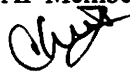


MEMORANDUM

TO: Council and AP Members
FROM: Chris Oliver 
Executive Director
DATE: February 1, 2010
SUBJECT: Observer Program

ESTIMATED TIME 4 HOURS

ACTION REQUIRED

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

BACKGROUND

- (a) Review progress on implementation plan for 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. In the past several years, the Council, NMFS, and the Observer Advisory Committee (OAC) have been working to develop a new system for observer funding and deployment in the Observer Program. The concept previously proposed was often called 'observer restructuring.' In general, the program would be restructured such that NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, disproportionate cost issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

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

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

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

restructured observer program (i.e., an implementation plan), recognizing that this important component will eventually be folded into the overall analysis. The motion also stated that the OAC should convene to review the implementation plan, prior to completion of the overall analysis.

The draft implementation plan was first reviewed by the OAC in September 2009, and the Council reviewed both the OAC recommendations on the plan and the plan itself at its October 2009 meeting. In October, the Council approved further revisions to the alternatives, primarily to clarify that shoreside processors are included in the various restructuring alternatives. In addition, the Council concurred with the OAC recommendations for further development, discussion, and expansion of several sections of the restructuring implementation plan,² prior to the development and review of the overall analysis. The Council then requested that the OAC convene prior to the February 2010 Council meeting to review a revised version of the implementation plan. The October 2009 Council motion, including the suite of alternatives, is attached as **Item C-2(a)**.

The revised version of the implementation plan was provided to the OAC and Council via email on January 20, and it was posted on the Council website. A hardcopy was mailed to you on January 25. The Council's review of the revised implementation plan, with action as necessary, is scheduled for this February meeting. Note that the next version of the implementation plan is intended to be provided within the construct of the EA/RIR/IRFA for the proposed action to restructure the observer program.

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

As requested by the Council in October, the OAC met on January 29 at the Alaska Fisheries Science Center, with the primary purpose of reviewing and providing feedback on the revised implementation plan. The OAC report is attached as **Item C-2(b)**. Note that an additional OAC member was recently added, Richie Davis, as a representative of the <60' catcher vessel sector from southeast Alaska. OAC membership is listed on the front page of the OAC report.

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

Observer Program Council motion
October 6, 2009

The Council forwards the following alternatives for analysis. (*Changes to the alternatives from the December 2008 Council motion are shown in underline and strikethrough.*)

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

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

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

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

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

Forward the OAC recommendations for further development, discussion, and expansion of several sections of the restructuring implementation plan, as outlined in Section VI of the September 2009 OAC report. The Council requests the OAC convene prior to the February Council meeting to review the revised document, recognizing that the implementation plan will eventually be folded into the overall analysis.

Forward the SSC recommendation of a more detailed analysis of proposed funding mechanisms, including scenario analyses of likely variation in catch and price.

**Observer Advisory Committee – Meeting Report
January 29, 2010**

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Traynor Conference Room
8:30 am – 4:30 pm

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

Council and NMFS Staff: Nicole Kimball (NPFMC), Martin Loefflad (AFSC), Brandee Gerke (AKR), Craig Faunce (AFSC), Sue Salvesson (AKR), Chris Oliver (NPFMC), Chris Rilling (NMFS), Tom Meyer (NOAA GC), Bill Karp (AFSC), Patti Nelson (AFSC), Darrell Brannan (NPFMC, consultant), Bob Maier (AFSC), Mike Adams (NOAA OLE), Jerry Berger (AFSC).

Other participants: Troy Quinlan (Techsea International), Jason Anderson (Best Use Cooperative), Josh Boyle (USCG), Mary Schwenzfeier (ADF&G), Karla Bush (ADF&G), Stefanie Moreland (ADF&G), Pat Hardina (Icicle Seafoods), Merrick Burden (Environmental Defense Fund), Ken Stump (Marine Fish Conservation Network), Rob Wurm (Alaskan Leader Fisheries), Tom Casey, Linda Kozak (Kozak & Associates), Dan Falvey, Julianne Curry (PVOA), Jeff Farvour.

