Public Testimony Sign-Up Sheet

Agenda Item C5- OBSERVERS

	NAME (PLEASE PRINT)	AFFILIATION
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

AGENDA C-5
APRIL 2008

MEMORANDUM

TO: AP and Council Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
2 HOURS

DATE: March 31, 2008

SUBJECT: Observer Program

ACTION REQUIRED

(a) Review Observer Advisory Committee report
(b) Final action on Observer Program regulatory amendment package (RIR/IRFA)

BACKGROUND

(a) Review Observer Advisory Committee report

The Council's Observer Advisory Committee (OAC) met on March 17 to: 1) review the results of a request for observer data from May 2007; and 2) review the proposed changes in the Observer Program regulatory amendment package and provide final recommendations to the Council.

NMFS staff prepared a series of tables to respond to a Council data request stemming from the OAC's May 2007 meeting (**Item C-5(a)**). The tables provide estimates of the total groundfish catch by vessels while carrying an observer as a percentage of the total groundfish catch for all vessels by area, gear type, target fishery, and vessel length category, during 2004 – 2006. Data from the CDQ fisheries are not included in these tables because almost all catch in the CDQ fisheries occurs on vessels carrying an observer and much of the CDQ catch data are confidential at the level of detail of the tables. The OAC reviewed these tables in March and provided feedback to the agency. NMFS will provide a brief review of these tables at this April meeting.

The OAC also reviewed the public review draft of the RIR/IRFA which proposes regulatory changes to the North Pacific Groundfish Observer Program. The OAC's recommendations on each of the seven issues included in the analysis, as well as the observer data request and other issues, are summarized in the attached March 2008 OAC report (**Item C-5(b)**).

(b) Final action on Observer Program regulatory amendment package (RIR/IRFA)

The existing North Pacific Groundfish Observer Program (Observer Program), in place since 1990, establishes coverage levels for most vessels and processors based on vessel length and amount of groundfish processed, respectively. Vessels and processors contract directly with observer providers to procure observer services to meet coverage levels in regulation. In the past several years, the Council, NMFS, and the 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 restructure the observer program. As part of initial review in February 2006, NMFS presented a letter (Item C-4(c)) 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.[1]

The NMFS letter reviewed in February 2006 outlines ongoing concerns with not being able to provide a definitive assessment of observer costs under a new service delivery model at the time, due to uncertainty about the applicability of the SCA and FLSA. Costs may not be possible to assess until actual contracts between NMFS and observer providers are finalized. In addition, NMFS has not received a response from the Department of Labor on its request for clarification of the applicability of several FLSA provisions.

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, as opposed to restructuring the observer program. This action was also recommended to the Council by NMFS and the OAC, given the need for continuing the program in the short-term and the lack of control over Congressional authority and cost issues. The final rule for this action was published on June 13, 2007 (72 FR 32559).

As part of its June motion, 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 cannot be anticipated at this time. Thus, the previous analysis of the restructuring alternatives was intended as a starting point for a future amendment.

Since final action in June 2006, the MSA was reauthorized (January 12, 2007). These amendments include changes to Section 313 which allow the Council and Secretary to prepare a fisheries research plan which

[1]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.

establishes a system of fees which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan. The MSA amendments also allow for a fee system to provide for the cost of electronic monitoring systems, as well as human observers.

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 unresolved. 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. In April, the Council sent another letter to Dr. Bill Hogarth, requesting a response from the Department of Labor on the FLSA issues. On a related front, NMFS has requested cost estimates from observer programs in other regions, in order to provide a (limited) means for comparison. Note also that one of the OAC's March 2008 recommendations is for the Council to send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the FLSA and SCA, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.

Given that the cost issues remain, in March 2007, NMFS sent a letter recommending that the Council continue to set the restructuring amendment package aside, and focus its efforts on necessary changes to the existing Observer Program. Several relatively short-term type actions to change the existing Observer Program are proposed in this RIR/IRFA, which NMFS believes need to occur regardless of observer restructuring. The OAC first met in May 2007 to make preliminary recommendations on the proposed changes and suite of alternatives. (The May OAC report is attached to the draft analysis.) The OAC's final recommendations will be reviewed by the Council at this meeting.

The Council initiated this regulatory amendment at the June 2007 Council meeting. The analysis is organized under seven different issues. It examines several alternatives to revise Federal regulations relevant to numerous administrative and procedural requirements applicable to observer providers, observers, and industry participating in the Observer Program. Specifically, the proposed actions would:

- Issue 1: Modify the current permit issuance process to reflect that observer and observer provider permit issuance is a discretionary NMFS decision.
- Issue 2: Amend current Federal regulations addressing observer behavior involving drugs, alcohol, and physical sexual conduct to remove NMFS oversight of observer behavior that does not affect job performance. Require that observer providers submit policies related to these activities and continue to notify NMFS upon learning of an incident. NOAA GC advises that current regulations are unenforceable, and/or outside the authority of NMFS.
- Issue 3: Clarify in Federal regulations that observer providers are allowed to provide observers or technical staff for purposes of exempted/experimental fishing permits and scientific research permits.
- Issue 4: Revise the definition of "fishing day" in Federal regulations.
- Issue 5: Require observer providers to submit economic information to NMFS.
- Issue 6: Specify a date by which observers who have collected data in the previous fishing year would be required to be available for debriefing.
- Issue 7: Implement housekeeping issues related to errors or clarifications in existing regulations.

Initial review of the draft analysis was completed by the Council at its February 2008 meeting, and final action is scheduled for this meeting. The analysis was sent to you on March 10, and the executive summary is attached as **Item C-4(d)**. Note that prior to initial review, NMFS sent a letter outlining its recommendations on three of the seven issues (**Item C-4(e)**).

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Percent Observed Catch in Alaska Groundfish Fisheries, 2004-2006

Jennifer Hogan, NOAA Fisheries, Juneau, Alaska

In February 2008, the Observer Advisory Committee and North Pacific Management Council requested NMFS analyze the 2004 - 2006 Alaska groundfish fisheries for the percent of observed catch. NMFS calculated the total catch, observed catch, and percent observed by year, FMP area, processing sector, gear type, trip target fishery, and vessel length. NMFS obtained total catch data from the NMFS Alaska Region catch accounting system and rounded to the nearest metric ton. NMFS obtained observer data from the NMFS observer database, and included both sampled and unsampled hauls when an observer was onboard the vessel. Sampled and unsampled hauls were included in this analysis because this data request attempts to determine the percent observed catch whenever an observer is onboard a vessel. NMFS screened these data for confidentiality so that more than two processors or vessels reported for a given target fishery.

In some cases, observer data were slightly higher than total catch data. This may be attributed to several factors. First, for the 30% observed catcher/processor and mothership sector, there may be a mismatch between the trip target that is assigned from the observed data and the trip target that is assigned based on weekly production report data, especially in mixed fisheries such as flatfish. In addition, each year there were invalid observer data for a few 100% observed catcher/processors. In this case, weekly production report data replaced observer data in the catch accounting system, but the observed catch continued to be derived from the observer database. Second, for the shoreside sector, total catch is based on fish tickets, which may differ from observer data. Finally, the two databases contain separate sources of information. For instance, weekly production reports focus on different goals from the observer data (production versus total catch), use a different method to determine catch and targets, and in cases of 30% observer coverage, include dis-coordinated time frames of estimates, especially at the trip target level.

In other cases, percent observed catch is substantially higher than 100%. This is often attributed to dividing into very small numbers, most of which are confidential. Most of these instances are attributed to a mismatch of target fisheries as explained above.

High variability in percent observed catch among years has been known to be correlated to several factors, such as different lengths of fisheries seasons per year, the variable participation of vessels in fisheries each year, different catch rates per year, weather, and fluctuating prices of fish products.

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
BSAI	CP/M	HAL	C	<60	--	--	0%	--	--	0%	0	0	0%
				>=60 and <125	22,079	13,187	60%	24,520	15,558	63%	21,926	14,642	67%
				>=125	96,284	95,194	99%	101,775	101,987	100%	81,541	81,122	99%
				Subtotal	118,363	108,381	92%	126,295	117,545	93%	103,466	95,764	93%
			S	>=60 and <125	356	226	64%	354	170	48%	476	194	41%
				>=125	66	66	99%	198	193	97%	199	198	99%
				Subtotal	423	292	69%	553	362	66%	675	393	58%
		NPT	A	>=60 and <125	984	780	79%	1,072	823	77%	1,099	530	48%
				>=125	58,411	58,411	100%	62,966	62,966	100%	62,703	62,703	100%
				Subtotal	59,395	59,191	100%	64,038	63,789	100%	63,802	63,232	99%
			C	>=60 and <125	21,835	8,340	38%	14,015	7,790	56%	16,033	7,922	49%
				>=125	44,544	44,542	100%	31,768	30,783	97%	33,058	33,057	100%
				Subtotal	66,379	52,882	80%	45,783	38,573	84%	49,091	40,980	83%
			F	>=60 and <125	1,119	81	7%	770	30	4%	240	5	2%
				>=125	1,546	1,546	100%	1,193	1,484	124%	254	254	100%
				Subtotal	2,665	1,627	61%	1,963	1,514	77%	494	259	52%
			K	>=60 and <125	0	23	0%	0	0	0%	--	--	2%
				>=125	10,039	10,039	100%	8,156	8,156	100%	9,724	9,724	100%
				Subtotal	10,039	10,062	100%	8,156	8,156	100%	9,724	9,724	100%
			L	>=60 and <125	8,763	4,108	47%	8,002	2,964	37%	7,348	3,806	52%
				>=125	19,792	19,791	100%	14,489	14,489	100%	12,951	12,950	100%
				Subtotal	28,554	23,899	84%	22,492	17,453	78%	20,298	16,756	83%
			R	>=60 and <125	6,495	5,798	89%	4,613	6,249	135%	5,979	7,172	120%
				>=125	40,029	40,028	100%	34,258	34,258	100%	39,612	39,611	100%
				Subtotal	46,524	45,826	98%	38,871	40,506	104%	45,591	46,783	103%
			Y	>=60 and <125	10,238	5,797	57%	12,039	5,593	46%	10,627	1,585	15%
				>=125	80,729	80,728	100%	101,629	101,629	100%	102,088	102,087	100%
				Subtotal	90,967	86,525	95%	113,668	107,221	94%	112,715	103,672	92%
		POT	C	>=60 and <125	--	--	39%	--	--	0%	--	--	0%
				>=125	--	--	61%	--	--	73%	--	--	83%
				Subtotal	3,282	1,945	59%	3,392	2,453	72%	3,345	2,581	77%
			S	>=125	--	--	0%	--	--	57%	--	--	99%
		PTR	B,P	>=125	656,361	656,358	100%	654,865	654,822	100%	666,357	667,315	100%
	S	HAL	C	<60	643	0	0%	1,105	0	0%	645	0	0%
				>=60 and <125	--	--	65%	--	--	0%	--	--	0%
				Subtotal	643	0	0%	1,105	0	0%	645	0	0%
			S	<60	312	0	0%	255	0	0%	282	0	0%
				>=60 and <125	49	2	4%	--	--	5%	--	--	16%
				Subtotal	361	2	1%	255	0	0%	282	0	0%
		NPT	C	<60	2,076	0	0%	--	--	0%	--	--	0%
				>=60 and <125	35,345	13,196	37%	31,505	12,314	39%	32,311	12,589	39%
				>=125	5,233	5,877	112%	3,271	3,634	111%	3,257	3,606	111%
				Subtotal	42,654	19,073	45%	34,776	15,949	46%	35,567	16,194	46%
			Y	>=60 and <125	--	--	60%	0	0	0%	--	--	46%
				>=125	0	0	0%	0	0	0%	--	--	132%
				Subtotal	0	0	0%	0	0	0%	1,216	744	61%
		POT	C	<60	2,568	0	0%	2,132	0	0%	3,430	0	0%
				>=60 and <125	8,948	2,756	31%	9,231	2,604	28%	9,701	3,098	32%
				>=125	3,000	1,070	36%	3,004	1,187	40%	4,038	1,480	37%
				Subtotal	14,517	3,826	26%	14,367	3,791	26%	17,169	4,578	27%
			S	<60	0	0	0%	--	--	0%	--	--	0%
				>=60 and <125	733	306	42%	747	417	56%	630	257	41%
				>=125	--	--	413%	0	0	0%	0	0	0%
				Subtotal	733	306	42%	747	417	56%	630	257	41%
		PTR	B,P	>=60 and <125	284,092	105,936	37%	275,129	96,096	35%	261,425	94,361	36%
				>=125	361,212	359,786	100%	381,283	379,814	100%	394,395	392,285	99%
				Subtotal	645,304	465,722	72%	656,412	475,910	73%	655,821	486,646	74%

Note: This table does do not include data from shoreside processors using paper weekly production reports because the data are at the processor level. The vessel length associated with the catcher vessels delivering to the shoreside processor is not available. This includes 238 mt of total groundfish catch in the BSAI.

