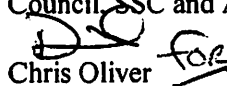


MEMORANDUM

TO: Council, SSC and AP Members  
FROM:   
Chris Oliver  
Executive Director  
DATE: February 1, 2006  
SUBJECT: Observer Program

ESTIMATED TIME  
4 HOURS

**ACTION REQUIRED**

- a) Initial review of analysis to restructure the funding and deployment mechanism in the North Pacific Groundfish Observer Program (BSAI Am. 86/GOA Am. 76)
- b) Review of Observer Advisory Committee (OAC) report

**BACKGROUND**

- a) Initial review of analysis to restructure the funding and deployment mechanism in the North Pacific Groundfish Observer Program

NOAA letter

As part of the review of the analysis to restructure the North Pacific Groundfish Observer Program (observer program), NOAA Fisheries will present a letter (**Item C-5(a)(1)**) regarding observer compensation issues and the status of observers with regard to the requirements for overtime pay under the Fair Labor Standards Act (FLSA) and the Service Contract Act (SCA). This issue was brought to the forefront in a memo from Dr. Bill Hogarth in November 2003, which stated that NMFS maintains that fisheries observers are biological technicians and therefore eligible for overtime compensation under the FLSA. NMFS recently reaffirmed its position that observers employed by companies which contract directly with the agency or use Federal funds for provision of observer services must apply FLSA and SCA criteria to determine observer compensation requirements.<sup>1</sup>

The NOAA letter outlines the ongoing concerns with not being able to provide a definitive assessment of observer costs under a new service delivery model. Costs may not be possible to assess until actual contracts between NOAA and observer providers are finalized. In addition, NOAA has not yet received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions. The NOAA letter also outlines the type of increased costs expected under any alternative other than status quo, as

<sup>1</sup>Memo from Dr. William Hogarth to industry groups, November 29, 2005. At the same time, Dr. Hogarth also sent a letter to the DOL requesting an interpretation of the applicability of the SCA and FLSA to fisheries observers employed by observer service providers that are either under contract with or permitted by NOAA Fisheries. This letter requests guidance in computing hours worked, geographical applicability, and the associated rules governing compensation of fisheries observers. Both letters are included in Appendix II of the draft analysis.

well as the need to ensure that funds are available to cover costs associated with oversight and management of a flexible, effective observer program. The existing observer program expires on December 31, 2007. NMFS recommends that during the time period in which uncertainties remain unresolved, the Council should consider selecting Alternative 2 (*indefinite extension of the existing observer program*) as the preferred approach under the current analysis.

#### Review of analysis to restructure the Observer Program

The Council has been working for several years to develop a new system for observer funding and deployment in the observer program. Under the new system, 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. The problem statement guiding the amendment identifies data quality and disproportionate cost issues resulting from the current program structure, in which vessels and processors contract directly with observer providers to meet coverage requirements fixed in regulation. 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 proposed amendment (**BSAI Amendment 86/GOA Amendment 76**) is thus intended to address a variety of longstanding issues associated with the existing system of observer procurement and deployment. The Council's Observer Advisory Committee (OAC) drafted a problem statement to guide the amendment, which is provided in the Executive Summary of the analysis (attached as **Item C-5(a)(2)**).

The existing Observer Program, in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. In designing the original program, the Council had limited options because the MSA did not provide authority to charge industry fees to pay for the cost of observers, and no Federal funds were provided. Because of the critical need for observers and the data they provide, the Council and NMFS proceeded with the Observer Program regulations (Amendments 13/18) that are largely unchanged today. These regulations were considered 'interim' at the time of implementation, as NMFS and the Council began to develop a new program (Research Plan) which would require all participants in the fisheries to pay a fee based on ex-vessel revenue from their catch, with NMFS contracting directly with the observer providers. Collection of the fee under the Research Plan was authorized by an amendment to the MSA (Section 313(b)(2)). The Council adopted this plan in 1992 and NMFS implemented the program in 1994. However, due to several concerns primarily related to observer costs to industry, the Council voted to repeal the program in 1995. The 1990 interim regulations continue to authorize the existing Observer Program today. These regulations have been extended several times, with the most recent amendment extending the program until **December 31, 2007**.

The alternatives under consideration in this amendment were developed through several Council and OAC meetings. In June 2005, the Council consolidated its suite of alternatives in order to eliminate redundancy between alternatives and better focus the analysis on the major policy issues facing the Council and NOAA Fisheries in developing a new groundfish observer program for the North Pacific. The Council approved the current suite of five alternatives in June 2005, and this is the first time the Council has reviewed an analysis of the revised alternatives. The proposed alternatives are as follows:

**Alternative 1. No action alternative.** Under this alternative, the current interim "pay-as-you-go" program would continue to be the only system under which groundfish observers would be provided in the groundfish fisheries of the BSAI and GOA. Regulations authorizing the current program expire at the end of 2007, meaning that no action is not a viable alternative over the long-term.

**Alternative 2. Extension of the existing program.** Under this alternative, the 2007 sunset date for the existing program would be removed and the program would be extended indefinitely with no changes to the service delivery model. By selecting this alternative, the Council would be deciding not to develop a new service delivery model and fee system to restructure the program.

**Alternative 3. GOA-based alternative. Restructured program for GOA groundfish and all halibut fisheries.** A new ex-vessel value fee program would be established to fund coverage for GOA groundfish vessels and processors, and halibut vessels operating throughout Alaska. Regulations that divide the fleet into 0%, 30%, and 100% coverage categories would no longer apply to vessels and processors in the GOA. Fishermen and processors would no longer be responsible for obtaining their own observer coverage. NMFS would determine when and where to deploy observers based on data collection and monitoring needs, and would contract directly for observers using fee proceeds and/or direct Federal funding. Vessels would only be required to carry an observer when one is provided by NMFS. Under this alternative, all groundfish vessels and processors in the BSAI would continue to operate under the current "pay-as-you-go" system.

**Alternative 4. Coverage-based alternative. Restructured program for all fisheries with coverage less than 100% (Tiers 3 and 4).** This alternative differs from Alternative 3 in that the program would be defined by coverage categories rather than geographic area. All vessels and processors assigned to Tiers 3 and 4 (i.e. that require less than 100% coverage) would participate in the new program throughout Alaska. Generally speaking this alternative would apply to all halibut vessels, all groundfish catcher vessels <125' LOA and all non-AFA shoreside processors. All vessels and processors assigned to Tiers 1 and 2 (100% or greater coverage) would continue to operate under the current "pay-as-you-go" system throughout Alaska.

**Alternative 5. Comprehensive alternative. Restructured program for all groundfish and halibut fisheries off Alaska.** This alternative would establish a new fee-based groundfish observer program in which NMFS has a direct contract with observer providers for all GOA and BSAI groundfish and halibut vessels in the Federal fisheries. Under this alternative, vessels with 100% or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100% would pay an ex-vessel value based fee. . The February 2006 Council meeting represents the first time the Council has been presented a draft analysis using the recently revised suite of alternatives and options.

**The Council's action at this February meeting is to review the initial review draft of the analysis.** The executive summary of the draft analysis, which includes the suite of alternatives and a list of primary decision points, is attached as **Item C-5(a)(2)**. The analysis was sent to you on January 24. Final action is tentatively scheduled for the April 2006 Council meeting.

b) Review of Observer Advisory Committee report

At the Council's request, the OAC met to review the draft analysis on January 30 - 31 at the Alaska Fisheries Science Center in Seattle. Because of the timing of the OAC meeting, the report will be provided at the Council meeting.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

*January 22, 2006*

Item C-5(a)(1)

Ms. Stephanie Madsen, Chair  
North Pacific Fishery Management Council  
605 West 4th Ave., Suite 306  
Anchorage, AK 99501-2252

Dear Madam Chair:

During the last several months, staff from the Alaska Regional Office, the Alaska Fisheries Science Center and the North Pacific Fishery Management Council (Council) have prepared an analysis of the five alternatives for restructuring the North Pacific Groundfish Observer Program (NPGOP) that were identified by the Council at its June 2005 meeting. This analysis will be presented to the Observer Advisory Committee (OAC) at its January 2006 meeting and carried forward to the Council for initial review at its February 2006 meeting in Seattle.

At the June 2005 meeting, some Council members and members of the public expressed concern that changes in the observer service delivery model which would occur under certain alternatives might result in increases in industry costs associated with observer labor. The Fair Labor Standards Act (FLSA) governs pay rate and overtime provisions of observer compensation of both current and future service delivery models. NOAA Fisheries Service has recently reaffirmed its position that observers employed by companies which contract directly with the agency or use federal funds for provision of observer services must apply FLSA and Service Contract Act (SCA) criteria to determine observer compensation requirements. These criteria are specified in federal labor regulations and include exemptions to the requirement to pay overtime for hours worked in excess of 40 hours per week. The exemption criteria include, among others, whether observers are paid on a salary or hourly basis, examination of their specific duties, responsibilities and education, and whether a collective bargaining agreement is in force.

Even though this reaffirmation by NOAA Fisheries Service addresses some of the concerns that were raised at the June 2005 Council meeting, we still are unable to provide a definitive assessment of observer costs under a new service delivery model. The applicability of some FLSA provisions and the actual number of hours worked by observers each day may not be determined until contracts between NOAA and observer providers are finalized. Furthermore, the Department of Labor (DOL) has yet to respond to a November 2005 NOAA Fisheries Service request to clarify uncertainties regarding classification of working and non-working hours, and verification of hours worked in an unsupervised environment. Initial feedback from DOL indicates that we may not receive a reply for several months, and that they may be unable to provide definitive answers to some of the labor-cost related questions.

