


MEMORANDUM

TO: SSC, AP and Council Members

FROM: Chris Oliver 
Executive Director

ESTIMATED TIME 6 HOURS

DATE: October 1, 2009

SUBJECT: Observer Program

ACTION REQUIRED

- (a) Receive report on EFP for Phase 2 of GOA Electronic Monitoring project
- (b) Review Implementation Plan for Restructuring the North Pacific Groundfish Observer Program; review Observer Advisory Committee report; action as necessary

BACKGROUND

- (a) Receive report on EFP for Phase II of GOA Electronic Monitoring project

During 2007, a pilot study was conducted to determine whether electronic monitoring (EM) could be used to improve estimation of halibut discards in the Central GOA rockfish fishery (Phase I study)(Bonney and McGauley, 2008). Based on results from a single vessel in an experimental setting, the study indicated that EM had the potential to produce more reliable and precise estimates of halibut discards when compared to current observer sampling methods. However, the study stressed that performance of an EM system in a commercial environment could be quite different and recommended further research into its broader utility. Specifically, the Phase I study was unable to: reasonably assess costs associated with large-scale EM under different regulatory scenarios; determine the extent to which different vessel configurations, sizes, and fishing methods would impact the practicability of EM; investigate the flow of data from an EM system at sea to data available for the management of actual quotas; and investigate the extent to which vessel crew would cooperate with the required halibut discard-only policy necessary for accurate halibut accounting.

The Alaska Groundfish Data Bank, in cooperation with NMFS, developed a Phase II project under an EFP to qualitatively investigate these outstanding questions. The Phase II project was completed during the 2008 rockfish pilot project fishing season, and the Council is scheduled to review the project report at this October Council meeting. The report was mailed to the Council on September 14.

- (b) Review Implementation Plan for Restructuring the North Pacific Groundfish Observer Program; review Observer Advisory Committee report; action as necessary

The existing North Pacific Groundfish Observer Program (Observer Program), in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. Vessels and processors contract directly with observer providers to procure observer services to meet coverage levels in regulation. In the past several years, the Council, NMFS, and the Observer Advisory

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

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

In December 2008, upon review of a discussion paper,¹ the Council initiated a new observer restructuring analysis (EA/RIR/IRFA), with a revised problem statement and suite of alternatives. The December 2008 Council motion is attached as **Item C-3(1)**. The Council motion specified that the analysts first work on a description of how NMFS would deploy observers under a restructured observer program (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.

NMFS and Council staff developed the implementation plan over the past several months, and it was sent to the Council on September 14. The OAC met in Seattle on September 21 – 22 at the Alaska Fisheries Science Center, with the primary purpose of reviewing and providing feedback on the implementation plan. The OAC report is attached as **Item C-3(2)**. Note that the OAC was reconstituted in June 2009; membership is listed on the front page of the OAC report.

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

Council Motions on Groundfish Observer Program December 15, 2008

Motion on C-5(a)

The Council tasks staff to prepare an initial draft analysis of alternatives to restructure the observer program, with the following guidelines:

1. The problem statement would be modified as follows (additions are in bold and underlined):

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

2. Revisions to the alternatives as recommended in NMFS's December 3, 2008, letter that would:
 - (i) remove Alternative 2 from the 2006 analysis, and
 - (ii) add an alternative for a comprehensive fee-based system.

With these revisions, the alternatives that would be analyzed are:

- Alternative 1. Status quo; continue the current service delivery model.
- Alternative 2. GOA-based restructuring alternative. Restructure the program in the GOA and include all halibut 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 the BSAI.
- Alternative 3. Coverage-based restructuring alternative. Restructure the program for all fisheries 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 with 100 percent or greater coverage would pay a daily observer fee and vessels 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 in the groundfish and halibut fisheries in the GOA and BSAI.

3. The initial draft analysis will include:
 - (i) the extent to which each alternative addresses the problem,
 - (ii) costs and other impacts on the industry, and
 - (iii) costs and impacts of the alternatives on NMFS.
4. The Council requests that analysts work first on a description of how NMFS would deploy observers under a restructured observer program (an implementation plan). Analysts will then meet with the OAC to solicit their input on this part of the analysis before the initial draft analysis is completed.

Motion on C-5(b)

The Council requests that NMFS proceed with development of a proposed rule to make the observer coverage requirements for catcher/processors using hook-and-line gear in the CDQ fisheries consistent with observer coverage requirements for catcher/processors in other rationalized fisheries. This proposed rule would not come back to the Council for further review before being published in the *Federal Register*.

Motion on Observer Advisory Committee

The Council approved a motion to reconstitute the Observer Advisory Committee, and to consider including a representative from the <60' sector and a representative with electronic monitoring experience or expertise. The intent is to solicit proposals for the entire committee in the December Council newsletter, and consider whether to replace the Chair of the committee with a current Council member.