Agenda

- I. Review and approve agenda
- II. Update on status of the proposed rule for regulatory changes the Council approved in 2008
- III. Review October 2009 Council motion & current suite of restructuring alternatives
- IV. Review second draft of NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program
- V. Discuss feedback and/or recommendations on the implementation plan
- VI. Scheduling & other issues

I. Review and approve agenda

Introductions were made. The agenda was approved, with one addition from Martin Loefflad, to provide a brief update on Observer Program activities and Federal funding for regional observer programs.

Martin introduced Chris Rilling, the new National Observer Program lead in NOAA HQ. Martin noted that currently 225 observers are deployed, and a new data entry form was installed this year. Observer Program staff are also working on the BSAI Amendment 91 rulemaking (monitoring for Chinook salmon bycatch), and working with the Auke Bay lab on genetic sampling. Martin also updated the U.S. Delegation at the 2010 IPHC meeting on observer program restructuring efforts, and the inclusion of the commercial halibut fleet off Alaska in the alternatives under consideration by the Council.

There is not a substantive increase in the 2010 budget for the North Pacific observer program. The program received a \$300k increase from the National Observer Program (NOP), which will cover inflationary costs. However, two regional programs received substantial increases in Federal funding: \$3 million each to the New England and Western Pacific observer programs. These are line item Congressional increases, earmarked for direct observer deployment in these programs, and thus do not represent discretionary funding by the NOP. The North Pacific observer program has requested a \$6 million increase for 2012 and beyond.

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

On September 30, NMFS published a proposed rule for an observer regulatory amendment previously approved by the Council in April 2008 (74 FR 50155). In November, NMFS sent a letter to the Council outlining four changes NMFS is considering to the proposed rule as it proceeds to the final rule. Two of those changes are related to the requirement for observer providers to submit invoices, and two address observer conduct regulations. The only significant change is to require observer providers to submit monthly invoices every year, as opposed to every third year, as was originally approved by the Council. As these changes differ from the Council motion, NMFS is required to consult with the Council per Section 304(b)(3) of the MSA, and did so at the December 2009 Council meeting. The Council approved a motion that concurred with NMFS' proposed changes; the final rule is expected in March 2010. One committee member noted that the rule includes changes to the definition of a fishing day (30% coverage by quarter), thus, an effective date at the beginning of a quarter would be preferable.

III. Review October 2009 Council motion and suite of restructuring alternatives

Staff reviewed the October 2009 Council motion, which revised all of the restructuring alternatives to explicitly include shoreside processing plants. Alternative 2 was also revised to include the <60' BSAI groundfish sector in the restructured program. In effect, all of the restructuring alternatives include the halibut sector and <60' sector, thus, no sector is entirely exempt. In October, the Council also requested that a second draft of the implementation plan be developed prior to the development of the analysis for observer program restructuring. The Council motion directed the OAC to convene and provide feedback on the revised implementation plan, prior to the Council's review in February 2010.

IV. Review NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program

NMFS and Council staff (Nicole Kimball, Brandee Gerke, Martin Loefflad, Craig Faunce) provided a presentation of the revised implementation plan, with a focus on changes from the October 2009 draft. The committee limited its questions to clarifications, with the intent to review the most significant questions and concerns in the afternoon (agenda item V).

Changes to Section 1 (Introduction) focused on changes to the suite of alternatives approved by the Council in October 2009, and the addition of a table outlining the five alternatives with regard to which sectors are included in the restructuring program, the funding mechanism, and the general coverage strata (<100% versus \geq 100%).

Changes to Section 2 (Implementation plan framework) focused on an expansion of the discussion regarding the scope of the restructuring alternatives and whether vessels fishing in State waters are included. Vessels that carry an FFP that are participating in Federal waters or State waters parallel fisheries would be included in the restructured program. These vessels would be assessed a fee based on the ex-vessel value of their groundfish and halibut landings, whether they occur in Federal waters or in State waters in the parallel fishery. This approach explicitly excludes vessels fishing in the State managed groundfish fisheries in State waters from observer coverage requirements and associated fees under the restructured program, regardless of whether they have an FFP. NMFS does not have the authority to require observers on vessels that surrender their FFP and are fishing within State waters.

