AGENDA C-6
DECEMBER 2004

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
4 HOURS

DATE: November 24, 2004

SUBJECT: Observer Program

ACTION REQUIRED

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

Background

The Council has been working for the past two years to develop a new system for observer funding and deployment in the North Pacific Groundfish Observer Program (Observer Program). Under the new system, NMFS would contract directly with observer providers for observer coverage, and this would be supported by a broad-based user fee and/or direct Federal funding. The problem statement guiding the amendment identifies data quality and disproportionate cost issues resulting from the current program structure, in which vessels and processors contract directly with observer providers to meet coverage requirements fixed in regulation. Concerns with the existing program arise from the inability of NMFS to determine when and where observers should be deployed, inflexible coverage levels established in regulation, cost-equity issues among the various fishing fleets, and the difficulty to respond to evolving data and management needs in individual fisheries.

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

The current observer coverage requirements in Federal regulations (50 CFR 679) are provided in the table below.

Table 1. Current observer requirements in Federal regulations

Vessel/processor type	*Observer Requirement*	*Regulation*
halibut vessels	0% (no observer requirement)	n/a
groundfish vessels <60' LOA	0% (no observer requirement)	n/a
groundfish vessels ≥ 60 and <125' LOA and pot vessels of any length	30% of their fishing time by quarter and one entire trip per quarter	50 CFR 679.50(c)(1)
groundfish vessels ≥ 125' LOA (With the exception of pot gear. See above.)	100% of their fishing time	50 CFR 679.50(c)(1)
motherships and shoreside processors that process 500 mt - 1000 mt of groundfish in a calendar month	30% of the days they receive or process groundfish	50 CFR 679.50(c)(1)
motherships and shoreside processors that process ≥1000 mt of groundfish in a calendar month	100% of the days they receive or process groundfish	50 CFR 679.50(c)(1)
CPs fishing for Atka mackerel in the Aleutian Islands Subarea	200%	50 CFR 679.50(c)(1)
AFA CPs, motherships, and shoreside processors	200%	50 CFR 679.50(c)(5)
CDQ CPs (trawl and hook-and-line)	200%	50 CFR 679.50(c)(4)
CDQ pot CPs	100%	50 CFR 679.50(c)(4)
CDQ fixed gear CVs and trawl CVs ≥ 60'	100%	50 CFR 679.50(c)(4)

The proposed amendment is thus intended to address a variety of longstanding issues associated with the existing system of observer procurement and deployment. The Council's Observer Advisory Committee (OAC) drafted a problem statement to guide the amendment, which was approved by the Council in February 2003:

Observer Program Restructuring Problem Statement

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

The alternatives and options under consideration were developed through several Council and OAC meetings. Since earlier attempts to restructure the program were unsuccessful, the Council, NMFS, and the OAC originally considered a step-wise approach. This was based on the concept that it might be more effective to undertake a less comprehensive restructuring effort, and focus primarily on those regions and fisheries in which the data quality and cost equity problems identified in the problem statement were most acute. The intent was to restructure the program primarily for the Gulf of Alaska, and then the Council could decide whether to extend the new system to the BSAI through a subsequent amendment process. The initial alternatives reflected this approach, and thus only included GOA groundfish vessels and all halibut vessels. In December 2003, the Council reviewed a preliminary draft analysis of the impact of those alternatives.

As NMFS began to evaluate the alternatives, however, they became concerned about operational and data quality issues that would potentially arise under a 'hybrid' system, in which GOA groundfish vessels and halibut vessels would be operating under a direct contract system funded by an ex-vessel fee, and BSAI vessels would continue to operate in the existing 'pay-as-you-go' system. NMFS identified several problems inherent in the current service delivery model in a letter to the Council in December 2003, including: 1) the agency's inability to determine when and where observer coverage takes places in the less than 100% covered fisheries; 2) the inability to match observer skill level with deployment complexity; 3) the inability to modify observer coverage due to the inflexible coverage levels in regulation; and 4) the inability to implement technological alternatives to human observers which might reduce costs.

The NMFS letter also raised concerns regarding the consequences of possible differences in observer wages under a 'hybrid' system, highlighting the possibility of the most experienced observers moving to the GOA, which may spur data quality and observer availability issues in the BSAI. Concerns with the observer remuneration issues stemmed from an agency policy on observer compensation that was described in a November 2003 memo from NMFS Headquarters.[1] The policy maintained that fisheries observers are eligible for overtime compensation under the Service Contract Act (SCA), the Fair Labor Standards Act (FLSA), and other Acts stipulating wages and benefits for employees contracted by the government. The primary issue was that this may increase the costs of observers in systems in which NMFS has a direct contract with observer providers, thus invoking the SCA. Note that the FLSA is applicable to observers under any service delivery model, including the status quo.

In February 2004, NMFS provided a subsequent letter to the Council stating that the agency had determined that effective procedures for addressing both observer performance and data quality issues could only be addressed through a service delivery model that provided direct contracts between NMFS and observer providers. NMFS thus recommended that the Council include a program-wide alternative in the analysis, which would apply the new system of direct contracting to all BSAI and GOA vessels and processors. Rationale for consideration of a program-wide alternative was based on the operational and data quality factors, as well as the concerns raised by the NMFS policy memo on observer wages. In February, the Council scheduled a March OAC meeting to consider inclusion of a program-wide alternative.

Also in its February motion, the Council approved sending a letter to NMFS HQ requesting reconsideration of its observer compensation policy and clarification as to how this policy would affect observer wages under a direct contract approach in the North Pacific. An initial response was provided on March 8, noting that the agency could not provide a timely response due to ongoing litigation surrounding these issues. A later response was recently received on September 27, 2004, and is provided as **Attachment C-6(a)**. This letter notes that consultation with the Department of Commerce and the Department of Labor (DOL) has resulted in the determination that NMFS has limited responsibility with respect to observer remuneration and enforcement of the SCA and FLSA. This responsibility lies primarily with the DOL, and the current DOL

[1]Memo from William Hogarth to Terry Lee, November 13, 2003.

regulations do not relate directly to the circumstances of an observer whose tour of duty may exceed 24 hours. NMFS thus recognizes that further guidance may be useful, and the DOL has offered to provide training and guidance to NOAA staff, observer providers, and other interested parties as appropriate.

As requested, the OAC held a meeting on March 11 - 12, 2004 to discuss the potential inclusion of a program-wide alternative. While the committee recommended the addition of two new alternatives which included specific BSAI sectors that may also experience disproportionately high observer costs compared to other sectors (on an ex-vessel value basis) or have modes of operation which would make it difficult to retain observer services under two different programs in the GOA and the BSAI, it did not recommend a program-wide alternative. Members generally expressed concern that there had not been sufficient rationale provided for this change, and there was a general disinclination to add new fleets into a direct contract system which would invoke the SCA and may increase costs. Other members thought that adding in the BSAI fleets would delay the amendment and thus delay a better system for the GOA. In April 2004, the Council reviewed the OAC's recommendations, as well as another letter from NMFS reiterating its concerns with implementing separate observer programs in the BSAI and GOA. The Council ultimately approved both the OAC's new proposed alternatives and NMFS' program-wide alternative for consideration in the analysis. The result is that the suite of alternatives was expanded to include the major fisheries of the BSAI.