**Observer Advisory Committee – Meeting Report
September 21 - 22, 2009**

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

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

Council and NMFS Staff: Nicole Kimball (NPFMC), Martin Loefflad (AFSC), Brandee Gerke (AKR), Alan Kinsolving (AKR), Craig Faunce (AFSC), Lisa Thompson (AFSC), Jennifer Cahalan (AFSC), Jerry Berger (AFSC), Patty Burke (NWFSC), Susan Auer (NOAA GCEL), Tom Meyer (NOAA GC), Sue Salvesson (AKR), Bob Maier (AFSC), Sally Bibb (AKR), Jennifer Mondragon (AKR)

Other participants: Stacey Hansen (NWO, Inc), Tim Carroll (Saltwater, Inc), Gregg Williams (IPHC), Jan Jacobs (American Seafoods), Alana Branson (observer), BM1 Berry Spivey (USCG), Troy Quinlan (Techsea International), Jason Anderson (Best Use Cooperative), Jim Hamilton (Ocean Peace), George Hall (Rondy's Inc), Mary Schwenzfeier (ADF&G), Karla Bush (ADF&G), Stefanie Moreland (ADF&G), Glenn Reed (PSPA), Dave Benson (NPFMC)

Agenda

- I. Review and approve agenda
- II. Review December 2008 Council motion on restructuring
- III. Review NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)
- IV. Review timeline for implementation
- V. Review report on EFP for Phase II of GOA electronic monitoring project
- VI. Discuss feedback and/or recommendations on the implementation plan
- VII. Scheduling & other issues

Summary of OAC recommendations

- The OAC recommends that the Council clarify under Alternative 2, whether the <60' BSAI groundfish sector: is included under the ex-vessel value fee program; is included under the existing pay-as-you-go program; or continues to remain exempt from observer coverage.
- The OAC recommends that the language of the alternatives be revised to reflect that shoreside processors are included under the restructuring alternatives (Alternatives 2 – 5).
- The OAC recommends further development, discussion, and expansion of several sections of the restructuring implementation plan, as outlined in Section VI of this report.
- The OAC recommends that staff revise the implementation plan according to the requests outlined in Section VI of this report, for review at the February 2010 Council meeting. The OAC recommends convening prior to the February Council meeting to review the revised document, recognizing that the implementation plan will eventually be folded into the overall analysis.

I. Review and approve agenda

The agenda was approved, with one addition by a committee member (Bob Alverson) to discuss a possible logbook requirement for the <60' groundfish sector. This agenda item was scheduled after the EFP report. The Chairs also noted that discussion would be primarily limited to committee members, with comment time provided for the public. The committee would not operate by vote, as the purpose of the

meeting is to voice ideas and concerns regarding the NMFS implementation plan for restructuring the observer program. The first day was devoted to presentation of the implementation plan and limited to clarifying questions. The second day of the meeting was devoted to reviewing the EFP report and providing feedback, discussion, and recommendations on the implementation plan.

II. Review December 2008 Council motion on restructuring

Staff reviewed the December 2008 Council motion, which requested that an implementation plan be developed as the first step in a new observer program restructuring analysis. The Council motion also directed the OAC to convene and provide feedback on the implementation plan, prior to the Council's review in October 2009.

III. Review NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)

NMFS staff (Brandee Gerke, Martin Loefflad, Tom Meyer, Bob Maier, Craig Faunce) provided a detailed presentation of the implementation plan. This included review of the Council's problem statement, the differences between the alternatives, and the factors that led to a new restructuring initiative, such that the committee could understand the overall context for the implementation plan. As noted above, the committee limited its questions to clarifications, with the intent to review the most significant clarifications, questions, and concerns on the second day of the meeting (agenda item VI).

IV. Review timeline for implementation

The committee reviewed the timeline for implementation within Section 6 of the implementation plan and using a Gantt chart (handout), which details the Council, rulemaking, and contracting tasks associated with a contracted model for 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.

V. Review report on EFP for Phase II of GOA electronic monitoring project

Julie Bonney (Alaska Groundfish Data Bank) and Alan Kinsolving (NMFS AKR) presented the report on the EFP for Phase II of the GOA electronic monitoring (EM) project. They summarized the rockfish pilot project as it started in 2007, allocating rockfish, Pacific cod, and sablefish quota, and halibut PSC. Generally, quota species are landed shoreside, while halibut must be discarded at sea. Observer coverage increased from 30% to 100%. The purpose of the initial (Phase I) project was to determine the feasibility of using EM to monitor discards of halibut at a single point, and estimate the number and lengths of discarded halibut by haul. All halibut were also measured before discard (census approach). Overall conclusions from Phase I: EM is possible to use for monitoring 100% retention requirements of quota species; there was no statistically significant difference between the census and EM discard estimates; and very few equipment failures. There was also no significant difference in the accuracy of EM measurements based on the time of day, number of halibut per haul, or reviewer-perceived image quality.

Phase II was intended to be conducted in a less controlled environment. Goals included: 1) determine whether EM would work equally well on a variety of different vessels; 2) evaluate time lags between vessel arrival and data availability; 3) assess costs for EM versus observers; and 4) determine whether vessel self-reporting could be used for immediate management needs. The project also attempted to

estimate per vessel cost savings or additional costs incurred by using EM (compared to human observers). The project included all four vessels in one cooperative (May 1 – Nov 15), and the vessels designed their own (removable) discard chutes, in order to determine whether it is important to have the same design replicated on each vessel. The presenters noted that EM can only work in a trawl fishery in a full retention environment (e.g., pollock, rockfish), where the only species being discarded is halibut, and all retained catch is accounted for at the processing plant.