Section 2 also included an expanded discussion on the relationship between the research plan fee authority (fees for observer coverage) in Section 313 of the MSA and the LAPP cost recovery fees authorized in Section 304(d). In effect, any observer fees assessed under Section 313 must be credited against any fee for stationing observers or electronic monitoring systems and the actual cost of inputting

collected data to which a vessel or processor is subject under Section 304(d). One member noted that the text should be revised to clarify that these two fees are additive, just not for observer purposes.

The majority of the changes to the implementation plan are in Section 4 (Implementing a restructured Observer Program). NMFS presented a new table on the limitations of the use of fee proceeds (p. 17), which outlines the current and future tasks that necessitate funding (e.g., training and debriefing, managing collected data, observer deployment logistics, observer pay, etc.); whether NMFS has the authority to use the Section 313 fees to fund the specified task; and the intended source of funding (e.g., NMFS funding versus industry fees). Tom Meyer (NOAA GC) also presented a new section on the relationship between the Halibut Act and Section 313, concluding that it is not likely that the Halibut Act provides authority to place observers onboard groundfish vessels without FFPs or IFQ fishing in State waters, for the purpose of observing halibut bycatch.

Several changes were made to Section 4.1.2, on the ex-vessel value based fee system. NMFS provided additional information on establishing standardized prices and the potential use of the Commercial Operator's Annual Report (COAR) data to establish groundfish ex-vessel value prices. Changes also included: discussion on the potential to incorporate delivery condition to estimate standardized ex-vessel prices on which to base the fee for groundfish; further rationale for the 50:50 split in fee liability between shoreside plants and CVs delivering to shoreside plants; penalties that could be imposed for delinquent fee payments; information on State fisheries taxes and how it compares to the proposed observer ex-vessel value fee derivation and collection process; and the approach to calculate a daily fee under Alternative 4.

Additional changes were also made to Section 4.3 (Sample design and observer deployment). NMFS updated the committee on progress on the continued division of the <100% stratum, by identifying groups/sectors that have similar properties. NMFS has analyzed 2008 data and will evaluate other years to see if patterns are consistent. NMFS has not developed a size threshold for small vessels that may be prohibitive in placing observers on the vessels, but recognizes that it may not be possible to deploy at-sea observers on all vessels. The draft results of the <100% stratum analysis are currently being reviewed by Pacific States and NMFS AKR, and are not yet included in the revised implementation plan. NMFS also described progress on the vessel selection process and call-in system, having consulted with the Northwest groundfish observer program. This program samples at-sea discards instead of total catch, and they have a vessel selection process whereby the observer samples continuously on a vessel during a two-month period. Comparisons between the current North Pacific and Northwest programs were discussed.

A second analysis of bias in the current system (in both the GOA and BSAI) has been completed, but was not contained within the draft implementation plan. Results may be provided as an appendix to the June analysis, if requested by the Council. It was reiterated that a major objective of the restructured program is to establish an observer deployment method that facilitates the development of a design-based estimator of catch and discards. In this manner, the program will collect baseline data in year 1 that would allow for the calculation of variance estimates associated with catch data. Those variance estimates from the first year may be then subsequently used to target when and where NMFS needs lesser or greater coverage in subsequent years (i.e., optimization approach).

Section 4.3.6 (p. 46) was also added, which outlines the requirement for a USCG safety decal if a vessel is selected to carry an observer. One member noted that safety requirements for 50' vessels are likely to change (through legislation), and that there are many reasons vessels do not carry a safety decal. Further discussions were tabled until the afternoon.

Finally, Section 4.3.7 was added to discuss the proposed observer deployment in shoreside plants and on stationary floating processors. Similar to vessels, the strata for processing plants would be <100%

coverage and $\geq 100\%$ coverage. The rationale behind plant observer requirements differs between various fishery management programs, and this drives the need for 100% coverage levels. In sum, shoreside plants taking AFA and CDQ pollock deliveries are the only sectors proposed to comprise the $\geq 100\%$ percent stratum for shoreside operations. This is because an observer needs to be present 100% of the time the processor takes delivery of or processes groundfish from these fisheries. For pollock deliveries, the observer deployed on the vessel conducts a census of the offload for prohibited species. Vessel-specific catch estimates are necessary in the pollock fisheries because prohibited species catch limits are vessel-specific, and transferable among vessels. Because offloads can exceed 12 hours, a primary duty of the plant observer during pollock deliveries is to relieve the vessel observer monitoring the offload. In other fisheries, the primary plant observer duty is for compliance monitoring and biological information collection, thus 100% coverage is not required. It was also noted that, similar to previous restructuring efforts, processors would be responsible for collecting the catcher vessel's half of the ex-vessel value fee, and remitting the entire fee to NMFS. If a daily fee is employed (Alternative 4), all vessels and plants in the $\geq 100\%$ stratum would pay a daily fee directly to NMFS.

