

MEMORANDUM

TO: Council and AP Members  
FROM: Chris Oliver *Chris*  
Executive Director  
DATE: March 13, 2007  
SUBJECT: Observer Program

ESTIMATED TIME  
2 HOURS

ACTION REQUIRED

- a) Progress report and action as necessary.

BACKGROUND

Observer Restructuring

The existing North Pacific Groundfish Observer Program (Observer Program), in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. Vessels and processors contract directly with observer providers to procure observer services to meet the coverage levels in regulation. In the past several years, the Council, NMFS, and the Observer Advisory Committee (OAC) have been working to develop a new system for observer funding and deployment in the Observer Program. The concept previously proposed was often called 'observer restructuring.' In general, the program would be restructured such that NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, disproportionate cost issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

The Council thus reviewed an amendment package in 2006, with alternatives intended to address a variety of longstanding issues associated with the existing system of observer procurement and deployment. As part of initial review in February 2006, NMFS presented a letter (Item C-5(a)) 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 subsequently 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>

<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 NMFS. 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 analysis for Amendments 86/76.

The NMFS letter reviewed in February 2006 outlines the ongoing concerns with not being able to provide a definitive assessment of observer costs under a new service delivery model at this time. Costs may not be possible to assess until actual contracts between NMFS and observer providers are finalized. In addition, NMFS had not received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions. The NMFS letter also outlined the type of increased costs expected under any alternative other than status quo, as well as the need to ensure that funds are available to cover costs associated with oversight and management of a flexible, effective observer program.

Also at the time of final action in June 2006, NOAA General Counsel, Alaska Region (GCAK) provided a preliminary determination that the Research Plan authority provided in the MSA (Section 313) to assess a fee for observer coverage could not be applied to only a subset of the vessels in the fisheries for which the Council and NMFS have the authority to establish a fee program. Therefore, all of the restructuring alternatives, which assessed different fees against different fisheries or sectors, were likely to require new statutory authorization.

**Given the cost and statutory issues described above, at the time of final action in June 2006, the Council approved an extension of the current program, by removing the December 31, 2007 sunset date in existing regulations.** This action was also recommended to the Council by NMFS and the OAC, given the need for continuing the program in the short-term and the lack of control over Congressional authority and cost issues. The proposed rule for this action was published on February 22, 2007 (72 FR 7948), and the public comment period ended March 23, 2007.

Also in June 2006, the Council recommended that a new amendment proposing restructuring alternatives for the Observer Program 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. Thus, the previous analysis of the restructuring alternatives was intended as a starting point for a future amendment. The Council's problem statement from the June 2006 action is provided below for reference.

#### **BSAI Amendment 86/GOA Amendment 76 Problem Statement (June 2006)**

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.

While the Council continues to recognize the issues in the problem statement above, existing obstacles prevent a comprehensive analysis of potential costs. Immediate Council action on a restructured program is not possible until information is forthcoming that includes clarification of cost issues that arise from Fair Labor Standards Act and Service Contract Act requirements and statutory authority for a comprehensive cost recovery program. During the interim period, the Council must take action to prevent the expiration of the existing program on December 31, 2007.

Since final action in June 2006, the Magnuson-Stevens Act (MSA) was reauthorized (January 12, 2007). These amendments include changes to Section 313 which allow the Council and Secretary to establish a system of fees to pay for the costs of implementing a fisheries research plan which requires that observers are deployed on vessels and in processors. The MSA explicitly allows for a system that may establish fees that vary by fishery, management area, or observer coverage level. The MSA amendments also allow for a fee system to provide for the cost of electronic monitoring systems, as well as human observers. The revisions to Section 313 of the MSA are provided as **Item C-5(b)**.

Thus, while one of the criteria (statutory authority) the Council stated was necessary to meet in order to reconsider an amendment to restructure the Observer Program was provided through MSA reauthorization, the FLSA and cost issues remain undefined. NMFS has not yet received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions, nor have these issues been clarified by statute or regulation, significantly affecting staff's ability to estimate costs associated with a fee-based system.

Given that the cost issues remain, NMFS recently sent a letter recommending that the Council continue to set the restructuring amendment package aside at this time, and focus its efforts on necessary changes to the existing program (**Item C-5(c)**). NMFS has proposed a list of regulatory changes to the existing Observer Program that it believes need to occur regardless of observer restructuring (**Item C-5(d)**). This list is comprised of relatively short-term type actions that can be developed in one regulatory package. Dr. Bill Karp, Director of the Fisheries Monitoring and Analysis Division at the Alaska Fisheries Science Center and NMFS staff will be available to review and discuss the proposed changes with the Council.

After its December 2006 meeting, the Council sent a letter to NMFS requesting that it be involved in the process to determine changes to the existing program (**Item C-5(e)**). Two letters have also been sent from an observer provider company, Alaskan Observers, Inc., with regard to informing and involving observer providers in the process of modifying or creating new internal policies or regulations that affect the industry. These letters were at least partially in response to a memo from NMFS (12/4/06) soliciting input on improving operational constraints facing the Observer Program. And an additional memo from Dr. Karp was distributed on March 12. These four letters are provided as **Item C-5(f)**.