The project resulted in several conclusions.

- EM appears to provide an accurate estimate of halibut bycatch on a variety of vessels, using a variety of chute designs. A total of 577 halibut were counted from 25 hauls, and the EM and census data agreed closely.
- The equipment failure rate was unacceptable, but deemed a technically solvable problem (e.g., changing the operating system from Windows, tightening the construction of the boxes, using newer boxes). Early in the project, they experienced a high equipment malfunction rate in the system control boxes (about 16% of haul data lost). After the boxes were replaced, there were fewer problems. Only one camera failure occurred.
- The data availability time lag for discarded halibut is an issue that requires further work, and NMFS is initiating a contract to evaluate an automated data review system.
- Generally, EM costs decline the longer a vessel spends fishing. EM may be less costly than human observers, depending on the economy of scale and cost effectiveness of halibut accounting, but it is unknown yet whether EM can be used to replace observers on vessels in this fishery. The conclusions regarding costs were qualitative in nature, due to the multiple assumptions that were necessary.
- EM support needs to be local in order to address equipment support, data time lag, and cost considerations.
- Vessel self-reporting also proved to be an issue that necessitates additional research before it could be considered a management tool. Skipper tallies were clearly different compared to EM estimates (e.g., the number of large halibut was underestimated by approximately 10%).

Also discussed was an industry proposal for a possible regulatory structure for EM in this context. The EM project requires: 1) NMFS-approved EM system equipment provider; 2) EM system verification; 3) a local EM data management provider; and 4) EM infrastructure support to manage, store, back-up, and archive EM data. NMFS could be responsible for the last task, but the remainder could be contracted privately, in order to retain flexibility. In sum, the best approach for implementing EM could be through an annual EFP process (similar to the Pacific whiting fishery), and not through Federal regulation. Using service providers is most likely a lower cost option than having NMFS implement EM in-house, and costs should decline as the number of vessels participating increases and the technology improves.

In addition, EM necessitates a high level of cooperation from vessel operators and crew, and it is clear that operators do not like having video on vessels, even if the data is improved. Vessel owners must see cost savings in order to accept EM.

The committee questioned whether the majority of images were sufficient to identify and measure halibut. Most images were sufficient, and the removal of poor images did not affect the overall estimates of halibut discards. The committee was also interested in the confidence of an automated data review system versus human review. It has potential to be more accurate, as the automated system can correct for split images, bending of the halibut, etc, but this must be investigated in future projects.

The committee also questioned how NMFS OLE would enforce a violation, and how any regulations would be structured. The presenters noted that NMFS OLE was involved throughout the process and there are several enforcement issues.

In sum, the committee was appreciative of the presentation and interested in next steps. Phase III is tentatively planned for the end of 2010. It will likely include goals of improving the skipper tally (self-reporting) approach, and comparing an automated data review system to manual review. Julie noted that the restructuring analysis should be forward-thinking in how one might incorporate EM in the future. For example, Alternative 3 may allow the use of EM in the 100% or greater covered fleets, as those participants would remain under the current (pay-as-you-go) service delivery model, which may increase motivation to incorporate EM for cost savings.

Logbook program for <60' groundfish vessels (addition to agenda)

Bob Alverson suggested implementing a logbook program for the <60' groundfish fisheries (similar to that in place by the IPHC for halibut). It may not be essential for restructuring, but would complement several of the restructuring alternatives and could potentially be used as an enforcement tool. One could consider establishing metric tonnage criteria as well, and require only those that meet the criteria to fill out a logbook. If observer coverage is going to be required on <60' groundfish vessels in the future, NMFS could use the logbook to compare with observer estimates. Some members questioned the purpose of the logbook data, but generally supporting assessing whether a logbook component should be required under restructuring. NMFS responded that staff could discuss the possibility of logbook requirements for the <60' groundfish sector in a future iteration of the implementation plan, and noted that observers currently report some data directly from logbooks. NMFS noted that the utility of logbooks greatly increases when they are reported electronically, as the data are then readily available to staff.

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

The committee focused on its most significant questions or clarifications, and provided recommendations on each section of the implementation plan.

Section 1: Introduction and alternatives

The committee asked for clarifications on Alternative 2 regarding the <60' groundfish sector. While it is clear that the halibut sector is included in both the GOA and the BSAI, it is unclear whether the <60' groundfish sector is included, and if so, under which fee system. **The Council should clarify under Alternative 2, whether the <60' BSAI groundfish sector: is included under the ex-vessel value fee program; is included under the existing pay-as-you-go program; or continues to remain exempt from observer coverage.**

The committee also requests that the language of the alternatives be revised to reflect that shoreside processors are included under the restructuring alternatives (Alternatives 2 – 5), as it is assumed that that was the Council's intent (see pp. 8 - 9 of the implementation plan for suggested language). The committee requests that the implementation plan be expanded to evaluate the inclusion of shoreside processors, as the plan is currently focused on vessels. The committee also requests that the implementation plan provide further rationale for the 50-50 split of the fee assessed on shorebased CVs and shorebased processors, if available. The implementation plan notes that this was the split proposed under the Research Plan and the 2006 analysis, and is thus used as precedent. Both sectors would receive observers under the fee program, and both sectors benefit from the data collected on the fishery. The current plan does not propose to regulate the 50-50 split, but outlines the intent. The committee also requests that staff develop a table that shows which sectors are covered under a particular fee system by alternative, including shoreside processors and assuming that BSAI Amendment 91 is effective.