V. Discuss feedback and/or recommendations on the implementation plan

The committee focused on its most significant questions and concerns, and provided recommendations to further revise the implementation plan.

1. Halibut IFQ fishermen operating without an FFP in State waters

The OAC questioned whether the restructured program would cover halibut IFQ fishermen without an FFP in State waters. Staff responded that the initial assumption is yes; NMFS has the authority under Section 313 to assess a fee and put an observer on halibut vessels in State waters. Halibut fishermen are required to have a Federal IFQ permit, thus an FFP may not be necessary to assert that authority. NMFS noted that further discussion of this issue, as well as treatment of incidental catch associated with halibut landings on non-FFP vessels in State waters, will be included in the analysis. The committee was most concerned with potential loopholes with regard to observer coverage, on an area or sector basis.

2. Two issues related to establishing the ex-vessel value based fee

a) Increased retention requirements mandate some sectors to retain fish that they wouldn't otherwise, due to their low value. These sectors will be assessed a fee on these low value fish, as well as their target catch.

Some committee members noted that it was not fair to require (high) retention of certain species, and subsequently assess a fee on species that vessels would not otherwise have retained. It was noted that one of the basic principles is to assess a fee on the extraction of the resource, not necessarily on whether that fish was targeted or caught incidentally to a target species. In addition, if a species has a very low ex-vessel value, the lower price will serve to lower the average weighted price for that species. For example, cod destined for meal will have a lower price than cod destined for fillets. Staff agreed to provide an explanation of how the COAR data capture the different delivery conditions, resulting in a blended price. In effect, delivery conditions are reflected in the mean price for a species, but staff does not intend to include different delivery conditions in the standardized list of prices. If, after assessment, delivery condition appears to have a considerable impact on prices, it could be included in the list of prices.

However, note that delivery condition only indicates the status of the fish that are landed. For example whole fish/food (code 01), whole bait (code 02), bled only (code 03), landed discarded (code 99), etc. Because the delivery code does not distinguish between fish harvested as the target species and those harvested incidentally to the target, applying the delivery code may be of little benefit in determining price differences paid based on whether it is target harvest or incidental catch. Members of the committee used pollock as an example. The ex-vessel price of pollock delivered as incidental catch in the cod fishery may only have a price of \$0.01/lb, but in the directed pollock fishery it could exceed \$0.10/lb. Assuming

both products are delivered as 'whole fish/food', the delivery code alone would not distinguish between the two deliveries and they would be assigned the same average price. If incidentally harvested pollock is taken with a different gear type than directed pollock, it may be possible to distinguish the two types of landings in the COAR.

b) There is seeming inequity between the data used for the CV and CP sectors to determine the catch on which to assess an ex-vessel value fee. NMFS would use the weight landed shoreside for CVs, while using observer estimates of total catch for CPs.

Some members were concerned with this potential inequity. For CVs, sector-wide at-sea discards are estimated based on rates derived from observer data collected across all vessels in the sector, thus, vessel specific discard rates are not available for CVs. At-sea discards are not required to be reported on fish tickets because the processor filling out the fish ticket does not always have first-hand knowledge of discards that occurred while the vessel was at-sea. All fish landed at the plant would be subject to the observer fee because plant discards can be determined by the processor. In order to calculate a total weight to be assessed a fee, an aggregate at-sea discard rate would have to be applied, which is not preferable because of the variability at the CV level. For CPs, the total observed catch are the best data available; the same data used to debit quotas. One member questioned whether self-reported landings production and discard data could be used for CPs, in order to derive landings data (retained catch values) similar to CVs. Staff has indicated they will attempt to estimate the aggregate difference in fees that would be collected if the CV were charged for at-sea discards. This estimate should be considered an academic exercise, as it is not possible to apply the fee difference at the individual CV level.