1. Values where total and observed columns are blank (-) indicate confidential data.
2. Confidential data have been defined as <3 vessels and processors for that given year, area, sector, gear type, target fishery, and vessel length.
3. These data do not include CDQ catch.
4. Total catch data are from the catch accounting system, and the observer data are from the observer database in February 2008.
5. In some cases, observed data are higher than the total catch data for a given area, sector, gear type, target fishery, and vessel length. There are several reasons that this occurs:
a. In each year, four CPs >=125 ft. had haul data considered to be invalid by the Observer Program. These data were replaced with weekly production reports in the catch accounting system, but are still used as the observed total.
b. For catcher/processors and motherships >=60 and <125, there can be a mismatch between the trip target that is assigned from the observed data and the trip target that is assigned based on WPR data. This is especially true in mixed fisheries like flatfish that is a combination of the trip targets of F, L, R, and Y.
c. For catch in the shoreside sector, the total catch is based on fish tickets, which could be different from the observer data.
d. The two databases include separate sources of information. The catch accounting system partially uses weekly production reports along with observer data. Production reports are focused on different goals from the observer data (production vs. total catch), uses a different method to determine catch and targets, and in the cases of 30% observer coverage include dis-coordinated time frames of estimates, especially when taken down to the target level (i.e. observer data may not cover the entire week that a production report is based on).
6. Gear type: HAL=hook-and-line; JIG=jig; NPT=non-pelagic trawl, POT=pot; PTR=pelagic trawl
7. Year= target fishery year
8. Harvest sector: S=shoreside; CP/M=catcher processor or mothership
9. Trip target code: A (Atka mackerel), B (Pollock, bottom), C (Pacific cod), D (Deep water flatfish), E (Alaska plaice), F (Other flatfish), H (Shallow water flatfish), I (halibut), K (Rockfish), L (Flathead sole), O (Other species), P (Pollock, midwater), R (Rock sole), S (Sablefish), T (Greenland turbot), W (Arrowtooth flounder), X (Rex sole), Y (Yellowfin sole)
10. Vessel length: <60=all vessels less than 60 ft length overall (LOA); >=60 and <125=all vessels greater than or equal to 60 ft and less than 125 ft LOA; >=125= all vessels greater than or equal to 125 ft
11. Weight has been measured as sum of weight posted in catch accounting system and as extrapolated weight in observer database; rounded to the nearest mt
12. Percent= (mt of observed catch/mt of total groundfish catch in catch accounting system)*100
13. Not included are trip target fisheries per gear type: HAL=B/P, I, K, O, T, W (9,278 mt); JIG= C, I, K, S (442 mt, shoreside); NPT= B, E, K, O, P, S, T, W (15,005 mt; 75% W shoreside target); POT= K, O, T, W (34 mt); PTR= A, C (90 mt).
14. For groundfish catch estimates for CPs and motherships, in the catch accounting system we use weekly production reports for vessels >=60 ft and <125 ft. and observer data for vessels >=125 ft., except for pot gear where we use weekly production reports for vessels >=60 ft.

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
GOA	CP/M	HAL	C	<60	--	--	0%	--	--	0%	0	0	0%
				>=60 and <125	2,394	509	21%	--	--	7%	2,243	1,631	73%
				>=125	2,419	2,419	100%	300	300	100%	2,152	2,152	100%
				Subtotal	4,814	2,928	61%	300	300	100%	4,395	3,783	86%
			S	<60	--	--	0%	7,302	0	0%	--	--	0%
				>=60 and <125	1,214	737	61%	1,278	935	73%	1,065	722	68%
				>=125	729	729	100%	814	794	98%	686	647	94%
				Subtotal	1,942	1,466	75%	9,394	1,730	18%	1,750	1,369	78%
		NPT	C	>=60 and <125	891	0	0%	--	--	85%	--	--	0%
				>=125	--	--	100%	0	0	0%	0	0	0%
				Subtotal	891	0	0%	0	0	0%	0	0	0%
			H	>=60 and <125	--	--	0%	--	--	6%	--	--	14%
			K	>=60 and <125	--	--	17%	--	--	0%	--	--	175%
				>=125	12,368	12,378	100%	11,861	11,133	94%	14,817	14,815	100%
				Subtotal	12,368	12,378	100%	11,861	11,133	94%	14,817	14,815	100%
			L	>=60 and <125	1,635	723	44%	3,009	956	32%	1,367	742	54%
				>=125	--	--	100%	--	--	100%	0	0	0%
				Subtotal	1,635	723	44%	3,009	956	32%	1,367	742	54%
			W	>=60 and <125	--	--	1989%	2,747	2,401	87%	3,959	1,557	39%
				>=125	964	964	100%	3,638	3,638	100%	4,737	4,737	100%
				Subtotal	964	964	100%	6,385	6,039	95%	8,696	6,294	72%
			X	>=60 and <125	3,318	34	1%	3,172	1,178	37%	7,166	1,752	24%
				>=125	--	--	100%	--	--	100%	0	0	0%
				Subtotal	3,318	34	1%	3,172	1,178	37%	7,166	1,752	24%
		POT	C	>=60 and <125	--	--	0%	--	--	34%	--	--	0%
		PTR	K	>=125	--	--	100%	--	--	100%	--	--	103%
	S	HAL	C	<60	5,182	0	0%	4,541	0	0%	6,295	0	0%
				>=60 and <125	752	99	13%	520	226	43%	805	179	22%
				Subtotal	5,934	99	2%	5,061	226	4%	7,101	179	3%
			S	<60	8,231	0	0%	7,302	0	0%	6,964	0	0%
				>=60 and <125	3,984	1,556	39%	3,942	1,588	40%	4,267	1,550	36%
				>=125	0	0	0%	--	--	0%	0	0	0%
				Subtotal	12,215	1,556	13%	11,244	1,588	14%	11,231	1,550	14%
		JIG	C	<60	2,996	0	0%	2,726	0	0%	698	0	0%
				>=60 and <125	97	0	0%	147	0	0%	--	--	0%
				Subtotal	3,093	0	0%	2,873	0	0%	698	0	0%
		NPT	C	<60	1,664	0	0%	3,560	0	0%	5,245	0	0%
				>=60 and <125	12,626	3,716	29%	8,159	2,577	32%	5,585	1,334	24%
				Subtotal	14,290	3,716	26%	11,718	2,577	22%	10,830	1,334	12%
			W	>=60 and <125	7,517	1,476	20%	8,519	2,212	26%	12,543	2,993	24%
		POT	C	<60	16,518	0	0%	13,375	0	0%	13,542	0	0%
				>=60 and <125	8,520	1,824	21%	10,216	2,263	22%	9,365	1,757	19%
				>=125	--	--	64%	--	--	0%	--	--	0%
				Subtotal	25,038	1,824	7%	23,591	2,263	10%	22,908	1,757	8%
		PTR	K	>=60 and <125	--	--	327%	535	636	119%	2,382	1,348	57%
			B, P	<60	13,067	0	0	21,960	0	0	14,056	0	0
				>=60 and <125	44,692	16,663	37%	61,005	20,989	34%	59,118	19,663	33%
				Subtotal	57,759	16,663	29%	82,965	20,989	25%	73,174	19,663	27%

Note: This table does do not include data from shoreside processors using paper weekly production reports because the data is at the processor level. The vessel length associated with the catcher vessels delivering to the shoreside processor is not available. This includes 5,734 mt of total groundfish catch in the GOA.

1. Values where total and observed columns are blank (-) indicate confidential data.

2. Confidential data have been defined as <3 vessels and processors for that given year, area, sector, gear type, target fishery, vessel length.

3. Total catch data are from the catch accounting system, and the observer data are from the observer database in February 2008.

4. Gear type: HAL=hook-and-line; JIG=jig; NPT=non-pelagic trawl, POT=pot; PTR=pelagic trawl
Year= target fishery year
Harvest sector: S=shoreside; CP/M=catcher processor or mothership

5. Trip target code: A (Atka mackerel), B (Pollock, bottom), C (Pacific cod), D (Deep water flatfish), E (Alaska plaice), F (Other flatfish), H (Shallow water flatfish), I (halibut), K (Rockfish), L (Flathead sole), O (Other species), P (Pollock, midwater), R (Rock sole), S (Sablefish), T (Greenland turbot), W (Arrowtooth flounder), X (Rex sole), Y (Yellowfin sole)

6. Vessel length: <60=all vessels less than 60 ft length overall (LOA); >=60 and <125=all vessels greater than or equal to 60 ft and less than 125 ft LOA; >=125= all vessels greater than or equal to 125 ft

7. Weight has been measured as sum of weight posted in catch accounting system and as extrapolated weight in observer database; rounded to the nearest mt

8. Percent= (mt of observed catch/mt of total groundfish catch in catch accounting system)*100

9. Not included are trip target fisheries per gear type: HAL=I, B/P, D, K, O, T, W (7,529 mt); JIG= I, K, O, P, S (342 mt); NPT= B, D, H, K, L, O, P, S (63,933 mt; 78% comprised of H and K targets); POT= B, O (13 mt); PTR= C, H, L, O, W (539 mt)

10. For groundfish catch estimates for CPs and motherships, in the catch accounting system we use weekly production reports for vessels>=60 ft and <125 ft. and observer data for vessels >=125 ft. except for pot gear, where we use weekly production reports for vessels >=60 ft.

11. In some cases, the observed data are higher than the total catch for a given area, sector, gear type, target fishery, vessel length. There are several reasons that this occurs:

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
610, Western GOA	CP/M	HAL	C	>=60 and <125	2,394	509	21%	--	--	7%	2,199	1,587	72%
				>=125	925	925	100%	292	292	100%	956	956	100%
				Subtotal	3,319	1,433	43%	292	292	100%	3,155	2,543	81%
			S	>=60 and <125	572	211	37%	618	254	41%	540	288	53%
				>=125	359	359	100%	415	411	99%	344	341	99%
				Subtotal	932	570	61%	1,034	665	64%	885	629	71%
		NPT	C	>=60 and <125	635	0	0%	--	--	625%	--	--	0%
				>=125	--	--	100%	0	0	0%	0	0	0%
				Subtotal	635	0	0%	0	0		0	0	
			H	>=60 and <125	--	--	0%	--	--	21%	--	--	57%
			K	>=60 and <125	--	--	117%	--	--	0%	--	--	189%
				>=125	5,291	5,298	100%	3,459	3,351	97%	6,625	6,623	100%
				Subtotal	5,291	5,298	100%	3,459	3,351	97%	6,625	6,623	100%
			L	>=60 and <125	1,047	114	11%	1,803	24	1%	--	--	35%
				>=125	--	--	100%	--	--	100%	0	0	0%
				Subtotal	1,047	114	11%	1,803	24	1%	0	0	0%
			W	>=60 and <125	--	--	1989%	--	--	2134%	--	--	71%
				>=125	901	901	100%	1,220	1,220	100%	953	953	100%
				Subtotal	901	901	100%	1,220	1,220	100%	953	953	100%
			X	>=60 and <125	--	--	5%	--	--	12%	--	--	21%
				>=125	--	--	100%	0	0	0%	0	0	0%
				Subtotal	755	144	19%	0	0	0%	0	0	0%
		POT	C	>=60 and <125	--	--	0%	--	--	34%	--	--	0%
	S	HAL	C	<60	--	--	0%	242	0	0%	78	0	0%
				>=60 and <125	4	0	0%	--	--	0%	--	--	0%
				Subtotal	4	0	0%	242	0	0%	78	0	0%
			S	<60	837	0	0%	728	0	0%	1,043	0	0%
				>=60 and <125	529	41	8%	380	122	32%	461	141	31%
				>=125	0	0	0%	--	--	0%	0	0	0%
				Subtotal	1,367	41	3%	1,107	122	11%	1,504	141	9%
		NPT	C	<60	1,464	0	0%	3,554	0	0%	5,114	0	0%
				>=60 and <125	183	0	0%	783	392	50%	--	--	25%
				Subtotal	1,646	0	0%	4,336	392	9%	5,114	0	0%
		POT	C	<60	10,299	0	0%	7,026	0	0%	7,218	0	0%
				>=60 and <125	5,016	1,138	23%	4,468	965	22%	3,882	683	18%
				>=125	--	--	64%	--	--	0%	--	--	0%
				Subtotal	15,315	1,138	7%	11,494	965	8%	11,100	683	6%
		PTR	B,P	<60	--	--	0%	--	--	0%	13,391	0	0%
				>=60 and <125	7,611	2,938	39%	10,988	5,613	51%	11,604	4,858	42%
				Subtotal	7,611	2,938	39%	10,988	5,613	51%	24,995	4,858	19%
		JIG	C	<60	946	0	0%	620	0	0%	45	0	0%