Section 2: Implementation plan framework

Assumption 1. The committee asked for clarifications on Assumption 1, which outlines the scope of the restructured program with regard to fisheries in State waters (parallel fisheries and State managed fisheries). NMFS stated that the regulatory infrastructure would clearly state when a vessel is required to carry an observer. If a vessel has an FFP and is fishing in a parallel fishery, it must comply with the restructured program (i.e., pay the fee and carry an observer when required). If a vessel has an FFP and is fishing in the State managed fishery, it is not part of the restructured program. This differs from the status quo, as the current regulations do not differentiate between a parallel and State managed fishery with regard to observer coverage. Currently, a vessel’s coverage requirements are tied directly to whether it carries an FFP. If a vessel is carrying an FFP in a State managed fishery, its fishing days accrue toward the existing 30% observer coverage requirements. (The regulated 30% coverage requirement would no longer exist under a restructured program.)

Staff should expand the implementation plan to reflect this issue more clearly, and provide additional rationale as to why the restructured program proposes to make a clear distinction for State managed fisheries (i.e., no observer coverage under restructured program and no fee on those landings) that differs from the status quo (see table below). The implementation plan should also include additional information about proposed changes to the rules associated with surrendering an FFP in other amendments.

Current assumption regarding whether observer coverage/fee would be required

Fishery	FFP on vessel	
	No FFP	FFP
Federal waters	n/a	Yes
Parallel fisheries in State waters	No	Yes
State-managed fishery in State waters	No	No

One committee member asked that NMFS analyze the volume of harvest from State waters to assess whether it is a concern to exclude those vessels from the restructured program. Other members noted that it is a State jurisdictional issue, and while we can notify the Joint Protocol Committee of the status of observer program restructuring, we cannot require that they are included in the program.

Assumption 4. The committee requested clarification as to whether the Limited Access Privilege Program (LAPP) fee authorized under Section 304(d) of the MSA can be additive to the observer fee authorized under Section 313. Staff clarified that the current legal guidance is that they are not additive. The 304(d) LAPP authority can cover management/ administrative costs and observer costs, and the 313 authority only covers observer costs. If the 304(d) fee is used for stationing observers or inputting collected data, any additional fees collected under Section 313 must be credited against the observer fees paid under Section 304(d). Theoretically, the maximum fee that could be paid by vessels in a LAPP program is 5% of ex-vessel value, assuming that the entire 304(d) fee (maximum 3%) is devoted to administrative and management costs, and the entire Section 313 fee (maximum 2%) is assessed for observers. However, the maximum fee that could be assessed on vessels in a LAPP *for observer coverage and inputting collected data* is 3%. This assumes that the entire 304(d) fee is devoted to observer coverage and inputting collected data. The Section 313 fee authority could not be invoked on these vessels, as they are already paying the maximum fee under Section 304(d) for observer coverage.

It was also noted that due to the high levels of coverage mandated in LAPPs, LAPPs would operate at the expense of observer coverage in other (non-LAPP) sectors, if they were under the same ex-vessel value based fee program.

The committee also noted that the daily fee authorized under Section 313 can exceed the equivalent of 2% of the ex-vessel value, because it is based on actual costs. Members noted that under the status quo, there is also no guarantee that the cost of observers would stay below the equivalent of 2% of ex-vessel values, and in many sectors, it already exceeds that amount. The committee requested that staff expand this section to include specific examples of LAPPs, and a discussion of how the agency would interpret fees that could be assessed under the existing authorities.

Section 3: Funding considerations

Staff reviewed the process for acquisition of Federal funds. NMFS requested additional funding through the AFSC budget, starting with \$6 million in 2012, and an increased request (to account for inflation) in 2013 – 2016. This equates to a request of \$26 million over four years. This request is in excess of the current observer program budget, to help cover start-up costs for one year in advance of the program and fund new agency responsibilities.

Section 4: Implementing a restructured observer program¹

Limitation on use of fee proceeds (p. 11). Committee members noted that NMFS needs to better define what the fee proceeds can be used for in the implementation plan, as this was a significant concern in the original Research Plan. NMFS has begun to establish a record as to what is meant by ‘stationing observers’ and ‘inputting collected data’, thus, NMFS would develop a common sense approach to what those tasks mean, and a list of tasks was intended to be provided in the overall analysis. NMFS also noted that it does not intend to use fee proceeds to offset the current government contribution to the observer program, recognizing that fee proceeds would be used to procure and optimize observer coverage needed in Alaska. NMFS noted that the Council may want to establish a supporting record if it agrees with this intent.

Standardized vs. actual prices (p. 14). It was emphasized that it is common practice in fisheries to use standardized prices (see Appendix 3 of the implementation plan), and the implementation plan proposes using the same method employed by the Economic SAFE report (COAR data) to calculate standardized ex-vessel prices by area, gear type, and species. However, the committee requested significant expansion of this section, including a discussion of the current methods already in place to estimate ex-vessel values, and more thorough rationale for NMFS’ preference. The disadvantage to using COAR data is the time lag between when fish are landed and when data are available; this concerned several members, as a two-year time lag is expected before standardized prices from the COAR data are able to be applied to landings.