Changes in industry costs associated with observer wages under different service delivery models are not the only costs warranting evaluation. The preliminary analysis presented to the Council at the June 2005 meeting identified some of the increased costs that would be incurred by NOAA Fisheries Service under alternatives other than status quo. These include:



- Costs of increased staffing for contract development, implementation and management; Item C-5(a)(1)
- Additional staff that would be necessary to support the AFSC's more "hands-on" role in directing and adjusting observer coverage;
- Increased costs for the development and implementation of technological monitoring approaches and vessel specific monitoring plans (VMPs) also are expected, although these costs will occur even under the status quo alternative; and
- Increases in observer coverage that may be necessary to meet new fishery management program monitoring requirements and which would increase the AFSC's costs for observer training, briefing, debriefing and database management (and a range of other functions).

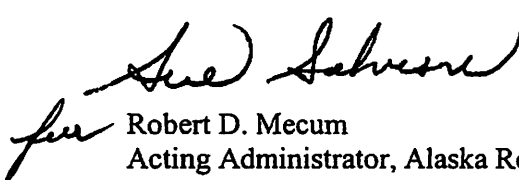
The magnitude of these increased costs depends on the design of the new monitoring system, the complexity and number of VMPs that are put in place and the overall increase in observer deployment days. However, at a minimum, salaries for new FTEs and operational costs would be required.

While agency and industry cost issues should be determined and resolved to the extent possible before restructuring can proceed, they are but one aspect of an effective restructuring program. To be most effective, restructuring alternatives must provide flexibility to adjust coverage levels in all sectors to optimize coverage relative to information needs, and encourage technological innovation when appropriate and cost effective. This requires us to take a more comprehensive approach to restructuring and to ensure that funds are available to cover costs associated with oversight and management of the observer program, as well as direct observer deployment costs.

At the January 2006 OAC meeting, we will discuss these issues with committee members and work towards developing new fisheries monitoring approaches for consideration by the Council. These approaches must recognize the need to constrain industry costs, provide funds necessary for NOAA Fisheries Service to operate the NPGOP, provide flexibility to optimize the benefits of observer coverage when resources are limited, and encourage appropriate use of video and other technologies for fishery monitoring.

We are hopeful that, through our collective efforts, we can build on the analytical work already completed and move forward to design and implement a comprehensive, flexible, and cost effective observation and monitoring system which will meet the needs for fishery-dependent information in the North Pacific groundfish fisheries for the foreseeable future. However, during the time period that the uncertainties outlined above remain unresolved, we recommend that the current structure of NPGOP be maintained and that the OAC and the Council consider Alternative 2 as the approach best suited to address current needs.

Sincerely,

  
for Robert D. Mecum  
Acting Administrator, Alaska Region

## Executive Summary

This draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) examines the environmental and economic effects of Amendments 86 and 76 to the Fishery Management Plans for Groundfish of the Bering Sea/Aleutian Islands and the Gulf of Alaska, respectively. Amendments 86/76 propose to restructure the North Pacific Groundfish Observer Program (Observer Program). The proposed action is intended to address a variety of longstanding issues associated with the existing system of observer procurement and deployment. At its February 2003 meeting, the Council approved the following problem statement for restructuring the Observer Program:

### *Observer Program Restructuring Problem Statement*

*The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990. 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.*

Because previous attempts to restructure the program had not been successful, NMFS, Council staff, and the Observer Advisory Committee (OAC) originally considered a stepwise approach in this amendment package. This was based on the concept that it might be effective to undertake a less ambitious restructuring effort focused primarily on those regions and fisheries where the problems of disproportionate costs and coverage are most acute. The intent was that once a restructured program had been implemented successfully for some fisheries, the Council could decide whether or not to proceed with expanding the program to include additional fisheries. The initial alternatives approved by the Council in April 2003 reflected this approach, and focused primarily on the groundfish and halibut fisheries of the GOA, with options to include BSAI groundfish vessels that currently have less than 100% coverage requirements. In December 2003, the Council reviewed a preliminary draft analysis of the impact of those alternatives that were focused primarily on the GOA.

As NMFS began to evaluate alternatives under this scenario, however, concerns arose that certain operational and data quality issues would be difficult to resolve under a "hybrid" system (with some fisheries covered by a new program and others continuing to operate under the old system) and that, in fact, some of these problems would likely become exacerbated under such a system. NMFS identified a range of operational and data quality issues associated with the current model. These included the agency's inability to: determine where and when observer coverage takes place on less-than-100% observed sectors of the fleet; match observer skill level with deployment complexity; reduce observer coverage for sectors of the fleet that are now subject to 100% or greater coverage levels; and implement

technological innovations which might meet monitoring needs while reducing observer coverage costs and expenses.

At the February 2004 Council meeting, NMFS described the above concerns and informed the Council that the agency had determined that effective procedures for addressing observer performance and data quality issues could only be addressed through a service delivery model that provided direct contractual arrangements between NMFS and the observer providers. NMFS thus recommended that the Council include an additional alternative to the draft analysis that would apply the proposed direct contract model program-wide, so that all observer services in both the BSAI and the GOA would be provided by observer companies through direct contracts with NMFS.

At its June 2004 meeting, the Council approved seven alternatives distinguished primarily by scope that ranged from a new program for GOA groundfish fisheries only to a comprehensive program for all groundfish and halibut fisheries off Alaska. At its June 2005 meeting, the Council decided to consolidate its suite of alternatives in order to eliminate redundancy between alternatives and better focus the analysis on the major policy issues facing the Council and NMFS in developing a new groundfish observer program for the North Pacific. The Council thus approved the current suite of five alternatives in June 2005.

### **Summary of the Alternatives**

This analysis considers five alternatives:

- Alternative 1. No action alternative:** Under this alternative, the current interim “pay-as-you-go” program would continue to be the only system under which groundfish observers would be provided in the groundfish fisheries of the BSAI and GOA. Regulations authorizing the current program expire at the end of 2007, meaning that no action is not a viable alternative over the long-term.
- Alternative 2. Rollover alternative: *Extension of the existing program.*** Under this alternative, the 2007 sunset date for the existing program would be removed and the program would be extended indefinitely with no changes to the service delivery model. By selecting this alternative, the Council would be deciding not to develop a new service delivery model and fee system to restructure the program.
- Alternative 3. GOA-based alternative: *Restructured program for GOA groundfish and all halibut fisheries.*** A new ex-vessel value fee program would be established to fund coverage for GOA groundfish vessels GOA-based processors, and halibut vessels operating throughout Alaska. Regulations that divide the fleet into 0%, 30%, and 100% coverage categories would no longer apply to vessels and processors in the GOA. Fishermen and processors would no longer be responsible for obtaining their own observer coverage. NMFS would determine when and where to deploy observers based on data collection and monitoring needs, and would contract directly for observers using fee proceeds and/or direct Federal funding. Vessels would only be required to carry an observer when one is provided by NMFS. Under this alternative, all groundfish vessels and processors in the BSAI would continue to operate under the current “pay-as-you-go” system.
- Alternative 4. Coverage-based alternative: *Restructured program for all fisheries with coverage less than 100% (Tiers 3 and 4).*** This alternative differs from Alternative 3 in that the program would be defined by coverage categories rather than geographic area. All vessels and processors assigned to Tiers 3 and 4 (i.e. that require less than 100%

coverage) would participate in the new program throughout Alaska. Generally speaking this alternative would apply to all halibut vessels, all groundfish catcher vessels <125' LOA and all non-AFA shoreside processors. All vessels and processors assigned to Tiers 1 and 2 (100% or greater coverage) would continue to operate under the current "pay-as-you-go" system throughout Alaska.

**Alternative 5. *Comprehensive alternative: Restructured program for all groundfish and halibut fisheries off Alaska.*** This alternative would establish a new fee-based groundfish observer program in which NMFS has a direct contract with observer providers for all GOA and BSAI groundfish and halibut vessels in the Federal fisheries. Under this alternative, vessels with 100% or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100% would pay an ex-vessel value based fee.

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

**Table ES-1 Vessels and processors included under each of the action alternatives**

<i>Area</i>	<i>Vessel/Processor class</i>	<i>Alt. 3 (GOA-based)</i>	<i>Alt. 4 (Tiers 3 and 4 only)</i>	<i>Alt. 5 (Comprehensive Alt.)</i>
GOA	Halibut vessels	Yes	Yes	Yes
	Groundfish CVs (all gears and sizes classes)	Yes	Yes	Yes
	Non-AFA inshore processors	Yes	Yes	Yes
	Pot CPs	Yes	Yes	Yes
	Trawl CPs < 125'	Yes	Option to include depending on final Tier classification	Yes
	Longline CPs < 125'	Yes		Yes
	Trawl CPs ≥ 125'	Yes		Yes
	Longline CPs ≥ 125'	Yes		
BSAI	Halibut vessels	Yes	Yes	Yes
	Non-AFA CVs (all gears and size classes)		Yes	Yes
	Pot CPs		Yes	Yes
	AFA CVs < 125'		Yes	Yes
	non-AFA inshore processors		Yes	Yes
	AFA CVs ≥ 125'		Option to include depending on final Tier classification	Yes
	Non-AFA trawl & longline CPs < 125'			Yes
	Non-AFA trawl & longline CPs ≥ 125'			Yes
	AFA inshore processors			Yes
	AFA motherships			Yes
	AFA CPs			Yes
	CDQ vessels and processors		Tier 3 and 4 vessels and processors are also included when fishing CDQ.	Yes



### **Coverage requirements: How would coverage levels be determined?**

The issue of coverage levels arises with the implementation of a program that rescinds the current coverage levels based on vessel length and processing volume and replaces them with one in which NMFS has more flexibility to decide when and where to deploy observers. However, some type of organizational structure is still necessary to categorize vessels and processors for the purpose of determining coverage levels. The establishment of uniform criteria for determining coverage requirements will also assist the Council in determining what levels of coverage are necessary when new management programs are proposed. As a replacement for the existing vessel length based categories, the following four tier system of coverage is proposed. Vessels and processors would be placed into one of the four coverage tiers based on their fishery and operating mode. The purpose of designing this four tier coverage system is to establish clear and uniform criteria for determining what level of coverage is required in each fishery. **The determination of which fishery sectors are placed into which tier is a decision point at final action.**