The addition of the BSAI fisheries greatly increases the complexity of the analysis. In June 2004, the Council approved options proposed by staff to consider a daily observer fee (as an alternative to the ex-vessel value based fee) for only the alternatives that include the major BSAI fisheries (Alternatives 6 and 7). These fisheries require individual vessel or cooperative level monitoring, and thus require at least 100% coverage as mandated by law or the provisions of their specific management program. For these fisheries, the Council approved analyzing a daily observer fee that could exactly match the costs of observer coverage, similar to how the program works today, except that NMFS would contract with the observer provider. This type of fee would thus avoid the potential for reducing coverage levels in the 100% and 200% fisheries to respond to revenue shortfalls. **These options were incorporated to create the existing suite of alternatives and options under consideration in the analysis, which is provided in the next section of this memo.**

Alternatives for Analysis

The analysis provided at this meeting is considered preliminary. Due to the inclusion of the BSAI alternatives and new fee options, further development of the alternatives and options was necessary. The review at this meeting is intended to generate feedback on staff's approach to several issues, including categorizing the various fisheries for the purpose of determining coverage levels, the fee system, and other implementation components. The Council's initial review of the analysis will be scheduled for a later date.

As provided below, there are **seven alternatives** under consideration. In addition to the no action alternative, there are six action alternatives that would replace the current pay-as-you-go system with a new system supported by user fees, in which NMFS would be responsible for determining when and where observers are deployed through a direct contract with observer providers. Each alternative in the analysis represents a comprehensive program constructed from the following five program elements:

- **Scope**: Which vessels and processors would be included in the new program?
- **Coverage requirements:** What levels of coverage would be required for each vessel, processor, or fishery category?
- **Funding mechanism:** How would the costs of observer coverage be funded?
- **Technological/equipment requirements:** What types of equipment and technologies would vessels be required to deploy in order to facilitate coverage by observers?

- **Contracting process:** How would NMFS contract with observer providers to obtain observer coverage?

The alternatives differ primarily in terms of scope (i.e., which vessels and processors are included in the new program) and by the structure of the fee collection system. The alternatives currently proposed are as follows:

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

Alternative 2. ***GOA groundfish vessels only.*** Under this alternative, a new fee-based program would be established for GOA groundfish vessels, including GOA groundfish vessels under 60'. Regulations that divide the fleet into 0%, 30%, and 100% coverage categories would no longer apply to vessels in the program, and vessel operators would no longer be responsible for obtaining their own observer coverage. Under the new program, NMFS would determine when and where to deploy observers based on data collection and monitoring needs and would contract directly for observers using fee proceeds and/or direct Federal funding. Vessels would only be required to carry an observer when one is provided by NMFS. The fee would be based on a percentage of the ex-vessel value of each vessel's GOA groundfish landings and would be collected through annual billing by NMFS.

Alternative 3. ***GOA groundfish vessels and halibut vessels only.*** This expands on Alternative 2 by including halibut vessels from all areas off Alaska. Fees would be collected from halibut landings as well as groundfish landings through annual billing by NMFS, and NMFS would have the authority to place observers on halibut vessels as well as groundfish vessels.

Alternative 4. ***GOA groundfish vessels, halibut vessels and GOA-based groundfish processors.*** This alternative expands on Alternative 3 by including GOA-based groundfish processors. However, in contrast to Alternatives 2 and 3, fees would be collected by processors at the time of landing, and fee proceeds would be submitted to NMFS on a quarterly basis.

Alternative 5. ***GOA groundfish vessels, halibut vessels, GOA-based groundfish processors, BSAI fixed gear catcher vessels (CVs) and BSAI pot vessels.*** This alternative expands on Alternative 4 by including BSAI fixed gear (longline and pot) and jig CVs and BSAI pot catcher processors (CPs).

Alternative 6. ***GOA groundfish vessels, halibut vessels, GOA-based groundfish processors, all BSAI groundfish vessels <125', and all BSAI pot vessels.*** This alternative expands on Alternative 5 by adding BSAI trawl CVs under 125', and BSAI trawl and longline CPs under 125'. Under this alternative, vessels with 100% or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100% would pay an ex-vessel value fee.

Option 1: **Include longline CPs ≥125'.** This suboption would expand Alternative 6 by including longline CPs ≥125' operating in the BSAI.

Option 2: **Include non-AFA trawl CPs ≥125'.** This suboption would expand Alternative 6 by including non-AFA trawl CPs ≥125' (i.e., the head & gut fleet).

Option 3: **Include BSAI trawl CVs ≥ 125'.** (Staff recommends inclusion of this option). This option would allow all CVs operating in the BSAI to be covered under a single uniform program. Without this option, the predominantly AFA CV fleet operating in the BSAI would be split between two separate observer programs despite the fact that the two classes of vessels would in many cases be fishing side-by-side and delivering to the same processors.

Alternative 7. ***Comprehensive alternative: All groundfish vessels and processors and all halibut vessels.*** This alternative would establish a new fee-based Observer Program in which NMFS has a direct contract with observer providers for all GOA and BSAI groundfish and halibut vessels in the Federal fisheries. Under this alternative, vessels with 100% or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100% would pay an ex-vessel value fee.

In developing the alternatives, the Council also included several options that may be applied to more than one alternative:

Option 4: **Exclude GOA-based inshore processors.** (Alternatives 5 and 6). This option would exclude GOA-based inshore processors from the program under Alternatives 5 and 6. The effect of the alternative would be to establish a vessel-only program for the covered fisheries in the GOA and BSAI.

Option 5: **Establish an opt-in, opt-out provision for BSAI-based inshore processors.** (Alternatives 4 through 6). This option applies only if Option 4 is rejected. This option would allow each BSAI-based processor to determine for itself whether to opt-in or opt-out of the program. Processors opting into the program would pay observer fees on all groundfish and halibut landings they receive and would receive their observer coverage through the program. Processors electing to opt-out would pay observer fees on only those landings received from vessels that are participating in the program and would pay no fees on landings from vessels that are not participating in the program. The rationale behind this option is to provide certain BSAI-based processors with the option to join the program should they find that the majority of their landings are from vessels covered by the program. Each BSAI-based processor would have the opportunity to decide whether it makes sense to participate in the program based on how many of its deliveries are from vessels covered by the program.

Option 6: **Include CDQ fishing for participating vessels** (Alternatives 5 and 6). Under this option, vessels that participate in the program when fishing in non-CDQ fisheries would continue to be included in the program when fishing CDQ. This option would allow vessel operators to obtain their coverage through a single program throughout the fishing year and would allow them to switch back and forth between CDQ and non-CDQ fisheries without changing observers. Without this option, vessel operators could be forced to switch observers and observer providers when switching between CDQ and non-CDQ fishing and would be obligated to pay two separate types of fees depending upon whether the vessel is fishing CDQ or non-CDQ.

An additional option applies to the type of fee program selected.

Option 7: **Uniform fee program.** (Alternatives 6 and 7) Under this option, a uniform ex-vessel value fee would be required for all vessels and processors covered by the program in place of the two separate fee programs that are contained in Alternatives 6 and 7. Adoption of this option in conjunction with Alternative 7 would establish a program similar to the Research Plan that was implemented in 1994 and repealed in 1995.

The alternatives above range in scope from the most minimal program that would include only the GOA groundfish vessels (Alternative 2) to the most comprehensive program covering all groundfish vessels and processors and all halibut vessels (Alternative 7). **A summary table showing which vessels and processors are included under each alternative is provided below.** Recall that if a vessel and/or processor is not included in the newly restructured observer program, it means that they continue to operate under the existing pay-as-you-go model, in which the vessel/processor contracts directly with an observer provider to meet coverage levels fixed in regulation.

Table 2. Program scope: Vessels and processors included under each action alternative

Vessel/Processor class	*Alt. 2*	*Alt.3*	*Alt. 4*	*Alt. 5*	*Alt. 6*	*Alt. 7*
GOA groundfish vessels	Yes	Yes	Yes	Yes	Yes	Yes
Halibut vessels (all areas)		Yes	Yes	Yes	Yes	Yes
GOA-based inshore processors			Yes	Yes (with Option to exclude)		Yes
BSAI fixed gear CVs				Yes	Yes	Yes
BSAI pot vessels				Yes	Yes	Yes
BSA-based I inshore processors			Each processor may elect to opt-in or opt-out			Yes
BSAI trawl CVs <125'				Yes	Yes	Yes
BSAI trawl CV ≥ 125'					Option to include	Yes
BSAI longline CPs < 125'					Yes	Yes
BSAI trawl CPs < 125'					Yes	Yes
BSAI longline CPs ≥ 125'					Option to include	Yes
BSAI non-AFA trawl CPs ≥ 125'					Option to include	Yes
AFA inshore processors			Each processor may elect to opt-in or opt-out			Yes
AFA motherships						Yes
AFA CPs						Yes
CDQ vessels and processors				Option to include vessels and processors that are included in the program for their non-CDQ activity		Yes

Note that Alternative 1 (no action) is not included in this table because no vessels or processors would be included in a new program.

