefish	2368	15,141	164	1,735	6.9%	11.5%
GOA	TRW	O - other	75	627	3	23	4.0%	3.6%
BSA	HAL	C - pacific cod	40	157	1	7	2.5%	4.3%
GOA	HAL	C - pacific cod	1202	5,081	6	99	0.5%	1.9%
GOA	HAL	O - other	493	246	1	0	0.2%	0.1%
BSA	HAL	K - rockfish	33	12	0	0	0.0%	0.0%
BSA	JIG	C - pacific cod	248	323	0	0	0.0%	0.0%
GOA	HAL	K - rockfish	1515	752	0	0	0.0%	0.0%
GOA	JIG	C - pacific cod	41	57	0	0	0.0%	0.0%
GOA	JIG	K - rockfish	26	12	0	0	0.0%	0.0%
GOA	JIG	O - other	505	642	0	0	0.0%	0.0%

* Due to weekly aggregation in observer data used for this comparison, the actual number of observed trips is somewhat under-counted.

**1998 Comments/Proposals
Relevant to the Observer Program**

GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Name of Proposer: Kim Dietrich
Address: P.O. Box 30167
Seattle, WA 98103
Telephone: 206-547-4228

Date: May 5, 1998

Fishery Management Plan: Groundfish of the Bering Sea/Aleutian Islands FMP and Groundfish of the Gulf of Alaska FMP. (Modify Amendment 47 of each FMP and/or any new amendments regarding the observer program for 1999).

Brief Statement of Proposal:

Modify current arrangement between NMFS and the contractors who hire observers so that there is a contractual agreement between NMFS and the contractors. NMFS can solicit bids for a no-cost contract (which was originally proposed under the "Third Party" alternative). Contracts will be awarded annually and for a period of one year with quarterly or biannual evaluations. Certification could expire after 2 consecutive negative evaluations. No contractor additions will occur once the annual cycle has begun for a given year. The year need not be based on a calendar year.

NMFS must take full control of their program and take more responsibility for the people who collect the data. During the RFP process, NMFS will evaluate the contractors on their (proposed) ability to retain prior observers and their ability to provide round the clock logistic support to observers. These factors would be weighted heavily. If NMFS feels a contractors plan to retain observers is inadequate, the proposal will be returned to be revised. At a minimum, a retention rate of 65% should be maintained. Some options to maintain priors would be for NMFS to place a cap on the total number of trainees to provide an incentive for retaining prior observers OR NMFS could state that a high turnover rate will negatively impact evaluations. "Prior observers" is defined as successfully completing three months in the field.

NMFS will maintain central control over data collection, but some quality control checks can be performed by NMFS trained contractor personnel to maintain consistency. NMFS currently does not have staff to perform as in depth of a quality control check as they have in the past.

All Department of Labor laws and regulations, including the Service Contract Act (SCA) will apply to the contractor/observer relationship.

Objectives of Proposal: (What is the problem?)

At the inception of the Domestic Groundfish Observer Program (DGOP), it was understood the Program had flaws and needed to be replaced as soon as possible. Unfortunately, eight years have passed under the flawed system and the status quo continues. Section 301 of 16 U.S.C. 1851 (a)(2) states "conservation and management measures shall be based upon the best scientific information available." The current observer program is not collecting the best information possible and therefore, its continuation is a violation of a National Standard for Fishery Conservation and Management.

NMFS has exhibited little oversight of the contractors to date. Some uncertainty exists whether the lack of authority exists or whether a choice has been made by NMFS not to exercise its authority over the contractors. Regardless, NMFS' input regarding the treatment of their data collectors has been insignificant. NMFS recognizes the potential for conflict of interest under the current system. Yet, the current contractor certification process has never been enforced. In fact, evaluation of contractors by NMFS was discontinued in 1991 and did not resume until 1997. At a national workshop on NMFS Observer Programs held in 1993, guidelines were recommended for all Federal observer programs. One recommendation stated, "Contractual arrangements will only be successful if agency authority and

responsibility is adequately defined by legislation, regulation and/or contract. Contractors must contract directly with the agency responsible; when contractors contract with vessel or plant owners to provide observer coverage, agency oversight is inadequate and the potential for conflict of interest is unacceptably high." Similar conclusions and recommendations were drawn at the most recent US/Canada Observer Program Workshop held in Seattle, WA, March 11-13, 1998.

Data quality is often questioned in the current program. Data quality could be improved by decreasing the turnover rate of observers and by providing extensive, supplementary training to the existing observers. The more consistency there is in data collection, the better the data quality.

Training of new observers is currently unlimited and free of charge. Tax dollars are being spent frivolously. These funds could be spent more effectively with increased training for observers who are already established within the program. Many observers do this job not only for the money but because they enjoy the lifestyle and they genuinely care about the management of the North Pacific and Bering Sea resource.

Need and Justification for Council Action: (Why can't the problem be resolved through other channels?)

NMFS claims to be unable to take drastic action (i.e. decertification) against a contractor under the current structure. The structure must change if NMFS is to maintain any control over its program and data quality.

No regulation or policy is in place to limit the number of observers trained. There is no incentive for NMFS, the industry or the contractors to invest in observers with prior experience.

Foreseeable Impacts of Proposal: (Who wins, who loses?)