Council action at the April 2007 meeting is to review the report provided and take action as necessary. The Council may also want to consider taking action to send another letter to Dr. Bill Hogarth, requesting a response from the Department of Labor on the FLSA issues, in order to make further progress on observer restructuring. In addition, the Council may choose to convene the Observer Advisory Committee to review NMFS's proposed changes to the existing program. If an OAC report was requested at the June Council meeting, tentative OAC meeting dates would be May 21 – 22 in Seattle. NMFS could provide an expanded discussion paper on the proposed changes for the OAC meeting, if this is the approach taken by the Council.

Based on the above, action at the June Council meeting could then be to review the expanded discussion paper, the OAC recommendations, and potentially initiate and approve alternatives for a regulatory amendment package to make changes to the existing Observer Program.

#### **Changes to the Atlas Regulations**

NMFS staff will provide a brief update on the current effort to upgrade the Atlas software. Regulations at § 679.50(g)(1) and (g)(2) require each Atlas-use computer to meet processing chip, memory, operating system, disk drives, and modem minimum specifications. Since its implementation, Atlas requirements have been periodically upgraded through proposed and final rulemaking. NMFS is currently developing a proposed rule to address issues associated with another upgrade.

One reason for the current upgrade is that the commercial database software used to store observer-collected information and interface with the Atlas software is no longer supported by the manufacturer. The new Atlas software should increase overall data quality by increasing the functionality and efficiency of the Atlas, and interface with new, supported commercial database software. The new Atlas software is expected to be available for installation for the 2008 fishing year.

However, rather than propose necessary hardware and software component upgrades to support new Atlas software, NMFS is proposing to remove these specific requirements. Alternatively, NMFS proposes to require that each vessel or processor already subject to Atlas requirements provide hardware and software that is fully functional and operational with the NMFS-supplied software. The term "functional" means that all of the tasks and components of the NMFS-supplied software could be executed, and data transmissions to NMFS could be initiated effectively by such communications equipment. This approach means NMFS would no longer revise Atlas hardware and software requirements through rulemaking. As changes to the software component of the Atlas become necessary to support electronic communications of observer data, Observer Program staff would communicate in writing with vessel and plant personnel to ensure the personal computer provided for use by an observer meets the minimum requirement to enable implementation of these changes. At that time, vessels and processors would be required to upgrade their computer hardware and software components to meet these minimum requirements.

In sum, if this proposed regulation is adopted, catcher vessels, catcher processors, motherships, and shoreside or stationary floating processors must ensure the Atlas computer meets the minimum specifications necessary for the NMFS-supplied software to execute all of its tasks, including communication with NMFS computers to transmit data, starting in the 2008 fishing year. Publication of the proposed rule is expected in late March or early April, with the intent to publish the final rule, if approved, by fall 2007.



**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*

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).

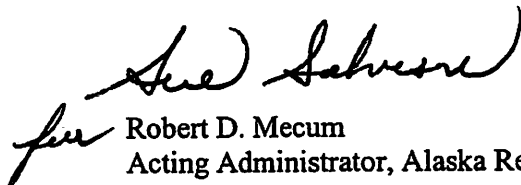
The magnitude of these increased costs depends on the design of the new monitoring system, the complexity and number of VMPs that are put in place and the overall increase in observer deployment days. However, at a minimum, salaries for new FTEs and operational costs would be required.

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

**SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION 16 U.S.C. 1862**

**104-297**

**(a) IN GENERAL.--**The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for ~~all fisheries under the Council's jurisdiction except salmon fisheries~~ any fishery under the Council's jurisdiction except a salmon fishery **which--**

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) ~~establishes a system of fees to pay for the costs of implementing the plan. Establishes a system, or system, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan.~~

**102-582**

**(b) STANDARDS.--**

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to--

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall--

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers, or electronic monitoring systems, on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against some or all fishing vessels and United States fish processors, including those not required to carry an observer or an electronic monitoring system under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section;  
~~and~~

(I) provide that fees collected will be credited against any fee for stationing observers or electronic monitoring systems on board fishing vessels and United States fish processors and the actual cost of inputting collected data to which a fishing vessel or fish processor is subject under Section 304(d) of this Act; and

(J) meet the requirements of section 9701(b) of title 31, United States Code.

**(c) ACTION BY SECRETARY.--**

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

**(d) FISHERY OBSERVER FUND.--**There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.



**(e) SPECIAL PROVISIONS REGARDING OBSERVERS.--**

(1) The Secretary shall review--

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of his section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that--

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

**104-297**

**(f) BYCATCH REDUCTION.--**In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

**104-297**

**(g) BYCATCH REDUCTION INCENTIVES.--**

(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2) (A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, *Provided, That--*

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

**104-297**

**(h) CATCH MEASUREMENT.--**

(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.

(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

**104-297**

**(i) FULL RETENTION AND UTILIZATION.--**

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.