Coverage Requirements

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

Note that this concept is being presented for public consideration for the first time in this analysis, so it is particularly ripe for feedback. Details such as the criteria for establishing each tier and the fisheries proposed for inclusion in each tier are preliminary. Should the Council wish to proceed with this concept, it will be developed in greater detail for the initial review draft of the analysis. The following is a description of the four proposed coverage tiers. Detail on the characteristics of the fisheries that would fit under each tier are provided in Chapter 2 of the analysis.

- **Tier 1 fisheries (200% coverage).** These are fisheries in which two observers must be present so that observers are available to sample every haul on processors or delivery on vessels. Tier 1 fisheries are generally those in which observers are directly involved in the accounting of individual vessel catch or bycatch quotas.

- **Tier 2 fisheries (100% coverage).** These are fisheries in which one observer is deployed on each vessel and processor. In contrast to Tier 1, it is recognized that the observer will likely be unable to sample all hauls or deliveries due to workload constraints and will, therefore, follow random sampling procedures so that the vessel or processor will not know in advance which hauls or deliveries will be sampled. Under certain circumstances, vessels that would otherwise qualify for Tier 1 coverage could operate with a single observer in Tier 2 if they are operating under restricted hours, or under an alternative monitoring plan approved by NMFS in which alternate technologies are used to monitor scales when the observer is absent.

- **Tier 3 fisheries (regular coverage generally less than 100%).** *(This tier replaces the old 30% coverage requirement).* These are fisheries in which NMFS is dependent on observer coverage for inseason management but in which 100% coverage on every vessel is unnecessary because observer data is aggregated across a larger fleet. Vessels participating in Tier 3 fisheries can expect to receive coverage on a regular basis and will be required to carry observers when requested to do so by NMFS. However, the actual coverage that each vessel receives will depend on the coverage priorities established by NMFS and the sampling plan developed for the individual fishery in which the vessel is participating. The actual coverage a particular vessel or processor receives could range from zero to 100%, but on a fleet-wide basis, coverage levels are likely to average closer to 30%.

- **Tier 4 fisheries (infrequent coverage).** These are fisheries in which NMFS is not dependent on observer data for inseason management. Coverage levels in Tier 4 fisheries are expected to be low and infrequent and used for special data needs and research rather than inseason management. Halibut vessels, jig vessels, and groundfish vessels <60' are likely to fall into Tier 4. In these fisheries, NMFS could deploy observers on vessels when necessary to collect needed baseline data or to respond to specific data needs, but would not deploy observers on a regular basis to collect inseason management data. Vessels participating in Tier 4 fisheries would be required to carry observers when requested to do so by NMFS but such requests are unlikely to occur on a regular basis.

Note that placement of a fishery or vessel class into a particular coverage tier may or may not affect the type or amount of fee that would be assessed. As shown under the alternatives, the Council has the option of establishing a uniform ex-vessel value fee that applies to all fisheries within the program, or it may establish a daily observer fee for Tier 1 and Tier 2 fisheries and an ex-vessel value fee for Tier 3 and Tier 4 fisheries. The following table shows the proposed classification of each fishery into each of the four tiers described above.

Table 3. Proposed tier levels for vessels and processors

Vessel/processor/fishery	*Current coverage requirement and future coverage requirements proposed under other programs*	*Proposed tier classification*
AFA CPs	200% coverage	Tier1
CDQ CPs	200% coverage	Tier 1
AFA motherships	200% coverage	Tier 1
AFA inshore processors	1 observer for each 12 hour period (i.e. 2 observers if plant operates more than 12 hours/day)	Tier 1
non-AFA trawl H&G vessels ≥125' in the BSAI	200% coverage under Amendment 79 groundfish retention standard (GRS)	Tier 1
CPs fishing for Atka mackerel in the Aleutian Islands Subarea	200% coverage	Tier 1
non-AFA Trawl H&G vessels <125' in the BSAI	30% coverage. However under proposed Amendment 80 Council is considering options for increased coverage under fishery cooperatives.	Tier 3 with possible increase to Tier 1 or Tier 2 under proposed Amendment 80
non-AFA Trawl H&G vessels ≥125' in the GOA	100% coverage	Tier 2
CVs >60' and pot CPs fishing CDQ	100% coverage	Tier 2
non-AFA Trawl H&G vessels <125' in the GOA	30% coverage	Tier 3
non-AFA inshore processors	0%, 30%, or 100% based on processing volume	Tier 3
Trawl CVs ≥125' (Including CDQ)	100% coverage	Tier 2 or Tier 3 with possible video monitoring requirement.
Trawl CVs 60' - 125' (Including CDQ)	30% coverage	Tier 3
Longline vessels ≥125'	100% coverage	Tier 3
Longline vessels 60' - 125'	30% coverage	Tier 3
Pot vessels ≥60'	30% coverage	Tier 3
Halibut vessels	no coverage	Tier 4
Jig vessels (all sizes)	no coverage or 30% depending on vessel length	Tier 4
Groundfish vessels <60'	no coverage	Tier 4

Note also that under this new four tier structure, the coverage levels would remain unchanged from the status quo for most vessels and processors that currently have 100% or 200% coverage requirements. The biggest change would occur for vessels that currently have 30% coverage requirements or no coverage requirements. Most current 30% vessels would fall into Tier 3 and can expect regular coverage at a level less than 100%. Most vessels that currently have no coverage requirements would fall into Tier 4 and be required to carry an observer when requested, but can expect such coverage to be a relatively rare occurrence. Thus, most existing fisheries would fall into the tier that relates to their current coverage level. Exceptions to this are proposed in the analysis for discussion purposes. Specifically, the following vessels and processors may be considered for inclusion in Tier 3 (regular coverage less than 100%) even though they are currently subject to 100% coverage requirements: (1) catcher vessels ≥ 125'; (2) hook-and-line catcher processors ≥ 125'; and (3) non-AFA inshore processors.

Funding Mechanism

Finally, all of the alternatives anticipate funding the new observer program through some combination of user fees and Federal funding (which may be necessary to start the program). **Setting an initial fee percentage is one of the primary decisions facing the Council in this amendment. Alternatives 2 - 5** would employ a fee based on a percentage of a vessel's ex-vessel revenue. **Alternatives 6 and 7**, which include the major BSAI fisheries, provide the Council with a choice to establish an ex-vessel value fee for all fisheries within the program, or a daily observer fee for Tier 1 and Tier 2 fisheries (200% and 100% coverage) and an ex-vessel value fee for fisheries under Tier 3 (regular coverage less than 100%) and Tier 4 (infrequent coverage).