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
620, 630 - Central GOA	CP/M	HAL	C	<60	--	--	0%	--	--	0%	0	0	0%
				>=60 and <125	0	0	0%	0	0	0%	--	--	100%
				>=125	--	--	100%	--	--	100%	1,195	1,195	100%
				Subtotal							1,195	1,195	100%
			S	<60	--	--	0%	--	--	0%	--	--	0%
				>=60 and <125	458	325	71%	397	465	117%	385	282	73%
				>=125	247	247	100%	287	281	98%	184	184	100%
				Subtotal	705	572	81%	684	746	109%	569	466	82%
		NPT	C	>=60 and <125	--	--	0%	565	411	73%	--	--	0%
				>=125	--	--	100%	0	0	0%	0	0	0%
				Subtotal	1,705	1,449	85%	565	411	73%	0	0	0%
			H	>=60 and <125	--	--	0%	--	--	1%	--	--	0%
			K	>=60 and <125	--	--	17%	0	0	0%	--	--	0%
				>=125	6,654	6,655	100%	7,973	7,353	92%	7,716	7,716	100%
				Subtotal	6,654	6,655	100%	7,973	7,353	92%	7,716	7,716	100%
			L	>=60 and <125	--	--	104%	--	--	77%	--	--	70%
			W	>=60 and <125	0	0	0%	2,735	2,150	79%	3,878	1,500	39%
				>=125	--	--	100%	--	--	100%	3,785	3,785	100%
				Subtotal	0	0	0%	2,735	2,150	79%	7,663	5,285	69%
			X	>=60 and <125	2,674	0	0%	2,776	1,133	41%	6,883	1,691	25%
				>=125	--	--	100%	--	--	100%	0	0	0%
				Subtotal	2,674	0	0%	2,776	1,133	41%	6,883	1,691	25%
	S	HAL	C	<60	5,144	0	0%	4,289	0	0%	6,185	0	0%
				>=60 and <125	748	99	13%	519	226	43%	802	179	22%
				Subtotal	5,892	99	2%	4,808	226	5%	6,987	179	3%
			S	<60	2,772	0	0%	2,531	0	0%	2,390	0	0%
				>=60 and <125	1,512	525	35%	1,544	510	33%	1,980	499	25%
				Subtotal	4,284	525	12%	4,074	510	13%	4,370	499	11%
		NPT	C	<60	--	--	0%	--	--	0%	--	--	0%
				>=60 and <125	12,443	3,716	30%	7,376	2,185	30%	4,861	1,152	24%
				Subtotal	12,443	3,716	30%	7,376	2,185	30%	4,861	1,152	24%
			W	>=60 and <125	7,517	1,476	20%	8,519	2,212	26%	12,543	2,993	24%
		POT	C	<60	6,219	0	0%	6,349	0	0%	6,324	0	0%
				>=60 and <125	3,504	687	20%	5,748	1,298	23%	5,472	1,074	20%
				>=125	0	0	0%	0	0	0%	--	--	0%
				Subtotal	9,723	687	7%	12,097	1,298	11%	11,796	1,074	9%
		PTR	B,P	<60	--	--	0%	1,677	0	0%	--	--	0%
				>=60 and <125	36,431	13,520	37%	47,273	14,845	31%	44,371	14,187	32%
				Subtotal	36,431	13,520	37%	48,950	14,845	30%	44,371	14,187	32%
			K	>=60 and <125	--	--	327%	535	636	119%	1,999	1,211	61%
		JIG	C	<60	2,051	0	0%	2,107	0	0%	653	0	0%
				>=60 and <125	97	0	0%	147	0	0%	55	0	0%
				Subtotal	2,147	0	0%	2,253	0	0%	708	0	0%
640,649,659, 650 - Eastern GOA	CP/M	HAL	S	<60	--	--	0%	--	--	0%	--	--	0%
				>=60 and <125	183	201	110%	262	216	82%	139	152	109%
				>=125	--	--	100%	--	--	92%	--	--	77%
				Subtotal									
		NPT	K	>=125	--	--	100%	--	--	100%	--	--	100%
		PTR	K	>=125	--	--	100%	--	--	100%	--	--	103%
	S	HAL	C	<60	36	0	0%	10	0	0%	33	0	0%
				>=60 and <125	0	0	0%	--	--	0%	--	--	0%
				Subtotal	36	0	0%	10	0	0%	33	0	0%
			S	<60	4,621	0	0%	4,043	0	0%	3,531	0	0%
				>=60 and <125	1,943	990	51%	2,019	956	47%	1,826	910	50%
				Subtotal	6,564	990	15%	6,062	956	16%	5,357	910	17%
		POT	C	>=60 and <125	0	0	0%	0	0	0%	--	--	0%
		PTR	B,P	>=60 and <125	650	204	31%	2,744	532	19%	3,143	618	20%
			K	>=60 and <125	0	0	0%	0	0	0%	384	137	36%

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
<541 - Bering Sea	CP/M	HAL	C	<60	--	--	0%	--	--	0%	0	0	0%
				>=60 and <125	22,079	13,187	60%	24,520	15,558	63%	21,674	14,345	66%
				>=125	92,520	91,441	99%	99,148	99,754	101%	78,550	78,132	99%
				Subtotal	114,599	104,627	91%	123,668	115,312	93%	100,223	92,477	92%
			S	>=60 and <125	0	0	0%	--	--	0%	--	--	68%
				>=125	--	--	100%	11	11	100%	56	56	100%
				Subtotal	0	0	0%	11	11	100%	56	56	100%
		NPT	A	>=60 and <125	984	780	79%	1,072	823	77%	1,099	530	48%
				>=125	1,226	1,226	100%	998	998	100%	1,047	1,046	100%
				Subtotal	2,211	2,007	91%	2,070	1,821	88%	2,145	1,576	73%
			C	>=60 and <125	21,754	8,340	38%	14,015	7,790	56%	16,033	7,922	49%
				>=125	29,598	29,596	100%	19,344	18,359	95%	20,873	20,872	100%
				Subtotal	51,352	37,936	74%	33,359	26,149	78%	36,906	28,795	78%
			F	>=60 and <125	1,119	81	7%	770	30	4%	240	5	2%
				>=125	1,546	1,546	100%	1,193	1,484	124%	254	254	100%
				Subtotal	2,665	1,627	61%	1,963	1,514	77%	494	259	52%
			K	>=60 and <125	0	23	0%	0	0	0%	--	--	2%
				>=125	107	107	100%	--	--	100%	0	0	0%
				Subtotal	107	130	121%	0	0	0%	0	0	0%
			L	>=60 and <125	8,763	4,108	47%	8,002	2,964	37%	7,348	3,806	52%
				>=125	19,792	19,791	100%	14,489	14,489	100%	12,951	12,950	100%
				Subtotal	28,554	23,899	84%	22,492	17,453		20,298	16,756	
			R	>=60 and <125	6,495	5,798	89%	4,613	6,249	135%	5,979	7,172	120%
				>=125	40,029	40,028	100%	34,258	34,258	100%	39,612	39,611	100%
				Subtotal	46,524	45,826	98%	38,871	40,506		45,591	46,783	
			Y	>=60 and <125	10,238	5,797	57%	12,039	5,593	46%	10,627	1,585	15%
				>=125	80,729	80,728	100%	101,629	101,629	100%	102,088	102,087	100%
				Subtotal	90,967	86,525	95%	113,668	107,221		112,715	103,672	
		POT	C	>=60 and <125	--	--	39%	--	--	0%	--	--	0%
				>=125	--	--	61%	--	--	73%	3,120	2,581	83%
				Subtotal	3,282	1,945	59%	3,392	2,453	72%	3,120	2,581	83%
			S	>=125	--	--	0%	0	0	0%	--	--	99%
		PTR	B,P	>=125	656,361	656,358	100%	654,476	654,432	100%	666,357	667,315	100%
	S	HAL	C	<60	--	--	0%	1,097	0	0%	605	0	0%
				>=60 and <125	--	--	65%	5	0	0%	--	--	0%
				Subtotal	616	2	0%	1,102	0	0%	605	0	0%
			S	<60	166	0	0%	86	0	0%	165	0	0%
				>=60 and <125	--	--	0%	8	0	0%	1	4	348%
				Subtotal	166	0	0%	93	0	0%	166	4	3%
		NPT	C	<60	--	--	0%	--	--	0%	0	0	0%
				>=60 and <125	30,278	11,084	37%	26,657	10,704	40%	26,032	10,172	39%
				>=125	1,296	1,251	97%	1,332	1,615	121%	1,795	1,896	106%
				Subtotal	31,574	12,335	39%	27,989	12,319	44%	27,827	12,068	43%
			Y	>=60 and <125	--	--	60%	0	0	0%	--	--	46%
				>=125	0	0	0%	0	0	0%	--	--	132%
				Subtotal	0	0	0%	0	0	0%	1,216	744	61%
		POT	C	<60	2,568	0	0%	2,132	0	0%	3,430	0	0%
				>=60 and <125	8,948	2,756	31%	9,231	2,604	28%	9,248	3,018	33%
				>=125	3,000	1,070	36%	3,004	1,187	40%	4,038	1,480	37%
				Subtotal	14,517	3,826	26%	14,367	3,791	26%	16,716	4,497	27%
			S	<60	0	0	0%	--	--	0%	--	--	0%
				>=60 and <125	341	154	45%	360	187	52%	404	151	37%
				>=125	--	--	413%	0	0	0%	0	0	0%
				Subtotal	341	154	45%	360	187	52%	404	151	37%
		PTR	B,P	>=60 and <125	284,092	105,936	37%	275,129	96,096	35%	260,499	94,361	36%
				>=125	361,212	359,786	100%	381,283	379,814	100%	394,395	392,285	99%
				Subtotal	645,304	465,722	72%	656,412	475,910	73%	654,894	486,646	74%

Total catch (mt), observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length.

					2004			2005			2006		
Area	Sector	Gear	Trip target	Length	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
541,542,543 - Aleutian Islands	CP/M	HAL	C	>=60 and <125	0	0	0%	0	0	0%	--	--	118%
				>=125	3,764	3,754	100%	2,627	2,233	85%	2,991	2,989	100%
				Subtotal	3,764	3,754	100%	2,627	2,233	85%	2,991	2,989	100%
			S	>=60 and <125	356	226	64%	351	170	48%	426	161	38%
				>=125	--	--	99%	187	182	97%	143	142	99%
				Subtotal	356	226	64%	538	351	65%	570	303	53%
		NPT	A	>=125	57,185	57,184	100%	61,968	61,968	100%	61,656	61,656	100%
			C	>=60 and <125	--	--	0%	0	0	0%	0	0	0%
				>=125	14,946	14,946	100%	12,424	12,424	100%	12,185	12,185	100%
				Subtotal	14,946	14,946	100%	12,424	12,424	100%	12,185	12,185	100%
			K	>=125	9,931	9,931	100%	8,125	8,125	100%	9,724	9,724	100%
		POT	C	>=60 and <125	0	0	0%	0	0	0%	--	--	0%
			S	>=125	0	0	0%	--	--	57%	0	0	0%
		PTR	B,P	>=125	0	0	0%	--	--	100%	0	0	0%
	S	HAL	C	<60	--	--	0%	--	--	0%	40	0	0%
			S	<60	146	0	0%	170	0	0%	117	0	0%
				>=60 and <125	44	2	5%	36	2	6%	25	0	0%
				Subtotal	190	2	1%	205	2	1%	142	0	0%
		NPT	C	<60	--	--	0%	--	--	0%	--	--	0%
				>=60 and <125	5,067	2,112	42%	4,848	1,610	33%	6,279	2,416	38%
				>=125	3,937	4,626	117%	--	--	104%	1,462	1,710	117%
				Subtotal	9,004	6,738	75%	4,848	1,610	33%	7,741	4,126	53%
		POT	C	>=60 and <125	0	0	0%	0	0	0%	--	--	18%
			S	>=60 and <125	392	152	39%	387	230	59%	226	106	47%
		PTR	B,P	>=60 and <125	0	0	0%	0	0	0%	--	--	0%

Table 1. Total catch (mt), observed catch, and percent observed catch by area and year, 2004-06.