**102-567**



AGENDA C-5(c)  
MARCH 2007  
UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

March 12, 2007

Stephanie Madsen, Chair  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue  
Anchorage, AK 99501-2252

Dear ~~Madame~~ <sup>Stephanie</sup> Chair:

At its March 2007 meeting, the North Pacific Fishery Management Council (Council) will consider changes to the regulations governing the North Pacific Groundfish Observer Program (NPGOP). The Council last discussed the NPGOP in June 2006, when they took action to extend the existing program. While recognizing that this action did not meet the majority of the issues identified in the underlying problem statement, the record notes that it did meet the short-term need of preventing the expiration of the observer program. The Council recognized that restructuring of the NPGOP would be necessary to fully address the problem statement. It was noted, however, that it would not be possible to initiate this process until the statutory authority necessary to implement any of the fee-based alternatives had been provided and outstanding questions on observer labor costs under direct NOAA contracts with observer providers had been answered. The statutory authority concern was resolved with the reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in January 2007.

In an audit report dated March 2004, the Office of the Inspector General (OIG) recommended that:

“NOAA should work with the North Pacific Fishery Management Council to establish requirements for an observer program that includes a vessel selection process that produces random sampling of the fishery.”

In a memorandum dated January 29, 2007 (enclosed), NOAA's National Marine Fisheries Service (NMFS) responded to this recommendation as follows:

“..... NMFS now has the necessary tools and authority in place to implement a program less prone to selection bias, and it is now up to the North Pacific Fishery Management Council to approve one of these (2006 restructuring) alternatives.”

Consistent with this and earlier statements, NMFS continues to support its position that substantive data quality and operational issues facing NPGOP can only be properly addressed through restructuring the entire program and that this process should be initiated as soon as possible. We also recognize that the outstanding observer labor cost



questions must be answered before this process can begin. We continue to seek answers to these questions from the United States Department of Labor and we have initiated an internal process which will document labor costs associated with current direct NOAA contracts for observer services. It is our intent, therefore, to ensure that comprehensive observer cost information is available later this year in the event the Council decides to initiate a new NPGOP restructuring analysis later this year.

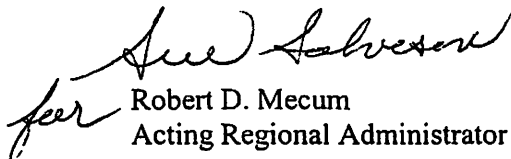
We expect that it would take several years to complete the restructuring process and, therefore, we seek the support of the Council to address several outstanding issues under the current program structure. These include:

- Changes to the observer certification/decertification appeal process
- Clarification on the use of certified observers as sea samplers under EFPs
- Clarification of fishing day definition
- Clarification of regulations governing observer behavior
- Miscellaneous housekeeping corrections and clarifications

A discussion paper detailing these topics will be distributed to Council members before the March meeting and staff will be present during the meeting to summarize the paper and respond to questions.

In summary, we seek the support of the Council to move forward on the above-mentioned issues at the March meeting. In the longer term, however, we wish to again emphasize the importance of restructuring the NPGOP.

Sincerely,

  
Robert D. Mecum  
Acting Regional Administrator

Enclosure

JAN 29 2007



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1315 East-West Highway  
Silver Spring, Maryland 20910  
THE DIRECTOR

MEMORANDUM FOR: Mack Cato  
Director  
Audit, Internal Control, and Information Management

FROM:  William T. Hogarth, Ph.D.

SUBJECT: Status Report on OIG Audit Recommendations –  
*OIG Report Final Audit Report No. IPE-15721/March 2004 NMFS  
Observer Programs Should Improve Data Quality, Performance  
Monitoring, and Outreach Efforts*

This memo describes the actions taken by NOAA's National Marine Fisheries Service (NMFS) to complete OIG Audit recommendations #1 and #9, due January 31, 2007. NMFS is requesting that both of these open recommendations be closed.

**Recommendation #1: The Assistant Administrator for Fisheries should develop and implement statistically valid, unbiased vessel selection procedures for observer programs with contractual relationships with observer providers and continually monitor the implementation to ensure that the vessel selection process is properly implemented.**

**Actions Taken:** NMFS conducted a national workshop on May 17–19, 2006, to evaluate vessel selection bias in 24 observer programs representing all six NMFS regions (see the attached *Report on the National Observer Program Vessel Selection Bias Workshop*). This workshop evaluated the procedures used by all observer programs to select vessels for observation, as well as procedures specific to individual regions. It examined the factors that could bias the estimates of catch and bycatch, and recommended improvements to program designs to reduce the bias. Some of the recommendations were national in scope and others were regional (see Tables 1-6a and 1-6b). The recommendations addressed the causes of bias in three broad categories: (1) errors in the sampling frame; (2) bias caused by how vessels within the sampling frame are selected for observation (i.e., observed vessels may not be representative of the general fleet); and (3) bias caused by changes in fishing behavior because of an observer's presence. The last category of bias is not directly related to the vessel selection method but was considered during the workshop because it applies to a sample of vessels.