Committee members noted that one argument for actual prices is that actual value is reflected on a fishticket, although there are concerns with the consistency of these data. In order to develop a standardized price, one must look at the product mix from each sector as a result of the landings. The committee asked staff to assess whether the process proposed in the implementation plan is different from that used to assess the State of Alaska landings tax, which also uses standardized prices.

The committee asked how NMFS would budget for observer coverage given the volatility of prices from year to year. A rolling average of prices over a three to five-year time frame might be advantageous to smooth out fee proceeds/NMFS budget for deploying observers. Staff noted that applying average prices from prior years to current year harvest volumes may result in an excess of 2% of the ex-vessel value in a particular year. NOAA GC advised that the 2% cap is not specified on an annual basis in the MSA. Thus, it may be possible to build a record to use rolling average prices in combination with a control rule that ensures that the 2% fee is not exceeded over a specified time frame.

¹Page numbers in this section refer to the corresponding section in the October 2009 *Implementation Plan: North Pacific Groundfish Observer Program Restructuring*.
http://www.fakr.noaa.gov/npfmtc/current_issues/observer/ObserverRestr_impln909.pdf

Setting the fee percentage (p. 16). The implementation plan noted that the ex-vessel value fee percentage for observer coverage would be established and changed through proposed and final rulemaking. Unlike IFQ cost recovery fees, which are adjusted annually through a rule-related notice based on a closed framework that is pre-established in regulation. The narrow exception provided by the Administrative Procedure Act which allows for rule-related notice without comment requires that an action be entirely non-discretionary. Staff noted that a primary objective of restructuring is to increase NMFS' discretion in determining when and where observers are deployed. Observer deployment decisions directly impact program costs and associated fees. Thus, NMFS would need to establish the fee percentage through proposed and final rulemaking. Any subsequent adjustments to the fee percentage would also require proposed and final rulemaking. In addition, observer fees are intended to be collected in advance of expenditures, unlike the halibut/sablefish IFQ fee, for example, which is a cost recovery fee to recover agency costs that have already been incurred. The need for upfront funds makes frameworking more difficult. Committee members noted that the rulemaking process is often lengthy and would not likely be amenable to adjusting the fee percentage on an annual basis. Staff noted that the fee percentage may not need to be adjusted annually, but could be adjusted through a subsequent analysis and rulemaking if observer fee proceeds were exceeding or falling short of program needs.

Fee remittal process (p. 17). The committee had several questions regarding why catcher processors would be assessed a fee based on round weight of total catch, while catcher vessels would be assessed a fee based on round weight of retained (landed) catch. Staff noted that the proposal attempts to keep quota management and observer fee collection based on the same amount of fish; currently, total (observed) catch is debited from a CP's quota. In the catcher vessel sectors, NMFS wants to avoid applying a discard rate from one (observed) vessel to another (unobserved) vessel, which is negated by using landed catch.

Several OAC members related that the same method should be used for both the CP and CV sectors, whether retained or total catch, even if CV discards must be estimated in order to determine total catch. Some members noted that the proposed approach does not appear to pass the 'fair and equitable' criteria mandated by Section 313(b)(1)(B) of the MSA. Some committee members expressed concern about paying the ex-vessel value fee on unmarketable species. Staff noted that the fee percentage would be applied with standardized prices. Thus, there would be no fee for species without a standardized price.

One member noted that the calculation for the fee assessment on multiple species could be simplified if it was only assessed on target species. It may be worth evaluating whether this approach would generate sufficient fees for observer coverage.

Daily fee (p 20). The committee noted that the daily fee is not linked to the ex-vessel value based fee, as the daily fee is based on a vessel's actual observer days. Upon inquiry about the application of the Fair Labor Standards Act and Service Contract Act, staff noted that the FLSA and SCA apply under both an ex-vessel value based fee and daily fee. Staff also noted that other U.S. observer programs exist in which observers are compensated in accordance with the FLSA and SCA, but no other programs assess a daily observer fee. This was discussed in the December 2008 Council discussion paper, and was broken out by program. One comparison, for example, is the Alaska Marine Mammal Observer Program, which is subject to the same prevailing wage determination as that for groundfish observers. In this program, the observer *labor* costs are \$284.55/day to \$314.45/day, depending on the level of the observer. This excludes the non-labor cost component.

Staff specifically requested ideas from the OAC on how to generate start-up funding under a daily fee.

One member noted that the implementation plan would benefit from a discussion of which sectors will be assessed a fee that is subject to the FLSA and SCA, and which sectors are not, under each alternative. It was also emphasized that the implementation plan should clearly note that the daily fee would be assessed

on individual vessels and processors for individual observer coverage, unlike the ex-vessel value fee, which is assessed on and deploys observers in the collective.

It was also recognized that the only constraint under the MSA for a daily fee is the actual cost of stationing observers and inputting data, and that Alternative 4 is the only alternative that employs a daily fee. This alternative may provide a way to fund high levels of observer coverage (100% and 200%) on vessels under a LAPP, without taking away from the amount of observer coverage on (non-LAPP) fisheries that are assessed an ex-vessel value based fee.