Competent, professional observers who are dedicated to the job win. Wage determinations under the Service Contract Act will apply to any contract NMFS has with a contractor(s). Wages decreased since the inception of the DGOP due to competition between the contractors and ever increasing insurance costs. 1998 wages increased only due to the observers taking drastic action through unionization. The wage decrease did not benefit the program and the wage issue isn't necessarily solved by the Union contract. At any time a new contractor can enter the scene and completely undermine the progress observers have made. Data quality will suffer again if some standards for the contractors aren't established and enforced by NMFS.

The public wins due to better utilization of public funds and the public resource. Training is currently unlimited and paid for by our tax dollars (both at NMFS and at the OTC). This money would be better spent to supplement training for prior observers. If all observers had better training, there would be an increase in data quality. Better training = better data = better management = sustainability of the public resource.

Industry wins and loses. Higher quality data will be collected so management of the resource improves. The proposed system will be more expensive due to wage increases mandated by the SCA. But, any new proposed system will be more expensive. If industry really wants something different than the status quo, then this will only be the first step.

Contractors win and lose. In general, contractors prefer prior observers because they are less of a risk. Prior observers have done the job successfully in the past and are more likely to be able to adapt to new situations quickly. A prior observer has already proven that he/she won't need to be unexpectedly replaced due to chronic seasickness. Prior observers require less supervision. Prior observers have more sea experience than the average trainee so they are less of an insurance liability. If a limit is placed on the total number of trainees per year or a limit on turnover, it is possible a contractor may need to sacrifice a little business to another contractor if that contractor suddenly finds itself shorthanded. Contractors find

themselves "short" observers under the current system; there is no reason to believe that a limit or specified turnover rate would significantly increase this occurrence.

Are There Alternative Solutions? If yes, what are they and why do you consider your proposal the best way of solving the problem?

1-Status Quo-current system is not working.

2-North Pacific Fisheries Research Plan would have been an adequate solution but was abruptly repealed in 1995.

3-JPA—doesn't solve all of the problems either and won't be implemented by 1999.

4-A new plan similar to the Research Plan is acceptable but extremely unlikely to be implemented by 2000 and likely couldn't be implemented until later.

Implementation of this proposal would address only a few of the data quality concerns as well as observer wage issues. This proposal is not a solution intended to stand alone but will act as a bridge to any future plan which requires contractor oversight by NMFS or PSMFC if JPA is implemented.

Supportive Data & Other Information: What data are available and where can they be found?

The DGOP has seen many tragedies since its inception: one observer killed due to negligent vessel operation, one contractor bankruptcy, one observer in jail, injuries without adequate compensation, wage decreases for the observers (1990-97), and high turnover of observers and staff. Many of these tragedies continue to be a real possibility. This may be the 'biggest and best' observer program in the world, but problems remain which MUST be solved.

Another recommendation of the first NMFS Observer Programs Workshop was to retain experienced observers. "Observer programs operate more effectively, and consistently collect better data if the program is able to retain experienced, high caliber observers. Further, the process of training new observers is time-consuming, costly, and may affect the quality of data collected as the observer goes through the necessary 'learning curve.'" Therefore, NMFS should establish guidelines that encourage and support the maintenance of experienced staff and observers. The minutes from this workshop are available from the NMFS and are summarized in NOAA Technical Memorandum NMFS-OPR-94-1.

Minutes from the most recent US/Canada Observer Program Workshop are tentatively scheduled to be available later this year.

Signature: 

May 5, 1998
5026 9th Avenue, NE
Seattle, WA 98105

Steve Pennoyer, Administrator for Sustainable Fisheries
NMFS Alaska Region
709 W. 9th Street
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Pennoyer:

I have worked as a NMFS-certified observer with the Domestic Groundfish Observer Program. This year observers have seen more stringent enforcement of the 90-day field limit (in regulation) which has been detrimental to many observers. There was no warning for this change in policy. I am writing because I would like to see NMFS reconsider the stringent enforcement of the ninety day cruise limit and possibly even eliminate this limit from the regulations. While I understand and respect the reasoning behind this rule, I do feel that a degree of flexibility can be maintained without jeopardizing the program's integrity. I believe that this would be in the best interest of both the program and observers. It would facilitate the ability of observers to tailor their work year to best meet their needs. In the name of data quality, NMFS is making data quality worse. Already in 1998 data has likely suffered for two reasons. Observers who wanted to continue working were pulled out of the field and many who wanted early returns (i.e. short contracts) were forced to stay. To stay within the 90-day limit contractors had to move more observers around resulting in more boats/observer and more observers on boats for only one trip. One trip worth of data is not always the best. A likely result will be to unemploy priors while employing more trainees. I don't understand how this sudden change in policy improves data quality.

The main worries of the Observer Program with long contracts seem to be data quality problems; timeliness of data and quality debriefings; and problems with abuse of extensions by contractors. I believe that all of these problems can be addressed within a flexible system.