Area	Year	Total	Observed	Percent observed
BSAI	2004	1,794,328	1,544,013	86%
	2005	1,797,596	1,556,919	87%
	2006	1,795,918	1,563,970	87%
	Total	5,387,842	4,664,902	
GOA	2004	184,908	55,565	30%
	2005	197,373	58,218	29%
	2006	206,687	63,226	31%
	Total	588,969	177,008	

Table 2. Total catch (mt), observed catch, and percent observed catch by area, vessel length, and year.

		2004				2005				2006			
Area	Size	Total	Observed	Percent observed	Percent of total	Total	Observed	Percent observed	Percent of total	Total	Observed	Percent observed	Percent of total
BSAI	< 60	6,185	0	0%	0%	4,599	0	0%	0%	5,237		0%	0%
	>=60 and <125	403,130	163,999	41%	22%	384,000	151,829	40%	21%	370,578	147,800	40%	21%
	>=125	1,385,012	1,380,015	100%	77%	1,408,997	1,405,090	100%	78%	1,420,103	1,416,169	100%	79%
	Total	1,794,328	1,544,013			1,797,596	1,556,919			1,795,918	1,563,970		
GOA	< 60	52,270		0%	28%	55,022		0%	28%	49,435		0%	24%
	>=60 and <125	111,890	34,892	31%	61%	124,265	41,093	33%	63%	133,641	39,901	30%	65%
	>=125	20,748	20,673	100%	11%	18,086	17,124	95%	9%	23,611	23,325	99%	11%
	Total	184,908	55,565			197,373	58,218			206,687	63,226		

Note: This table does not include data from 21 shoreside processors using paper WPRs, which consists of 5,734 mt in the GOA, and 238 mt in the BSAI.

Table 3. Total catch (mt), observed catch, and percent observed catch by area, gear type, and year.

		2004			2005			2006		
Area	Gear	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
BSAI	HAL	122,442	110,824	91%	131,055	120,051	92%	108,401	99,464	92%
	NPT	351,444	303,357	86%	336,558	299,441	89%	343,934	302,813	88%
	POT	18,546	6,092	33%	18,554	6,662	36%	21,246	7,433	35%
	PTR	1,301,665	1,123,740	86%	1,311,296	1,130,751	86%	1,322,249	1,154,260	87%
	Total	1,794,098	1,544,013		1,797,462	1,556,905		1,795,830	1,563,970	
GOA	HAL	27,261	6,545	24%	21,585	4,339	20%	27,832	7,160	26%
	NPT	69,958	29,346	42%	64,579	29,200	45%	78,006	32,228	41%
	POT	25,496	1,959	8%	23,917	2,319	10%	23,412	1,757	8%
	PTR	58,736	17,715	30%	84,398	22,360	26%	76,671	22,080	29%
	Total	181,451	55,565		194,479	58,218		205,922	63,226	

Note: This table does not include jig gear.

Table 4. Total catch (mt), observed catch, and percent observed catch by area, sector, and year.

		2004			2005			2006		
Area	Sector	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
BSAI	CP	959,036	922,691	96%	956,756	928,896	97%	950,483	922,235	97%
	M	130,248	130,248	100%	131,944	131,944	100%	133,046	132,909	100%
	S	705,043	491,074	70%	708,896	496,079	70%	712,390	508,826	71%
	Total	1,794,328	1,544,013		1,797,596	1,556,919		1,795,918	1,563,970	
GOA	CP	31,954	23,228	73%	31,480	23,349	74%	40,823	30,144	74%
	S	152,954	32,336	21%	165,894	34,869	21%	165,864	33,082	20%
	Total	184,908	55,565		197,373	58,218		206,687	63,226	

Note: There is no existing mothership sector data in the GO

Table 5. Total catch (mt), observed catch, and percent observed catch by area, target, and year.

		2004			2005			2006		
Area	Target	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
BSAI	A	59,395	59,270	100%	64,057	63,807	100%	63,802	63,524	100%
	B	18,481	20,958	113%	31,110	32,368	104%	27,716	29,835	108%
	C	246,250	187,690	76%	226,654	178,325	79%	210,054	160,097	76%
	E	0	0	0%	0	0	0%	380	380	100%
	F	2,665	1,627	61%	1,963	1,514	77%	494	259	52%
	K	10,184	10,066	99%	8,166	8,161	100%	10,017	9,738	97%
	L	28,554	23,899	84%	22,492	17,453	78%	20,298	16,756	83%
	P	1,283,251	1,101,506	86%	1,280,575	1,098,364	86%	1,294,643	1,124,222	87%
	R	46,524	45,826	98%	38,871	40,508	104%	45,591	46,783	103%
	S	1,644	731	45%	1,670	814	49%	1,697	670	40%
	W	3,350	3,261	97%	5,612	5,651	101%	4,847	4,847	100%
	Y	91,049	86,574	95%	113,668	107,221	94%	113,930	104,416	92%
	Total	1,791,347	1,541,410		1,794,840	1,554,185		1,793,468	1,561,527	87%
GOA	B	10,949	2,453	22%	19,114	4,760	25%	35,412	8,443	24%
	C	56,291	10,167	18%	45,263	5,861	13%	47,154	7,102	15%
	H	4,114	1,127	27%	8,157	1,379	17%	11,170	1,482	13%
	K	26,219	17,346	66%	23,103	15,477	67%	25,396	19,179	76%
	L	3,075	1,927	63%	3,059	978	32%	1,644	884	54%
	P	54,098	15,126	28%	64,748	16,231	25%	41,030	11,738	29%
	S	14,518	3,156	22%	13,551	3,318	24%	13,120	2,919	22%
	W	8,510	2,974	35%	15,154	8,346	55%	21,354	9,317	44%
	X	3,521	236	7%	3,244	1,251	39%	7,166	1,752	24%
	Total	181,298	54,512		195,392	57,701		203,446	62,815	

Note: Targets not included in this table are D, I, O, T.

Table 6. Total catch (mt), observed catch, and percent observed catch by area, target, and year.

			2004			2005			2006		
Area	Vessel length	Target	Total	Observed	Percent	Total	Observed	Percent	Total	Observed	Percent
BSAI	< 60	C	5,696	0	0%	4,159	0	0%	4,763	0	0%
		K	0	0	0%	5	0	0%	0	0	0%
		S	312	0	0%	293	0	0%	350	0	0%
	>=60 and <125	A	984	780	79%	1,072	823	77%	1,099	530	48%
		B	5,146	3,340	65%	11,179	6,628	59%	10,072	4,726	47%
		C	88,430	39,147	44%	79,303	38,266	48%	80,278	38,251	48%
		F	1,119	81	7%	770	30	4%	240	5	2%
		K	141	23	16%	0	0	0%	285	6	2%
		L	8,763	4,108	47%	8,002	2,964	37%	7,348	3,806	52%
		P	278,985	102,981	37%	264,357	89,469	34%	251,529	89,663	36%
		R	6,495	5,798	89%	4,613	6,249	135%	5,979	7,172	120%
		S	1,155	548	47%	1,145	589	51%	1,132	456	40%
		W	700	610	87%	594	635	107%	298	316	106%
		Y	10,320	5,846	57%	12,039	5,593	46%	11,622	2,039	18%
	>=125	A	58,411	58,490	100%	62,984	62,984	100%	62,703	62,995	100%
		B	13,335	17,618	132%	19,931	25,740	129%	17,644	25,109	142%
		C	152,124	148,544	98%	143,192	140,059	98%	125,013	121,846	97%
		E	0	0	0%	0	0	0%	380	380	100%
		F	1,546	1,546	100%	1,193	1,484	124%	254	254	100%
		K	10,043	10,043	100%	8,161	8,161	100%	9,732	9,732	100%
		L	19,792	19,791	100%	14,489	14,489	100%	12,951	12,950	100%
		P	1,004,266	998,525	99%	1,016,218	1,008,895	99%	1,043,114	1,034,559	99%
		R	40,029	40,028	100%	34,258	34,258	100%	39,612	39,611	100%
		S	176	183	104%	231	225	97%	216	214	99%
		W	2,650	2,651	100%	5,019	5,016	100%	4,549	4,531	100%
		Y	80,729	80,728	100%	101,629	101,629	100%	102,308	102,377	100%
GOA	< 60	B	268	0	0%	2,477	0	0%	2,614	0	0%
		C	26,643	0	0%	24,454	0	0%	25,780	0	0%
		H	11	0	0%	11	0	0%	23	0	0%
		K	337	0	0%	119	0	0%	37	0	0%
		L	78	0	0%	0	0	0%	0	0	0%
		P	15,308	0	0%	19,484	0	0%	11,450	0	0%
		S	8,436	0	0%	7,480	0	0%	7,099	0	0%
		W	1	0	0%	0	0	0%	0	0	0%
	>=60 and <125	B	10,681	2,453	23%	16,638	4,760	29%	32,797	8,443	26%
		C	25,554	6,148	24%	20,349	5,662	28%	18,959	4,951	26%
		H	4,102	1,127	27%	8,146	1,379	17%	11,147	1,482	13%
		K	12,680	4,134	33%	10,403	3,625	35%	9,711	3,506	36%
		L	1,849	779	42%	3,037	956	31%	1,644	884	54%
		P	38,790	15,126	39%	45,264	16,231	36%	29,580	11,738	40%
		S	5,218	2,292	44%	5,226	2,523	48%	5,336	2,273	43%
		W	7,545	2,010	27%	11,421	4,613	40%	16,587	4,550	27%
		X	3,318	34	1%	3,172	1,178	37%	7,166	1,752	24%
	>=125	C	4,095	4,019	98%	460	300	65%	2,415	2,152	89%
		K	13,203	13,212	100%	12,581	11,853	94%	15,648	15,674	100%
		L	1,148	1,148	100%	22	22	100%	0	0	0%
		S	864	864	100%	846	794	94%	686	647	94%
		W	964	964	100%	3,733	3,733	100%	4,767	4,767	100%
		X	203	203	100%	72	72	100%	0	0	0%

Note: Targets not included in this table are D, I, O, T.

Observer Advisory Committee Report
March 17, 2008

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Room 1055
8:30 am – 4:30 pm

Committee present: Joe Kyle (Chair), Bob Alverson, Christian Asay, Jerry Bongen, Julie Bonney, Kathy Robinson, Paul MacGregor (by phone)

Committee not present: Todd Loomis, Tracey Mayhew, Brent Paine, Pete Risse, Thorn Smith

Staff:
NPFMC – Chris Oliver, Nicole Kimball
NMFS/AFSC – Martin Loefflad, Bill Karp, Bob Maier, Jennifer Ferdinand, Allison Barns, Lisa Thompson, Jennifer Calahan, Craig Faunce, Jerry Berger
NMFS AK Region – Sally Bibb, Jennifer Hogan
NOAA GC – Tom Meyer
NOAA Office for Law Enforcement (Alaska Division) – Mike Adams, Nathan Lagerway

Other participants: Jan Jacobs, Michael Lake, Diana Starr, Lori Swanson, Ed Richardson, Stefanie Moreland, Troy Quinlan, Everette Anderson

AGENDA

I. Review and approve agenda

II. Review of observer data: 2004 – 2006 total catch, observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length (Jennifer Hogan, NMFS)

III. Review analysis and provide recommendations on proposed regulatory changes to North Pacific Groundfish Observer Program

IV. Scheduling & other issues

SUMMARY OF OAC RECOMMENDATIONS

OAC recommendations on the proposed regulatory changes to the observer program (agenda item III) are as follows. See the relevant sections of the minutes for details.

Issue 1: Alternative 2
Issue 2: Alternative 2, Option 1 (72 hours)
Issue 3: Alternative 2
Issue 4: Alternative 2, Option 1
Issue 5: Alternative 4. The committee also recommended Option 1 and Option 2 with revisions. Option 1 would be revised to state: "Limit the submittal of economic data to every third year." Option 2 would be revised to state: "Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider, or working for an existing observer provider, in the North Pacific."
Issue 6: Alternative 1
Issue 7: Alternative 2

The committee also recommended:

- With regard to the observer data request, the committee recommends breaking out the GOA and AI Pacific cod State fisheries from the Federal (including parallel) fisheries data. The committee also recommended showing the Central, Western and Eastern Gulf subtotals in Table 1 on p. 11.
- The committee recommends the Council send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the Fair Labor Standards Act (FLSA) and Service Contract Act, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.
- The OAC would like to convene in the future to re-evaluate the problem statement and objectives from the June 2006 observer program restructuring analysis, in order to explore whether some of the problems particular to the GOA fisheries can be resolved through regulatory measures as opposed to comprehensive restructuring.