Contracting process (p. 20). The committee questioned whether the plan attempts to maintain a specific number of observer providers. NMFS responded that there is no intent to limit the number of observer providers, but the contracted model would attempt to achieve the best mix of providers to complete the work. There are recognized advantages to maintaining active competition, including reduced costs and the increased likelihood that a sufficient number of providers are available for services in any given year.

Sample design (p. 27). The committee engaged in considerable discussion on the proposed sampling unit of trips (defined for a landing report as the period from when fishing begins to the time of delivery), and expressed general concern with using a one-size-fits-all approach to the sample design. Members suggested considering alternatives, including sectors (e.g., GOA Pacific cod hook-and-line); a longer period of time than a trip (e.g., an entire season in a particular fishery); randomization by vessel; or tonnage (e.g., must take an observer until a minimum tonnage is harvested). These alternatives were provided because many members were concerned with the ability to define a trip such that vessels could not 'game the system' by continuing to take 'observer tows or sets.' It was suggested that NMFS work with ADF&G on proposed sampling units.

It was also noted that NMFS needs to define the trip such that vessels could continue to make either partial or full offloads, as opposed to prohibiting a partial offload. NMFS needs to associate an observed trip with the offload from that trip, even if the offload is split between plants. It may be possible to have an observer to stay with the vessel for the entire offload, regardless of the plant at which the vessel is offloading. NMFS noted that it proposes to use anticipated catch in particular ports, by fishery, in order to deploy observers, but that those analyses have not yet been developed.

There was also substantial discussion on the proposed 72-hour call-in requirement, as some members viewed that timeframe as challenging and potentially constraining in quick turnaround fisheries. Alternatively, NMFS would need to know information from the fleet in advance to implement an adequate sample design. One alternative discussed was to have vessels register for specific fisheries in advance. The committee also requested further discussion in the implementation plan on contingency plans (i.e., what happens if a vessel calls in and an observer is not available within the prescribed 72 hours?). The committee suggested that the existing observer providers might provide insight as to an effective notification requirement. NMFS emphasized that the current iteration of the implementation plan is the first cut at defining a new system, and that the primary decision point was to determine which sectors would be in the <100% observer coverage tier, and which would be in the 100% or greater observer coverage tier. The implementation plan did not delve further into how to address deployment within the <100% observer coverage tier, and further work on this component was requested by the committee.

Finally, the committee asked whether additional thought had been given to how NMFS might further stratify different fisheries within the two primary strata: 1) trips that belong to a group of trips that will be censused in the 100% and 200% fleets, and 2) trips that belong to the group of trips that will be sampled in the <100% fleets. For example, whether halibut and sablefish should be stratified together, or BSAI trawl fisheries, etc. The committee also questioned the geographic units that would be used to define an

area within the strata (i.e., IPHC regulatory area, FMP area, Federal management area, state statistical area), and requested staff explore and/or discuss potential units in the implementation plan. NMFS noted that the geographic requirements in its current plan are very broad: BSAI versus GOA. In this design, the trip level selection of vessels would distribute coverage according to the fishing effort.

NMFS noted that each element needs to be independent in order to reduce the effect of behavior on data, and the designation of which strata each trip belongs to must be made based on observable characteristics that are known before the trip occurs. NMFS has not yet identified the design beyond the sampling unit (trip level) and the two primary strata, but was encouraged to work further with ADF&G and the observer providers.

Section 5: Relative agency costs associated with partial and comprehensive alternatives

Observer provider representatives on the committee did not see operational problems with a hybrid system, under which some sectors operate under a contracted model and some sectors continue under a regulated model. However, committee members noted that any issues resulting from a hybrid model are likely more severe under Alternative 2 than Alternative 3.

Section 6: Projected timeline

The timeline projected by staff tentatively schedules Council review of the overall initial draft analysis at the June 2010 Council meeting. The committee noted that because the implementation plan is a significant component of the analysis, it is worthwhile to revise the implementation plan and convene the OAC for a second review of the implementation plan as a distinct document.

Staff clarified that while staff could begin work on the overall analysis (EA/RIR/IRFA), the decisions in the implementation plan directly feed into the overall analysis. Significant changes to the direction of the implementation plan and/or alternatives could necessitate modifying the timeline and delay initial review beyond the June meeting. Committee members noted that the major components of the implementation plan (fees and sample design/observer deployment) need to be further fleshed out prior to developing the overall analysis. However, some portions of the overall analysis can be developed in tandem with the implementation plan.

VII. Scheduling & other issues

The OAC recommends that staff revise the implementation plan according to the requests outlined above, for review at the February 2010 Council meeting. The OAC recommends convening prior to the February Council meeting to review the revised document, recognizing that the implementation plan will eventually be folded into the overall initial review draft analysis.

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Anchorage, AK 99508

September 2, 2009

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N.P.F.M.C

Eric Olson, Council Chair
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501

Dear Chairman Olson:

In reading the "Observer Program Restructuring Discussion Paper, December 2008", I was moved to provide my comments on what restructuring means to me. The NPFMC Staff's discussion paper to Council was very informative and appreciated.