First, data quality problems could be minimized by evaluating observers on an individual basis. Different observers have different field deployment limits. Observers would like to see concrete evidence from the Observer Program that data suffers beyond a 90-day field deployment. Have evaluations of observers who were over and under 90-days been compared? Were more decertifications instigated against observers who've had an extension? Each individual observer should be responsible for determining what his/her limit is, when s/he is burned out and when his/her collection of data is suffering. If there is an option to return early or extend, which option is best for him/her personally and which option is best for the quality of data collected. Observers with a good work history may be a much lower risk for systematic errors but if they are forced to stay in the field when they don't want to be there, data quality could suffer. NMFS should grant exemptions on an individual basis rather than by using a rigid guideline. Even observers on probation or new trainees should have the option to work if the NMFS field office deems their data acceptable. NMFS could stop exempting people from mid-cruise evaluations. Any contractor who thinks they are going to request an extension for an observer should have that observer go in for an early trip mid-cruise and also have them go in for a second mid-cruise at the 2-2 1/2 month mark to make a final determination whether an extension should be granted. Use the field offices to their fullest potential.

The issue of timeliness and debriefing quality also seem far from insurmountable. Timeliness should become less and less of an issue as more of the fleet acquires ATLAS capacity. NMFS will have access to essentially all of an observers' data on a regular basis with this technology. NMFS tells us each debriefer will be assigned a group of observers who they will monitor throughout their field deployment so that problems will be caught and solved before debriefing. In cases where ATLAS is unavailable or if that avenue of reporting is deemed insufficient, it is possible to have observers who decide early on in their contracts that they would like to extend go in for partial debriefings such as is done when observers work over the new year. This way NMFS would have access to the early portion of the observers data, there would be a thorough check done on their work, and the observer would not lose field time. Data could be handed in on one port call and corrections be made and problems dealt with three weeks or a month later at the next port call. This would give field staff plenty of time to deal with data checks and still get information to NMFS in a timely manner. This would also help to eliminate the problem of a

long term cruise leading to poor quality debriefing because of the time elapsed between the beginning of a cruise and the debriefing. Final vessel reports can be filled out in Dutch Harbor or Kodiak during port calls if the observer has finished on one or more vessels; I believe the field offices are now equipped with that computer capacity.

Contractor abuse of extensions and coercion of observers to stay beyond their original contract length is a serious issue. NMFS could potentially follow-up with the observers to verify they have agreed to a given request to extend. Observers send in weekly reports—a text message is easily added for the observers to retrieve the next time they send a message. Coercion of observers should be considered an unacceptable practice by a contractor and NMFS should move to first reprimand and then decertify a contractor if complaints continue. However, we are uncertain what legal ground NMFS has to pursue either the reprimand or the decertification. If observers are worried that a refusal to request an extension could result in future problems obtaining employment or a relegation to the worst possible assignments, the Alaska Fisherman's Union is their current and best avenue for litigation. If a prior observer has made a written request for work by a set deadline they have legal priority over new hires. No one to date has tested the grievance process available if they believe they've been unfairly forced to work. The union contracts have only been in place since Jan. 1.

Finally, I'd like to try and explain why I feel so strongly that it is important to allow observers the possibility of extending contracts. Quantity of work available in this profession is constantly in flux, but I think it is fairly safe to say that the majority of work comes early on in the calendar year. For many observers who use this as a sole source of income it is necessary to obtain 4-5 months of work between January and June. Summer and fall work tends to be limited either in quantity or duration and although some do manage to get full three month contracts or even more work in the later year it is not a certainty. With the ability to extend a month in years when work is short (such as this year) an observer is much more likely to be able to get a solid four months of work in. If they are required to return to Seattle to debrief the chances of a contractor sending them back up for three to four weeks is minimal (an airfare costs the same be it a three week or three month cruise) whereas the same contractor might well be willing to extend an employee as long as a reasonable amount of work remains even though they didn't absolutely need them. Another problem that should be of concern to NMFS in years where work is short is that observers may well commit to second contracts very early on in their first in order to insure themselves employment with the understanding that they'll be debriefed/rebriefed a little early (maybe at the 2 month mark) and then related directly back to the field. Here you'll have someone who in essence made a commitment to work five or more months straight after only a few weeks or a month in the field. At three months they may well want to go home but they'll be tied into their contract. Or, alternatively, in years when work is plentiful a person who wants to work four months (and perhaps has a financial need to do so) may be required to sign a second full contract if they want to return to the field after having to return to debrief at the three month mark (again, airfare stays constant). These situation seems much more likely to result in burnout and lowering of work quality than would be the case in situations where you are allowing contract extensions to prior observers with a history of quality work and to observers who want to work.

I believe that many long term priors have kept with this job in part because of the ability it affords us to work when it best suits our needs (within the confines of work availability of course). While I know that a stringent enforcement of the ninety day rule will not affect all observers, it will affect some. I hope that NMFS will honestly explore alternatives to a strict rule and strive to maintain a level of flexibility that will allow observers to continue to do a quality job while meeting their own financial and time off needs.