A questionnaire was developed before the workshop to collect information about each regional fishery (see Appendix C-1 for questionnaire responses). This questionnaire covered the following topics:

- Observer program goals and objectives
- Description of the fishing fleet being observed
- Description of target and bycatch species
- Description of critical bycatch issues
- Available data sources to estimate total catch and bycatch
- Observer program design and sampling protocols

THE ASSISTANT ADMINISTRATOR  
FOR FISHERIES



- Statistical catch and bycatch estimation procedures
- Bias issues specific to each program, including
  - Sampling frame
  - Vessel and trip selection protocols
  - Spatial and temporal distribution of sampling
  - Bias in estimators

During the workshop, each regional observer program analyst provided an overview of these topics (see Appendix D-1 for presentations). This was the basis for evaluating bias in each regional observer program and for developing recommendations. The fisheries and sources of potential bias were diverse, but some general conclusions could be drawn about how to diagnose and reduce vessel selection bias.

NMFS will continue to monitor all regional observer programs for vessel selection bias. Each regional observer program will provide updates on problem areas to the National Observer Program Advisory Team (NOPAT) before each NOPAT meeting to continually monitor these actions and ensure that the vessel selection process is properly implemented.

**Recommendation #9:** NOAA should work with the North Pacific Fishery Management Council to establish requirements for an observer program that includes a vessel selection process that produces random sampling of the fishery.

**Actions Taken:** The North Pacific Groundfish Observer Program (NPGOP) was implemented in 1972 through industry funding, with fishing vessels contracting directly with observer service providers to obtain observer coverage. This service delivery model limited NMFS' ability to control the distribution of observer coverage and to implement random sampling of catch in many sectors of the fishery. The Magnuson-Stevens Fishery Conservation and Management Act of 1996 did not provide NMFS with sufficient flexibility to collect industry fees and issue a government contract establishing observer program requirements that include random sampling of catch throughout the fishery. However, Section 214 of the reauthorized Magnuson-Stevens Act, enacted in December 2006, now provides NOAA with enhanced authority to collect industry fees to pay for observer coverage. NMFS has worked with the North Pacific Fishery Management Council to develop and evaluate alternatives that can be implemented by the Council to restructure the NPGOP. These alternatives are: (1) restructured program for the Gulf of Alaska groundfish and all halibut fisheries operating throughout Alaska; (2) restructured program for all fisheries with observer coverage less than 100 percent; and (3) restructured program for all groundfish and halibut fisheries off Alaska. Under each alternative, 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. Therefore, NMFS now has the necessary tools and authority in place to implement a program less prone to selection bias, and it is now up to the North Pacific Fishery Management Council to approve one of these alternatives.

MAR. 8. 2007 11:19AM

SCIENCE&TECHNOLOGY

NO. 0921 P. 4

Cc: Gary Reisner, Brian Brown, Robert Ziobro, Neil Williams, Stephe Bost, Bonnie Ponwith, Lisa DesFosse,  
Stephen Brown

## **Recommended Observer Program Regulatory Revisions:**

### **March 2007 NMFS Staff Discussion Paper**

At its June 2006 meeting, the Council adopted a motion to extend regulations governing the Observer Program beyond December 31, 2007. This action was necessary to avoid expiration of the current Observer Program, and ensure the continued collection of observer data for supporting science and management functions. This action has been published as a proposed rule and the public comment period closed on March 23, 2007.

The Council's June 2006 motion indicated their intent to consider initiating a new amendment proposing restructuring alternatives for the Observer Program when: "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."

On January 12, 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Pub. Law No. 109-479, (MSA). The reauthorized MSA authorizes the North Pacific Council to adopt fee based alternatives which were considered in the analysis. Specifically, the MSA states that the Council may prepare a fisheries research plan which "establishes a system, or system, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan." This, along with other clarifying MSA language, provides the flexibility the Council needs to develop a new fee based Observer Program. However, the exact nature of the fee program authorized by the Magnuson-Stevens Act must be determined, the Council must consider a new amendment to restructure the current Observer Program, and NMFS must undergo rulemaking to implement a new Observer Program.

The second impediment to restructuring, however, remains unresolved. NMFS has not yet received a response to the November 29, 2005 letter from NMFS to the Department of Labor (DOL) which requested guidance on computing hours worked and the associated rules governing compensation of fisheries observers, and the applicability of the Service Contract Act (SCA) and Fair Labor Standards Act (FLSA) on land, in the territorial sea, the Exclusive Economic Zone, and international waters. We continue to seek guidance from DOL and have initiated an internal process which will document labor costs associated with current direct NMFS contracts for observer services. We intend to ensure that comprehensive observer cost information is available later this year.

While we continue to believe that the substantive data quality and operational issues facing the Observer Program can only be properly addressed through restructuring the entire program, we do not envision restructuring the Observer Program until the remaining impediment identified by the Council is adequately resolved. And, even if all impediments were resolved, it would still take several years before a restructured Observer Program could be implemented.



In the meantime, NMFS has identified several issues which should be addressed to make improvements to the current Observer Program. NMFS does not expect the identified issues to be labor intensive to analyze or implement. NMFS intentionally did not address complex issues which would best be solved by restructuring. This discussion paper briefly describes the issues we propose to address under the current Program, and offers some potential solutions. We would anticipate developing these issues, and the alternatives to address them, through the Council's Observer Advisory Committee (OAC).