Decisions related to the type of user fee, whether an ex-vessel value fee or daily observer fee, do not preclude the possibility of obtaining Federal funding to cover all or a portion of observer costs. The analysis outlines the primary issues with regard to a fee program in Chapters 2 and 3. **Because it is difficult to predict the possibility of future Federal funding and future coverage needs in various fisheries, the analysis considers the fee percentages necessary to maintain existing overall levels of coverage and provide room to expand the program into fisheries that currently have no coverage at all (halibut and <60' LOA groundfish vessels) in the absence of Federal funding.** To the extent Federal funding becomes available, fee percentages could be reduced or coverage increased. Therefore two 'endpoint' fee levels are proposed under each alternative in the RIR. This approach does not differ from previous analyses presented to the Council:

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

Option 2: Establish a fee percentage that is self-supporting at current coverage levels for sectors that currently have coverage and apply the same fee percentage to all new fisheries into which the program expands (upper endpoint fee). Under this option, the fee percentage would be set at a level necessary for fee revenues from the currently covered sectors of the industry (groundfish vessels over 60' and shoreside processors) to fund the current number of deployment days in those sectors. Each new sector that is not currently covered that is included in the program will generate additional fee revenues so that expansion of coverage into the <60' groundfish and halibut fleets would not necessarily come at the expense of existing coverage for vessels ≥60'. Because the average daily revenues generated by halibut vessels and groundfish vessels <60' are lower than the average daily revenues generated by groundfish vessels ≥60', and because observer costs per deployment day are generally higher for small vessels that operate out of more remote ports, fee revenues generated by halibut vessels and groundfish vessels <60' would not be adequate to extend coverage to those vessels at levels currently in effect for groundfish vessels ≥60'. A precise estimate of the level of coverage that the upper endpoint fee would provide for halibut and groundfish vessels <60' will be difficult to make because data on the average number of fishing days for such vessels is unavailable.

The following table provides a summary of the 2000 - 2002 average annual coverage days, estimated observer costs, ex-vessel value of groundfish landings, and average observer costs expressed as a percentage of ex-vessel value for each sector. **This table thus estimates costs under the no action alternative.** Note that CDQ vessels are not broken out in this table, and 2003 data is not yet included.

Table 4. 2000 - 2002 average annual observer days, ex-vessel value (in dollars), and observer costs

Vessel type and class		Observer days		Observer costs in dollars		Groundfish ex-vessel value in dollars		Obs. cost as a % of ex-vessel value	
		GOA	BSAI	GOA	BSAI	GOA	BSAI	GOA	BSAI
Catcher processor	AFA CP	0	5,298	0	1,880,672	0	115,317,845	0.00%	1.63%
	Longline CP < 125	310	1,477	109,883	524,383	8,042,095	11,378,056	1.37%	4.61%
	Longline CP ≥ 125	141	6,712	49,901	2,382,914	2,896,002	48,709,378	1.72%	4.89%
	Pot CP <125	19	20	6,594	7,251	138,731	114,351	4.75%	6.34%
	Pot CP ≥ 125	51	165	18,059	58,621	513,085	1,368,942	3.52%	4.28%
	Trawl CP < 125	179	625	63,428	221,992	1,802,868	9,210,508	3.52%	2.41%
	Trawl CP ≥ 125	226	4,168	80,281	1,479,707	5,286,664	52,585,679	1.52%	2.81%
Catcher vessel	AFA Diversif. Trawl < 125	571	498	202,705	176,672	10,183,486	11,917,371	1.99%	1.48%
	AFA Trawl ≥ 125	1	4,087	355	1,451,003	confidential	78,187,154	confidential	1.86%
	AFA Trawl 60-124	41	1,908	14,673	677,458	990,540	70,073,066	1.48%	0.97%
	Longline ≥ 60	543	425	192,647	150,993	16,810,424	1,510,975	1.15%	9.99%
	Non-AFA Trawl 60-124	890	58	316,068	20,472	13,061,097	623,474	2.42%	3.28%
	Pot ≥ 60	215	676	76,325	239,980	5,154,738	9,292,662	1.48%	2.58%
	Unknown CV	9	1	3,077	355	220,333	1,427,986	1.40%	0.02%
Inshore/mothership processor	AFA Inshore	0	925	0	328,375	2,464,944	137,460,380	0.00%	0.24%
	Alaska Peninsula/Aleutians	0	0	0	0	250,327	4,603,932	0.00%	0.00%
	Floater	12	197	4,142	70,053	1,023,293	5,579,031	0.40%	1.26%
	Kodiak	1,288	20	457,358	7,100	46,195,944	4,308,520	0.99%	0.16%
	Mothership	0	936	0	332,280	30,204	21,477,653	0.00%	1.55%
	Other Bering Sea	0	23	0	8,165	126	438,701	0.00%	1.86%
	Southcentral	95	0	33,607	0	39,099,745	229,573	0.09%	0.00%
Total		4,591	28,219	1,629,103	10,018,446	125,301,715	585,815,237	1.30%	1.71%

[1]Based on an estimated daily average cost of $355/day for 2000-2002 which includes estimated travel costs of $25/day and meal costs of $15/day.

Under the proposed alternatives, coverage costs to individual vessels and processors will take one of two forms: **(1) an ex-vessel value fee** on landings (proposed under Alternatives 2 - 7); or **(2) a daily observer fee** based on the number of fishing days (proposed only under Alternatives 6 and 7). While the costs to individual vessels would vary depending on whether they are subject to an ex-vessel value fee or a daily observer fee, in both cases, the overall costs to the fleet are dependent on the daily cost of contracting for observer coverage.

In Tier 1 and Tier 2 fisheries that are proposed to be subject to a daily observer fee (under Alternatives 6 and 7), the daily fee would be based on the average daily cost of contracting for observer coverage. In Tier 3 and Tier 4 fisheries that are proposed to be subject to an ex-vessel value fee (under Alternatives 2 - 7), the fee percentage would be determined by three factors: (1) the desired level of coverage, (2) the daily cost of observer coverage, and (3) the total ex-vessel revenues of the affected fleet. Both types of fees could be adjusted downwards if Federal funds become available to partially or fully subsidize the costs of coverage.[2]

Because the SCA would apply to any form of direct Federal contracting for observer services, a great deal of concern has been raised about the extent to which Federal contracts for observer coverage under the SCA would increase the coverage costs in the North Pacific. These concerns are based on two issues:

- Whether a prevailing wage established under the SCA would increase observer salaries relative to the no action alternative
- Whether a prevailing wage established under the SCA would include a requirement that observers be paid an hourly wage plus overtime under the requirements of the FLSA

Neither of those two issues can be definitively resolved at this point, because both questions can only be resolved by the Department of Labor (DOL) rather than NMFS. With respect to the determination of a prevailing wage, however, the DOL guidelines indicate that when the majority of employees in a particular job classification and region are covered by a collective bargaining agreement (CBA), the terms of the CBA are used to establish the prevailing wage and supersede any alternative wage determinations that might be made by the DOL. Because a majority of observers in the North Pacific are currently covered by a CBA (three of the four active observer providers belong to the Alaska Fishermen's Union), it is most likely that the DOL would use the existing CBA as the basis for a prevailing wage determination for North Pacific fisheries, meaning that observer salaries would not change under the SCA.

As for the FLSA issues and the NMFS HQ memo mentioned previously, NMFS is not directly responsible for determining whether or not the overtime provisions of the FLSA apply to observers working in the North Pacific. (Note again that the requirements of the FLSA apply to observers working in the North Pacific regardless of whether Council chooses to adopt a system of direct Federal contracting under one of the action alternatives, or remains with the no action alternative.) Absent resolution of this issue in a more definitive manner (through either clarification/revision of duties and position descriptions for North Pacific observers or statutory clarification under the FLSA), the daily costs of observer coverage under the alternatives cannot be predicted with absolute certainty. For this reason, and given the rationale provided above, the cost estimates contained in the analysis are based on two assumptions:

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[2]The cost estimates in this analysis assume that the fee proceeds will only be used to pay for the direct cost of observer coverage, and implementation costs would be paid by NMFS.

Assumption 1: SCA prevailing wage determinations for North Pacific fisheries are likely to be consistent with the terms of the existing CBA governing observer salaries in the North Pacific

Assumption 2 : Observers will continue to be paid on the basis of a daily wage and will not be entitled to overtime pay under the FLSA

Until the issue of overtime pay for observers is resolved, the cost estimates contained within this analysis should be considered the best information available at this point in time.