I. Review and approve agenda

The committee approved the agenda with one addition. Julie Bonney proposed adding a discussion about whether the quality of the observer data in the Gulf of Alaska (GOA) is sufficient to use for the type and level of extrapolations currently necessary in the catch accounting system, and whether any changes can be made under the current service delivery model that would improve the status quo. This item was added to the end of the agenda.

II. Review of observer data: 2004 – 2006 total catch, observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length

The committee received a presentation from Jennifer Hogan (NMFS AKR) on updated data showing the effective annual rate of observer coverage in various target fisheries, areas, and sectors. The data tables presented were in response to a request from the OAC in May 2007. NMFS presented the percent observed catch in the Alaska groundfish fisheries from 2004 – 2006, specifying that the observer data included both sampled and unsampled hauls from when an observer was onboard the vessel. The total catch data was from the NMFS catch accounting database.

Jennifer presented background information on the sources of the data, including the databases used to estimate total catch for each vessel type. If a catcher/processor or mothership was 100% or 200% observed, observer data were used to estimate total catch; if the catcher/procssor had 30% coverage requirements, WPR data were used for retained catch and observer data for at-sea discards. For catcher vessels delivering shoreside, ADF&G fish tickets were used for retained catch and observer data were used to estimate at-sea discards; if delivering unsorted catch to motherships, observer data were used. Jennifer also discussed how trip targets are assigned (based on a retained amount of groundfish on a weekly basis for CPs and motherships and a trip basis for CVs delivering shoreside), and how it is possible for trip targets to be mismatched between WPR and observer data. Production data often lags behind observer data, which can affect the derived target.

The committee highlighted the utility of the data as a standalone product. While it does not feed directly into the analysis being considered by the Council in April, it is comprehensive background information that the agency intends to update annually.

The committee clarified that the GOA harvest in the data tables includes State fisheries (e.g., Pacific cod). Including the State water Pacific cod fishery (which does not have observer requirements) within the Federal fishery harvest totals underestimates the effective coverage rate in the Federal fisheries, particularly in the Gulf pot cod fishery. **The committee recommended breaking out the GOA and AI**

Pacific cod State fisheries from the Federal (including parallel) fisheries data in order to see the effective coverage rate in the Federal fisheries. The committee also recommended adding the Central, Western, and Eastern Gulf subtotals in Table 1 on p. 11.

It was also noted that there is no observer coverage in the directed halibut fishery. There is an effort by the IPHC and NMFS to look at the use of video in the hook-and-line halibut fleet through an NPRB study this summer.

The committee also discussed examples in Gulf trawl fisheries in which an increasingly large component of the catch is being harvested by <60' vessels, which are not subject to observer coverage requirements. This feeds into the extrapolation issues of concern to members. In the Gulf, the majority of the observer data is generated by the 30% fleet (reference Table 6, p. 14). These data are relatively sensitive and can be greatly influenced by the level of extrapolation that occurs for both the unobserved fleet and unsampled hauls of the observed fleet. The recent example cited was one observed trip that took one tow, resulting in one Chinook salmon caught in a 22 pound groundfish tow. The observer was dropped off and the vessel resumed fishing, which resulted in that one salmon being extrapolated across all pollock targets for an estimate of 21,000 Chinook.

The committee member noted that the above example highlights not only concerns with extrapolations, but that more unrepresentative fishing occurs under the current service delivery model as vessels try to control their observer costs by making 'observer tows' to meet coverage requirements. This behavior would be curtailed under a new service delivery model which would replace the current regulatory framework of observer requirements based on vessel length with a fee system in which NMFS determines when and where an observer would be placed. It was also noted that a relatively small amount of Federal funding could go a long way toward improving data quality in the Gulf, by placing observers on some of the unobserved fleet. However, this effort would not address the disproportionate cost issues that are also of concern in the Gulf.

In sum, the committee noted that on the whole, the data presented show that the fisheries with 30% coverage requirements (which are primarily in the Gulf) are obtaining about 30% coverage rates. Thus, there is relatively consistent compliance with the 30% requirement. What the data do not show is how representative that data is on a temporal or spatial basis, and how sensitive it is. Thus, one must be aware that the gross level may mask some underlying issues, including how much of the catch is actually sampled by an observer. The committee discussed two major issues that create data gaps (which exacerbate the extrapolation issues) most notably in the Gulf: 1) the unobserved <60' sector; and 2) 30% coverage may not be representative on a temporal or spatial basis. The committee agreed that the issue of the unobserved sector could be resolved through a regulatory change, but that concern with the 30% sector could likely most effectively be resolved through a change to the service delivery model, under which NMFS would decide where and when to place observers based on a statistical sampling plan.

Martin Loefflad (AFSC, Director of FMA) provided a brief update on cost analyses requested by AFSC to HQ to inform the overall cost estimates that may result from a change to a NMFS-contracted observer program. This analysis of existing contracts (awarded contracts and bids that were not awarded) is intended to provide an overview of what other regions are paying for observer services. Combined with the current Service Contract Act (SCA) wage determinations from the Department of Labor, analysts may be in a better position to estimate costs based on a number of hours per day (e.g., 12, 16, 18 hours/day).

Given the discussions relative to observer restructuring, and the cost estimates necessary to develop an analysis, the committee recommended the Council send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the Fair Labor Standards Act and Service Contract Act, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.

The OAC also discussed whether some of the current problems identified in the GOA could be mitigated through management measures (regulatory changes), given the previously unsuccessful attempts to change the service delivery model for the entire program. **The OAC would like to convene in the future to re-evaluate the problem statement and objectives from the June 2006 observer program restructuring analysis, in order to explore whether some of the problems particular to the GOA fisheries can be resolved through regulatory measures as opposed to comprehensive restructuring.**

III. Review analysis and provide recommendations on proposed regulatory changes to North Pacific Groundfish Observer Program

The committee received a presentation on the public review draft analysis of proposed regulatory changes to the Observer Program from Nicole Kimball (NPFMC). The following sections represent committee discussion and recommendations on each issue analyzed in the amendment package.

Issue 1: Observer certification and observer provider permitting appeals processes
The committee questioned whether a current contractor that loses their permit and needs to reinitiate the process to receive a new permit would be granted an appeals process if the new permit is denied. Staff responded that the appeals process would be removed from the regulations for all observer providers that are denied a new permit. However, this issue does not affect the appeals process available to existing permitted providers, should their current permit be sanctioned. The committee agreed with the rationale for removing an appeals process that is not required by law. The committee supports Alternative 2.

Issue 2: Observer conduct
This issue was primarily discussed by the three observer providers represented at the meeting (i.e., AOI, Saltwater, and TechSea). The committee agreed that observer conduct relative to drugs, alcohol, and physical sexual contact with vessel or processing facility employees is more appropriately addressed through the employee/employer relationship. In addition, all providers currently have policies addressing such behaviors in their current observer contracts. The OAC generally agreed that NMFS needs to continue to be notified in the case that there is a breach of the providers' policies on drugs, alcohol, and sexual contact, so that the agency is aware of any potential effects on data quality or can use the information as mitigating circumstances in an enforcement case. The providers agreed that a longer notification period is preferred, such that there is sufficient time to obtain correct information. It was noted that notification under the proposed regulation would be similar to that under existing regulations for other issues (e.g., harassment, safety issues, etc). Contractors provide the best information they have at the time, and often follow up with clarifying details if necessary. The committee recommends Alternative 2, Option 1 (72 hour notification period).

Issue 3: Observer providers' scope of authority regarding scientific and experimental research permits
The committee agreed that regulatory language that clarifies that observer providers are allowed to supply observers and scientific data collectors for the purpose of exempted fishing permits (EFPs) and scientific research permits (SRPs) is necessary. This would clarify the approach taken to supply these services. The committee understood there were no changes proposed to the 90-day cruise limit and 4 vessel limit prior to debriefing.

The committee's primary question was whether the language proposed under Alternative 2 was broad enough to encompass other scientific and research activities. The observer providers gave several examples of potential scenarios in which they may receive a request for an observer or scientific data collector for research that is not formally approved by NMFS, but is sponsored by a university, commission, or industry. Providers did not want the language to preclude providing observers for these types of activities.

The committee discussed whether the language used in Alternative 2 that allows observer providers to provide "scientific data collector and observer services to support NMFS approved scientific research or experimental fisheries as defined under 50 CFR 600.10," limits these other activities that are outside of NMFS' purview. There was some discussion about whether a letter from NMFS would suffice to meet the intent of "NMFS approved" research for the types of activities that fall outside of 600.10, understanding that the regulations would then remain unclear about some activities, requiring NMFS to make subjective decisions on a case by case basis.

Staff responded that Alternative 2 was intended simply to clarify an observer provider's ability to provide observers for exempted and scientific research activities as defined in Section 600.10.[1] NMFS suggested that the regulatory text proposed under Alternative 2 could be revised to be clear that the activities being added to the list of things that do not present a direct financial interest are only those SRP or exempted activities specifically defined under 600.10 and not any type of scientific or experimental activity. The majority of the activity to date has been under SRPs or EFPs, which is why the alternative was developed to address those specific activities.

The committee agreed that clarifying that these types of activities are allowed is preferable to the status quo, even if some activities may remain in question and require further discussion with NMFS. The committee supports Alternative 2.

Issue 4: Fishing day definition

The committee discussed Issue 4 at length, including exploring other options that may better close the loophole in existing 30% coverage regulations. Most members agreed that the problem has a negative effect on data quality, often at a time high quality data is most needed (e.g., near the end of the fishery). Many 30% vessels take observers at the beginning of the fishery, in order to ensure they meet their coverage requirements before the fishery closes (at a future uncertain date). This means that in the 30% fleet, a relatively substantial amount of observer data are available at the beginning of the fishery, and data taper off toward the end of the fishery. Thus, a relatively small amount of observer data at the end of the fishery can greatly influence both the total catch and PSC estimates, which in turn influences fishery closures. At times these data may also extend a fishery, thus, one may see a peak in observer data at the end of the fishery as vessels suddenly need more coverage due to the unexpectedly longer season.

The committee also agreed that no regulatory option would completely resolve the problem of observer tows/sets, but that Alternative 2 may serve to mitigate strategic behavior to some extent as vessels would need to carry an observer for the entire fishing day (any fishing time in a 24-hour period) in order for it to count as an observer coverage day.

In addition, Option 1 appears to have some added benefit to Alternative 2. Option 1 would change the 24-hour period definition of a fishing day to noon to noon (from midnight to midnight). Because most fisheries open and close at noon, changing the definition to noon to noon removes the ability to receive an entire coverage day by carrying an observer on the fringes of short pulse openings. In addition, the best fishing occurs during daylight hours, so there is a greater likelihood that vessels may forego strategic behavior in order to maximize fishing time and revenue. The committee questioned whether the observer providers would revise their fee schedule to match the definition of an observer coverage fishing day under Option 1.

The committee also discussed a suggestion to include a restriction such that one may not receive more than one day's worth of observer coverage in any calendar day under Option 1. While the proposal appeared to have some merit, it was confusing to some members to define a fishing day (noon to noon)

[1]NMFS approved activities defined under 50 CFR 600.10 include: scientific research activities; exempted educational activities; and exempted or experimental fisheries.

differently than you would an observer coverage day (calendar day, midnight to midnight). In addition, some members were concerned with the increase in costs over and above the costs assumed under Alternative 2, Option 1. In general, Option 1 would prevent a vessel from being able to obtain three days of observer coverage in any period slightly exceeding 24 hours. A vessel could obtain a maximum of two days of observer coverage in any period slightly exceeding 24 hours. The committee noted that while data quality could increase, this change will also increase costs for both vessels trying to manipulate the system and those that are not, as vessels must carry an observer longer in order to receive the same number of coverage days they could receive under the status quo.

The committee ultimately agreed that Alternative 2, Option 1 is the preferred alternative. The alternative could serve to modify behavior, as vessels may not risk their ideal fishing time during daylight hours by fishing solely for observer coverage. In addition, a vessel could not obtain more than two days of coverage in a 48-hour period, and an observer would need to be present for all gear retrievals in a 24-hour period in order to receive an observer coverage day. The committee thought that this would result in more full calendar days (and fewer partial days) with an observer onboard, and that observer data could potentially be more temporally representative. The committee noted that while the fleet continues to be responsible for ensuring they meet coverage requirements, the observer providers currently assist vessels in planning to meet those requirements. It may be more difficult for providers to help individual vessels plan under Alternative 2, because providers will not know if vessels return to fishing (without an observer) in the same 24-hour period, thus negating the observer coverage day.