Sincerely,


Kimberly S. Dietrich

Cc: Sue Salvesson, Assistant Administrator for Sustainable Fisheries
Jim Balsiger, Alaska Fisheries Science Center
Bill Karp, Alaska Fisheries Science Center
Shannon Fitzgerald, Alaska Fisheries Science Center
Chris Oliver, North Pacific Fisheries Management Council

May 6, 1998
P.O. Box 30167
Seattle, WA 98103

Steve Pennoyer
Administrator for Sustainable Fisheries
NMFS Alaska Region
709 W. 9th Street
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Pennoyer:

The staff report at the April meeting of the North Pacific Fisheries Management Council indicated that there will likely be a delay in implementing the Joint Partnership Agreement between NMFS and the Pacific States Marine Fisheries Commission. If implementation is delayed, NMFS will start drafting regulations to rollover the current Interim Observer Program. The APO would like NMFS to include or address the following in regulation for the 1999 fishing season:

1. Establish a minimum 65% retention rate for observers in the Domestic Groundfish Observer Program (DGOP). The ADF&G Shellfish Observer Program has required 65% prior shellfish observers be deployed on an annual basis for several years and no crab vessels have ever been prohibited from fishing due to an observer shortage. This is the minimum stated by the current contracts between the Alaska Fisherman's Union and the current certified contractors although there is no guarantee it will remain; three of the four contracts will be re-negotiated for the 1999 season. Some of the contractors already maintain a higher retention rate; it is not impossible. This regulation would save tax dollars since less training would be required of NMFS and/or the University of Alaska's Observer Training Center (OTC). Staff time saved could be utilized in a more efficient and productive manner.
2. Add a regulation stating contractors not distribute personal information such as resumes of observers to the fishing industry. Resume requests have been a contract negotiation factor for one fishing company in particular. A contractor's unwillingness to distribute resumes can result in a threat for a vessel to change contractors. NMFS Observer Program policy, as per a memo to contractors dated April 15, 1994, is to request the contractors not release this information without the written permission of the observer. The APO finds this unacceptable. In addition to this practice being an invasion of privacy, release of personal information by contractors potentially compromises NMFS' ability to meet the Observer Programs' objectives and obligations. If observers feel that fishing company personnel can contact them or their family directly, discouraging the observer from making reports which might lead to enforcement action, observers are likely to feel pressured to not file such reports. NMFS receives copies of resumes/transcripts and is responsible for determining if the applicant complies with the experience and education requirements in regulation. Industry doesn't need or have a right to any personal information.

3. Regulations already state that observers have the right to refuse a vessel for safety reasons but this does not guarantee an observer will utilize this right even if it's warranted. If an observer refuses a vessel for safety reasons related to mechanical problems or related to the behavior of vessel personnel (i.e. drug use or unsafe deck practices), the reality of the situation is that observer gets replaced with a less fussy observer and the refusing observer is likely out of a job. There is significant disincentive to refusing vessels. If an observer refuses a vessel, there should be NMFS Observer Program notification and NMFS staff should go to the vessel immediately to evaluate the situation. Vessels should not be held up without cause. However, **NO observers should be allowed to ride the vessel until the problem is resolved.**
4. There are currently no standards in regulation for observer housing at shore-based plants while there are extensive requirements for vessels. Minimum requirements would include: a) a dry, clean, quiet room, b) communication equipment such as a phone or VHF radio so vessel observers and plant personnel can easily contact for assistance or notify of deliveries the plant observer, and c) transportation to the plant if the plant is more than one mile away from housing facilities. Observers in Kodiak have been provided substandard housing far away from the work sites. Data collection suffers if the plant observer misses offloads or is unable to assist a fellow observer due to logistic problems.
5. Modify regulations so that one observer is never covering more than one 100% coverage plant and not more than two 30% coverage plants.
6. Sample station guidelines, not regulations, need to be established. An appropriate sample station should include a small table, adequate light, a place to hang a scale or position a platform scale, adequate space, and access to a fresh or salt water source. NMFS should notify contractors when they feel a vessel has sampling problems that could be addressed by the contractor. A summary of observer sampling problems could be provided prior to each new year for all the vessels the contractor will work with.

Thank you for your time and consideration on these matters. I am available if you have further questions. The APO would like to work cooperatively with NMFS to initiate positive change for the observers and the Observer Program.

Sincerely,



Kimberly S. Dietrich

cc: Sue Salvesson, AK Region
Jim Balsiger, Alaska Fisheries Science Center
Bill Karp, Alaska Fisheries Science Center
Shannon Fitzgerald, Alaska Fisheries Science Center
Chris Oliver, North Pacific Fisheries Management Council

May 28, 1998
P.O. Box 30167
Seattle, WA 98103

Bill Karp, Task Leader
Domestic Groundfish Observer Program
Alaska Fisheries Science Center, NMFS
Bin C15700, Bldg 4
7600 Sand Point Way, NE
Seattle, WA 98115

Dear Dr. Karp:

I have recently been informed that the Observer Program has set a September 21-25, 1998, date for the multi-species CDQ (MS-CDQ) specialized briefing. As per previous correspondence, although the Association for Professional Observers (APO) opposed specialized training in the first place because our philosophy is that all observers should be trained to work on all vessels in all fisheries at all times, we've accepted NMFS' decision. However, the APO strongly opposes a single briefing for the following reasons:

- Prior observers will be expected to sacrifice B-season employment with no guarantee there will be enough vessels fishing MS-CDQ. **The APO recommends priors not make this commitment unless they are willing to take the chance of no fall employment as an observer. (This is a risk that I'm personally not willing to take.)**
- Neither NMFS nor the contractors can accurately predict how many vessels will participate. The final rule hasn't been published in the Federal Register and vessels are just speculating on their participation at this time. Many vessels may find the requirements cost prohibitive. Even vessels that are in the process of installing sampling stations and motion-compensated scales aren't guaranteed participants. Length of deployment/employment is extremely uncertain. As with CDQ pollock and CDQ shellfish, the number of vessels participating and their length of participation will be in constant flux.
- Observers in recent briefing classes have been told pay incentives are an option. Pay incentives are unrealistic in the current system. Industry is required to carry double the observer coverage. They will not tolerate paying more than double because it isn't cost effective (especially in the flatfish MS-CDQ target fisheries). In addition, some of the AFU negotiated contracts have an annual limit on the number of days of paid briefing. It is possible that observers will not get paid for their time briefing or waiting.
- If the Olympic fisheries are still open October 1, observers who committed to MS-CDQ will be expected to wait (likely without pay) until the vessels start fishing MS-CDQ. The CDQ cod fishery, for example, probably won't begin until the longline cod fishery closes in November or December. There is no logical reason an observer couldn't work open access pollock then move to a CDQ vessel after open access.
- The briefing is being offered only in Anchorage. Costs to the observer (and to industry if they're paying) if they have to wait a month to be deployed are unacceptably high. This is another disincentive for priors to participate.

The APO requests the Observer Program re-evaluate a single briefing date. We suggest additional specialized briefings be offered prior to the start of the open access fishery (possibly August 17-21) and after open access trawling closes (mid to late October), thereby increasing opportunities of work

for priors, rather than the reverse. NMFS should utilize this opportunity to provide observers with additional professional training not alienate long time priors who aren't willing to risk unemployment. New NMFS staff should be trained and in the field by the start of MS-CDQ. If time between briefing and deployment is a concern, observers going into this fishery could be required to check in with field personnel before being deployed.

Thank you for your time and consideration.

Sincerely,

Kimberly S. Dietrich
Association for Professional Observers

Cc: Jim Balsiger, AFSC (via email)
Shannon Fitzgerald, AFSC (via email)
Paula Cullenberg, OTC
Steve Pennoyer, NMFS AK Region
Chris Oliver, NPFMC
Mark Coles, Alaska Fisherman's Union (faxed)

Alaskan Observers, Inc.
Data Contractors, Inc.
Frank Orth & Associates
NWO, Inc.
Saltwater, Inc.

Alaska Groundfish Data Bank

OPS C-6 ✓
P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

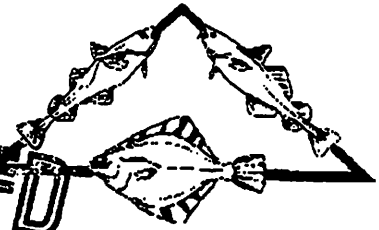
RE: COMMENTS ON EXTENDING THE EXISTING OBSERVER PROGRAM
AGENDA ITEM C-6

DATE: JUNE 2, 1998

SENT BY FAX: 1 PP

RECEIVED

JUN - 2 1998



N.P.F.M.C.

**COMMENTS ON EXTENDING THE EXISTING OBSERVER PROGRAM
(AGENDA ITEM C-6)**

SUBMITTED BY ALASKA GROUND-FISH DATA BANK

Since the existing observer program must be extended because which all efforts so far to replace the existing program with a program which is cost effective and provides better data, the members AGDB request that the Council specifically call for proposals this summer designed to improve the current program and proposals for the "ideal program."

The increased observer costs along with the increases in travel costs and the requirement in contracts that observers be paid every day even if sitting in town while a storm blows through is making some fisheries uneconomic for small vessels, particularly the resident Alaska fleets and Gulf of Alaska processors.

AGDB feels the JPA approach is not feasible and that the Council should begin work on a fee plan. The call for proposals should assist in a better observer plan under the existing framework and offer ideas for the next iteration of the observer plan.

It has been seven and a half years since the observer program was implemented. There should be at this time enough experience and data to substantially improve the observer program.

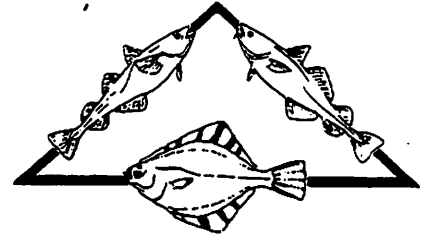
Thank you for your attention to our comments.

Chris Blackburn, Director
Alaska Groundfish Data Bank

RECEIVED

AUG 11 1998

N.P.F.M.C



GROUND FISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Please check applicable box(es)		
<input type="checkbox"/> Bycatch Reduction	<input type="checkbox"/> BSAI Groundfish FMP	<input type="checkbox"/> GOA Groundfish FMP
<input type="checkbox"/> BSAI Crab FMP	<input type="checkbox"/> Scallop FMP	<input checked="" type="checkbox"/> Observer Program
<input type="checkbox"/> Habitat of Particular Concern		

Name of Proposer: ALASKA GROUND FISH DATA BANK

Date: AUGUST 3, 1998

Address: P.O. 948, KODIAK, AK. 99615

Telephone: 907-486-3033

FAX: 907-486-3641

Fishery Management Plan: GULF OF ALASKA AND BERING SEA

Brief Statement of Proposal: ALLOW PROCESSORS TO ADJUST PLANT OBSERVER COVERAGE LEVEL TWO DAYS AFTER ALL TRAWL FISHERIES CLOSE. THIS PROPOSAL MAY BE APPLICABLE ONLY TO THE GULF OF ALASKA.