3. How might logistical concerns or limitations influence the sample design?

The committee suggested that NMFS observer program staff visit some fishing communities with small boat fleets in order to evaluate the logistical concerns with placing observers on these vessels. This information may feed into the sample design for the small boat and halibut sectors. The committee emphasized that the variability in size, operations, and area within these small boat sectors make a standardized sample design improbable. One member noted that not only is it logistically difficult, but adding an observer takes away from space designated for crew, and there may not be space to bunk an observer on overnight trips. One member related that it may be reasonable to determine that some segment of the fleet should not be required to carry observers. Another member noted that other programs and regions have extensive experience deploying observers on small boats (e.g., Alaska Marine Mammal Program), and the North Pacific observer program can learn from their experience.

Staff has noted that the current intent is not to wholly exempt a segment of the fleet based on vessel size, but some segments may have a different probability of having to carry an observer. In addition, the great majority of the catch in small boat fisheries is landed by a relatively small portion of the fleet – this is the population on which NMFS should focus. NMFS will continue to work on refining the <100% stratum, specifically with respect to the <60' and halibut sectors. The practical reality of some of these issues is that it may force a change in sampling design (i.e., it may warrant accepting some increased variance). NMFS intends to meet with several halibut vessel representatives to discuss logistical concerns.

4. Payment of fees for deliveries that occur outside of Alaska

Committee members asked whether shoreside plants located outside of Alaska that receive deliveries from fisheries included in restructuring would be required to collect and remit observer fees to NMFS. Staff noted that in the original research plan, any processor receiving fish from research plan fisheries was required to collect and remit the fees. That authority extends to Washington and other U.S. ports, but not likely to international ports. Staff committed to adding discussion to the implementation plan describing this issue.

5. USCG safety regulations and the safety decal

Representatives of the halibut and small boat fleets expressed concern with the need to get a USCG safety decal prior to carrying an observer. Currently, while vessels must comply with USCG safety regulations, they are not required by the USCG to have a decal. The primary burden related to the safety decal is the difficulty in complying in a remote location, where it may take weeks or months to schedule the re-inspection by the USCG to prove compliance. Other concerns relate to the potential for increasing the threshold for safety regulations by adding another person (observer) to the vessel. One member noted that in the Alaska Marine Mammal Program, the USCG provided inspections and decals to small skiffs, with adjusted safety requirements. This member reported that the USCG was very efficient at providing inspections in small, remote villages.

6. Hybrid issues – vessels that have trips that cross over between Gulf and BSAI

The discussion highlighted that these issues may need to be further explored in the implementation plan. Staff undertook a preliminary evaluation and found that about 1% of the total catcher vessel trips crossed areas in 2008. The committee questioned how many individual vessels that included, and whether there are logistical concerns for vessels that operate in two areas under two different fee programs. Several members expressed that it does not appear to be a significant issue, and separate fee programs by area are only applicable under Alternative 2. Staff committed to providing further discussion in the analysis.

7. Timeline for contracting process & the advantages/disadvantages of the contract approach

Observer providers asked about the timing of the task orders that would result after the contract is awarded. NMFS related that they can issue task orders the same day the contract is issued, under the proposed ID/IQ contracting system. Observer providers cautioned against establishing task orders of short duration (e.g., one year), as they require significant time and effort to prepare and bid on contracts. NMFS also noted that it is not preferable to award such a sizeable contract to only one provider, but it is not possible to speculate on the number of contracts until the scope of the restructured program is determined. NMFS would attempt to reduce risk by using more than one provider.

One member also related that while the advantages of the contracting system are well described in the implementation plan, the primary disadvantage is the increased industry cost of changing the service delivery model and invoking the Service Contract Act. In addition, any mandated coverage levels (100% or 200%) will take priority for coverage generated by a fixed funding pool; thus, high coverage levels may come at the expense of coverage in the remaining (<100%) fleets. These cost/benefit issues will be the focus of the regulatory impact review in the analysis.