Issue 5: Economic Data Collection

The committee reviewed the suite of four alternatives proposed under Issue 5, recognizing that each action alternative varies in the cost and time required for observer providers to comply with data collection. Alternative 4 is the least burdensome to observer providers, as it only requires providers to submit copies of actual invoices to NMFS. The listed information required in the invoices under Alternative 4 is common to the existing invoices. Alternatives 2 and 3 would require providers to compile, sort, and summarize their cost data differently than they do now, in addition to requiring cost data that some providers do not currently account for separately.

The agency reiterated its desire to collect this information, in order to inform analyses regarding the cost components of the industry-funded portion of the observer program. Past analyses have used $355/day as an 'average' daily rate, which does not account for the wide variability in the different fishery sectors' observer costs nor does it allow analysts to differentiate between sectors. It was noted that the disadvantage to Alternative 4 is that it would not allow analysts to determine fixed costs versus variable costs, overhead versus travel, etc. But because Alternative 4 allows NMFS to easily verify the data provided are accurate, minimizes misreporting, and allows the agency to sort raw data to suit its purposes on a case by case basis, NMFS noted its general support for Alternative 4.

The committee noted that #7 listed under what is required in invoices submitted under Alternative 4 ("any specified 'other' costs not included above") may need to be removed. It was intended as a 'catch-all' such that observer providers would not feel they had to remove items from an invoice that were not specifically listed under Alternative 4. Because the introductory language states that invoices *must* contain the following information, staff agreed that #7 spurs confusion and should be removed.

None of the three providers present at the meeting voiced concerns with the ability to submit invoices under Alternative 4. The primary concern was related to the use of the data submitted, and whether it would remain confidential. One observer provider noted that industry invoices are not protected information currently, in that industry can provide those to whomever they choose. However, due to concerns with contractors to NMFS using submitted information to then become a provider's competitor, the committee endorsed Option 2. Option 2 would disallow a person that received this confidential information as a contractor to NMFS to become a permitted observer provider in the North Pacific. The

committee recommended that Option 2 be revised to also disallow an individual to work for an existing observer provider. Staff noted that this would only apply to individuals/companies under contract with the agency or Council, as agency and Council staff have different restrictions.

The committee also discussed relaxing the requirement to submit cost data on an annual basis. Option 1 as currently written would limit the collection of these data to a total of three years. Given the limited utility of collecting only three years' worth of data, the committee recommended revising Option 1 to require that the data only be submitted every third year. In effect, observer providers would not be required to submit data for each year of operation; they would be required to submit cost data every third year.

Issue 6: Completion of the fishing year

The committee reviewed the analysis and noted that upon further review, the analysts determined that it is not necessary to establish a cutoff date by which observers who collect fishing data that span two years must return for debriefing (Alternative 2). Consultation with the primary internal agency users of the data prompted this conclusion, noting that completion of the annual observer data set will continue to be delayed until all observer data is submitted, which could be as late as the end of March of the following year. The cost tradeoff to industry in artificially shortened fishing trips was sufficient rationale not to support Alternative 2. NMFS is recommending Alternative 1 (no action) under this issue. The committee also supports Alternative 1.

Issue 7: Miscellaneous modifications

The committee did not identify any problems with making the proposed changes that clarify regulations or revise inaccuracies (i.e., housekeeping issues). The committee recommends Alternative 2.

IV. Scheduling & other issues

The committee also addressed the issue added to the agenda: whether the quality of the observer data in the GOA is sufficient to use for the type and level of extrapolations currently necessary in the catch accounting system, and whether any changes can be made under the current service delivery model that would improve the status quo. One member noted that there is a need for a more statistically robust system in the GOA, since it is not nearly as data-rich as the Bering Sea. Given the large unobserved fleet and 30% fleet in the GOA, the data is sparse enough to be very sensitive to only a few observer reports, which can create a relatively variable fishery and reduces the ability of vessels to plan for their coverage.

One of the examples a committee member related was in the WGOA, where there is not a trawl vessel over 60' that can carry an observer. In this situation, extrapolating from the CGOA to the WGOA results in a perceived overestimate of halibut PSC. In addition, more of the GOA catch is being harvested by the unobserved <60' fleet (e.g., trawl cod), many vessels of which can pack more and are more efficient than much of the >60' – 125' fleet. While the majority of this discussion occurred under agenda item II, the committee further discussed the suggestion of using a different algorithm in the GOA to extrapolate data across fisheries, potentially weighting observer reports at the end of the season less than those at the beginning of the season.

Martin Loefflad related that the Observer Program is currently working with the Alaska region to develop a contract that would evaluate ways to incorporate some statistical estimators into the catch accounting system. The intent is to capture the level of error around the existing point estimates (catch and PSC estimates), which becomes more necessary as we ask NMFS to manage increasingly fine levels of sector allocations and bycatch caps. When completed, this report will be available to the public.

UNITED STATES DEPARTMENT OF
National Oceanic and Atmospheric Ad
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA C-5(c)
APRIL 2008

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

EXECUTIVE SUMMARY

This Regulatory Impact Review (RIR) was prepared to meet the requirements of Presidential Executive Order 12866 for an evaluation of the benefits and costs, and of the significance, of a proposed Federal regulatory action. Analysts have also drafted an initial regulatory flexibility analysis (IRFA) to comply with the Regulatory Flexibility Act. The IRFA will be revised upon selection of a preferred alternative by the Council, in order to reflect the potential economic effects of the proposed action on directly regulated small entities.

The Council is considering amending Federal regulations relevant to numerous administrative, technical, and procedural requirements applicable to observer providers, observers, and industry participating in the North Pacific Groundfish Observer Program. Specifically, the proposed actions would:

- Modify the current permit issuance process so that observer and observer provider permit issuance is a discretionary NMFS decision. (Issue 1)
- Amend current Federal regulations addressing observer behavior involving drugs, alcohol, and physical sexual conduct to remove NMFS oversight of observer behavior that does not affect job performance. Require that observer providers submit policies related to these activities and continue to notify NMFS upon learning of an incident. NOAA GC advises that current regulations are unenforceable, and/or outside the authority of NMFS. (Issue 2)
- Clarify in Federal regulations that observer providers are allowed to provide observers or technical staff for purposes of exempted fishing permits, scientific research permits, or other scientific research activities. (Issue 3)
- Revise the definition of "fishing day" in Federal regulations. (Issue 4)
- Require observer observers to annually submit detailed economic information to NMFS. (Issue 5)
- Specify a date by which observers who have collected data in the previous fishing year would be required to be available for debriefing. (Issue 6)
- Implement housekeeping issues related to errors or clarifications in existing regulations at 50 CFR 679.50. (Issue 7)

Alternatives Considered

Table E - 1 provides a summary of the issues, alternatives, and options under consideration in this analysis, and the following section provides a brief discussion of each alternative. Each of seven issues has associated proposed alternatives, some of which also contain options. Each issue represents a mutually exclusive decision point. As structured, the Council would ultimately select a preferred alternative under each of the seven separate issues.

Table E - 1 Summary of the Issues, Alternatives, and Options under Consideration

ISSUE	ALTERNATIVES and OPTIONS			
ISSUE 1: Observer certification and observer provider permitting appeals processes	**Alternative 1.** No action.	**Alternative 2.** Remove the appeals processes for observer candidates that have failed training and observer provider applicants denied an initial permit.		
ISSUE 2: Observer conduct	**Alternative 1.** No action.	**Alternative 2.** Remove Federal regs that govern observer behavior related to drugs, alcohol, and physical sexual contact. Require that each observer provider have such policies and submit them to NMFS. **Option 1:** Require observer providers to notify NMFS of a breach of the above policies within (24, 48, or 72) hours after becoming aware of a breach.		
ISSUE 3: Research and experimental permits	**Alternative 1.** No action.	**Alternative 2.** Clarify in Federal regs that observer providers may provide observers or scientific data collectors for research associated with exempted fishing permits, scientific research permits, or other research activities.		
ISSUE 4: Fishing day definition	**Alternative 1.** No action.	**Alternative 2.** Revise the fishing day definition in Federal regs to require that an observer be onboard for all gear retrievals in which groundfish are retained during the 24 hr period in order to count as an observed day. **Option 1:** Change the 24 hr period from midnight to midnight to noon to noon.	**Alternative 3.** Establish Federal regs to prohibit activities that result in unrepresentative fishing behavior from counting as an observed day.	
ISSUE 5: Economic data collection	**Alternative 1.** No action.	**Alternative 2.** Require observer providers to submit annual costs to NMFS according to defined cost subcategories and area, fishery, gear type, and coverage category.	**Alternative 3.** Require observer providers to submit annual costs to NMFS according to area, fishery, gear type, and coverage category.	**Alternative 4.** Require observer providers to submit copies of actual invoices to NMFS on a monthly basis. Invoices must contain specified information.
		Option 1: Limit data collection to 3 years. **Option 2:** Prohibit a person/entity that receives this information on behalf of NMFS from being certified as a provider in the North Pacific.		
ISSUE 6: Completion of the fishing year	**Alternative 1.** No action.	**Alternative 2.** Require that observers who collect fishing data on a deployment that spans two years return and be available for debriefing by Feb 28.		
ISSUE 7: Miscellaneous reg modifications	**Alternative 1.** No action.	**Alternative 2.** Revise Federal regs to correct inaccuracies and establish a deadline (Feb. 1) for observer providers to submit to NMFS copies of each type of contract they have with observers or industry.		

Note: This table provides a general summary outline of the issues, alternatives, and options. See the following section for the exacting wording of the alternatives and options under consideration.

Issue 1. Observer certification and observer provider permitting appeals processes

Alternative 1. No action. No change would be made to existing Federal regulations at 50 CFR 679.50(j)(1)(iv) that provide an appeals process to an observer candidate in the case that NMFS denies an observer candidate who failed training the opportunity to pursue further Alaska groundfish observer training. No change would be made to existing Federal regulations at 50 CFR 679.50(i)(1)(v) that provide an appeals process to an observer provider applicant in the case that NMFS denies an applicant an initial permit to become an observer provider.

Alternative 2. Remove the Federal regulations that provide an appeals process to an observer candidate in the case that NMFS denies an observer candidate initial certification and the opportunity to pursue further NMFS observer training. Remove the Federal regulations that provide an appeals process to an observer provider applicant in the case that NMFS denies an applicant an initial permit to become an observer provider. (Note that this alternative does not affect the ability of observers and observer providers to appeal any decision to revoke or sanction a certification or permit that is already issued.)

Issue 1, Alternative 1 (no action) would not change Federal regulations related to the observer certification and observer provider permitting appeals processes; thus, regulations would continue to provide an appeal opportunity to initial observer candidates and observer provider applicants. Alternative 1 would continue to require that NMFS provide staff resources to the appeals process for both observer candidates that fail training and are not allowed to retake training and applicants that are denied observer provider permits.

Allowing unsuccessful observer provider applicants to appeal an agency denial may increase the chance of a lower quality applicant entering the pool of certified observer providers. This is expected to have negative effects on the management and conservation of the Nation's fisheries, NMFS, the fishing industry, current certified observer providers, and observers. However, future observer provider applicants trying to gain an observer provider permit may benefit from Alternative 1, as it would sustain their ability to appeal any agency denials, thus increasing their chances of receiving a permit upon final resolution of the appeal.

The fishing industry that relies on high quality observer data would be negatively affected if a lower quality observer candidate is certified or a lower quality observer provider applicant is permitted. Alternative 1 would continue to limit NMFS' discretion as to whether to grant or deny an initial observer certification or observer provider permit, by requiring that an appeals process be provided in the case of denials.

Issue 1, Alternative 2 would change Federal regulations to expand NMFS' discretion in whether to grant or deny an initial observer certification or observer provider permit. There is no statutory entitlement to receiving observer certification or an observer provider permit; thus, the granting or denial of observer certifications and observer provider permits are discretionary agency actions. NMFS discretion would be expanded two ways: 1) by revising regulations such that NMFS "may" grant a permit or certification rather than "will" grant a permit or certification; and 2) by establishing final agency action on the permit application as the point at which the observer program official issues a notice stating that the observer provider permit application is denied or that the observer candidate would not be permitted to re-enter the initial groundfish training course. Note that this alternative does not affect the ability of observers and observer providers to appeal any decision to revoke or sanction a certification or permit that is already issued. An observer or observer provider permit applicant who is denied a permit (although not entitled to a further NMFS review) could initiate an action against NMFS in a United States District Court.

Under Alternative 2, NMFS' role in granting observer certifications and observer provider permits would more clearly reflect the discretionary nature of these processes. NMFS would not have to apply limited staff resources to the appeals process when an observer certification or observer provider permit is denied. The change in observer certification processes would better serve the Nation's interest in having well-qualified observers monitoring the North Pacific groundfish fisheries.