Objectives of Proposal: (What is the problem?) In the Gulf of Alaska all trawl fisheries close each quarter when both the deep and shallow halibut caps are reached. The groundfish deliveries after the quarterly trawl closures are usually from longline and pot vessels as well as IFQ deliveries. The weekly groundfish deliveries in the Central Gulf after the trawl closures is usually less than 500 MT spread among all Central Gulf processors.

However, the processor who needed 100% coverage due to trawl deliveries early in the month is required to continue 100% coverage until the end of the month, even though the observer may have nothing to do. The alternative is to release the observer and suspend buying for the remainder of the month. This alternative may disadvantage small non-trawl vessels.

The table below shows the trawl closing dates for 1996 and 1997 and the number of non-trawl days in each closure month. The potential financial savings offered by this proposal may differ among processors and years depending on each processor's coverage level during the trawl fisheries, coverage level after the trawl closure and dates of the trawl closures.

ALL TRAWL CLOSURES -- 1996 AND 1997 AND NUMBER OF DAYS REMAINING IN THE MONTH AFTER THE CLOSURE MINUS TWO DAYS FOR OFFLOADING

YEAR	TRW CLSD	#NO TRW DAYS	YEAR	TRW CLSD	#NO TRW DAYS
1996	MAY 13	16	1997	MAY 6	23
1996	JUN 1	27	1997	JUN 9	19
1996	AUG 7	22	1997	AUG 8	21
1996	SEP 19	9	1997	SEP 21	7
1996	DEC 2	27	1997	NOV 26	2
TOT DAYS		101			72

TRAWL OPENINGS : JAN 20 (HALIBUT RELEASE), APRIL 1 (HALIBUT RELEASE), JUNE 1 (2ND TRIMESTER POLLOCK), JULY 1 (HALIBUT RELEASE), SEPTEMBER 1 (POLLOCK), OCTOBER 1 (HALIBUT RELEASE).

In 1996 the halibut caps closed all trawling May 13 leaving 18 no trawl delivery days in the month and August 7 leaving 24 no trawl days -- a total of 42 days during which observers who had little or nothing to do remained on the plant payroll.

In 1997 there were 44 no trawl delivery days May and August combined when observers had to be present in the plants, but had little or nothing to do.

Usually the June pollock fishery ends sometime in early to mid-June, but observers have to be kept until the end of June.

Were this proposal to be adopted, processors would be able to adjust their observer coverage after the trawl fisheries closed based on what they anticipated buying. Plants which needed 100% observer coverage for trawl deliveries may drop to 30% for the remainder of the month. Some plants may need no coverage. Each plant would consider the savings in observer costs significant. The provision that observer coverage be adjusted two days after all trawling is closed allows observers to remain in the plant while the last vessels off load.

Need and Justification for Council Action: (Why can't the problem be resolved through other channels?)

Only the Council can change observer coverage regulations.

Foreseeable Impacts of Proposal: (Who wins, Who loses?)

Processing plants would be winners because their observer costs would be reduced. There does not seem to be any losers.

Are There Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem? The alternative is a fee system that eliminates the current coverage regulations and places observers where and when they are needed. This proposal is a stop gap measure which can be implemented quickly. The fee plan may take several years to implement.

Supportive Data & Other Information: What data are available and where can they be found?

NMFS has data on Gulf trawl closures as well as data by plant of the tonnage of product delivered when trawl fishing is open and when trawl fishing is closed.

Signature:



Chris Blackburn, Director
Groundfish Data Bank

- - - - -
OOS

**FISHING VESSEL OWNERS' ASSOCIATION
INCORPORATED**

ROOM 232, WEST WALL BUILDING • 4005 20TH AVE. W.
SEATTLE, WASHINGTON 98199-1290

SINCE 1914

August 20, 1998

Mr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, AK 99501-2252

RECEIVED

AUG 24 1998

N.P.F.M.C

Dear Clarence:

This letter is in regards to the upcoming September meeting of the Council's Observer Committee. It has become apparent ever since the domestic observer program was initiated, that observers are an essential management tool for monitoring the Alaskan fisheries. It is important that the Council be able to continue the observer program and take advantage of the Magnuson-Stevens Act that provides for a research program, so that all harvesters can pay an appropriate share of the observer costs.

The Association has several concerns with the observer program based on the previous EIS. These concerns are, the manner in which fees were calculated using a standard calculated fish price, not current ex-vessel prices; the degree of coverage required, and the ability to maintain a statistically acceptable level of coverage.

Calculating the fee - After completing several meetings with the NMFS on how the IFQ and CDQ fee will be calculated, the Association believes it is critical that fees are based on actual prices paid during the season. Standard prices developed by the government often reflect other influences rather than market influences. In order to achieve industry support, NMFS needs to follow the procedures recommended by the IFQ Fee Committee, which emphasized the use of actual prices, particularly, with fish that is caught and delivered to a primary processor. This is important for species that have different values in different ports, such as halibut. Halibut prices have been \$0.70 in Dutch Harbor and \$1.60 in Seattle. One standard price will not work for the halibut fishery. Standard prices may not be a problem for species that have less volatile prices between ports.