8. Transmission of observer data

One member emphasized that, while not directly related to restructuring, it is important to enter observer data into the NORPAC system on a timely basis. In a short fishery, and/or one that is PSC-limited, observer information needs to be available as soon as possible. Examples noted were the GOA shoreside fleets (with the exception of the rockfish pilot program), in which observer data is faxed to NMFS and the data is manually entered. On virtually all CPs, the observer enters data while onboard the vessel and it is transmitted directly to NMFS. It was recommended that NMFS work toward a more uniform electronic data system, with observers trained to submit information quickly. NMFS noted that agency control over all of the hardware (e.g., observers having their own laptops) would provide more consistency.

9. Is there a formal mechanism by which the Council can provide input on which tasks/activities can be funded by industry fees?

NMFS presented a table which outlines the tasks or activities associated with the observer program for which NMFS has the authority to use industry fees, and whether NMFS intends to use industry fees to cover those tasks. NOAA GC reviewed this list, and it is based upon an interpretation of the broad authority granted in the MSA, to be able to use industry fees for stationing observers and inputting

collected data, or toward other costs directly incurred in carrying out the plan. Members were concerned that even if the Council agreed with the list of tasks that NMFS intends to fund in a restructured program, NMFS could modify that list in the future without consultation with the Council.

As NMFS has the authority to modify the list of tasks as determined necessary without Council action, it is important for the Council to build a record and provide statements of intent such that high levels of NMFS management support the original approach. The agency typically consults the Council on major decisionmaking, but the Council cannot drive budget decisions. One option would be for the Council to request that NMFS provide a periodic report, outlining how fee monies are disbursed.

10. Enforcement issues

The committee discussed whether enforcement tasks/costs needed to be added to Table 2, as several of the alternatives may require increased enforcement (e.g., fee collection; increasing observer coverage into segments of the fleet that have not previously been covered; administrative costs). Staff noted that the agency costs of each alternative, including enforcement, would be a separate section in the analysis. NMFS would most likely have to fund increased enforcement costs, as opposed to using the industry fee.

11. Does NMFS have hot-spot observer coverage authority under the current program?

The OAC asked whether NMFS currently has 'hot-spot' authority to place observers on specific vessels if necessary. Current regulations at 50 CFR 679.50 provide the Regional Administrator with this authority, for vessels and processors that are already required to have observer coverage under the current regulations. Thus, this authority does not extend to the halibut sector or <60' groundfish sector. Members noted that if Federal funding was available, the RA could increase observer coverage on the Gulf 30% fleets. A blanket increase in observer coverage levels does not meet all of the data quality objectives of restructuring, however, as coverage still would not follow a scientifically based sampling plan, with a vessel selection process designed to reduce bias.

The public was also provided an opportunity for comment at the meeting. Several members of the halibut sector discussed the need for alternative processes for vessels that are not suited to carry observers, as well as the concern with obtaining a safety decal prior to carrying an observer. One member noted that NMFS should be cognizant of the actual safety requirements that the decal represents on small boats. The public also endorsed community outreach prior to implementation, such that fleets could provide input necessary to the agency. One member related that his fleet was concerned about further consolidation within the halibut fleet, if vessel owners find it is too costly to carry an observer.

V. Scheduling and other issues

The committee reviewed the timeline for implementation (Section 6 of the implementation plan), which details the Council, rulemaking, and contracting timeline associated with observer restructuring. Council initial review of the overall analysis, of which the implementation plan will become a part, is tentatively scheduled for June 2010. Council final action is tentatively scheduled for October 2010, with the associated rulemaking developed through 2011. Contract development for a contract of this projected scope is about two years to completion, with the potential implementation of a newly restructured observer program in 2013. A key issue for the implementation schedule will be determining when start-up funds will be available to initiate contract task orders.

The OAC recommended convening again in late May 2010 to review the initial review draft analysis, prior to the Council's review in June. The committee noted that fleshing out issues early in the analytical process would increase the likelihood of having final action in late 2010.

Polar Star, Inc.