Table 5 below shows the estimated low and high endpoint fees that would be required under each alternative using coverage days and ex-vessel value data from 2000 - 2002. This table also shows the estimated number of additional observer days that would be funded under the high endpoint fee percentages, as well as the fees that would result under Alternatives 6 and 7 if Tier 1 and 2 fisheries were covered by a daily observer fee and Tier 3 and 4 fisheries were covered by an ex-vessel value fee.

Note that the alternative that would provide the program with the largest revenue base relative to observer days is Alternative 4, which would require an estimated ex-vessel value fee of 0.51% to fund the current level of coverage under the low-endpoint option, and a fee of 0.88% under the high-endpoint fee option. An additional 3,300 observer days would be funded under the high-endpoint fee option for Alternative 4 and these observer days would be available to expand coverage in the groundfish and halibut fisheries that fall within the scope of Alternative 4.

The highest fee percentages would come under Alternative 6, especially if all three of the options for Alternative 6 are chosen. If all three options are chosen, the low endpoint fee would be 1.44% and the high-endpoint fee would be 1.85%.

Recall that there are options to assess a daily observer fee on Tier 1 and Tier 2 (200% and 100% covered) fisheries under Alternatives 6 and 7, leaving the Tier 3 and 4 fisheries under an ex-vessel value based fee. Under the proposed daily observer fee under Alternatives 6 and 7, all vessels and processors operating in Tier 1 and Tier 2 fisheries would be assessed a daily observer fee that is equal to the actual average daily cost of observer coverage as determined by the coverage contract in effect for each fishery. Using estimated current daily coverage costs of $355 which includes transportation and meal costs, the daily observer fee would be $710 in Tier 1 fisheries (200% coverage) and $355 in Tier 2 fisheries (100% coverage). Vessels and processors that are currently subject to 100% and 200% coverage and that are proposed for inclusion in Tier 1 or Tier 2 would face no change in their average daily observer cost relative to the status quo, as long as the daily costs of coverage do not increase. The difficulties in estimating future daily coverage costs are described in detail in Chapter 4 of the analysis.

Table 5. Estimated high and low endpoint fees for each alternative and estimated number of additional observer days funded under high endpoint fee percentage using 2000-2002 estimates of observer days and ex-vessel value[1]

2000-2002 average annual data	*Alt 2*	*Alt 3*	*Alt 4*	*Alt 5*	*Alt 6 [2]*					*Alt 7*	
					no options	*Option 1*	*Option 2*	*Option 3*	*All options*	*Tier 3 and 4 only*	*All Tiers*
Observer days	3,204	3,204	4,599	5,886	9,828	16,540	13,996	13,915	24,796	20,627	32,820
Obs. cost in $ millions	1.14	1.14	1.63	2.09	3.49	5.87	4.97	4.94	8.80	7.32	11.65
Estimated value of groundfish and halibut subject to the observer ex-vessel value fee in millions of dollars											
Groundfish from ≥ 60' vessels	96.74	96.74	185.80	200.03	295.45	344.16	348.04	373.64	474.94	422.35	786.29
Groundfish from <60' vessels	11.42	11.42	11.42	12.70	12.70	12.70	12.70	12.70	12.70	12.70	12.70
Halibut	-	123.11	123.11	123.11	123.11	123.11	123.11	123.11	123.11	123.11	123.11
Total ex-vessel value	108.15	231.26	320.33	335.84	431.26	479.97	483.85	509.45	610.74	558.16	922.09
Estimated high and low endpoint fee for each alternative											
Estimated low endpoint fee %	1.05%	0.49%	0.51%	0.62%	0.81%	1.22%	1.03%	0.97%	1.44%	1.31%	1.26%
Estimated high endpoint fee %	1.18%	1.18%	0.88%	1.04%	1.18%	1.71%	1.43%	1.32%	1.85%	1.73%	1.48%
Additional number of observer days that could be funded by the high endpoint fee percentage based on revenue from <60' and halibut vessels											
from <60' fee proceeds	378	378	283	374	422	610	511	473	663	620	530
from halibut fee proceeds	-	4,078	3,047	3,622	4,095	5,917	4,951	4,585	6,427	6,013	5,139
total additional days	378	4,456	3,330	3,996	4,517	6,527	5,461	5,058	7,090	6,633	5,669

Note: CDQ data is included in this table for each vessel class that made CDQ landings. Therefore, this table should be treated as if the option to include CDQ vessels under each alternative was selected.

[1]Low and high endpoint fee percentages are generated using average annual coverage days and ex-vessel value revenues for 2000-2002 and using an average coverage cost of $355/day.

[2]Fee percentages for all options under Alternative 6 assume that all vessels covered by the program would be covered by an ex-vessel value fee, including Tier 1 and Tier 2 vessels covered by the program.

Summary

In sum, the analysis describes in detail the elements necessary to create a comprehensive program under each proposed alternative. This analysis is provided for preliminary review by the Council, in order to show progress on the issues addressed in the analysis and staff's current approach. The analysis is not considered complete at this time, and is notably lacking in the sections which address issues of implementation and contracting procedures. Note that NMFS has submitted a letter to the Council (**Attachment C-6(b)**), highlighting the overall need for the amendment, as well as guidance on observer remuneration and the process NMFS has established for addressing the remaining data quality, contracting, and deployment issues. NMFS and Council staff have scheduled an internal meeting in early January to, among other things, plan the completion of the document.

The Council's action at this meeting is to review the preliminary analysis and provide feedback as necessary. The Council was notified of the document being posted on its website on December 1, and a hard copy of the document was sent on November 29. A discussion of the schedule may also be necessary at this meeting. Initial Council review of the draft analysis will likely need to be scheduled for April 2005 at the earliest, depending on whether or not the Council would like the OAC to review the document prior to Council initial review.

AGENDA C-6(a)
DECEMBER 2004

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

THE DIRECTOR

SEP 17 2004

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th Street
Anchorage, Alaska 99501-2252

Dear Chris:

This is in response to your letter sent earlier this year, seeking responses to several questions concerning the National Marine Fisheries Service (NMFS) policies regarding observer remuneration and eligibility for overtime, and applicability of certain provisions of the Fair Labor Standards Act (FLSA) to observers and observer providers.

After consultation with the Department of Commerce General Counsel (DOC GC) and the Department of Labor (DOL), it has been determined that NMFS has limited responsibility with respect to observer remuneration. The agency was acting within this limited scope of responsibility when we put forth our position, based on long-standing practices within the Department of Commerce, that observers are technicians and therefore eligible for overtime pay under the FLSA (see my enclosed memo of November 13, 2003). However, the questions you raised regarding how observers are to be compensated to ensure compliance with the requirements of the Service Contract Act (SCA), FLSA, or other Acts, are more appropriately addressed by DOL.

The DOL is the primary Federal agency responsible for enforcing the FLSA, which sets basic minimum wage and overtime pay standards. These standards are enforced by the Department's Wage and Hour Division, a program of the Employment Standards Administration. In addition, the Department of Labor enforces the provisions of two other statutory requirements that affect observer remuneration and overtime pay. They are:

- The McNamara-O'Hara SCA, which requires payment of prevailing wage rates and fringe benefits to service employees employed on contracts to provide services to the federal government, and

- The Contract Work Hours and Safety Standards Act, which requires contractors and subcontractors on federal contracts to pay laborers and mechanics (including other non-professional, non-seamen, non-clerical, or non-supervisory workers) at least one and one-half times their basic rate of pay for all hours worked over 40 in a workweek.

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

When NMFS requests proposals for observer services, the work statement generally includes a requirement that all bidders demonstrate how observers will be compensated in accordance with the requirements of the SCA and FLSA, including payment for overtime. The actual enforcement of the SCA and FLSA, with respect to record-keeping and computation of pay and benefits, is the responsibility of DOL. Unfortunately, a simple read of the DOL regulations regarding SCA and FLSA wage computations does not relate directly to the circumstances of fishery observers whose tour of duty may exceed 24 hours. Therefore, NMFS recognizes that further guidance may be useful regarding the requirements of the SCA and FLSA as they pertain to fishery observers on extended tours.