The following is a description of the four proposed coverage tiers:

- **Tier 1 fisheries (200% coverage).** These are fisheries in which two observers must be present so that observers are available to sample every haul on processors or delivery on vessels. Tier 1 fisheries are generally those in which observers are directly involved in the accounting of individual vessel catch or bycatch quotas.
- **Tier 2 fisheries (100% coverage).** These are fisheries in which one observer is deployed on each vessel and processor. In contrast to Tier 1, it is recognized that the observer will likely be unable to sample all hauls or deliveries due to workload constraints and will, therefore, follow random sampling procedures so that the vessel or processor will not know in advance which hauls or deliveries will be sampled. Under certain circumstances, vessels that would otherwise qualify for Tier 1 coverage could operate with a single observer in Tier 2 if they are operating under restricted hours or an alternative monitoring plan approved by NMFS in which alternate technologies are used to monitor scales when the observer is absent.
- **Tier 3 fisheries (regular coverage generally less than 100%).** *(This tier replaces the old 30% coverage requirement).* These are fisheries in which NMFS is dependent on observer coverage for inseason management but in which 100% coverage on every vessel is unnecessary because observer data is aggregated across a larger fleet. Vessels participating in Tier 3 fisheries can expect to receive coverage on a regular basis and will be required to carry observers when requested to do so by NMFS. However, the actual coverage that each vessel receives will depend on the coverage priorities established by NMFS and the sampling plan developed for the individual fishery in which the vessel is participating. The actual coverage a particular vessel or processor receives could range from zero to 100%, but on a fleet-wide basis, coverage levels are more likely to average closer to 30%.
- **Tier 4 fisheries (previously uncovered).** These are fisheries in which NMFS is not currently dependent on observer data for inseason management. At the outset of the program, coverage levels in Tier 4 fisheries are expected to be low, and used for special data needs and research rather than inseason management. Halibut vessels, jig vessels, and groundfish vessels <60' would be assigned to Tier 4. In the initial years of a restructured program, NMFS could deploy observers on these vessels when necessary to collect needed baseline data or to respond to specific data needs, but would not deploy observers on a regular basis to collect inseason management data. Vessels participating in Tier 4 fisheries would be required to carry observers when requested to do so by NMFS but such requests are unlikely to occur on a regular basis

during the outset of the program. As NMFS and industry gain experience with the deployment of observers in small-vessel fisheries, the dividing line between Tiers 3 and 4 may become less meaningful.

Under this four tier structure, the coverage levels would remain unchanged from the status quo for most vessels and processors that currently have 100% or 200% coverage requirements. The biggest change would occur for vessels that currently have 30% coverage requirements or no coverage requirements. Under the four tier structure, most current 30% vessels would fall into Tier 3 and can expect regular coverage at a level less than 100%. Most vessels that currently have no coverage requirements will fall into Tier 4 and will be required to carry an observer when requested, but can expect such coverage to be a relatively rare occurrence, especially during the initial years of the program.

This analysis does not propose an annual mechanism through which a fishery would change from one tier to the next if it is determined that coverage levels need to be increased or decreased. Currently, all coverage levels are established in regulation and any changes to existing coverage requirements must be implemented through notice and comment rulemaking. Based on NOAA GC guidance, this analysis assumes that formal rulemaking would also be necessary to change fisheries from one tier to another under the new system. Flexibility would still be substantially increased through the proposed system, however, as the coverage levels for fisheries within Tiers 3 and 4 could be shifted and modified on an inseason basis. Table ES-2 provides a summary of the proposed tier classifications for each class of vessel and processor.

**Table ES-2 Proposed tier classifications for vessels and processors**

<i>Vessel/processor/fishery</i>	<i>Current coverage requirement and future coverage requirements proposed under other programs</i>	<i>Proposed tier classification</i>
AFA CPs	200% coverage	Tier 1
CDQ CPs	200% coverage	Tier 1
AFA motherships	200% coverage	Tier 1
AFA inshore processors	1 observer for each 12 hour period (i.e. 2 observers if plant operates more than 12 hours/day)	Tier 1
non-AFA trawl H&G vessels $\geq 125'$ in the BSAI	100% coverage currently. 200% coverage under Amendment 79 groundfish retention standard (GRS)	Tier 2
CPs fishing for Atka mackerel in the Aleutian Islands Subarea	200% coverage	Tier 1
non-AFA Trawl H&G vessels $< 125'$ in the BSAI	30% coverage currently. However, 200% coverage would be required under proposed BSAI Amendment 80.	Tier 2 or Tier 3 with increase in coverage to 100%.
non-AFA Trawl H&G vessels $\geq 125'$ in the GOA	100% coverage	Tier 2
CVs $> 60'$ and pot CPs fishing CDQ	100% coverage	Tier 2
non-AFA Trawl H&G vessels $< 125'$ in the GOA	30% coverage	Tier 2 or Tier 3 with increase in coverage to 100%.
non-AFA inshore processors	0%, 30%, or 100% based on processing volume	Tier 3
Trawl CVs $\geq 125'$ (Including CDQ and AFA)	100% coverage	Tier 2 or Tier 3 with possible video monitoring requirement
Trawl CVs $60'-125'$ (Including CDQ and AFA)	30% coverage	Tier 3
Longline CPs $\geq 125'$	100% coverage	Tier 2
Longline CPs $60'-125'$	30% coverage	Tier 2 or Tier 3 with increase in coverage to 100%.
Longline CVs $60'-125'$	30% coverage	Tier 3
Longline CVs $\geq 125'$	100% coverage	Tier 3
Pot vessels $\geq 60'$	30% coverage	Tier 3
Halibut vessels	no coverage	Tier 4
Jig vessels (all sizes)	no coverage or 30% depending on vessel length	Tier 4
Groundfish vessels $< 60'$	no coverage	Tier 4

## **Funding mechanism**

All of the alternatives contained within this analysis anticipate funding the new observer program through some combination of user fees and direct Federal funding. Federal funding may be necessary to get the program started, cover some direct coverage costs if industry fees are inadequate, and cover agency costs associated with implementing and maintaining the program. Therefore, any decisions related to the type of user fee would not preclude the possibility of obtaining Federal funding to cover observer deployment costs. There are several decisions related to the funding mechanism under each alternative. Section **Error! Reference source not found.** outlines the primary issues and concepts relevant to the funding mechanism:

- Types of fee (ex-vessel value or daily observer fee)
- Uniform or variable fees
- Supplemental fee options for special programs
- Initial fee percentage
- Process for adjusting fee percentages
- Fee collection mechanism
- Start-up funding and Federal funds
- Restriction on the use of fee proceeds

### ***Type of user fee***

Two primary types of fee programs are proposed under the action alternatives:

1. **Ex-vessel value fee:** An ex-vessel value fee is proposed for Alternatives 3 and 4, and to fund coverage in Tier 3 and 4 fisheries under Alternative 5. Fees based on the ex-vessel value of landed catch are the most common type of fee currently used in the North Pacific.
2. **Daily coverage fee:** A daily coverage fee is proposed to fund coverage for Tier 1 and 2 fisheries under Alternative 5. This approach would to some extent mirror the existing "pay-as-you-go" program, except that vessel owners would be billed by NMFS for their coverage instead of contracting directly with an observer provider. Such a fee could be designed to exactly match the direct costs of observer coverage, as is currently the case with the existing pay-as-you-go program, or the fee could be set at a lower level than actual coverage costs if Federal funds are available to support the program.

### ***Setting the initial fee level***

**If Alternative 3, 4, or 5 is selected, one of the most important decision points for the Council is setting an initial fee percentage for those vessels/fisheries that will operate under an ex-vessel value based fee.** The fee percentage (and the level of Federal funding) would determine the program's budget and would directly affect coverage levels in the fisheries covered by the program and costs paid by industry. The issue of how much coverage is necessary or optimal to manage particular groundfish and halibut fisheries is complex and goes beyond the scope of this analysis. The process proposed to determine coverage levels in the fisheries that will have less than 100% coverage requirements (Tier 3 and 4) are described in Chapter 3.

Most of the fisheries in question are currently evolving, as a rationalization program is under development for the GOA groundfish fishery and various cooperative management proposals are under development for the BSAI flatfish fisheries, and future coverage needs are unknown. It is also beyond the scope of this

analysis to determine what levels of coverage would ultimately be necessary to implement the various rationalization and cooperative management proposals that are currently under development. For this reason, this analysis is limited to considering the fee percentages necessary to maintain existing levels of coverage overall (with the flexibility to shift coverage among the Tier 3 and 4 fisheries as necessary) and provide some resources to expand the program into fisheries that currently have no coverage (the halibut and <60' groundfish fleets) in the absence of any direct Federal funding. To the extent that Federal funding becomes available, fee percentages could be reduced or coverage increased. Therefore, three fee percentage levels (upper, middle, and lower endpoints) are proposed for Council consideration under each alternative in Chapter 3.

**Option 1 (lower endpoint): Maintain the existing number of deployment days.** Under this option, the fee percentage would be set at the level necessary to provide an equivalent number of coverage days that are currently provided under the status quo. NMFS would have roughly the same number of observers to work with as are available under the status quo, but would have the flexibility to deploy these observers in a more rational fashion to maximize the utility of the data collected. Under this option, any deployment of observers in the halibut fishery and on groundfish vessels <60' would come at the expense of existing coverage levels on shoreside processors and groundfish vessels ≥60'. Under all of the alternatives, the average costs of observer coverage for vessels that currently carry observers would go down under this endpoint because the status quo number of coverage days would be supported by revenues from a wider fleet than under the status quo.