Patrick J. Pikus, President
P.O. Box 2843 Kodiak, AK 99615
907-486-5258 pikus@acsalaska.net

February 2, 2010

Eric Olson, Chair
North Pacific Fishery Management Council

RE: Agenda item C-2, GOA Observer Program Implementation Plan

Dear Chair Olson:

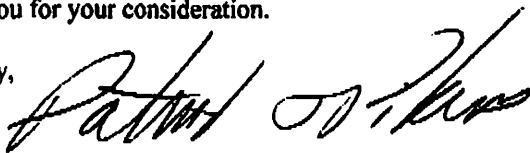
I own and operate the 58-foot F/V Polar Star, which fishes for salmon, sablefish, P-cod, halibut and Tanner crab here in the Gulf of Alaska. I am greatly concerned about the impacts of bottom trawling on the stocks of halibut and Tanner crab in the GOA. In particular, I believe that bottom trawling may be having a severe impact on the Tanner crab stocks on the eastside of Kodiak Island. The current observer program does not provide for an adequate level of observer coverage, and the flaws in its design permit vessels to effectively game the system, resulting in underreporting of the actual PSC catch levels. For these reasons, I support the Council moving forward as quickly as possible with a plan to restructure the GOA observer program.

I believe that the design of the current observer program is flawed. Here in the Gulf of Alaska, the bulk of the trawl fleet is supposedly observed for 30% of their fishing days. This 30% observer coverage is supposed to represent an accurate sampling of trawl catch, including their directed species as well as incidental catch of secondary species and prohibited species. However, because halibut PSC caps can limit the trawl fishery, many in that sector game the observer system in an effort to mask their actual PSC bycatch levels when truly targeting the directed species. This is accomplished by having observed catches occur in non-representative areas and at non-representative times (see pg. 37 of *Implementation Plan: North Pacific Groundfish Observer Program Restructuring*). That this gaming occurs is common knowledge on the dock, and has been attested to by observers, from time to time. Thus, I believe that the actual level of trawl catch that is observed is significantly less than 30%, and the actual level of PSC catch is much higher than reported. This has got to stop.

The implementation plan under discussion at this meeting represents a good first step in addressing the problems in the observer program. Ideally, the groundfish fishery in the Gulf would be 100% observed as it is for most of the BSAI fisheries. In the absence of 100% observed coverage, there will always exist the potential for gaming the system. I urge the Council to move forward with observer program restructuring, but I would argue that the following two points should be priorities when developing the restructuring plan: (1) the actual, effective level of observer coverage should be increased to at least 50%, and (2) the program should be designed such that it prevents opportunities for participants to game the system and misrepresent what their true PSC catches are.

Thank you for your consideration.

Sincerely,



Patrick J. Pikus
Polar Star, Inc.

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SINCE 1914
February 2, 2010

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

Dear Chairman Olson:

As a member of the reconstituted Observer Committee, and also as a member of the previous Observer Committee, there have been persistent comments about inadequate observer coverage in the Gulf of Alaska. This concern includes lack of coverage on the halibut fleet, the under 60-foot trawl fleet in western Alaska, and the trawl fleet out of Kodiak.

There have been statements of concern by NMFS representatives at the different observer committee meetings to these holes in the observer program but also from the unions that represent the observers. The members of the Fishing Vessel Owners' Association are pleased at the recent progress of the Observer Committee and hopefully, the Council may take final action on amendments to the observer program in October of this year. However, it seems like a long time between now and possible implementation in 2013/14.

It came to the attention of the Observer Committee last week that NMFS does have the authority to place observers on the over "60 foot" fleet in order to resolve the lack of data where problems may arise. The members of FVOA request the Council to ask NMFS to deploy some observers on the fleets mentioned in 2010. If this means that NMFS would like to place some observers on the over 60' longline halibut fleet, please let us know and we will assist. The over 60' trawl fleet out of Kodiak has been identified by both the observer union and representatives of NMFS as a potential problem area for coverage.

Sincerely,



Robert D. Alverson
Manager

RDA:cmb

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-2 Observer Program

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 Bob Alverson	FVOA-Seattle
2 Michael Calko	AOI
3 Jeff Farvor / Julianne Curny	ALFA / PVOA
4 Paul Mac Gyer	AT-Sea Processors Assn.
5 David Polushkin	K-Bay Fisheries Assoc.
6 Julie Benny	A&D B
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

2/12/10

Testimony from Michael LAKE

Alaskan Observers, Inc.