In response to our recent inquiries regarding applicability of the SCA and FLSA to observer wages, the DOL Wage and Hour Division has offered to provide training and guidance to NOAA contracting officers, observer providers, and other interested parties as appropriate on the SCA and FLSA. Information from these sessions will be summarized and made available on a public website.

The NOAA Acquisitions and Grants Office (AGO) will be working with DOL's Wage and Hour Division to arrange the most suitable date(s) and venue(s) for such training. The questions you have raised will be provided to DOL to ensure that they are addressed during the training, and NOAA AGO will notify you when training sessions have been scheduled. It is my hope that this approach will provide the Council with sufficient information to conclude its evaluation of regulatory alternatives associated with restructuring of the North Pacific Groundfish Observer Program.

Sincerely,

Bill

William T. Hogarth, Ph.D.
Assistant Administrator for Fisheries

Enclosure

cc: Helen Hurcombe, NOAA Acquisitions and Grants Office
Kim Dietrich, Association for Professional Observers
Joseph Sullivan, Mundt MacGregor

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

THE DIRECTOR

NOV 1 3 2003

MEMORANDUM FOR: Terry H. Lee
Office of General Counsel

FROM: for William T. Hogarth, Ph.D.

SUBJECT: Applicability of Overtime Pay for Fisheries Observers

This memo supplements a request from Mr. Abe Vinikoor of the Western Administrative Support Center (WASC) for an legal opinion from the Department of Commerce Office of General Counsel (DOC OGC) on whether contracted fisheries observers are entitled to overtime pay. It provides justification for the National Marine Fisheries Service (NMFS) position that contracted fisheries observers are non-exempt from coverage under the Fair Labor Standards Act and other Acts, as appropriate, by virtue of their status as technicians, and therefore are eligible for overtime pay.

Based on information provided by DOC OGC and Department of Labor representatives during a workshop sponsored by the NMFS' National Observer Program (see Appendix 1; Fisheries Observers Insurance, Liability, and Labor Workshop, section 4.2, pp. 17-20), it was determined that NMFS needed to clarify the status of observers as either professionals (which are exempt from coverage under the Fair Labor Standards Act), or technicians (which are non-exempt).

This issue was discussed at a subsequent meeting of the National Observer Program Advisory Team. The National Observer Program Advisory Team is comprised of representatives from each NMFS region and headquarters office. The Advisory Team works with NMFS' National Observer Program staff in the Office of Science and Technology to identify issues of national concern, to recommend or establish priorities for national research and problem solving, and to support information collection and program implementation. The team, at its October 2001 meeting, recommended that the National Observer Program develop a Position Description for fisheries observers that would clarify their status as technicians, using the Biological Technician series (GS-404) as a starting point. It was recommended this Position Description be forwarded to the Department of Labor for consideration in issuing future Wage Rate Determinations and for inclusion in the Service Contract Act Directory of Occupations (see http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm). This clarification would provide consistency in wages paid to observers in various regions of the U.S. In addition, it would help clarify pay scales for work performed on land and at sea and aid in determining appropriate types of benefits, i.e., overtime compensation.

The National Observer Program, in consultation with the National Observer Program Advisory Team, reviewed the duties and responsibilities of fisheries observers and developed a classification scheme identifying three levels of Fishery Observer for consideration by the

Department of Labor (Level I/II/III). I sent a letter to Mr. William Gross, Director of the Department of Labor's Wage Determination Division on September 9, 2002 (see Appendix 3) to that effect. That letter, along with a subsequent letter dated November 6, 2002, resolved to establish wage rates for contracted fisheries observers that are comparable to Federal Observers under the General Schedule (GS) system.

The development of Fishery Observer Position Descriptions for consideration by the Department of Labor was prompted by inconsistencies in wage rate determinations that had been made up to that point, and the fact that these wages were considerably less than the federal equivalency for the same type of position. Wage rate determinations issued by the Department of Labor for various localities stipulated minimum hourly wages ranging from $9.55/hour (2001 for California, Oregon, Washington) to $10.59/hour (2001 for California County of Los Angeles), whereas the 2003 hourly pay scale for GS-5 employees is $11.23/hour (see http://www.opm.gov/oca/03tables/pdf/gs_h.pdf). If the Department of Labor had a uniform national standard for making wage rate determinations for fisheries observers, then there would be more consistency in wage rates for contracted observers, and these wages would reflect wages that would be paid to federal employees performing the same job functions.

In developing the position that contracted fisheries observers are technicians, the National Observer Program, in consultation with the National Observer Program Advisory Team, considered both the duties and responsibilities of fisheries observers as well as past recruitment actions for Federal fisheries observers (see Appendix 4). In a 1999 Vacancy Announcement for Federally-employed fisheries observers in Hawaii that was issued before the program was converted to a contracted program, recruitment for fisheries observers were for Biological Science Technicians (ZT-404-II, equivalent to GS-5 through GS-8).

The classification of fisheries observers as technicians is also consistent with guidance from the Office of Personnel Management's classification standards for (see The Classifier's Handbook, Chapter 4 "Determining the Pay System and Series" at http://www.opm.gov/fedclass/clashnbk.pdf). The duties and responsibilities of fisheries observers involve adhering to routine sampling protocols that are planned and managed by professional employees. Fisheries observers perform these duties unsupervised, but all work is carefully reviewed for completeness and accuracy by professional biologists. Although most of the contracted observer programs currently require that observers have a professional degree (usually a Bachelor's degree in a biological science) as an eligibility standard for recruitment by the contracted observer service provider, specialized experience can be substituted for education (see also Appendix 4, Qualifications). Observers then receive up to three weeks of specialized training, which must be completed to the satisfaction of the program before observers are certified to be deployed aboard fishing vessels.

Therefore, NMFS maintains the position that fisheries observers are biological technicians and are therefore eligible for overtime compensation under the Service Contract Act (SCA), the Fair Labor Standards Act (FLSA), and other Acts stipulating wages and benefits for contracted service employees, as appropriate.

While we understand that work performed by observers beyond U.S. territorial waters is outside of the jurisdiction of the SCA and FLSA, attempting to track the geographical location of a vessel in order to determine whether or not SCA/FLSA wages apply would be a huge administrative burden for both the contracted observer provider and the agency. Therefore, it is the position of NMFS that the wage rate that the Department of Labor determines is appropriate for each specific locality should be applied to contracted fisheries observers whether they are working inside or outside of U.S. territorial waters in order to provide a fair, simple, and consistent application of the SCA/FLSA.

If you concur with this position, we strongly encourage you to advise WASC to request a revised Wage Rate Determination from the Department of Labor for Honolulu, as well as for localities that may be associated with the deployment of observers under current West Coast observer contracts as well as those solicited in the future. This would apply to contracts, cooperative agreements, and grants issued for the deployment of observers in the Alaska Marine Mammal Observer Program, the West Coast Groundfish Observer Program (via a cooperative agreement with the Pacific States Marine Fisheries Commission), and the California Longline and Gillnet Observer Programs. This will ensure that wage rates for fisheries observers reflect the new Position Descriptions for Fishery Observers that were provided to the Department of Labor in 2002, and that overtime pay is provided under these contracts in accordance with the SCA, FLSA, or other applicable laws.

Attachments

Appendix 1.

Excerpt from the Final Report of the Fisheries Observers Insurance, Liability, and Labor Workshop, June 12-14, 2001 (Section 4.2, pp. 17-20)

sometimes find themselves having to assist fishermen with the fishing operation. If an injury occurred to an observer while they were taking part in the fishing operation, the policy would be nullified.