### **Certifications/decertification appeal processes**

*Issues:* The observer certification/decertification process and the observer provider permitting process were revised in 2002 to comply with the Administrative Procedure Act. Since that time, experience gained with the current process has highlighted 3 areas where the regulations need improvement or clarification.

A. Current regulations provide for an appeals process whenever NMFS denies an applicant a certification. This applies to both observers and observer providers. Thus, individuals who fail our training course and are denied certification can appeal these decisions to the NMFS Office of Administrative appeals. Additionally, an observer provider who is denied a permit can also appeal. NMFS can consider whether to make a permit or certification issuance a discretionary decision, not subject to further review under the APA. Once the permit or certificate is issued, however, observers and observer providers would be entitled to appeal any decision to revoke or sanction the permit or certification.

B. Current regulations attempt to control observer behavior so that certified observers present themselves professionally on vessels and at plants, at NMFS sites, and in fishing communities. We are advised by NOAA GC that many of these regulations are unenforceable, and/or are outside of our authority and need to be clarified or deleted.

C. The Observer Manual currently outlines the standards and methods which observers must adhere to. NOAA GC advises that our administrative processes would be improved by incorporating the Observer Manual standards in regulation text.

Potential solutions – NMFS believes each of these issues can be corrected by relatively simple regulatory changes. NMFS proposes to further develop potential regulatory solutions to these issues for discussion with the Observer Advisory Committee.

### **Observer providers' scope of authority regarding research and experimental permits**

*Issues:* Current regulations allow observer providers to provide observers only for purposes of required groundfish coverage. Regulations are ambiguous as to whether observer providers may provide employees to aid in research activities, including exempted fishing permits, scientific research permits, or other research. The current practice is to allow these activities, but results in confusion for NMFS staff and observers when observers switch between data collections under research and management activities.

*Potential Solution:* Revise regulations to clarify that observer providers are allowed to provide observers or technical staff for purposes of research activities. The role of technical staff

provided for research activities differs from the role of an observer. Observers are trained, certified and directed by NMFS, and several regulatory provisions apply to them and their employers. Under some circumstances, technical staff are not directed by NMFS and would follow experimental protocols at the direction of the chief scientist or researcher. The technical staff would not follow observer program protocols and direction and would not submit data through the observer program. These technical staff conduct activities outside of the observer program, and NMFS observer program regulations would not apply to them or their employers. Note that there are circumstances where observers would be required to account for removals or the research is being conducted within the context of the normal fishery.

### **Fishing Day Definition**

*Issues:* The term “fishing trip” for purposes of obtaining required observer coverage is defined in regulation at § 679.2. In many cases, observer coverage regulations are based on this definition. However, this regulation allows vessel owners or operators to use *any* observer coverage incurred during a 24 hour period to account towards coverage requirements. This has resulted in vessels fishing and being observed in ways that aren’t representative of actual fishing behavior, often for short periods of the day. In a January, 2005 memo, NMFS Enforcement staff identified this as an issue and requested that it be addressed through rule-making.

*Potential Solution:* Revise the definition of fishing day to alter vessel behavior and decrease the fleet’s ability to conduct fishing solely for the purposes of obtaining required observer coverage.

### **Program Cost Information**

*Issue:* NMFS lacks precise information on the total costs, and the components of those costs, for the industry funded component of the observer program. This information is needed for various internal and external analyses. Costs are readily known by observer providers but they are not provided to NMFS.

*Potential solution:* Require mandatory reporting of costs broken out by the categories NMFS believes are necessary for analysis and understanding of costs. Note that mandatory reporting of cost information would be considered confidential information.

### **Completion of the Fishing Year**

*Issue:* At the end of each calendar year, Observer Program staff complete all quality control processes for that year’s data set. However, compilation of data for a fishing year is always delayed because staff must wait for observers to return and debrief. Because observers can be deployed for 90 days, data collected in one year may not be debriefed until late March of the following year. For example, if an observer is deployed on a catcher/processor longliner in December 2006, that observer may not return for debriefing until February 2007. Thus, some data collected in 2006 would not be finalized until late in the first quarter of 2007. This delays finalization of the data and release of the complete data set to NMFS scientists and managers.

*Potential solution:* Establish a reasonable date when observers who have collected data in the previous fishing year would be required to complete debriefing.

## Miscellaneous Modifications

*Issue:* The following is a list of various modifications recommended by staff to address observer program operational issues.

1. Regulations at § 679.50(c)(5)(i)(A) reference a workload restriction at (c)(5)(iii). The reference should be (c)(5)(ii).

*Potential Solution:* Replace (c)(5)(iii) with (c)(5)(ii).

2. Currently, regulations at § 679.50 require observer providers to submit each type of contract they have entered into with observers or industry. However, there is no deadline for submission of some of this information. While most providers currently operate as if there is already an annual deadline for all submitted information, resolution of this issue would provide clarity to observer providers.

*Potential solution:* Establish requirement and due date for annual submissions of information from providers.