Thank yous - Council, Staff, Public and Mr. Lloyd

I believe the staff has created a great argument for a restructured observer program with this document. As I have testified before this Council over the years, my support for a comprehensive restructured observer program covering both the Bering Sea and Gulf of Alaska has not wavered, that is until now. I say this because this document lays out a compelling argument to restructure the Gulf but not the Bering Sea. It is my understanding that approx. 87% of all groundfish caught in the Bering Sea is observed, combining both at-sea and shoreside sectors. In 2011 after Am 91 kicks in that number will rise to approx 95%. Taking those numbers into account, I would say that the Bering Sea has a very comprehensive Observer Program. However, in the Gulf of Alaska it is my understanding that only approx. 16% of all groundfish caught is observed. Of course my numbers are not official but close enough for this exercise. I would submit that that does not equate to a comprehensive observer program. I believe and have experienced first hand that observer coverage manipulation is still rampant in the GOA, and is more likely the rule than the exception. And of course the under 60 fleet and Halibut fishers have 0 coverage. Through this review process for the implementation plan I've learned that a analysis of bias in the current program has been completed and I would like to ask this council to request the results of this analysis from NMFS and that it be provided to the OAC sooner rather than later. I understand it may be incorporated in the analysis due in June if requested by the council but since its ready now I'd like to request that the OAC receive it sooner than that. I see this bias as a very serious issue that really hasn't been understood as well as it should be. I also believe that the bias issue is not necessarily just a 30% vessel coverage issue

i.e. "gaming the system" but a huge issue with the under 60 fleet. As an example between Jan 1 and Jan 31, 2010, just last month, the Central Gulf P-cod trawl fishery was prosecuted by more than 70 vessels. It is my understanding that all these vessels were under 60 feet and as such absolutely no observer coverage was provided because there is no regulation allowing coverage for these vessels. To compound that lack of coverage is the fact that none of this fish is observed at the plant either. This is due to "sorting at-sea" for this fleet. So zero, zip, not one minute of observer coverage during the prosecution of more than 2K metric tons of p-cod in the Central Gulf. This is disturbing if nothing else. And I believe its just this type of thing that calls for a complete restructuring of the observer program called for under Alt #3. Having said this I'd like to know if theres a way to get NMFS some type of authority, between now and any restructuring, to place observers on these vessels to at least try and stop some of this bias?

I'd also like to ask the council to task the staff with a viable plan to getting every observer a lap-top as soon as possible. This is a very important issue as real time information needed for a short fishery or one that is PSC limited is critical to the managers and fleet and lap-tops would facilitate the transmission of observer data in real time and speed up the assimilation of the data into the system instead of faxing the data and inputting it mechanically.

I'd also like to encourage the council or if directed by the council the OAC to be involved on an ongoing basis with any restructured program on at least an annual basis. I think this will allow for transparency if nothing else but should also be a way to ensure that we're getting our biggest bang

for the buck.

And finally, while I currently support Alt 3, I think there may be a better way to achieve the coverage necessary to do away with bias in the Gulf. It would be cheaper/more cost effective and give the service all the flexibility they are looking for regarding the placement of observers where and when they want than creating an expensive, slow, burdensome bureaucracy. It could be fee-based or perhaps an earmark similar to the earmarks of \$3 million each for the New England and Hawaii observer programs. It could be more efficient for NMFS if used properly and could actually lower the potential fees that will need to be charged to industry if fee-based. This alternative is called the "Observer Cadre". There is a precedent for this as there's been a Cadre before although what ever happened to them is still a mystery to me. I submit that this should be an alternative say #6 that needs to be given due diligence just as the 5 current alternatives have been. I have brought this up to both industry and some NMFS staff and been fairly well rec'd. If the council considers this "new" alternative then I would ask that the OAC be involved with fleshing out the pros and cons of how a Cadre would look and what their tasks would be. I would also want to be sure that it does not come at the cost of current NMFS obs. Program tasks such as training/briefing/debriefing or any other task that would hinder the current efficiencies that are in place. Council oversight would be critical to ensure this. As I said earlier it would address the issues, all of them, and could potentially be done in a much shorter time frame than the current schedule any restructuring is

on.