**Option 2 (mid-point): Establish a fee percentage that accommodates 100% coverage for trawl and longline CPs <125' while maintaining the existing number of observer days for the remaining fleets covered by the program. Note: This option is only applicable to Alternative 3.** Under Alternative 3, all GOA groundfish vessels and processors and all halibut vessels would be included in the new program and assessed an ex-vessel value fee regardless the tier in which they are classified. All trawl and longline CPs <125' would be assigned to Tier 2 (100% coverage), and fees would be increased relative to Option 1 to accommodate this increase in coverage without affecting coverage levels in other fisheries.

**Option 3: Establish a fee percentage that is self-supporting at current coverage levels for sectors that currently have coverage and apply the same fee percentage to all new fisheries into which the program expands (upper endpoint).** Under this option, the fee percentage would be set at a level necessary for fee revenues from the currently covered sectors of the industry (groundfish vessels ≥60' and shoreside processors) to fund the current number of deployment days in those sectors. Each new sector that is not currently covered that comes into the program will generate additional fee revenues so that expansion of coverage into the <60' groundfish and halibut fleets would not necessarily come at the expense of existing coverage for vessels ≥60'. Because the average daily revenues generated by halibut vessels and groundfish vessels <60' are lower than the average daily revenues generated by groundfish vessels ≥60', and because observer costs per deployment day are generally higher for small vessels that operate out of more remote ports, fee revenues generated by halibut vessels and groundfish vessels <60' would not be adequate to extend coverage to those vessels at levels currently in effect for groundfish vessels ≥60'. A precise estimate of the level of coverage that the upper endpoint fee would provide for halibut and groundfish vessels <60' is difficult to determine because data on the average number of fishing days for such vessels is unavailable.

Table ES-3 provides estimates of the low, mid, and high fee endpoints for each action alternative. **Note that the ex-vessel value based fees provided in the table are only applicable to those vessels that are required to pay an ex-vessel value based fee in each of the alternatives.** Thus, under Alternative 3, all GOA vessels and processors and halibut vessels in all areas would pay the fee. Groundfish vessels and processors in the BSAI would continue operating in the existing pay-as-you-go system. Under Alternative 4, only vessels in sectors included in Tiers 3 and 4 in both the GOA and the BSAI would pay the fee.

Vessels selected for inclusion in Tiers 1 and 2 in both the GOA and the BSAI would continue under the current pay-as-you-go system. Finally, under Alternative 5, again only vessels in sectors included in Tiers 3 and 4 in both the GOA and the BSAI would pay the fee shown in Table ES-3. Vessels selected for inclusion in Tiers 1 and 2 in both the GOA and the BSAI would pay a daily observer fee similar to the current pay-as-you-go system, the difference is that it would be paid directly to NMFS. Note that the fee estimates in Table ES-3 are based on the existing system of daily wages without overtime pay. The fee percentages vary substantially among alternatives because as each group of vessels is included in the program, they bring with them both a revenue base, in terms of the ex-vessel value of their landings, and coverage needs. The coverage needs relative to the revenue base for each group of vessels varies substantially.

**Table ES-3 Estimated observer days, coverage cost, and fee percentages for low, mid, and high endpoint fee options based on 2000-2003 average coverage days and ex-vessel revenues**

Alternative	Observer days			Observer cost			Estimated fee %		
	Low	Mid	High	Low	Mid	High	Low	Mid	High
Alt. 3 (GOA-based)	5,288	6,525	12,340	\$1.88	\$2.32	\$4.38	0.49%	0.60%	1.15%
Alt 4 & 5 (Tiers 3 and 4 w/o CPs <125')	10,025	N/A	18,628	\$3.56	N/A	\$6.61	0.71%	N/A	1.32%
Alt. 4 & 5 (Tiers 3 and 4 with CPs <125')	12,680	17,660	22,066	\$4.50	\$6.27	\$7.83	0.82%	1.15%	1.44%

Finally, there are two major issues discussed in the analysis for which the Council is not being asked to make decisions at this time: (1) technological requirements and (2) the contracting process.

#### **Technological requirements: Electronic fishing logs, electronic reporting requirements, and VMS.**

The analysis contains extensive discussions of a variety of technological requirements that will facilitate implementation of a restructured observer program. These include:

- **Electronic fishing logbooks** so observed and unobserved vessels can report fishing activity electronically from the fishing grounds.
- **Revised electronic reporting requirements** for processors that will facilitate the collection of ex-vessel fees.
- **VMS requirements** to enable NMFS to monitor and enforce compliance with check-in/check-out requirements.

**While the above technological requirements may represent decision points for the Council at a future date, they are not currently presented as decision points for the Council in this analysis.** This is primarily because all three types of technological requirements are part of larger program initiatives that will be developed on separate tracks. Therefore, this analysis does not propose making decisions related to these issues at this time.

#### **Contracting process**

Under all of the alternatives under consideration, private contractors would continue to be the source of observers deployed under the restructured program. The main difference from the status quo is that NMFS would be the entity responsible for contracting for observer coverage rather than the vessel owner.

Complicated regulations and procedures already govern the Federal contracting process. Therefore, this analysis does not examine alternatives to the process that would govern direct Federal contracting for observer services. The existing Federal contracting process is described in Section 4.8, to provide the Council and the public with an understanding of how the program would operate, should one of the action alternatives be adopted. This section also explores the role of contractors under a new program, and whether single or multiple contracts, and single or multiple contractors, are preferable.

Several different contract modules are possible but are difficult to develop until the scope of work is defined. In essence, there are several ways to accomplish any task and distribute work. Contracting is flexible and will accommodate various desired scenarios. For example, the work can be broken into components regionally (BSAI or GOA), by gear type, or by vessel size class. Various combinations are possible. It is also possible to develop different types of work modules. One module could be for overall coverage planning and another for the provision of observers to obtain that coverage. Once the scope of work and funding are identified, NMFS can further develop alternative contract modules for consideration. Details are provided in Section 4.8.

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

#### **Decision points for Council consideration**

In addition to selecting a preferred alternative, the Council is faced with several decision points that are associated with one or more alternatives. These include:

1. **Final assignment of vessel classes and fisheries into tier levels.** NMFS has provided initial recommendations for the assignment of vessel classes and fisheries into the four proposed coverage Tiers. The most significant change relative to the status quo is the proposed classification of trawl and longline CPs <125' into Tier 2. Because all Tier classifications will be established in regulation, it is appropriate for the Council to review the proposed Tier assignments and either endorse them or make alternative recommendations at the time of final action.
2. **Initial fee percentage.** Because the ex-vessel value fee percentage will likely be fixed in regulation, it is essential that the initial fee percentage be chosen after careful consideration of the future coverage objectives of the program. The analysis proposes three possible fee levels for consideration.
3. **Variable or fixed fee.** Because harvest levels, prices, and coverage costs vary annually, the Council may wish to contemplate establishing a variable fee that self-adjusts upwards or downwards based on multi-year running average. A 5-year running average is suggested in Section **Error! Reference source not found.** Alternatively the Council may chose to establish a fixed fee percentage in regulation that would require subsequent Council action and regulatory amendment to adjust.
4. **Use of standard or actual prices.** NMFS recommends the use of standard prices for the ex-vessel value fee program. However it may be possible to develop a program based on actual prices for shoreside deliveries if there is sufficient interest in doing so.
5. **Restrictions on the use of fee proceeds.** Should the fee only be used to pay for costs directly associated with coverage by human observers or should fee proceeds be able to be used for supplemental or alternative monitoring technologies as they are proposed in the future?

## Conclusions

The benefits and costs of the proposed action cannot be compared in a quantitative manner because the actual costs of the proposed action alternatives cannot be determined until a variety of labor issues are resolved (see Section 4.4). Furthermore, the benefits of the proposed action are qualitative or distributional in nature (e.g. improved data quality, sharing of costs). Nevertheless, a variety of qualitative conclusions can be drawn with respect to the benefits and costs of the alternatives.

**Alternative 1, the no action alternative,** would result in the sunset of the North Pacific Observer Program on December 31, 2007. Adoption of the no action alternative would result in significant costs to both industry and the environment and would leave NMFS in violation of various statutes that mandate observer coverage in the North Pacific. Without data collected by observers, NMFS would be forced to adopt a much more conservative approach towards managing the groundfish fisheries of the GOA and BSAI. Such an approach could include closing fisheries much earlier in the absence of observer data on groundfish catch and PSC bycatch to prevent exceeding TACs and PSC limits, and using more conservative population models to generate ABCs and TACs in the absence of observer data for use in stock assessment modeling. Given that the total cost of the observer program is about 1.4% of ex-vessel value in the GOA and BSAI, these types of precautionary management measures could cost the industry many times more revenue in lost fishing opportunities than the observer program costs. In addition, failure to maintain a groundfish observer program in the North Pacific would violate the terms of a variety of statutes, including the ESA, under which observer coverage has been mandated as part of reasonable and prudent measures (RPMs). RPMs are non-discretionary measures under current Biological Opinions that are prescribed under the incidental take statements for endangered marine mammals, salmon, and sea birds. Absent observer coverage, many of the groundfish fisheries could be found in jeopardy and subject to closure under the ESA. The costs of widespread ESA-mandated fishery closures across the North Pacific would exceed the costs of maintaining an observer program by orders of magnitude.

**Alternative 2, the rollover alternative,** would result in the extension of the existing program. This alternative would not achieve the objectives outlined in the problem statement such as improvements to data quality and the reduction of disproportionate observer costs born by many small vessel operators. At the same time, extending the current program without modification may not result in cost savings for industry relative to the proposed restructuring under Alternatives 3 through 5 for several reasons. First, most of the unresolved issues associated with observer costs are present under the current program as well as under a program of direct Federal contracting. The primary unresolved issue with respect to labor costs is whether observers are covered by the overtime requirements of the Fair Labor Standards Act (FLSA). It should be emphasized that the FLSA applies to observers regardless of whether they are working under the current "pay-as-you-go" system, or under a new system of direct federal contracting. If courts ultimately determine that observers are entitled to overtime pay under the FLSA then they will be entitled to such pay regardless of the contracting model in place. Adoption of Alternative 2 would provide industry with no assurance that future observer costs can be constrained any more than under Alternatives 3 through 5. In summary, Alternative 2 would fail to achieve the objectives of the problem statement yet may provide little or no cost savings or security against future cost increases compared to Alternatives 3 through 5.