Furthermore, in many regions, vessels do not have P&I insurance. This is more common with small vessels, especially those operating in the Gulf of Mexico and Alaska.

Q: How does compensation under the Jones Act work?

Under the Jones Act, if a vessel is considered negligent, the injured seaman can sue for compensation. If awarded by the court, compensation may be provided beyond the "maintenance and cure" typically provided by employers (or their insurers). Compensation is paid retroactively from the time of injury forward. In lieu of this compensation or until an award is made, maintenance is provided to cover food and other incidental expenses (typically at no more than a modest $26/day, based on average maintenance costs while at sea). Wages are also paid, but only from the point of injury to home. Transportation costs are also limited to getting the injured individual home. Hence, Jones Act remedy is not all that attractive until a case gets to the litigation stage and only then if a jury agrees that the plaintiff deserves a lot more compensation.

4.2 Applicability of the Service Contract Act, Contract Work Hours and Safety Standards Act, and the Fair Labor Standards Act to observers as they pertain to pay for hours worked beyond 40 hours per week

Supplemental meeting materials may be found In Appendix B, Appendix C, Appendix D, and Appendix E.

Tom Obert, *Department of Labor*
Wage and Hour Division
Washington, D. C.

In 1965, the Service Contract Act (SCA) was established to set standards for wage rates and to fill gaps that existed in government contracts. Because the principle cost in service contracts is wages of staff working on the contract, there was concern that competitive bidding and award of contracts to the lowest bidders would cause wage rates to decrease below acceptable levels. The SCA was intended to remedy this problem.

Observer programs generally contract for services through the use of service employees and are therefore subject to the SCA. Generally, only professional or administrative employees are exempt from the SCA. The definitions of professional and administrative employees are found in the Fair Labor Standards Act (FLSA) and are how FLSA links with the SCA. Exempt employees are those that are salaried, do not receive overtime pay, and are required to have at least a bachelor's degree to conduct the specific work for which they are employed. Non-exempt employees have hourly wage rates set, and are paid overtime for hours worked over a 40 hour workweek. The

Act itself does not define who these employees are; these are defined in CFR 29 Part 541. The SCA also does not address overtime directly; this is covered by FLSA or by the Contract Work Hours and Safety Standards Act (CWHSSA).

Although the CWHSSA deals with overtime compensation, it is limited to laborers and mechanics and thus does not figure prominently in work performed by observers. In addition, it is unclear whether CWHSSA has the same geographical limits as FLSA, for example, if a vessel departed a port in US waters and steamed beyond US Territorial Waters, but returned within 40 hours, the vessel would be covered by FLSA, but it may not be covered under CWHSSA.

Observers are paid wages that are based on an hourly rate and are clearly service employees, thus, they are covered by the SCA. However, because the FLSA does not apply beyond the U.S. territorial waters (12 miles from shore), and some observers work beyond this point, there may be periods when observers are exempt from the SCA. Technically, observers (and their employers) are only subject to these laws for that portion of work performed inside territorial waters. This makes the application of the requirement to pay overtime more confusing.

"For the most part, observers are working in international waters beyond the scope of the U.S. You're not going to have either SCA or FLSA coverage during that time at sea."
T. Obert

Mark Langstein, *Department of Commerce, General Counsel*
Contract Law Division
Washington, D.C.

As described by Mr. Obert, the Contract Work Hours and Safety Standards Act provides guidance for overtime compensation, but would generally not apply to observers because their tasks and functions are considered technical and scientific, not manual labor. However, observer programs would have to be assessed on an individual program by program basis to determine whether the Contract Work Hours and Safety Standards Act would apply in specific cases. Based on existing programs, it is likely that observers would be considered professional employees and not manual laborers and therefore the Act would not apply. For example, taking biological samples, other measurements, and maintaining records would not be considered manual labor, even if the work were physically demanding at times. Additionally, a minimum of a Bachelor's degree or other special training is usually required to be an observer.

Discussion and Q&A session

Q: What is the definition of salary?

Salary is basically a set amount employees receive regardless of the number of hours worked over a specified amount of time. The Department of labor (DOL) normally issues wage determinations under the SCA. In a collective bargaining agreement, DOL is obligated to issue a wage rate and fringe benefits and a daily rate may be negotiated. However, it is

not clear whether a daily rate constitutes a salary for the purposes of the FLSA.

It was the understanding of some panelists and participants that observers would not be exempt from the provisions of the SCA and FLSA. The CWHSSA provides the ability to apply liquidation standards, which allows the US Government to recover dollars if overtime was not properly paid to employees, but the SCA does not. Hours worked are defined in 29 CFR 785.6.

Q: What is the area covered by the Outer Continental Shelf Act as it relates to territorial waters and overtime?

With regard to distance from shore, the area covered by the Outer Continental Shelf Act was based on the distance and depths at which offshore drilling used to occur (out to 100 fathom contour, or a depth of approximately 600 feet). This is likely to be the same basis as for the SCA and FLSA as to why they do not cover employees outside of Territorial waters.

Q: If observers are considered biological technicians, what effects does the FLSA or CWHSSA have on them?

They would be non-exempt under the SCA, but then a determination remains regarding which overtime law applies, the FLSA or CWHSSA. The CWHSSA only applies to labourers and mechanics, whereas the FLSA applies to everyone else. If observers are paid hourly and considered non-exempt for purposes of overtime laws, the FLSA or CWHSSA requires that they be paid time and one half for overtime. But confusion obviously exists, and the application of these standards is currently inconsistent. In the Southeast US, one NOAA Fisheries observer program considers observers exempt, and pays a daily rate or salary, not an hourly wage. Another NOAA Fisheries observer program does not consider observers exempt and pays an hourly wage plus overtime.

Q: How are "Agreements" viewed by DOL?

While the SCA deals only with contracts, for the purposes of this Act, all "agreements," even those lacking a clear contract, are considered to have the "intent" of a contract, thus making the Act applicable.

Q: Who sets the wage determinations?

Although the Department of Labor issues wage rate determinations, NOAA Fisheries or their contractors provide the information used to make those determinations. Currently, NOAA Fisheries has seven wage rate determinations for fisheries observers operating in various parts of the country, each with a different wage rate.

Generally, federal observers have been hired at a rate equivalent to GS-5, Step 1. However, the current wage determination rate for some observers is more in line with a GS-3 rate. It was unclear to the observer program managers whether this determination was based on information provided to the Department of Labor by NOAA Fisheries, or from some other source. However, anyone can request a review and re-consideration of a wage rate. If the practice of a federal direct hire for a GS-5 was to include hazardous pay,

then this must be taken into account in the equivalent observer wage rate determinations issued by DOL.

Q: What is the penalty for an agency not going to the Department of Labor and asking for a wage determination?

There is no particular penalty, however, if it comes to the attention of the Department of Labor, then they send a letter to the agency to rectify the problem, retroactively. Employees do not have private right of action under the SCA. DOL has sole enforcement authority and is mandated by statute to act on the employees' behalf. Under the FLSA, an employee can sue their employer for inappropriate wages, but they cannot sue under the SCA. However, in the event of an injury, different laws and different rules apply.

Q: Are there processes set up for dealing with cumbersome circumstances, for instance, locality keeps changing or employees keep moving around?

If the nature of the job is such that employees work from different locales, the Department of Labor uses head-up points, which refers to where the trip began. Multiple landings do not negate the SCA requirements.

Q: What is the applicability of the SCA to observers in the North Pacific groundfish observer program, considering its unique service delivery model?

There have been two rulings (by different agencies) regarding the applicability of the SCA to observers employed by private companies supplying observers for the North Pacific Groundfish Observer Program (NPGOP). One, by NOAA Fisheries, determined that the SCA did apply. The other, by the Department of Labor, determined it did not apply.