Issue 2. Observer conduct

Alternative 1. No action. No change would be made to existing Federal regulations that require that observers refrain from engaging in specified behaviors related to violating the drug and alcohol policy established by the Observer Program; engaging in illegal drug activities; or engaging in physical sexual contact with vessel or processing plant personnel (50 CFR 679.50(j)(2)(ii)(D)). NOAA GC advises that these regulations are unenforceable, and/or outside the authority of NMFS.

Alternative 2. Remove current Federal regulations at 50 CFR 679.50(j)(2)(ii)(D) that attempt to control observer behavior related to activities involving drugs, alcohol, and physical sexual contact, and remove references to the Observer Program's drug and alcohol policy in the regulations. Regulations would be revised to require each observer provider to have a policy addressing observer conduct and behavior, and current copies of each provider's policy would be required to be submitted to NMFS.

Option 1: Add a requirement under 679.50(i)(2)(x)(I)(5) to require observer providers to submit information to NMFS concerning allegations or reports regarding a breach of the observer provider's policy on observer conduct.[1] Notification of such information is required [24 hours, 48 hours, or 72 hours] after the provider becomes aware of the information.

Issue 2, Alternative 1 (no action) would make no changes to the existing Federal regulations which govern observer conduct related to drugs, alcohol, and physical sexual contact. NOAA GC has advised that these regulations are unenforceable, and/or outside the authority of NMFS. In effect, there may not be a sufficient direct connection between the sanctioned behavior and the activity that NMFS has the statutory authority to regulate (i.e., the collection of statistically reliable fisheries data).

Issue 2, Alternative 2 would remove current Federal regulations that attempt to control observer behavior related to activities involving drugs, alcohol, and physical sexual conduct and regulations that prohibit observers from engaging in any behavior that adversely affects the public's confidence in the integrity of the observer program or of the government. Further, regulations would be removed that prohibit observers from engaging in any illegal actions or other activities that would reflect negatively on their image as professional scientists, other observers, or the Observer Program as a whole. NMFS would discontinue the Observer Program's existing drug and alcohol policy, as a drug and alcohol policy would instead be the purview of each observer provider. Thus, references to the Observer Program's existing drug and alcohol policy would be removed from Federal regulations.

In effect, Alternative 2 would require each observer provider to have a policy addressing observer conduct and behavior, and current copies of each provider's policy would be required to be submitted to NMFS. However, NMFS would not formally evaluate and approve the submitted policies. The agency's role would be limited to ensuring that the observer providers had developed a policy. All of the existing permitted observer providers currently have standards of professional conduct in their contracts with

[1]This notification requirement would mirror the current requirement at 679.50(i)(2)(x)(I)(5) that mandates observer providers submit information to NMFS concerning allegations or reports regarding observer conflict of interest or breach of the standards of behavior within 24 hours after the provider becomes aware of the information. Observer conflict of interest and standards of behavior provisions are at 679.50(j)(2)(i) and (j)(2)(ii), respectively

observers, so expanding or maintaining these standards may involve a minimal amount of time and resources to implement. Alternative 2 would also require that observer providers submit information to NMFS on any allegations or reports of an observer's noncompliance with the observer provider's policy on observer conduct. Three options are provided to establish this notification period (24 hours, 48 hours, or 72 hours). Alternative 2 is intended to clarify the responsibilities between NMFS and observer providers, which may result in less confusion for observers if and when behavior issues arise. Submitting this information to NMFS would provide enforcement officials with additional information about potential MSA violations. It would also provide decertification officials information helpful in decertification proceedings. For example, if an observer had a drug or alcohol abuse issue, that information would be useful in determining whether an observer has a strong chance of rehabilitation, which may mitigate a full decertification and loss of employment as an observer.

Issue 3. Observer providers' conflict of interest limitations regarding research and experimental permits

Alternative 1. No action. No change would be made to existing Federal regulations, which are unclear as to whether observer providers may provide scientific data collectors[2] to aid in research activities, including exempted fishing permits, scientific research permits, or other research. Current practice is to allow these activities, but the existing regulations are ambiguous.

Alternative 2. Revise Federal regulations to clarify that observer providers may provide observers or scientific data collectors for purposes of exempted fishing permits, scientific research permits, or other scientific research activities. In this role, NMFS observer program regulations would apply to observers operating under their NMFS certification, but would not apply to scientific data collectors[3]

Issue 3, Alternative 1 (no action) would maintain the current regulations, which do not explicitly indicate whether observer providers are allowed to provide observers or scientific data collectors for research activities in Federal regulations. NMFS would likely continue to allow these activities without pursuing enforcement action. However, it is possible that NMFS Enforcement and NOAA GC could determine that observer providers are in violation of Federal regulations. If this occurs, researchers would likely have to obtain scientific data collectors from a different source. In addition, NMFS may not be able to require observers as a condition of a permit, and research may not be able to be conducted within the context of the normal groundfish fishery.

Issue 3, Alternative 2 would clarify that, in addition to the provision of observer services for purposes of groundfish fisheries managed under the FMPs, observer providers could provide scientific staff for purposes of exempted fishing permits, scientific research permits, and other research activities. There would likely be minimal impacts resulting from Alternative 2, as current practice is to allow these activities, but all parties involved would understand an observer provider's role. Additionally, there would be no chance of enforcement actions as a result of these activities, should interpretation of this rule subsequently change.

[2] Note that NMFS has suggested a revision to this alternative. The word "employees" has been removed, and replaced with the words "scientific data collectors." This revision provides consistency with Alternative 2.

[3]Note that there are circumstances in which observers would be required to account for removals or the research is being conducted within the context of the normal fishery.

Issue 4. Fishing day definition

Alternative 1. No action. The current definition of "fishing day" in Federal regulations allows vessel owners or operators to use any observer coverage incurred during a 24-hour period to count towards observer coverage requirements, which has resulted in vessels fishing and being observed in ways that are not representative of actual fishing behavior. No change would be made to existing Federal regulations at 50 CFR 679.2 which define "fishing day" as follows:

> *Fishing day means to (for purposes of subpart E) a 24-hour period, from 0001 hours A.l.t. through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.*

Alternative 2. Revise the definition of "fishing day" in Federal regulations as follows:

> *Fishing day means ~~to~~ (for purposes of subpart E) a 24-hour period, from 0001 hours A.l.t. through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. An observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.*
>
> Option 1. Revise the definition of "fishing day" in Federal regulations as follows:
> *Fishing day means ~~to~~ (for purposes of subpart E) a 24-hour period, from ~~0001~~ 1201 hours A.l.t. through ~~2400~~ 1200 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. An observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.*

Alternative 3. Establish regulations under 50 CFR 679.7 prohibiting activities that result in non-representative fishing behavior from counting toward an observer coverage day.

Issue 4, Alternative 1 (no action) would not clarify 30 percent observer coverage requirements, which pertain to all catcher/processors and catcher vessels equal to or greater than 60 ft length overall (LOA), but less than 125 ft LOA. NOAA Enforcement has documented instances in which vessel operators intentionally structure fishing activities only for purposes of obtaining observer coverage. For example, a vessel may fish unobserved until late in the day, pick up an observer and make a short tow prior to midnight, make one more short tow immediately after midnight, and then return the observer to port. Under current regulations, this is interpreted as two "observer coverage" days. Under Alternative 1, vessels would likely continue to conduct unrepresentative fishing, specifically with the intent of meeting observer coverage requirements. Observers would continue to collect information on total catch, and that information likely would be used by NMFS to manage the groundfish fisheries.

Issue 4, Alternative 2 would revise Federal regulations to require that affected vessels carry an observer for all fishing activities that occur during a 24-hour period for that fishing day to count as an observer coverage day. This would affect all catcher/processors and catcher vessels greater than or equal to 60 ft LOA, but less than 125 ft LOA that are subject to 30 percent observer coverage requirements. Alternative 2 would likely reduce instances in which vessels conduct fishing operations specifically to meet coverage requirements, and likely increase data quality for this sector. Alternative 2 would also likely increase costs for vessels in some cases, requiring them to carry observers longer than they would be required to under Alternative 1 (status quo). Alternatively, vessels could choose to postpone fishing (in the example described above) such that they do not retrieve hauls without an observer during a 24-hour period in which they also retrieved hauls with an observer, thus increasing trip length and costs. For these reasons, Alternative 2 may have some significant cost implications for those elements of industry 1)

who have adopted the aforementioned strategy to meet the technical letter of the law, while circumventing its true purpose, and 2) who are not undertaking strategic behavior but whose normal fishing behavior on a specific trip may mirror this behavior due to unforeseen circumstances.

Option 1 under Issue 4, Alternative 2 still requires that affected vessels carry an observer for all fishing activities that occur during a 24-hour period for that fishing day to count as an observer coverage day. However, Option 1 would change the current 24-hour period from midnight to midnight to a 24-hour period from noon to noon. This would also affect all catcher/processors and catcher vessels greater than or equal to 60 ft LOA, but less than 125 ft LOA that are subject to 30 percent observer coverage requirements. Option 1 may reduce instances in which vessels conduct fishing operations specifically to meet coverage requirements more so than Alternative 2 alone, as vessels may have a higher financial disincentive to undertake strategic behavior during optimal (daylight) fishing hours. It is likely, however, that the change under Alternative 2 would provide the primary benefit, and the marginal benefit of Option 1 is unknown. Option 1 would also likely increase costs for vessels in some cases, requiring them to carry observers longer than they would be required to under Alternative 1 (status quo) or, potentially, Alternative 2.

Issue 4, Alternative 3 would establish regulations that would prohibit activities that result in unrepresentative fishing behavior from counting toward an observer coverage day. NMFS' intent for Alternative 3 is to identify through analysis activities or behaviors that are specific to vessels exhibiting strategic behavior only to obtain observer coverage, and prohibit those activities. Staff identified several candidate behaviors that could be prohibited in regulation. However, two problems with this methodology were identified. First, differentiating between strategic behavior and the same activity resulting from normal fishing behavior is difficult. Of the candidate fishing behaviors that could be used to regulate strategic behavior, all could potentially be explained by typical fishing operations. Second, for each candidate behavior that could be prohibited, staff determined that the regulatory fix could be circumvented and, in some cases, potentially exacerbate the existing problem.

For these reasons, NMFS has determined that Alternative 3 would not be enforceable, and would not decrease instances of vessel captains fishing only to obtain required observer coverage.

Issue 5. Observer program cost information

Alternative 1. No action. Observer providers would not be required to report various subcategories of costs to NMFS.

Alternative 2. Require observer providers to report annual costs to NMFS according to the following subcategories: labor, overhead, transportation, housing, food, and insurance. This information would be reported on an annual basis, broken out by BSAI versus GOA fisheries, and by shoreside, 30 percent, 100 percent, and 200 percent covered vessel/processor categories and gear type.

Option 1: Limit the mandatory economic data collection program to three years.

Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

Alternative 3. Require observer providers to report annual costs to NMFS by GOA and BSAI subareas; shoreside, 30%, 100% and 200% covered vessel/processor categories; and gear type.

Option 1: Limit the mandatory economic data collection program to three years.

Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

Alternative 4. Require observer providers to submit copies of actual invoices to NMFS on a monthly basis. Invoices must contain the following information:

1. Name of each individual vessel or shore plant
2. Name of observer who worked aboard each vessel or at each shore plant
3. Dates of service for each observer on each vessel or at each shore plant (include and identify dates billed that are not coverage days)
4. Rate charged per day for observer services
5. Total observer services charge (number of days multiplied by daily rate)
6. Specified transportation costs (i.e. airline, taxi, bus, etc.)
7. Any specified "other" costs not included above (i.e. excess baggage, lodging, etc.)

Option 1: Limit the mandatory economic data collection program to three years.

Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

Issue 5, Alternative 1 (no action) means that observer providers would not be required to report cost information to NMFS. As a result, NMFS would continue to lack sufficiently detailed information on the costs of observer services in order to inform baseline analyses of the industry-funded portion of the groundfish observer program. Analyses to support proposed regulatory changes would continue to rely on an average daily rate, multiplied by the number of observer days incurred by vessels and processors. Thus, NMFS and the Council would continue to make use of the best available data in the development of these analyses, recognizing the data limitations discussed below.

Issue 5, Alternative 2 would require observer providers to report costs and other economic and socioeconomic information to NMFS by a specified date, according to various subcategories. The proposed subcategories of cost information include labor, overhead, transportation, housing, food, and insurance. The intent is that this information would be reported on an annual basis, broken out by BSAI versus GOA fisheries, and by 30 percent, 100 percent, and 200 percent covered vessel/processor categories and gear type. NMFS is not able to assess the various cost components of the existing groundfish observer program under the information currently required. Most if not all of the observer provider/vessel contracts submitted to NMFS provide only the daily rate for observer services (e.g., $355/day). The proposed cost categories identify the specific types of information that could be collected to address common questions regarding the baseline costs of the existing program.