# North Pacific Fishery Management Council

Stephanie Madsen, Chair  
Chris Oliver, Executive Director



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December 20, 2006

Dr. Bill Karp, Director  
Fisheries Monitoring and Analysis Division, NMFS  
Alaska Fisheries Science Center  
7600 Sand Point Way NE  
Seattle, Washington 98115

Dear Dr. Karp: <sup>Bill</sup>

The Council received public testimony at its December 2006 meeting regarding the need for a groundfish observer de-briefer to be stationed in Kodiak, particularly during the harvest of rockfish and sideboard species under the Gulf of Alaska rockfish pilot program. With the level of observer coverage (100% for catcher vessels and 200% for catcher processors) required under the program, dedicating a de-briefer to Kodiak during the rockfish fisheries may both expedite the de-briefing process and reduce costs to participating vessels. Industry representatives have noted that they are prepared to coordinate with participating vessels and NMFS to maximize efficiency. The Council would appreciate consideration of this request.

In addition, the Council is aware that NMFS is drafting regulatory changes for consideration by the Council, to address several problem areas with the existing groundfish observer program. This was noted in your letter of December 4, 2006, to all North Pacific Groundfish Observer Providers, along with the request for feedback as you identify problems and develop potential solutions through the regulatory process. I would like to emphasize the Council's desire to provide input during this process, both through review at the Council meetings and the Observer Advisory Committee (OAC). It may be prudent to schedule a report on NMFS's progress toward identifying and prioritizing short- and long-term issues associated with the existing program at the April 2007 Council meeting, with the intent to convene the OAC shortly afterward to assist in further defining the problems and range of potential solutions for analysis.

Thank you for your consideration of the above requests. Please feel free to contact me if you have any questions.

Sincerely,

Chris Oliver  
Executive Director

Cc: Sue Salveson, NOAA Fisheries, AKR  
Council members

# ALASKAN



February 26, 2007

Bill Karp PhD.  
Director, Fisheries Monitoring and Analysis Division  
Alaska Fisheries Science Center  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

Dear Dr. Karp, *Bill,*

Thanks for meeting with the informal industry group and myself on the 15th. I thought it was a great first step. I hope that you did as well? I realize that our thought processes are completely different but hope you realize that I am trying to be part of the solution not part of the problem.

As a follow-up I'd like to see a written response to AOI's letter dated 2/15/07. I'd really be interested in your ideas/agreements/disagreements. Also, I trust going forward that the Providers will play an important part of any dialogue and/or decision making with regard to Policies under current or future Observer Program consideration. The timing of this interaction is important as we both may be able to find a common ground on these issues given enough notice.

Thank you again for your time and consideration. I look forward to your response.

Sincerely,  
Alaskan Observers, Inc.

*[Signature]*  
Michael Lake  
President

*[Handwritten circles around the following text]*  
cc: Chris Oliver - E.D. Council staff ✓  
Sue Salvason - NOAA Fisheries, AKR ✓  
Nicole Kimball - OAC/council staff  
Council members

# ALASKAN



January 4, 2007

Bill Karp PhD.  
Director, Fisheries Monitoring and Analysis Division  
Alaska Fisheries Science Center  
7600 Sand Point Way NE  
Seattle, WA 98115-0070

Dear ~~Dr. Karp~~ <sup>Bill,</sup>  
Happy New Year! I hope this finds you well and that you had a great holiday season. I really appreciated the one on one time in Anchorage last month and hope you did too.

I'm writing today regarding your Memo dated December 4, 2006: Soliciting Input on Improving Operations.

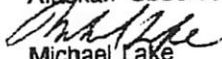
While AOI has a myriad of suggestions, I agree with Chris Oliver's letter dated December 20, 2006 and would like to encourage you not to make *any* changes you may be considering until the Council and OAC has a chance to review and comment on those proposed changes. These changes include, but are not limited to, those discussed in your memo and any regulatory changes you are drafting for Council consideration.

Please let me know, in writing, if you agree, disagree, think I'm crazy, etc. If you'd still like our comments, let me know that.

I look forward to working with you and your staff on this important range of issues.

Thank you in advance.

Sincerely,  
Alaskan Observers, Inc.

  
Michael Lake  
President

cc: Chris Oliver - E.D. Council staff  
Sue Salvesson - NOAA Fisheries, AKR  
Nicole Kimball - OAC/council staff  
Council members



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 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 Alaska Fisheries Science Center  
 Fisheries Monitoring and Analysis Division  
 7600 Sand Point Way Northeast  
 Seattle, Washington 98119-0070

December 4, 2006

**MEMORANDUM FOR:** All North Pacific Groundfish Observer Providers

**FROM:** Bill Karp – Director, Fisheries Monitoring  
 and Analysis Division *Bill Karp*

**SUBJECT:** Soliciting Input on Improving Operations

The purpose of this memorandum is to highlight important operational constraints which face the North Pacific Groundfish Observer Program and directly impact our observer providers. We would like to detail some of these issues and solicit your input on ways we can improve our collective operations to address short- and long-term concerns.