In the previous EIS, there appeared to be a less than equitable financial contribution paid by the at-sea processors, not to pick on at-sea processors. In

FAX
(206) 283-3341

LATITUDE: 47° 39' 36" NORTH

DIAL "A VESSEL"
(206) 283-7735

LONGITUDE: 120° 22' 58" WEST

Mr. Clarence Pautzke
Executive Director, NPFMC
August 20, 1998
Page 2

particular, in the previous EIS's, crab, halibut, sablefish, and fixed-gear pacific cod would have accounted for well over 50% of the observer fees. NMFS should refrain from asking industry what prices they receive to base standard prices for processed fish, but rather rely on export prices that are recorded with NMFS through their market division or some other neutral procedure in acquiring necessary information. This should result in de-politicizing the observer fees, which, in our opinion, was a problem last time. Organizations going over to NMFS to lobby on what prices to use will be critically observed by all of industry and is inappropriate. If standard prices need to be developed on processed product, fair product recovery rates also need to be used.

Coverage - The levels of coverage need to be reassessed. The original levels served a purpose and appropriate levels need to continue. We believe that the previous levels may no longer be appropriate.

Fishing behavior of the different gear types should be well documented by the existing observer program and the ability to fish differently with particular gear types should similarly be known. In particular, crab pots do not seem to have great variability in fishing compared to mobile gear. Pelagic trawl gear seems to have established itself, such that bycatch rates are low and utilization is extremely high, with regards to Pollock, both shore-based and at-sea. Perhaps some of the observer requirements can be reduced to 15 to 20%. The SSC said, at one time, that these coverage levels would have been adequate.

It is known that the observer program under the research program will have a limited amount of funds. The previous EIS suggested that at least 20% less coverage can be expected with a research program compared to status quo, due to cost inefficiencies. In order to compensate for this, we suggest a lesser rate of coverage for gear types that are more predictable. If everyone is paying 2%, the issue of who carries the observers should become less of a political issue. The Association has suggested, as a groundfish amendment, that IFQ sablefish operations be allowed to meet coverage requirements based on QS held rather than by quarter in order to reduce costs.

The past two debates regarding coverage on crab vessels and the expectation that all the crab coverage would be funded from the research program, got entirely out of hand. At one time, the previous EIS showed that groundfish observer coverage

Mr. Clarence Pautzke
Executive Director, NPFMC
August 20, 1998
Page 3

would have to be severely limited in order to pay for the coverage levels on crab vessels. This is unacceptable. The issue of coverage requirements on crab vessels needs a thorough discussion.

The level of coverage in each of the distinct fisheries needs a thorough review, and areas where duplication in observer coverage exist, need to be identified and the requirement for those observers, eliminated. There appears to be some duplication of effort with the use of some of the shorebased observers. This should be looked into. The funds generated by the 2% exvessel fee should cover all current observer activities other than the CDQ requirements.

In summary, the Association would like to see actual prices for vessels that are not processing their own product, particularly, for halibut. Standard calculated prices will be needed for those who process their catch or put their product into their own account or deliver to a co-op. Observer levels need to be reassessed and reduced where possible. The crab observer requirement needs to be revised so they fit into the budget created by the 2% fee. Standardized prices need to be developed at arms length from industry and be de-politicized in how they are derived. Standard prices should include realistic product recovery rates. These areas of concern were not adequately and fairly dealt with in the last attempt to adopt a research plan, which resulted in most of the industry, including FVOA, opposing the research plan. Fairness and cost efficiency must be recognized as key to getting support this time.

If you could make available our comments to the Observer Committee, it would be appreciated.

Sincerely,



Robert D. Alverson
Manager

RDA:cb

Sue Salvesson
NMFS, Alaska Region
September 18, 1998
99obsreg.wpd

Potential short-term changes to the North Pacific Groundfish Observer Program (NPGOP) and associated issues

Observers, industry representatives, and NMFS staff have proposed changes to regulations implementing the NPGOP. Many of these proposals address desired changes and, pending OAC and Council concurrence, could be developed as regulatory amendments. Other proposals could be addressed through other than regulatory means, while several others address issues that cannot readily be resolved without further guidance from the OAC and Council. A summary of the proposed changes and initial responses by NMFS staff follow:

PROPOSALS		NMFS INITIAL RESPONSE
Received from observers		
1.	Establish a minimum 65% retention rate for observers	NMFS consistently has expressed concern that the number of trips completed by an observer does not sufficiently gauge the quality of the observer or of the data collected. Since 1997, NMFS has evaluated observers based on both experience and quality of data. In the future, this approach might be incorporated into an incentive program to retain quality observers through rulemaking. Prior to this action, however, NMFS must conduct an analysis of its program to assess evaluation criteria based on performance and duration of experience. We believe 2 full years of data would be required to provide for a meaningful analysis. NMFS could initiate such an analysis during 1999 and present results to the OAC for its assessment and further input.
2.	Add a regulation prohibiting contractors from distributing personal information on observers (e.g., resumes) to the fishing industry	NMFS has a long standing policy that contractors not distribute personal information on observers to the industry. Although NMFS does not have evidence that this policy is being violated, observers contend that this policy is being ignored by some contractors. As a result, NMFS proposes to incorporate its existing policy into regulations so that enforcement action could be taken against any contractor who continues to distribute personal information.
3.	NMFS observer safety policy provides observers the option of refusing to board a vessel for deployment if the observer believes the vessel to be unsafe. The expectation that observers will utilize this right is unrealistic and strong disincentives exist for refusing to board a vessel. NMFS must evaluate safety situations in a manner that does not hold up a vessel without cause while ensuring a safe environment for observers..	NMFS and the USCG concur that the existing national observer safety standards can create an undesirable situation for observers who believe a vessel poses safety concerns. Preliminary discussions with the USCG indicate that the USCG may be able to serve as an intermediary to resolve some safety issues between observers and vessel owners/operators. NMFS will continue to pursue this option with the USCG.