**Alternatives 3 and 4** present two distinctly different approaches to partial restructuring of the Observer Program. The scope of Alternative 3 is based on geographic area. Under Alternative 3, all groundfish fisheries in the GOA and all halibut fisheries throughout Alaska would be covered by the new program, in which vessels would pay an ex-vessel value based fee and NMFS would directly contract for observer services. By contrast, Alternative 4 is based on coverage levels irrespective of geography. Under Alternative 4, all vessels and processors assigned to Tiers 3 and 4 (less than 100% coverage) would be



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covered by the new program and all vessels and processors assigned to Tiers 1 and 2 (100% or greater coverage) would be excluded and continue to operate under the existing pay-as-you-go system. Table ES-4 compares the advantages and disadvantages of these two separate approaches for partial restructuring.

While neither Alternative 3 nor 4 would completely address all of the issues in the problem statement because the largest portion of the observer program would remain unchanged, it is possible to draw some conclusions about the differences between these two different approaches. From an operational standpoint, Alternative 3 is likely superior to Alternative 4 because it would allow NMFS to develop scientific-based sampling plans for specific fisheries in the GOA and to implement them with single contracts that would govern all coverage in each fishery. Under Alternative 4, NMFS would only have direct control over deployments on Tier 3 and 4 vessels in each fishery and would be less able to develop efficient approaches to the deployment and rotation of observers within a fishery. However, Alternative 4 would better address concerns about the disproportionate costs faced by the operators of smaller vessels because it would extend the program to all Tier 3 and 4 fisheries in the BSAI as well as the GOA. Alternatives 3 and 4 therefore represent a tradeoff between developing a more unified and scientific-based sampling program for the GOA and addressing the problem of disproportionate costs for a wider range of vessels in the BSAI and GOA. Furthermore, both Alternatives 3 and 4 raise a variety of issues associated with the administration of two separate programs. Attempting to administer two separate programs could generate a variety of operational and data quality issues which are discussed in detail in Section 4.9.

**Alternative 5, the comprehensive alternative,** is the only proposed alternative that would address the problem statement in its entirety while avoiding new complications associated with the management of two separate programs in the GOA and BSAI. The primary disadvantage to this approach is the scope. A comprehensive restructuring of the entire North Pacific Observer Program is a large and complex undertaking, and there are likely to be more short-term complications and disruptions to observers, observer providers, and the fishing industry if the entire program is restructured at once. Alternatives 3 and 4 would allow NMFS to get a new program up and running in most smaller-scale fisheries of the GOA that are less dependent on observer coverage without initially affecting the large-scale fisheries in the BSAI where most observers are currently deployed. However, operational difficulties introduced by managing simultaneous programs may offset some of the benefits of restructuring smaller scale fisheries initially.

**Table ES-4 Comparison of the advantages and disadvantages of the approaches in Alternatives 3 and 4**

<i>Issue</i>	<i>Alt 3 (GOA-based)</i>	<i>Alt 4 (Coverage level-based)</i>
<i>Sampling design and data issues</i>	Because fisheries are generally managed by area rather than size class, Alternative 3 would allow NMFS to design a complete sampling and data collection program for each GOA fishery. Observer coverage for a specific fishery operating in a specific geographic location could be a single contractor.	Under Alternative 4, NMFS would be dealing with multiple contractors and would have control over observer deployments for only a subset of vessels in each fishery in which Tier 1 and Tier 2 vessels participate. This will make it more difficult to design coherent sampling programs and observer rotations for fisheries in which vessels from different tiers participate.
<i>Cost-containment and contract efficiency</i>	Geographic-based modules are likely to be simpler to design and bid on because observer providers will be bidding on exclusive contracts to provide coverage for a specific geographic area or port. Also, increased potential for cost containment exists if observer providers can focus on discrete geographic areas because there will be reduced down time and transportation costs if observers do not need to be rotated between geographic regions.	Observer providers may find it more difficult to bid on contract modules that are focused on vessel size classes or coverage tiers rather than geographic areas because they may not have adequate advance knowledge of where the group of vessels they are bidding on will be fishing and out of which ports they will be operating. A contract in which an observer provider is responsible for limited coverage of vessels across a broad geographic area may also increase costs due to increased down time and transportation costs during observer rotations.
<i>Disproportionate costs for smaller vessels</i>	Alternative 3 would address concerns about disproportionate costs for GOA vessel only. It would not address concerns about disproportionate costs paid by small vessels operating in the BSAI.	Alternative 4 would address the issue of disproportionate costs for all vessels operating in Tiers 3 and 4 regardless of where they are operating in Alaska.
<i>Complications with crossover issues and the management of two separate program:</i>	Contracting complexities and crossover issues could arise for vessels that are moving between the GOA and BSAI under Alternative 3. These could be mitigated to some extent, if subcontracting was allowed and if the same observer providers who earn contracts in the GOA are allowed to provide coverage in the BSAI.	Crossover issues would be minimized if a single contract for coverage follows Tier 3 and 4 vessels regardless of where they operate within Alaska.

**DRAFT**  
**Observer Advisory Committee Report**  
**January 30 - 31, 2006**  
Alaska Fisheries Science Center  
7600 Sand Point Way, NE, Seattle  
Building 4, Room 1055  
8:30 am - 5 pm

- Committee present:** Joe Kyle (Chair), Julie Bonney (by phone), Tracey Mayhew, Paul MacGregor, Susan Robinson, Jerry Bongen (by phone), Brent Paine, Arni Thomson
- Committee not present:** LeeAnne Beres, Kim Dietrich, Rocky Caldero, Kathy Robinson, Peter Risse, John Gauvin
- Staff:** NPFMC – Chris Oliver, Nicole Kimball, Kent Lind (contractor)  
NMFS/AFSC – Bill Karp, Martin Loefflad, Bob Maier, Doug DeMaster, Heather Weikart, Jerry Berger, Allison Barns  
NMFS AK Region – Jason Anderson, Sue Salvesson  
NOAA GC – Tom Meyer  
NOAA Office for Law Enforcement (Alaska Division) – Mark Kirkland
- Other participants:** Anne Vanderhoeven, Lisa Butzner, Mark Buckley, Bob Alverson, Michael Lake, Bill West, Tim Meintz, Peggy Parker, Amanda Saxton

**AGENDA**

- I. Review and approve agenda
- II. Review NMFS letter on restructuring (1/22/06)
- III. Review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (BSAI Am. 86/GOA Am. 76)
- IV. Receive report from NMFS on pilot projects from summer 2005
- V. Scheduling & other issues

**SUMMARY OF OAC RECOMMENDATIONS**

- In light of concerns outlined by NMFS, including the lack of Congressional authority to support the type of fee-based programs currently proposed, ongoing cost uncertainties related to overtime requirements of the Fair Labor Standards Act, and the upcoming expiration of the observer program on December 31, 2007, the committee recommends that the Council select Alternative 2 (extension of the current program) as the preferred alternative in BSAI Amendment 86/GOA Amendment 76 to meet the short-term need of continuing an observer program beyond 2007.
- The committee further recommends that, due to the continued need to restructure the observer program and the absence of a sunset date in Alternative 2, a new amendment proposing restructuring alternatives should be considered by the Council at such time that: 1) legislative authority is established for fee-based alternatives; 2) the FLSA issues are clarified (by statute, regulation, or guidance) such that it is possible to estimate costs associated with the fee-based alternatives; and/or 3) the Council requests reconsideration in response to changes in conditions that cannot be anticipated at this time.

## **I. Review and approve agenda**

The agenda was approved with two additions: an update from NMFS on the Federal Observer Compensation Act (FOCA) and an update from Chris Oliver on Magnuson Stevens Act (MSA) reauthorization. The Chair noted that the primary purpose of the meeting was to review the draft analysis to change the funding and deployment mechanism in the North Pacific Groundfish Observer Program (Observer Program) and recommend any changes or additions to the analysis or the analytical approach. This task is in preparation for the Council's review of the preliminary analysis at its February 2006 Council meeting. The analysis was provided to the OAC prior to the meeting to facilitate its review.

## **II. Review NMFS letter on restructuring (1/22/06)**

Dr. Bill Karp reviewed a letter from the NMFS AK Region to the Council (1/22/06) (Attachment 1). The letter outlined several concerns, including: 1) the need for MSA authority to support the type of fee-based programs currently proposed in the analysis; 2) recent reaffirmation by NMFS that observers in all regional observer programs do not meet the professional exemption criteria in the Fair Labor Standards Act (FLSA) and thus both the overtime requirements of the FLSA and the requirements of the Service Contract Act (SCA) must be applied when determining observer wages for observers employed by companies which contract directly with NMFS or use Federal funds; and 3) increased agency costs associated with implementing the proposed fee-based programs.

The first issue is related to the timing and status of MSA reauthorization. The Council and committee have been proceeding with the understanding that Congressional authorization is necessary to implement the types of fee-based programs proposed. The current administration bill would remove the existing Research Plan language and include broad authority for all regions that would support the restructuring programs being considered. The Senate version of the bill, however, does not currently include such authorization.

The second issue relates to NMFS's recently reconfirmed determination that observers do not meet the professional exemption criteria in the FLSA and thus the FLSA and SCA must be applied to determine observer compensation for observers employed by companies which contract directly with the agency or use Federal funds. Under the current service delivery model in the North Pacific, overtime requirements are likely less of a concern, as the majority of observers operate under a collective bargaining agreement which results in wages that likely meet or exceed the base wage rate established by the Dept. of Labor (\$5.15/hour) plus overtime. However, if the program is changed to a fee based program as proposed under Amendments 86/76, with direct contracts between NMFS and observer providers, the overtime requirements in the FLSA coupled with the SCA minimum wage requirements are estimated to increase observer costs compared to the status quo. These costs could be significant, but are not possible to estimate with any certainty.