Currently, we are working through a substantial debriefing load. The year-end debriefing pulse is always challenging but this year it has been compounded by the timing of multiple fishery closures, staff attrition, bad weather, and an uncertain budget. From a budgetary perspective, we are operating under a continuing resolution which severely limits our spending. The agency has also instituted a hiring freeze so we are unable to recruit to fill vacancies created by the recent departure of four key staff and the departure of an additional six staff members during the last two years. In the short-term, we are working to implement a contract which would allow us to hire debriefers as contractors (not subject to the hiring freeze). The contract has not yet been awarded so it will not provide immediate relief, but it does hold hope for improving our debriefing efficiency in the spring. In the long run, our ability to hire staff or contract for labor will not be determined until the budget for FY07 (and future years) is resolved.

Given the staffing and budgetary constraints, we can expect continued delays in debriefing and associated stress. It is critical that we maintain data of the quality necessary for management and science. With that in mind, I would be very interested in your thoughts regarding operational, policy and regulatory changes which might improve our efficiency.

I'm interested in your suggestions as they relate to all aspects of our operations. Among these are the following areas of particular concern for your consideration.

Observer quality

We currently have many excellent certified observers. A small number of observers, however, do a poor job and create a burden on staff and bottlenecks in debriefing. We have attempted to prevent the poor performers from slowing down the debriefing of good observers, but we are not always successful in this regard. The processes we must follow



for revoking certification are laborious and time consuming. Often an observer whose work is poor is terminated by one service provider only to be hired by another company.

We are very interested in your ideas on ways to ensure that we maintain a quality workforce. Options may include raising the initial class entry standards and increasing initial certification standards. It has been suggested, for example, that observers should not be fully certified until they have demonstrated sustained performance in the field.

#### Debriefing throughout

One option would be to limit first time observers to 60 day cruises so they would return sooner than the prior observers in the spring. This would stagger the spring debriefing workload and give us more time to work with the new observers who usually take more time to debrief.

#### Gear

Gear losses are becoming increasingly expensive and difficult to sustain with diminishing budgets. It is essential that we upgrade our policies regarding gear management and accountability. Suggestions for addressing this area of concern include transferring this management and accountability task to the observer provider companies (as is now the case for ADF&G observer service providers). Such a change may have unforeseen consequences, and other solutions may be available, so we would appreciate your feedback on this topic.

#### Regulatory changes

It has been several years since we made any major changes to the observer regulations. We are now drafting regulatory changes for consideration by the Council that address several problem areas. We would like your input on regulatory problems and potential solutions so that we can incorporate your ideas early in the process. We will consider all suggestions, but it is important to note that the process of reviewing and developing ideas is complex, and some issues are not amenable to a regulatory fix under the current statutory constraints.

In closing, I would like to emphasize the importance of all participants in the North Pacific Groundfish Observer Program. Observers, observer provider companies, fishing companies, government, and the North Pacific Fishery Management Council are all critical to our collective success. I would also like to thank each of the observer provider companies for their sustained hard work and commitment to the program. I would greatly appreciate your help as we strive to build on our success and resolve outstanding short- and long-term concerns.

cc: Sue Salvesson  
Doug Demaster  
Jim Coc  
Chris Oliver  
Joe Kyle



**RECEIVED**  
 MAR 12 2007  
 N.P.F.M.C.



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 Alaska Fisheries Science Center  
 Fisheries Monitoring and Analysis Division  
 7600 Sand Point Way Northeast  
 Seattle, Washington 98115-0070

March 12, 2006

MEMORANDUM FOR: All North Pacific Groundfish Observer Providers

FROM: Bill Karp – Director, Fisheries Monitoring  
 and Analysis Division *Bill Karp*

SUBJECT: Response to Input on Improving Operations

Last December I wrote to each of the NPGOP certified contractors to address some operational issues and solicit feedback. I am writing again to provide an update regarding the operational issues and to respond to some concerns and suggestions that were raised in response to my earlier memo.

During the last few months of 2006 we were faced with operational challenges that resulted from the timing of multiple fishery closures, staff attrition, bad weather, and an uncertain budget. Debriefing delays were sometimes quite serious and I am aware that this had adverse impacts on observers and contractors. Now that agency hiring restrictions have been lifted and we have initial indications of funding levels for the 2007 fiscal year, we are in the process of recruiting to fill debriefer and other vacancies. While this will not result in immediate relief, I am confident that we will be able to bring new staff online during the coming months and be in a much better position to handle expected debriefing demands during the summer and fall. As mentioned in the earlier memo, we are also working to establish a contract which will allow us to hire additional debriefers on a temporary basis during peak periods. Finalization of this contract is expected later this year.

We received several suggestions for improving the efficiency of the debriefing process and we are always interested in feedback from contractors on this process. One suggestion concerns improvements that could be made in the mid-cruise review process. While contractors are required to make observers available for mid-cruise reviews, operational issues sometimes make this difficult. Vessel sailing schedules or contractors' obligations to redeploy observers soon after they arrive in port can be particularly problematic. So I would like to ask for your assistance in making sure all observers make themselves available for mid-cruise data reviews as soon as they arrive in port. This is particularly critical for new observers or observers who have just completed their first deployment with a new gear type. We focus on the identification and resolution of conceptual errors during these sessions because the time necessary to work through all the data that has been collected by an observer is rarely available. We will continue to improve this process and we will establish a procedure for advising contractors whenever we identify potentially serious performance concerns with specific observers.