4.	Regulations should be implemented that stipulate standards for observer housing at shoreside plants that reflect the standards established in regulations for vessels. These standards should include: a clean, dry and quiet room; communications equipment such as a phone or VHF radio; and transportation to the plant if the plant is more than 1 mile from housing facilities.	NMFS agrees that the recommended housing standards for shoreside observers are reasonable and should be established in regulations.
5.	Modify regulations so that one observer is not covering more than one 100% coverage plant and not more than two 30% coverage plants	NMFS understands that logistic problems and potential coverage concerns arise from the sharing of observers and this practice could expand beyond processors currently engaged in this practice. NMFS recommends that the OAC assess this issue and provide recommendations.
6.	Establish guidelines (not regulations) for observer sampling stations onboard all vessels.	Existing regulations specify standards for observer sampling stations for vessels participating in the MSCDQ program. NMFS believes that extending these standards beyond the CDQ fisheries would be premature. Furthermore, NMFS is in the process of compiling vessel profiles for purposes of observer sampling protocol and this process should be completed before regulatory provisions are implemented for mandatory sampling stations. Furthermore, compliance standards must be established in regulations. Vessels wishing to voluntarily set up observer sampling stations can use the standards established for vessels in the MSCDQ program.
7.	Regulations should be implemented that any NMFS observer program staff may be deployed at NMFS's discretion on any vessel at any time in lieu of or in addition to the vessel's regular observer.	NMFS agrees and intends to pursue appropriate regulations. However, such regulations will need to be carefully developed to explain why such authority is necessary, define the circumstances that would invoke this authority, and develop the logistical procedure NMFS and affected vessels would be required to undertake.
8.	Require NMFS to have non-monetary contractual arrangements with contractors to provide greater control and oversight over contractor performance.	<p>Under the existing funding infrastructure for the observer program, NMFS likely does not have the authority to regulate the nature of business relationships between contractors and industry clients in a manner that would constrain competitive choices and more directly address performance and conflict of interest concerns. A contractual relationship between NMFS and contractors likely is possible only if NMFS is paying contractors to provide specified services.</p> <p>NOAA GC has noted that enforcement action already can be taken against contractors that do not adhere to regulations stipulating contractor performance requirements at 679.50(i)(2). A history of noncompliance and enforcement actions against a particular contractor can be used by NMFS as a basis for decertification.</p>

Received from Industry		
9.	Revise shoreside observer coverage requirements to base coverage levels during a calendar month on other than landed amounts of groundfish received during that month	NMFS is open to consideration of revising coverage requirements based on landed amounts of groundfish during a weekly reporting period. Pros and cons exist to this proposed change that NMFS will discuss with the OAC.
Recommended by NMFS staff		
10	Assure that shoreside deliveries by observed vessels are adequately monitored and sampled. This could require that the catcher vessel observer stay until the delivery is sorted (can take several days) or revise shoreside observer requirements.	NMFS would like to discuss this issue with the OAC. No specific regulatory actions are proposed at this time.
11	Require catcher vessel owners to purchase and maintain computers for use by observers onboard their vessels. Computer equipment standards would be similar to those currently specified for catcher/processor vessels.	NMFS increasingly is moving toward electronic reporting of observer and industry catch data to provide more timely management of the groundfish fisheries. Use of computers to input observer data collected onboard catcher vessels would enhance NMFS's prohibited species catch monitoring, allow for more effective management of observers, improve the quality of observer reports and data, reduce the amount of time spent by observers doing paperwork and verifying reports, and reduce observer debriefing time.
12	Increase observer coverage for true mothership processor operations that receive unsorted codends from catcher vessels. Although 2 observers are required in the pollock 'B' season to monitor salmon bycatch, only 1 observer is required during the pollock 'A' season.	The high volume catch and processing operations conducted by mothership operations result in a relatively low percentage of the hauls being observed by a single observer onboard these vessels. Requiring two observers at all times onboard motherships receiving unsorted codends from catcher vessels would enhance the quality of the observer data collected for these operations. This provision would not apply to motherships treated as shoreside processors for purposes of catch accounting.
13	Clarify the definition of a "fishing day" for purposes of determining observer coverage requirements for vessels using pot gear	An increasing number of instances have occurred where vessels using pot gear circumvent the intent of regulation requiring 30 percent coverage. These vessels can take an observer onboard, retrieve one pot, retain any groundfish caught, and satisfy requirements for one day of observer coverage. OAC assessment of this situation and appropriate recommendations would be useful.