Dr. Karp related that in December 2005, NMFS requested guidance from the Department of Labor (DOL) on how the FLSA is to be applied, what constitutes work hours, how to track worked hours, and related questions by January 2006 (see **Appendix II** of the analysis). Informal feedback from DOL indicates that a response could take several months, and that guidance related to cost uncertainties is unlikely to be definitive until a specific contract is in place. Thus, it is unlikely that the DOL could provide sufficient guidance to inform a cost analysis of the fee-based programs currently proposed in the analysis.

Finally, Dr. Karp relayed concerns with existing agency costs and likely cost increases due to implementation of a fee-based program. He related that the agency needs a mechanism to recover at least a portion of the added implementation costs, either through an appropriations increase or by using a portion of the fee proceeds. To date, the analysis includes an explicit assumption that the fee proceeds

would only pay for the direct cost of observers, and not for agency administrative costs. Committee members also noted that agency budget needs have not been previously highlighted as a concern. Dr. Karp reported that the agency budget is not linked to the number of observer days, so NMFS continues to have difficulty financing the increased seadays required of new programs approved by the Council. To date, these increased costs have been paid for through normal staff attrition. Dr. Karp relayed that a rough estimate of the total cost for deploying observers in the North Pacific is much lower than in other regions (at relatively the same observer wages), but in the future, any increase in observer days will require additional funding. The committee reiterated that industry would not agree to pay for NMFS administrative costs, and that has been an ongoing premise of the fee programs proposed in the analysis. One suggested option is to reduce observer coverage days and purchase the number of days that the budget can provide. Another approach suggested by NMFS is to determine the highest priorities for the program, agree on a fixed budget, put out a contract for bid, and once observer costs are known, purchase the amount of coverage possible under the budget.

**In light of the above concerns, ongoing cost uncertainties, and the upcoming sunset of the Observer Program on December 31, 2007, NMFS recommends that the committee and the Council consider selecting Alternative 2 (extension of the current program) in the current analysis.** Alternative 2 would effectively remove the expiration date on the program and establish the current program permanently until a new program is implemented.

#### Update on MSA reauthorization

Chris Oliver provided a brief update on MSA reauthorization and also reiterated the merits of convening the OAC prior to receiving a response from the DOL on FLSA application. It was noted that some form of the administration's MSA reauthorization bill (which would potentially authorize a fee program) may be in the House version, and reauthorization is expected this fall. The committee also discussed the possibility that the House bill would attempt to clarify the FLSA issue, either through establishing 'professional status' for observers or by an explicit exemption from the requirements of the FLSA, similar to other marine employment categories. Several members agreed that an explicit exemption appeared to be the most effective and direct solution. It is uncertain whether such an exemption could be included in the MSA or whether it is necessary as a direct amendment to the FLSA. Chris also noted that the language authorizing Dedicated Access Programs in the administration's bill currently includes a recovery fee associated with those programs of up to 3%, but it is uncertain whether the fee could be used to cover observer costs.

### **III. Review draft analysis (BSAI Am. 86/GOA Am. 76)**

Kent Lind provided an overview of the preliminary draft analysis provided to the committee for review. Under the system proposed in the analysis, NMFS would contract directly with observer providers for observer coverage, funded by a broad-based user fee and/or direct Federal subsidy. Vessels and processors not covered under the new program would continue to operate under the existing program, whereby vessels contract directly with observer providers. The alternatives for the new program vary with regard to scope (i.e., which fleets or sectors are included in the new program and which remain in the current pay-as-you-go program). The three action alternatives range from including Gulf of Alaska (GOA) groundfish vessels and processors and halibut vessels in all areas to a comprehensive alternative that would include all vessels and processors fishing groundfish or halibut in Federal waters of the North Pacific. The following sections highlight committee discussion on specific issues within the analysis.

While almost all of the fisheries/sectors included in the analysis would start with about the same observer coverage levels as the status quo, NMFS has recommended 100% coverage on all catcher processors included in the new program. The analysis includes various ways to pay for such coverage under the

alternatives: place all CPs in Tier 2 (100% coverage) and continue to have them in the pay-as-you-go program (Alternative 4); place all CPs in Tier 2 and assess a daily observer fee (Alternative 5); place all CPs in Tier 3 and increase the ex-vessel value fee percentage on all vessels to accommodate 100% coverage on all CPs (possible under Alternative 3, 4, or 5).<sup>1</sup>

The committee also discussed that a rollover of the existing program for those sectors not included in the fee-based system is embedded in both Alternative 3 and 4. Because those alternatives do not include all fisheries in the new fee-based program, the existing program would be extended indefinitely for those sectors. In addition, it may be necessary to roll over the existing program for some period of time under any alternative, in the case that the time necessary to implement the new program exceeds the current expiration date of 12/31/07.

The committee also discussed that it may be logical to keep halibut and sablefish vessels together under Alternative 3, as they commonly undertake combined trips.

In addition, the committee reviewed the proposed fee percentages that result from the action alternatives. It was suggested that the analysis should better clarify how the fee would be assessed. For example, if a fee was established at 0.6% of ex-vessel value, the vessel would pay 0.6% and the shoreside processor would pay 0.6% of the ex-vessel value of the catch. In the case of catcher processors, which both catch and process the fish, the catcher processor would pay both fees, for a total of 1.2% of the ex-vessel value of the catch. This mirrors the approach in the original Research Plan.

It was noted in the presentation that tables were included at the request of the Council to delineate total catch between vessels <60', 60' – 125', and >125' length overall, by sector and area. While the data show a much lower scale of harvest in the GOA compared to the BSAI, the data do not indicate a trend of increased tonnage by larger vessel sizes in the GOA. In effect, the harvest level does not seem to be dependent on vessel size in the GOA, for all gear types except pelagic trawl. Trawl fisheries also harvest the greatest volume of fish, and the majority of unobserved harvest (in terms of tonnage) is from the <60' trawl fleet.

**Given the concerns outlined by NMFS and the upcoming expiration of the current observer program, the committee recommended that the Council select Alternative 2 as the preferred alternative.** The committee emphasized that this selection should be construed as the only feasible choice at the current time. As additional information on cost and Congressional authorization become available, the committee supports reconsidering the restructuring alternatives currently proposed under Alternatives 3 – 5, recognizing that it may be preferable to consider additional alternatives in the future as well.

The committee also recommended updating the analysis to include the most recent NMFS letter (1/22/06) and a comprehensive discussion of the cost uncertainties and timing issues with both MSA reauthorization and the sunset date of the current program, in order to better reflect the current situation and short-term needs. Staff noted that the analysis of Alternative 2 would be expanded in this regard in the next draft of the analysis.

The committee also agreed that Alternative 2 should not be modified to include a new sunset date. As it stands, Alternative 2 would remove the sunset date and establish the current program until such time that a new program is approved. While members supported a mechanism to maintain priority status for changes to the observer program, many asserted that the sunset date does not do this effectively. In

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<sup>1</sup>Note that Alternative 3 only applies to vessels and processors in the Gulf of Alaska and halibut vessels in all areas.

addition, development of the requisite analyses and regulations to further extend a program ties up staff resources that could be better spent on developing the new program.

The committee also expressed concern with the perception of abandoning the restructuring alternatives in making the above recommendation. The intent is that Alternative 2 would address the short-term needs to have an authorized observer program in place for 2008, and that the restructuring alternatives would remain viable approaches, given additional information, to meet long-term needs as expressed in the current problem statement. While the committee discussed whether to create a new problem statement and separate analysis to address the short-term concerns, it agreed that the discussion in the analysis could be sufficiently expanded to explain the problems, timeframes, and intent of the preferred alternative.

**The concerns outlined above and the absence of a sunset date spurred the committee to further recommend that a new amendment proposing restructuring alternatives should be considered by the Council at such time that: 1) legislative authority is established for the fee based alternatives, through MSA reauthorization or other Congressional action; 2) the FLSA issues are clarified (by statute, regulation, or guidance) such that it is possible to estimate costs associated with the fee-based alternatives; and/or 3) the Council requests reconsideration in response to changes in conditions that cannot be anticipated at this time.** If the first two criteria are met, the Council would also be in a much better position to estimate start-up funding for a fee-based observer program and NMFS implementation costs.

#### **IV. Receive report from NMFS on pilot project from summer 2005**

Todd Loomis (NMFS) presented a brief summary of two research projects conducted this past summer. The first tested a new deployment model, the application of video to monitor discards, and alternative sampling methods in the GOA rockfish fishery. The alternative observer deployment model was a continuation of a 2003 study. This project included nearly the entire Kodiak trawl catcher vessel fleet and all of the shoreside processors. The second project was a cooperative research project designed to explore the use of technology to improve catch sampling and discard monitoring. This study was conducted on the *F/V Seafisher* under a scientific research permit in cooperation with the International Pacific Halibut Commission, Marine Conservation Alliance Foundation, and Cascade fishing.

The primary objectives of the GOA project were to: 1) test whether electronic monitoring/video could be used to monitor at sea discards; 2) test an alternative observer deployment model (instead of vessels being responsible for their coverage, NMFS used a decision matrix to determine when and where observers would be deployed); and 3) test brailer bags for sampling species composition in the rockfish fishery. NMFS anticipates that the data analysis and report on the video component of the Kodiak project will be completed in the next several months. Preliminary results indicate a more consistent stream of data and better distributed coverage which was more representative of actual fishing effort and location (~36% coverage). Drawbacks to the decision matrix included the need to maintain a pool of observers ready for deployment on short notice and having staff on call 24/7. Brailer sampling was not successful in the rockfish fishery, but may have application in other fisheries.