I am currently, and have been a groundfish observer for 19 years. I completed a Masters Degree in 1993, from the University of Washington, studying quantitative fish stock assessment.

The purpose of this letter is to ask council to reinstate observer program restructuring effort. I believe that restructuring will provide the following: 1) just and fair wages; 2) improved observer and program performance; 3) optimized overall data quality; 4) improved training; 5) improved retention of experienced observers; and 6) unbiased placement of observers to all vessels and processors. I close with my thoughts on a fair and equitable fee system to all vessels and processors.

The worth of an experienced observer was determined in 1997, by the Association of Professional Observers, at \$220 per day. At that time, 3 of 5 current observer providers entered collective bargaining agreements with the Seafarers Union. The 2 observer providers not in collective bargaining agreements with the union were startups since 1997.

From 1997 to 1998, top pay for an observer increased from \$105 to \$135 per day, with the expectation that \$220 per day would be reached within a few years. Now, 12 years later, we have at long-last reached the realm of \$220 per day, but this has been attained from just one observer provider and for only level 2 lead assignments where the observer is already at top pay. Our top pay is about \$200 per day for all other assignments. An end of year bonus for observers working at least 150 assigned days would add about \$7 to those daily figures. It takes about 5 years to reach top wages.

An Observer 2, as defined in the Department of Labor (DOL) job titles, was determined to be worth \$252 per day in the "Observer Program Restructuring Discussion Paper, December 2008". This is about a 1.2% annual gain in the observer's worth since 1997.

I believe that the productivity of a worker is linked to their wages. A worker deserves his wages (1 Tim 5:18). Wages are an obligation (Rom 4:4). Thus, my feelings are, that to optimize data quality within the observer program, not only does observer performance need oversight, but also, observer income, with a view to provide for fair wages. This oversight can be attained in a restructured observer program. I hope that observer wages and fringe benefits would be determined as guided by DOL, and not solely as contained in our current collective bargaining agreement.

Page 11 of the Council's restructuring discussion paper speaks of a restructured program allowing NMFS to match deployment complexity with observer skill. I think that under a restructured program there would be less of a need for this because, a well structured program would retain experience. I suggest dealing with complexity by focusing training on assignments slated for certain groups of observers. Under a restructured program NMFS would have better information on assignments for observers than currently, and up coming training classes and briefings could be tailored to meet those needs.

Some degree of easing new observers into the job could be used but, under the current state of the program, there are too many trainees for this to work for everyone. The least complex assignments are those that require less work, such as shore based processors and pollock boats. If these were to become the domain for new observers, then they would learn little of the more complex fisheries such as, trawl cod, longline, and the Kodiak catcher boat fleet.

If restructuring increases retention of experienced observers, then qualifications for level 2 and level 2 leads could be increased to standards suitable to the program's ability. As it is currently, an observer can be level 2 lead during their second deployment to sea. This highlights the drain on experience in the observer program; as experience decreases, inefficiency increases. If the program is restructured in a manner consistent with the worth of an observer, then there should be no shortage of experienced observers.

An ideology that helped unionize the observers was to retain experienced observers with the expectation of improving data quality. After the union was voted in, I saw a degree of reality in this dream. More recently, my observations are that observer retention is lower than it was 5-7 years ago. There is financial incentive for observer providers to hire new observers and trim down the pool of experienced observers. I see the high level of observer turnover as a cause for the professionalism or standards of conduct to wane among observers.

Due to shortages of level 2 lead observers, I have seen experienced observers held back from assignments or pulled from assignments to be replaced by new or less experienced observers so that, a level 2 lead could be placed in fisheries with more restrictive observer requirements such as, the CDQ longline cod fishery. This has caused

experienced observers to lose work but newer observers to gain work. This can discourage experienced observers from staying with the program. There is also an inherent bias in that better data might be collected for CDQ fisheries than for the applicable open access fishery.

Another source of bias is preponderances between observer providers. Examples include: one observer provider places observers almost exclusively on pollock boats; another provider has a higher proportion of longline vessels; another tends to have a higher proportion of new observers; another tends to have a higher proportion of experienced observers; and some providers have more work available to observers than other providers. These preponderances could exasperate themselves overtime, causing experienced observers to gravitate to certain providers. There would also be a tendency for observers working for one provider to repeat certain assignments numerous times. To deal with these biases within observer providers, I suggest that a restructured program consider placing observers to assignments randomly between all observer providers, to the degree practical.

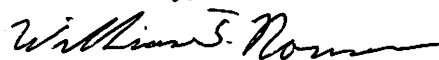
Finally, as noted in the problem statement of the discussion paper, smaller boats tend to pay a higher disproportionate cost for observers than larger vessels. If smaller vessels (i.e., the 30% sector) were charged an ex-vessel value, and the 100% and 200% sectors stayed on a pay-as-you-go system, then the larger vessels could end up paying less than if charged an ex-vessel value. There would still be a higher disproportionate cost to smaller vessels and solve nothing.

Another possibility might be that a 2% ex-vessel value charged to the 30% sector may not be enough revenue to place observers on all vessels in that sector. Then Council and NMFS might develop a statistically viable model for picking random vessels to carry observers, similar to what was done in the crab fisheries before rationalization. Thus, some of the vessel in the 30% sector might have an observer for an entire season, while others would have no observer at all.