The primary benefit of this action is that this information would allow for a more accurate assessment of costs and benefits under potential program changes, which may benefit the groundfish observer program and the fisheries dependent upon observer data for management. The primary cost of this action would be the administrative costs incurred by the observer providers, in effect, the staff time and resources necessary to provide cost information on an annual basis. It is uncertain at this time whether the incremental cost of providing this additional information would represent a substantial cost to the observer providers.

This alternative includes two options. First, the alternative would include an option to limit the economic data collection program to three years. Second, it would include an alternative to prohibit a person or entity that receives confidential financial or business information from observer providers on behalf of

NMFS from being permitted as an observer provider in the North Pacific. This second option is intended to address a situation where a person or entity could use confidential information to compete with current observer providers.

Issue 5, Alternative 3 would require observer providers to provide NMFS the total costs of providing observer services, split out by GOA and BSAI subareas; vessel/processor coverage categories; and gear type, on an annual basis. Compared to Alternative 2, Alternative 3 provides more generalized information. Alternative 3 would be less burdensome on observer providers than Alternative 2 and, therefore, would be less costly.

This alternative includes two options. First, the alternative would include an option to limit the economic data collection program to three years. Second, it would include an alternative to prohibit a person or entity that receives confidential financial or business information from observer providers on behalf of NMFS from being permitted as an observer provider in the North Pacific. This second option is intended to address a situation where a person or entity could use confidential information to compete with current observer providers.

Issue 5, Alternative 4 would require observer providers to submit to NMFS copies of actual, standardized invoices containing specific information on a monthly basis. The intent of this alternative is to reduce the administrative burden and costs associated with calculating and reporting the costs associated with Alternatives 2 and 3. Under Alternative 4, observer providers would submit copies of their standardized actual billing invoices to NMFS, and NMFS would enter the raw information into a database for analytical use when needed. In addition to the benefits described for Alternatives 2 and 3, Alternative 4 has two main advantages. First, observer provider cost information could be verifiable by NMFS, increasing the overall data quality. Second, this approach to economic data collection allows increased flexibility in terms of data analysis.

Alternatives 2 – 4 include two options. First, each alternative includes an option to limit the economic data collection program to three years. Second, they include an option to prohibit a person or entity that receives confidential financial or business information from observer providers on behalf of NMFS from being permitted as an observer provider in the North Pacific. This second option is intended to address a situation where a person or entity could use confidential information to compete with current observer providers.

Issue 6. Completion of the fishing year

Alternative 1. No action. No change would be made to existing Federal regulations allowing observer deployments to span two different fishing years and last for up to 90 days.

Alternative 2. Revise regulations to require that observers who collect fishing data in one fishing year during a deployment that extends into a second fishing year return from sea and be available for debriefing by February 28 of the second fishing year.

Issue 6, Alternative 1 (no action) would not change existing regulations to require observers who collected fishing data over a span of two different years to return from sea and be available for debriefing by a specified date. In effect, this alternative allows for the potential to delay completion of the observer annual data set for the first year until all observers have returned and debriefed. Under current regulations, an observer can be deployed for up to 90 days, meaning the maximum deployment could last through late March of the second year. This means that the completed data would not be available to end users working on a variety of analytical projects until some time after the observer returns.

Issue 6, Alternative 2 would require that observers who collected fishing data over a span of two different years return from sea and be available for debriefing by February 28 of the second year. Those observers whose cruises span two different fishing years would be impacted by this action. Alternative 2 would likely increase observer provider costs because the efficiency of each deployment that spans two different years would be reduced and fishing industry costs could increase to the extent observer provider costs are incorporated into billable costs. Using the last fishing day as the cut-off, 7 observer deployments would have needed to be truncated in 2006. The actual impact is difficult to predict because it would depend on the composition of the observer providers' clients and the duration of the trips they take.

This action was proposed due to the potential benefit to NMFS and the clients to which it provides observer information, as it would provide a date certain whereby observers would need to return from sea for debriefing, allowing consistency in the completion of the final annual data set. However, in July 2007, NMFS further consulted with the primary internal agency users of observer information to determine if their needs warrant consideration of this action. These consultations were conducted due to preliminary discussions with both the OAC and the Council that the proposed action (Alternative 2) would potentially increase indirect costs to industry (shorten trips) with limited direct benefits. Upon review, while there is interest in obtaining a final observer dataset earlier in the year, there are no compelling analytical requirements that warrant a change to the status quo.

Issue 7. Miscellaneous modifications

Alternative 1. No action. Do not revise existing Federal regulations to address inaccuracies or housekeeping issues.

Alternative 2. Revise existing Federal regulations related to observer program operational issues as follows:

a. Regulations at § 679.50(c)(5)(i)(A) incorrectly reference a workload restriction at (c)(5)(iii). Replace (c)(5)(iii) with the correct reference at (c)(5)(ii).

b. Regulations at § 679.50 currently require observer providers to submit to NMFS each type of contract they have entered into with observers or industry. There is no deadline for submission of this information, although most providers currently operate as if there is an annual deadline for all submitted information. Establish a February 1 deadline for annual submissions of this information, which is consistent with the deadline for copies of 'certificates of insurance.'

c. Update the NMFS Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division website address throughout 50 CFR 679.50.

Issue 7, Alternative 1 would not revise existing Federal regulations to address inaccuracies or housekeeping issues.

Issue 7, Alternative 2 would revise existing Federal regulations related to observer program operational issues. Three changes are proposed, which would serve to correct technical inaccuracies or clarify current regulations. Effects are expected to be none to minimal.

Implementation and enforcement issues

The following enforcement and monitoring issues should be considered when selecting a final preferred alternative:

- Removing the appeals process associated with initial observer certification and observer provider permitting could result in significant resource reallocations towards necessary program functions (Issue 1, Alternative 2)
- Placing the burden associated with regulating observer conduct on observer providers, rather than NMFS, could result in significant agency resource reallocations towards necessary program functions (Issue 2, Alternative 2).
- Prohibiting non-representative fishing behavior would likely result in additional NMFS enforcement costs, but would help prevent strategic behavior used to evade catch monitoring (Issue 4, Alternative 3).
- Requiring observer providers to report cost information would necessitate development and maintenance of a reporting and database system (Issue 5, Alternatives 2, 3, and 4).
- Issue 3 (Alternative 2), Issue 4 (Alternative 2), Issue 6 (Alternative 2), and Issue 7 (Alternative 2) would not result in any implementation issues, and cost would be minimal. To the extent that there could be non-compliance with reporting regulations, enforcement burdens could be increased.

UNITED STATES DEPARTMENT OF C(
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P.O. Box 21668
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January 16, 2008

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

Dear Chairman Olson:

At its February 2008 meeting, the Council will receive a staff presentation and is scheduled to take initial action on a Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) on proposed changes to current regulations governing the North Pacific Groundfish Observer Program (Observer Program). The RIR/IRFA analyzes a suite of mutually exclusive alternatives for seven different issues intended to enhance the Observer Program. During the course of analysis, NMFS has identified several concerns with the current suite of alternatives. These concerns, and associated recommendations, are summarized below.

Issue 4 - Fishing day definition

Action alternatives under Issue 4 are intended to revise 30 percent observer coverage regulations to address enforcement and management concerns associated with vessels fishing solely to obtain observer coverage. Alternative 3 was recommended for inclusion in the analysis by the Council's Observer Advisory Committee (OAC). Alternative 3 would identify, through analysis, activities or behaviors that are specific to vessels exhibiting strategic behavior only to obtain observer coverage and prohibit those activities.

Analysts concluded that it is difficult to identify vessels only exhibiting strategic behavior from those conducting normal fishing operations. Additionally, for each candidate behavior that could be prohibited, staff determined that the proposed regulatory fix could be circumvented, and potentially even exacerbate the identified problem. For these reasons, we have determined that regulatory options available under Alternative 3 would not be enforceable, and would not reduce instances of vessel captains fishing only to obtain required observer coverage. Therefore, we do not recommend adoption of Alternative 3.

Issue 5 - Observer program cost information

The action alternatives under Issue 5 propose requiring specific types of cost information from observer providers to address common analytical questions regarding the baseline costs of the existing Observer Program. At its June 2007 meeting, the Council directed

NMFS to include for analysis two action alternatives to implement observer provider cost reporting requirements. As staff began preliminary analysis, it became evident that some clarification was needed to allow a clear comparison among these alternatives.

To facilitate a meaningful analysis, the RIR/IRFA proposes a restructured suite of alternatives. These restructured alternatives are intended to address slight wording differences between the current alternatives, remove confusing and unneeded language, restructure specific options so that they are considered under each action alternative, and add an additional alternative to reduce the reporting burden to observer providers. The RIR/IRFA contains a complete discussion of these recommended changes and NMFS supports them.

Issue 6 - Completion of the fishing year

Issue 6 is intended to address historical concerns associated with the timeliness of annual Observer Program data sets. Because regulations allow observer cruises to span two calendar years, and completion of the observer data set is dependent on observers returning from sea and completing debriefing for all cruises that have data for a given year, data from a previous year is sometimes unavailable until well into March. Under this issue, NMFS proposed revising Federal regulations to establish a calendar date cutoff whereby observers who collect fishing data in one year would be required to return from sea and be available for debriefing.

In July 2007, staff consulted with the primary internal agency users of observer information to determine if their needs warrant consideration of this action. Upon review, we have determined that while there is interest in obtaining a final observer data set earlier in the year, there are no compelling analytical requirements that warrant a change to the status quo. In addition, during preliminary discussions with both the OAC and the Council, we learned that the proposed action (Alternative 2) would potentially increase indirect costs to industry by shortening trips, thereby possibly increasing the total number of observed fishing trips. Each observed trip has fixed costs associated with it, so increasing the number of trips would increase total costs. Thus, we do not consider this change necessary and any cost increase or imposition upon the industry, observer providers, or observers is not warranted. Therefore, we do not recommend adoption of Alternative 2.

Thank you for your attention to these issues, and your continued support of the Observer Program. NMFS staff will be available to address further questions the Council may have.

Sincerely,

for Dr. James W. Balsiger
Administrator, Alaska Region

AGENDA C-5
Supplemental
APRIL 2008

Alaska Groundfish Data Bank

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Eric A. Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Avenue, Suite 306
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March 26, 2008

Re: Comments on the Observer Program Regulation Package

Dear ~~Mr. Olson~~ Eric,

This letter contains comments on the Observer Program Regulation Package regarding issue four -- definition of a fishing day. The Alaska Groundfish Data Bank is a member organization representing GOA shoreside trawlers and shoreside processors. Virtually all the trawl vessel members of Alaska Groundfish Data Bank are required to carry an observer for 30% of their fishing days. The 30 % fleet pays for and provides the bulk of the observer coverage for the Gulf of Alaska fisheries. Many other groundfish participants carry no observers, incur no costs, and yet benefit from the observer data that is collected on our vessels to manage the groundfish fisheries.

Developing a reasonable solution for non-representative fishing is difficult to resolve under the present observer program structure. The only true resolution of this issue for the 30% fleet is through a change in the service delivery model (i.e., restructuring the observer program). In this construct NMFS could determine when a vessel carries an observer and costs could be distributed across all participants in the groundfish fisheries instead of at the individual vessel level.

Issue 4 (Fishing Day definition) is looking at developing a regulatory fix that would create disincentives that would prevent operators from practicing non-representative fishing to meet observer coverage requirements. According to the analysis, unrepresentative fishing is relatively small, 4.3% - 6.2%, of the total observed fishing days for the trawl sector. However, these non-representative tows impact the quality of the observer data.

The members of Alaska Groundfish Data Bank support Alternative 2 -- option 1 as the preferred alternative for issue four. We support the observer program and the collection of quality data that is representative of actual fishing practices and want to see reasonable changes to address the issue. However it is important to note that both these regulation changes in combination will drive up observer costs for the entire 30% trawl fleet, both legitimate operators and those who purposefully manipulating the system.

The vessel operators/owners are assuming that the observer contractors will work with industry to adjust their billing practices if the fishing day changes from midnight to midnight to noon to noon. If the contractors do not change their billing practices then the vessels' observer costs will see an even higher incremental increase in cost structure besides the proposed changes to the definition of a fishing day.

Thanks you for the opportunity to comment on the definition of a fishing day issue.

Sincerely,

Julie G. Bonney

Julie Bonney -- Executive Director, AGDB