The objectives of the *Seafisher* project were to: 1) determine the efficacy of video for monitoring pre-sorting and discard activities on trawl catcher processors; 2) evaluate the functionality of an automated catch sampling system; and 3) determine the (haul-specific) accuracy and precision of observer sampling based estimates of target and non-target species weights. Nine cameras were installed to monitor catch (yellowfin sole and arrowtooth flounder targets) from landing to point of discard. Results have not been fully analyzed but indicate that video has potential for use as a catch monitoring tool on catcher processors and automated catch sampling systems may be a viable way of randomly selecting samples of the catch.



## V. Scheduling and other issues

The committee also discussed the following three issues summarized below.

### *Changes to the existing Observer Program*

The committee and NMFS noted that there may be changes desired in the existing observer program that could be included in a new amendment package. The committee noted a couple of issues to frontload those discussions, should such an 'omnibus' type amendment be initiated. These included a proposal to increase the number of observer trips that can occur before de-briefing. The committee is interested in addressing fisheries that have very short openers (a few days) and are required to have 30% observer coverage (effectively creating 100% coverage).

A member of the public also suggested a requirement for <60' vessels to have logbooks if they catch 50,000 pounds or more of groundfish annually. It was suggested that this be included in the annual recordkeeping and reporting package developed by NMFS.

### *Federal Observer Compensation Act (FOCA)*

Dr. Karp provided an update on the status of FOCA. This proposed legislation is intended to reduce the costs for observer insurance, limit vessel liability in the case of negligence claims, and provide a more comprehensive program for compensating observers in the event of work-related illness or injury. Dr. Karp noted that the most recent FOCA language available to the public continues to be the QuanTech report (March 2003) provided to the committee last May. No significant changes have been made to the substance of the bill since that version. The proposal continues to undergo internal agency review.

### *Administration's MSA Bill (Dec 2005 version)*

The committee reviewed the draft observer language proposed in the December 2005 version of the administration's MSA reauthorization bill (Attachment 2), provided by NMFS at the request of the committee. The committee noted that the language authorizing the collection of fees from industry (all regions) to cover the costs of observers is very broad, and no cap is specified. The language also refers to Secretarial authority, and does not mention the Councils as developing the fee programs. This spurred the question of whether the intent was for the Secretary to implement a fee program without going through the Council. Staff noted that statutes often reference the Secretary without mention of the Council, with the understanding that the Council would develop and recommend an amendment package with corresponding regulations in order for the Secretary to exercise the authority established in the statute.

The committee also noted that the administration's language defining for what an observer fee could be used is ambiguous; notably, it is uncertain whether it would allow the fee to be used for any agency administrative costs. Lastly, the committee did not favorably view the intent of the language that required that no new observer programs could be funded through direct contracts with industry and that existing such programs must undergo an independent peer review to evaluate the accuracy, precision, and potential biases of the data from the program.

Staff noted that they will inform the OAC of revised proposed MSA language as it becomes available. The administration's MSA reauthorization bill (December 2005 version) is provided in entirety at: <http://www.nmfs.noaa.gov/msa2005/>.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
*National Marine Fisheries Service*  
P.O. Box 21668  
Juneau, Alaska 99802-1668  
January 22, 2006

Attachment 1

Ms. Stephanie Madsen, Chair  
North Pacific Fishery Management Council  
605 West 4th Ave., Suite 306  
Anchorage, AK 99501-2252

Dear Madam Chair:

During the last several months, staff from the Alaska Regional Office, the Alaska Fisheries Science Center and the North Pacific Fishery Management Council (Council) have prepared an analysis of the five alternatives for restructuring the North Pacific Groundfish Observer Program (NPGOP) that were identified by the Council at its June 2005 meeting. This analysis will be presented to the Observer Advisory Committee (OAC) at its January 2006 meeting and carried forward to the Council for initial review at its February 2006 meeting in Seattle.

At the June 2005 meeting, some Council members and members of the public expressed concern that changes in the observer service delivery model which would occur under certain alternatives might result in increases in industry costs associated with observer labor. The Fair Labor Standards Act (FLSA) governs pay rate and overtime provisions of observer compensation of both current and future service delivery models. NOAA Fisheries Service has recently reaffirmed its position that observers employed by companies which contract directly with the agency or use federal funds for provision of observer services must apply FLSA and Service Contract Act (SCA) criteria to determine observer compensation requirements. These criteria are specified in federal labor regulations and include exemptions to the requirement to pay overtime for hours worked in excess of 40 hours per week. The exemption criteria include, among others, whether observers are paid on a salary or hourly basis, examination of their specific duties, responsibilities and education, and whether a collective bargaining agreement is in force.

Even though this reaffirmation by NOAA Fisheries Service addresses some of the concerns that were raised at the June 2005 Council meeting, we still are unable to provide a definitive assessment of observer costs under a new service delivery model. The applicability of some FLSA provisions and the actual number of hours worked by observers each day may not be determined until contracts between NOAA and observer providers are finalized. Furthermore, the Department of Labor (DOL) has yet to respond to a November 2005 NOAA Fisheries Service request to clarify uncertainties regarding classification of working and non-working hours, and verification of hours worked in an unsupervised environment. Initial feedback from DOL indicates that we may not receive a reply for several months, and that they may be unable to provide definitive answers to some of the labor-cost related questions.

Changes in industry costs associated with observer wages under different service delivery models are not the only costs warranting evaluation. The preliminary analysis presented to the Council at the June 2005 meeting identified some of the increased costs that would be incurred by NOAA Fisheries Service under alternatives other than status quo. These include:



- Costs of increased staffing for contract development, implementation and management;
- Additional staff that would be necessary to support the AFSC's more "hands-on" role in directing and adjusting observer coverage;
- Increased costs for the development and implementation of technological monitoring approaches and vessel specific monitoring plans (VMPs) also are expected, although these costs will occur even under the status quo alternative; and
- Increases in observer coverage that may be necessary to meet new fishery management program monitoring requirements and which would increase the AFSC's costs for observer training, briefing, debriefing and database management (and a range of other functions).

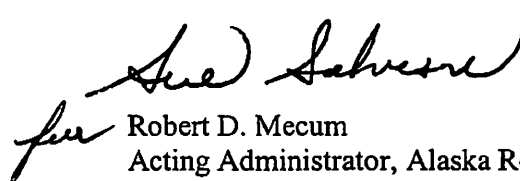
The magnitude of these increased costs depends on the design of the new monitoring system, the complexity and number of VMPs that are put in place and the overall increase in observer deployment days. However, at a minimum, salaries for new FTEs and operational costs would be required.

While agency and industry cost issues should be determined and resolved to the extent possible before restructuring can proceed, they are but one aspect of an effective restructuring program. To be most effective, restructuring alternatives must provide flexibility to adjust coverage levels in all sectors to optimize coverage relative to information needs, and encourage technological innovation when appropriate and cost effective. This requires us to take a more comprehensive approach to restructuring and to ensure that funds are available to cover costs associated with oversight and management of the observer program, as well as direct observer deployment costs.

At the January 2006 OAC meeting, we will discuss these issues with committee members and work towards developing new fisheries monitoring approaches for consideration by the Council. These approaches must recognize the need to constrain industry costs, provide funds necessary for NOAA Fisheries Service to operate the NPGOP, provide flexibility to optimize the benefits of observer coverage when resources are limited, and encourage appropriate use of video and other technologies for fishery monitoring.

We are hopeful that, through our collective efforts, we can build on the analytical work already completed and move forward to design and implement a comprehensive, flexible, and cost effective observation and monitoring system which will meet the needs for fishery-dependent information in the North Pacific groundfish fisheries for the foreseeable future. However, during the time period that the uncertainties outlined above remain unresolved, we recommend that the current structure of NPGOP be maintained and that the OAC and the Council consider Alternative 2 as the approach best suited to address current needs.

Sincerely,

  
for Robert D. Mecum  
Acting Administrator, Alaska Region

## Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

provisions, a broad framework regulation would control aspects that are common to all buyback programs; additional, program-specific regulations would address the particular details of each fishery, as necessary. If a particular buyback program were to be industry-funded, a referendum of participants in the fishery would be required.

### **SECTION 19. FUNDING FOR FISHERY OBSERVER PROGRAMS**

This section amends the Act to address the funding of observer programs and is intended primarily to establish an observer funding program that provides national guidelines but also incorporates sufficient flexibility to meet the unique needs of different regions. Accordingly, the Secretary may establish an observer funding mechanism to cover the cost of an observer program. With a few exceptions, private contractual arrangements between fishermen and non-government observers may not be established. Existing private contracts shall be evaluated by an independent peer review established by the Secretary to evaluate accuracy, precision, and potential biases in the program. The details of observer funding mechanisms should be tailored flexibly to the circumstances of the fishery. Notably, monies deposited in the Fishery Observer Fund must be used for that observer program.

### **SECTION 20. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS**

This section makes a technical amendment to section 111 of the Sustainable Fisheries Act to clarify that Western Pacific communities with indigenous inhabitants are eligible for fishery demonstration projects under that section, even if those communities have not developed and submitted a community development program under section 305(i)(2)(B)(v) of the Act to provide fisheries access to indigenous communities.

### **SECTION 21. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT**

This section amends the Northern Pacific Halibut Act of 1982 to increase the maximum civil penalty to \$200,000 and to authorize permit sanctions under that Act. The new permit sanction authorization is modeled on the permit sanction regime under section 308(g) of the Act. This section also amends section 9 of that Act to increase the maximum fines to \$200,000 for a fishing violation under that Act and to \$400,000 for using a dangerous weapon in committing a fishing violation, engaging in conduct that causes bodily injury to an enforcement officer, or placing an enforcement officer in fear of imminent bodily harm.