Other suggestions regarding debriefing improvements included re-assignment of staff during peak debriefing periods and assigning contractors and observers awaiting debriefing to review and check observer data before debriefing occurs. Since the duties and responsibilities of contractors and observers are defined by regulation and we lack any authority to assign or oversee data checking by contractors or observers, this approach would not be possible without a change in the service delivery model. We will continue to assign staff to debriefing duties whenever possible, and we are planning significant changes to our data collection procedures in 2008 which will improve debriefing effectiveness and efficiency.

We continue to seek your assistance in reducing deployment duration for new observers, those deployed for the first time with a new gear type, and those whose performance has been problematic. I understand that this is not always possible, and that cost is a serious concern, but this approach will help us minimize debriefing delays during peak periods and improve data quality. Even the most thorough inseason advising and mid-cruise review process will not detect all serious problems and bringing observers back for debriefing sooner rather than later will always benefit overall data quality.

I would like to apologize for any misunderstanding that may have arisen from comments regarding maintenance of a high-quality workforce in my earlier memo. We are committed to doing the best we can to make it as easy as possible for observers to be successful. This philosophy is emphasized in all our activities, including training, briefing, debriefing and inseason support of observers; the record speaks for itself. Every effort is made to address and resolve data quality problems while observers are in the field, before they return for debriefing. Very few observers are recommended for decertification each year and the training failure rate continues to be very low. I am, therefore, particularly troubled by suggestions that decertification is the first step we would take if someone's work isn't up to standard (or to fail them out of briefing or training). Decertification or failure is never the first step and considerable staff resources are directed towards working with observers to identify and resolve problems at all stages. We can always improve our efforts in this area and constructive comments are always welcome.

The comments in my earlier memo regarding the possibility of raising the class entry standards and increasing certification standards may also have been misunderstood. I did not suggest that we would be raising the grade-point-average minimum for candidates nor is this under consideration. But please bear in mind that we are working in a regulated environment so we have limited options for addressing performance and data quality concerns. Observer service providers who contract directly with NOAA can be offered incentives to address data quality problems directly; these tools are not available to us and regulatory solutions will inevitably be indirect and less effective.

An effective partnership between NMFS and our NPGOP service providers is critical to the success of the program and I would like to take this opportunity to thank each of you for your continued participation and commitment. I would also like to acknowledge the

need for better communication between our staff and our certified observer providers. Within the next month, we will be sending each company a letter which provides feedback based on surveys completed by observers; we will also be asking each company to schedule a follow-up meeting with us. In the meantime, please continue to work directly with our staff on operational issues as you have in the past, but do not hesitate to contact me directly whenever the need arises.

cc: Sue Salveson  
Doug Demaster  
Jim Coe  
Chris Oliver  
Joe Kyle



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Seattle, Washington 98115-0070  
March 20, 2007

To: North Pacific Groundfish Observer Providers

From: Bill Karp – Director, Fisheries Management and Analysis Division

Subject: Organizational Changes

I would like to let you know about some planned changes in the organizational structure of the Fisheries Monitoring and Analysis (FMA) Division.

As you are aware, we have suffered significant staff attrition in recent years. We have been able to backfill some critical vacancies but we do not expect to receive sufficient appropriated funds to fully staff the North Pacific Groundfish Observer Program in the foreseeable future. Furthermore, new positions (and associated funds) requested to support new management programs such as the GOA Rockfish Pilot Project and the new groundfish retention requirements have not been provided. Therefore, we have decided to eliminate the Observer Cadre as a separately-managed activity within the Division. To the extent that resources are available, some of the functions previously carried out by the Cadre will be carried out within a reorganized debriefing group. We will maintain a small (2-4 person) office in Anchorage which will be staffed by members of the debriefing group. We will be hiring a new manager to supervise all debriefing staff and coordinate all debriefing activities and we also plan to hire at least two debriefers in Seattle and one in Anchorage to fill some of our current vacancies.

Once we have hired the new manager, the FMA management team will consist of: Bill Karp (Division Director), Martin Loefflad (Deputy Director), Jennifer Ferdinand (Manager of training and associated support services), Doug Turnbull (IT manager), and the new Manager of debriefing services.

I realize that our inability to fully-staff the FMA Division directly impacts the operations of our certified observer service providers and we will continue to do our best to minimize any impacts. Through this planned reorganization we expect to improve the efficiency and effectiveness of debriefing and other observer support services. As I mentioned in an earlier memo, we are also working to establish a contractual arrangement which will allow us to contract with suitably-qualified individuals during peak periods.



Please feel free to contact me directly if you have questions or concerns regarding these organizational changes.

cc:

Sue Salveson  
Doug DeMaster  
Jim Coe  
Chris Oliver  
Joe Kyle



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7800 Sand Point Way Northeast  
Seattle, Washington 98115-0070  
March 20, 2007

To: North Pacific Groundfish Observer Providers

From: Bill Karp – Director, Fisheries Management and Analysis Division

A handwritten signature in black ink, appearing to read "William Karp".

Subject: Organizational Changes

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Please feel free to contact me directly if you have questions or concerns regarding these organizational changes.

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