Additional money for observer coverage might go to the improvement and upkeep of observer housing. Funds might also be used for observers to attend professional meetings, for vacation and holiday leave, health insurance, and pensions. A learning curve would be expected to ensure that revenues from industry or government would exactly match the direct costs of observer coverage.

I dream of the day when freshmen students at universities have hopes of becoming observers. My hope is that the restructuring of the observer program will move forward, improving the quality of the program and the quality of life for observers.

Honorably,



William T. Norman

cc: Tracey Mayheu, Union Representative
Robert D. Mecum, Acting Administrator of NMFS

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-3 Observer Program (a) + (b)

NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1 Michael LAKE	AOI
2 Tracey Mathew	UIW
3 Bubba Cook	WWF
4 Paul Mae Gray	At-Sun Processor
5 Todd Loomis	Cascade Fishing, Inc.
6 BRENT PAINE	UCB
7 JEFF FARVOUR	SELF
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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.

C-3 Groundfish Observer Program

The AP recommends accepting the problem statement with the following sentence added to the end: *“The restructuring of the observer program will, to the extent practical, allow fishermen to maintain current fishing patterns and business practices.”*

The problem statement as modified passed 19/0.

The AP recommends that the Groundfish Observer Program package be moved forward for additional development, incorporating the Observer Advisory Committee’s recommendations as outlined in their report. The AP also recommends the Council and NMFS conduct an outreach to the fleet during development of this analysis. Further, the AP recommends the Council consider development of alternative deployment methods for observers.

The AP amended the above motion in order to provide further clarification to the OAC, by adding an option under Alternative 2 that includes the <60 ft BSAI groundfish sector in the ex-vessel value fee program. *The amendment passed 18/1/1.*

The final motion as amended passed 19/0.

D-1(a) Chinook Salmon Bycatch Data Collection

The AP recommends the Council adopt the following Problem Statement:

Problem Statement

In April 2009 the Council approved Amendment 91 to the BSAI groundfish fishery FMP to reduce Chinook salmon bycatch in the Bering Sea pollock fleet. Under Amendment 91, the pollock fishery has the option of participating in a NMFS-approved Incentive Plan Agreement (IPA) to access a higher hard cap than is available in the absence of an IPA. The IPAs provide a new and innovative method of bycatch management. A data collection program is needed in conjunction with Amendment 91 to understand the effects and impact of the IPAs. The data collection program will focus on: (1) evaluating the effectiveness of the IPA incentives in times of high and low levels of salmon bycatch abundance, the hard cap, and the performance standard in terms of reducing salmon bycatch, and (2) evaluating how the Council’s action affects where, when, and how pollock fishing and salmon bycatch occur. The data collection program will also provide data for the agency to study and verify conclusions drawn by industry in the IPA annual reports. To ensure that a full assessment of the program is possible, the data collection program should be implemented at the time Amendment 91 is implemented or as soon as practicable.

To ensure that a full assessment of the program is possible from the start of the program, the data collection program should be separated into two phases, with a suite of data collection measures implemented at the time Amendment 91 goes into effect and sent to the Comprehensive Economic Data Collection Committee after IPAs have been fully developed and submitted to NMFS.

The motion passed 20/0.

The AP recommends that the Council move the analysis of the following alternatives forward for initial review:

Alternative 1

Status quo (existing data sources)

Alternative 2A

In addition to the status quo data sources:

1. Transaction data for salmon – quantity and price of transfers (survey will be used to determine whether these are arm’s length transactions).
2. Information regarding change in fishing grounds:
 - a. For both the original and new fishing grounds, the date, time, bycatch rate, location, and CPUE of tow.
 - b. Pollock quota remaining for harvest and salmon allowance remaining at time of event.
 - c. Time, distance, and use of fuel in searching for cleaner fishing grounds.

Alternative 2B

In addition to the status quo data sources:

1. Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm’s length transactions).
2. Information regarding change in fishing grounds:
 - a. For both the original and new fishing grounds, the date, time, bycatch rate, location, and CPUE of tow.
 - b. Pollock quota remaining for harvest and salmon allowance remaining at time of event.
 - c. Time, distance, and use of fuel in searching for cleaner fishing grounds.

Alternative 3

In addition to the status quo data sources:

1. Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm’s length transactions).
2. Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).
3. Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).
4. ~~Survey of roe quantity, quality, and revenues at the minimum level collected by the company (e.g., lot, trip).~~

Alternative 4

~~In addition to the status quo data sources:~~

- ~~1. Transaction data for salmon and pollock– quantity and price of transfers (survey will be used to determine whether these are arm’s length transactions).~~
- ~~2. Surveys to estimate costs of moving vessels to avoid salmon bycatch (vessel fuel use, transit time, and lost fishing time).~~
- ~~3. Post-season surveys of skippers to determine rationale for decision making during the pollock season (fishing location choices and salmon bycatch reduction measures).~~
- ~~4. Survey of roe quantity, quality, and revenues at the minimum level collected by the company (e.g., lot, trip).~~
- ~~5. Survey of daily vessel operating costs (labor, observer, etc.).~~

The motion passed 19/1.