### **SECTION 22. MAINE POCKET WATERS**

This section corrects the coordinates in section 809 of the Atlantic Coastal Fisheries Cooperative Management Act for the waters known as "Maine pocket waters." That Act was amended in 1996 to exempt Maine commercial lobster permit holders from Federal permitting requirements in Maine pocket waters.

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1 reasonably necessary to meet the program's proposed objectives.

2 “(4) The Secretary shall contract with each person participating in a program, and each  
3 such contract shall, in addition to including such other matters as the Secretary  
4 deems necessary and appropriate to effectively implement each program (including,  
5 but not limited to, penalties for contract non-performance) be consistent with the  
6 framework and implementing regulations and all other applicable law.

7 “(5) Each program not involving fair market assessment shall involve a reduction auction  
8 that scores the reduction price of each bid offer by the data relevant to each bidder  
9 under an appropriate fisheries productivity factor. If the Secretary accepts bids, the  
10 Secretary shall accept responsive bids in the rank order of their bid scores, starting  
11 with the bid whose reduction price is the lowest percentage of the productivity  
12 factor, and successively accepting each additional responsive bid in rank order until  
13 either there are no more responsive bids or acceptance of the next bid would cause  
14 the total value of bids accepted to exceed the amount of funds available for the  
15 program.

16 “(6) Each program shall proceed by the Secretary issuing invitations to bid setting out the  
17 terms and conditions for participation consistent with the framework and  
18 implementing regulations. Each bid that the Secretary receives in response to the  
19 invitation to bid shall constitute an irrevocable offer from the bidder.”

20 **SEC. 19. FUNDING FOR FISHERY OBSERVER PROGRAMS.**

21 (a) NORTH PACIFIC RESEARCH PLAN. – Section 313 (16 U.S.C. § 1862) is amended-

22 (1) by striking subsections (a), (b), (c), (d), (e), and (i);

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1 (2) by redesignating existing subsections (f), (g), and (h) of Section 313, as subsections (a),  
2 (b), and (c), respectively;

3 (3) by redesignating existing subsection (j) of Section 313 as subsection (d);

4 (4) in subsection (a), as so redesignated, by striking "and this section"; and

5 (5) in subsection (b), as so redesignated-

6 (A) by striking "North Pacific Fishery Observer Fund" and inserting "Fishery Observer  
7 Fund established under Section 403(e)"; and

8 (B) by striking "303(b)(10)" under paragraph (2)(A) and inserting "303(b)(8)" in its  
9 place.

10 (b) OBSERVER PROGRAM FUNDING. – Section 403 (16 U.S.C. § 1881(b)) is amended by-

11 (1) striking "GUIDELINES FOR CARRYING OBSERVERS" in the heading of subsection  
12 (a), and inserting "GUIDELINES FOR OBSERVER SAFETY" in its place; and

13 (2) inserting after existing subsection (c) of Section 403 the following new subsections-

14 "(d) OBSERVER PROGRAM FUNDING MECHANISM.

15 "(1) The Secretary may establish a funding mechanism to cover the cost of an  
16 observer program to monitor any fishery managed under this Act or any other  
17 Act administered by the Secretary, including the Northern Pacific halibut  
18 fishery.

19 "(2)(A) The Secretary may exercise broad discretion in developing a funding  
20 mechanism under this subsection, which may include, but is not limited to, a  
21 system of fees, payments collected from dedicated access privilege  
22 programs, or any other cost recovery mechanism to pay for the cost of-

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1                   “(i) stationing observers on board fishing vessels and United States fish  
2                   processors, and

3                   “(ii) the actual cost of inputting collected data, less any amount received  
4                   for such purpose from another source or from an existing surplus in the  
5                   Fishery Observer Fund established in subsection (e).

6                   “(B) The moneys collected under a funding mechanism established under this  
7                   subsection for an observer program shall be-

8                   “(i) deposited into the Fishery Observer Fund established by  
9                   subsection (e); and

10                   “(ii) used only for the observer program covering fisheries from  
11                   which the moneys were collected.

12                   “(3) Except where provided under subsection (d)(4), no new observer programs  
13                   may be funded through direct contractual agreements between the owner or  
14                   operator of a fishing vessel or United States fish processor and any non-  
15                   governmental observer provider company.

16                   “(4) Fishery management plans and regulations under this Act that currently allow  
17                   for direct contractual agreements between the owner or operator of a fishing  
18                   vessel or United States fish processor and any non-governmental observer  
19                   provider company shall be evaluated by an independent peer review  
20                   established by the Secretary to evaluate the accuracy, precision, and potential  
21                   biases of data from the program. Based on the results of this and other  
22                   germane reviews, the Secretary, in consultation with the Council, will

**GROUND FISH AND HALIBUT AND SABLEFISH IFQ PROGRAM  
& RESUBMITTED TO OBSERVER PROGRAM (C5 – SSC)**

**AMENDMENT PROPOSAL**

North Pacific Fishery Management Council

Fax: (907) 271-2817

**Name of Proposer:** Ludger W. Dochtermann

**Date:** June 1, 2005 / Feb. 6, 2006

**Address:**

P.O. Box 714  
Kodiak, Alaska

**Telephone:**

(907) 486-5450

**RE Amendment 76 & Alternative 3, new Option.  
RESTRUCTURING FOR MANDATED OBSERVER COVERAGE w/ TIER  
2 (100%) AT-SEA COVERAGE ON GOA TRAWL SECTOR FOR ALL  
VESSELS (<125' & >125'; & CV & CP).**

**Applying:** NS#1 issues of 'rebuilding', optimum yield, preventing overfishing; NS#2 –best science & providing most current, comprehensive information; NS#3 'close coordinated management'; NS#7 minimize costs (damaged stocks, wasted fuel etc.) NS#8 sustained community participation & NS#9 minimize bycatch & mortality on non-targeted species.

**Brief Statement of Proposal:**

Full (100%) Observer Coverage on All GOA Trawl Vessels for the Year 2006, and once in every 5 or 7 years thereafter. By "Year 2006," I mean before any further Rationalization regulations are promulgated, so inherent in this proposal is a halt to further action until the best (adequate) scientific data is made available.

**Objectives of Proposal (What is the problem?):**

To accurately evaluate the trawl fisheries' entire catch performance regarding the bycatch of non-targeted species and the on-board management conduct of the fishery's prosecution. There is a serious need to have years of full knowledge regarding bycatch for several reasons, not the least of which is for comparison with other years of reduced coverage where the Nation relies upon self-reporting during non-observer hauls.

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

Due to the nature of the extraordinary value of bycatch – often exceeding the value of targeted species, and due to the nature of massive discards when incidents of 'bad hauls' occur, NOAA Fisheries and the Council need more accurate base data years' statistics. Absent the presence of constant recording cameras and other means of full data collection, and given the need for human confirmation of such 'remote sensing' were it to even be present, the 2006 fishery would be a first start in accurate measurement. Human behavior in the interests of overwhelming economic rewards absent effective comparison data and enforcement commands that NOAA base its decisions on more accurate data, and confirm that behavior is not incorrectly reported when observer coverage is not at 100% levels.

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

The program would arguably be costly and operationally inconvenient to many vessels, however government could cover much of the costs in return for the knowledge gained. For the cost of not having full and complete knowledge – at least once every 7 years, and at least "once" (in 2006) – before creating any further arbitrary resource allocation (property rights shifting) regulations (such as "rationalization schemes") may be a grave loss to society and



regional economies as heavy-impact, intense methods of fishing – i.e. hard-on-bottom trawling – proceed unabated and unwatched.

The question of “who wins and who loses?” is moot under the logic that the Public resource is an invaluable asset of the Nation, and no one loses when we all know what are the true conditions of the prosecution of such fisheries. Everyone wins when regulations are based on the best data, and when they follow the National Standards in the Magnuson-Stevens and Sustainable Fishery Acts, in their spirit and intent – especially when the regulatory process proceeds on science, not politics and greed.

**Are there Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem?:**

There is another means of keeping an eye on the prosecution of the fishery, but the cost of having numerous Coast Guard vessels on site, around the clock, along with ‘random-boarding’ (fair) observer coverage would be much higher than instituting a full-coverage year-stratification program that operates only once every 5 to 7 years.

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

This is a complex matter, as NOAA has not had adequate budgets for better research. But the conduct of the trawl fishery and the witnessing of its highly destructive prosecution are well known among NOAA, Alaskan communities and fishing crews. The Council and NOAA might have greater insight on data collection and statistical need, and that could all come out during the evaluation of this proposal were the Council to create an agenda item specifically to task going forward with 100% observer coverage in 2006.

**Additional Notes (2/6/06):**

The Council has not made any progress on this June 2005 submittal. It was suggested that the issue be brought up with the Observer Committee, however I could not attend due to the conduct of the tanner crab fishery (I skipper my own vessel). Also, due to the volcano, a representative could not make that meeting, as well.

I believe the SSC is the most appropriate venue for this 100% coverage proposal due to several factors: 1) the amount of damaged resources, a.k.a. “trawl crab” – tanners damaged by hard-on-bottom trawling in our Kodiak Island fishery – is reaching monumental proportions; 2) the issue is increasingly one of making the best policy based on the best scientific information, and given factor #1, this committee should further my proposal to the Council for inclusion in its regulatory framework. This is imperative, as GOA Rationalization is proceeding without adequate knowledge of the resources and the harms done by another sector’s fishing practices, and this must be stopped until further analysis can be done. I ask you to please propose staff tasking on this issue and to conduct that analysis as soon as possible. I will be carrying further public comment to the AP and Council level.

**Signature:**

Sincerely yours, on behalf of

*Ludger Dochtermann*

Absent from the SSC Meeting on Feb. 6, 2006 – presented by Stephen Taufen

As reported to NMFS, Pot hauls in the 2006 GOA Tanner fisheries have often shown over 50% “trawl crab” damage due to trawlers concurrently in the areas. Letters will be provided to the Council.