In the NPGOP, even though there is not a direct contract between NOAA Fisheries and the private companies or service providers that employ the observers, NOAA Fisheries has presumed that the situation met the intent of an "agreement" between the two parties and therefore fell under SCA requirements. NOAA Fisheries has therefore been requiring the observer service providers to meet the requirements of the SCA. However, it was the position of the General Counsel of the Department of Labor that under the NPGOP there was not a contract, therefore the SCA was not applicable.

The Department of Labor has final authority on labor issues. These kinds of questions should go to Labor for the appropriate expertise.

If observer companies in the NPGOP are required to pay SCA wages, but do not, the Department of Labor could issue a three-year debarment. There is no avenue for early removal of this debarment period once it is in place. During an investigation, if a contract was found out to have a wage rate, a determination would be made and the investigation would resume.

It was noted that, observers in the NPGOP worked outside of Territorial Waters most of the time, where the SCA or the FLSA does not appear to apply.

Appendix 2.

Excerpt from the minutes of the October 2001 meeting of the National Observer Program Advisory Team.

Topic: Observer Roles, Duties & Responsibilities

A better definition could help address the following:

- Determining pay for observer work performed on land and at sea
- Determining appropriate types of benefits
- Obtaining appropriate Department of Labor Wage Rate Determinations
- Defining the status of observers under FECA
- Establishing hiring standard guidelines for observer contractors

There was discussion as to whether observers were in the technical vs. professional series, and there was agreement that beginning observers were technicians, even though increasing job responsibilities may make them eligible for professional series positions down the road. There was clarification that even though observers are exposed to hazardous conditions, which may make them eligible for hazardous duty pay, this does not change their basic job duties. Job descriptions should also include compliance monitoring responsibilities where appropriate. It was noted that there is currently a lack of consistency between regions with respect to how observers are paid, i.e., and what constitutes a work day.

Observer Definition - It was agreed that:

- A new position description for observers should be developed using the Biological Technician position as a starting point. The name should be something like "Marine Resources Observer."

This new Position Description could be used by NMFS to:

- Request revision of current DOL Wage Rate Determinations
- Define observers for purposes of FECA compensation (which may require references to the various Service Delivery Models). This may require considerable discussions and further analysis under the Risk Management Plan.
- Develop recruitment guidelines for observer service providers
- Amend federal job Position Description library to include "Marine Resources Observer."

Appendix 3.

Letter from Dr. William Hogarth, National Marine Fisheries Service, to Mr. William Gross, Department of Labor Wage Determination Division, regarding Position Descriptions for Fishery Observers (September 9, 2002),

and

Subsequent letter to Ms. Sandra W. Hamlett, Department of Labor Employment Standards Administration, clarifying Federal GS equivalencies for Fishery Observers (November 6, 2002).

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

THE DIRECTOR

SEP - 9 2002

Mr. William Gross
Director, Wage Determinations Division
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Gross:

The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) is submitting the enclosed multi-level position descriptions for use by the Department of Labor (DOL), Wage and Hour Division in determining wage rates for contracted fisheries observers. NOAA Fisheries drafted these descriptions clearly defining fisheries observer duties and responsibilities with the intent that they would be incorporated in the DOL's catalog of job categories.

Our regional observer programs are resolved to establishing wage rates for contracted fisheries observers that are comparable to Federal observers under the General Schedule (GS) system. Therefore, to assist DOL in establishing appropriate wage rates for fisheries observers, we are also providing equivalent federal wage rates for similar positions. Entry level wage rates for federally hired fisheries observers (analogous to the Fisheries Observer Level I position description enclosed) have historically been based on a GS-5 step-1 hourly rate. Once incorporated, these descriptions should ensure that wage rate determinations for contracted fisheries observers are rendered from a uniform national standard.

I appreciate your attention to this request. Please contact Dennis Hansford in the Office of Science and Technology at 301-713-2328, ext. 217 regarding actions taken by DOL in addressing this request.

Sincerely,

William T. Hogarth, Ph.D.

Enclosures

cc: F/ST, F/ST1, F/ST1:DHansford:VCornish, GCF, F/CU(2)
NMFS:F/ST1:DHansford:713-2328:ddh:9/4/02
Revised By:DHogans:9/6/02

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

FISHERY OBSERVER I

Performs routine tasks associated with recurring and continuing work according to prescribed or established procedural standards and technical methods assigned. Assures that tasks are completed, data developed, methods used in securing and verifying data are technically accurate and in compliance with instructions and established procedures. Makes estimates of amounts and species composition of fish caught, retained and discarded, using at a minimum, simple, single stage sampling techniques and dichotomous keys. Collects biological samples from the catch of various fisheries according to detailed program and gear specific procedures. According to established standards and detailed procedures, records data on appropriate forms and logs, some of which may be electronic. Maintains field equipment and supplies. Collects scientific, management, compliance information, and make observations of fishing operations. Use and complete a pre-boarding vessel safety checklist. Measures selected portions of catch including incidentally caught marine mammals, sea birds and sea turtles. May tag species of interest including sharks, tunas, sablefish, spiny lobsters, swordfish and sea turtles. Uses calculator and/or PC for calculations and recording data. Obtains, enter and transfer data electronically. Obtains and record information on electronic equipment, socio-economics and gear characteristics of fishing gear types while working either on board vessels, on an alternative platform, or at a shore-based facility. May use interpersonal and communication skills to contact fishermen and schedule observer sampling trips. May observe and document compliance with fishery regulations, and may write affidavits. May camp at remote sites and may operate All Terrain Vehicles (ATV's) and skiffs.

FISHERY OBSERVER II

Independently executes duties, while learning when and how to resolve exceptions and special problems or to make adaptations in the procedures. Makes estimates of amounts and species composition of fish caught, retained and discarded, utilizing knowledge of various statistically valid sampling methods and dichotomous keys. Collects biological samples from the catch of various fisheries according to detailed program and gear specific procedures. According to established standards and detailed

procedures, records data on appropriate forms and logs, some of which may be electronic. Supplies in-season reports. Maintains field equipment and supplies. Use and complete a pre-boarding vessel safety checklist. Collects scientific, management, compliance information, observations of fishing operations, measure selected portions of catch including incidentally caught marine mammals, sea birds and sea turtles. Participates in tagging species of interest including sharks, tunas, sablefish, spiny lobsters, swordfish and sea turtles. Uses calculator and/or PC for calculations and recording data. May enter and transfer data electronically. Obtains and record information on electronic equipment, socio-economics and gear characteristics of fishing gear types while working either on board vessels, on an alternative platform, or at a shore-based facility. Uses knowledge of interpersonal and communication skills while contacting fishermen to schedule observer sampling trips and may coordinate observer activities with appropriate State agencies. May observe and document compliance with fishery regulations, and may write affidavits. May camp at remote sites and may operate All Terrain Vehicles (ATV's) and skiffs. May participate in aerial surveys and surveys to provide abundance data or describe fisheries to be used in observer data analysis and program design.

FISHERY OBSERVER III

Acts as field coordinator and primary debriefer of lower graded Fishery Observers. Oversees and tracks debriefing lower graded Fishery Observers, final data review, data editing and entry. Demonstrates extensive familiarity of methods, procedures and management to ensure proper day-to-day operations. Shifts from one type of responsible technical assignment to other types, which are different in terms of equipment used, of data used, and uses to which data will be put. Acts as primary field contact to address sampling, data, and deployment issues. Makes recommendations so as to increase the efficiency of recruiting, training, and safety components of the program. Supplies in-season reports. Independently executes duties, while learning when and how to resolve exceptions and special problems or to make adaptations in the procedures. Collects biological samples from the catch of various fisheries according to detailed program and gear specific procedures. Makes estimates of amounts and

species composition of fish caught, retained and discarded, utilizing knowledge of various statistically valid sampling and sub-sampling methods and dichotomous keys. According to established standards and detailed procedures, records data on appropriate forms and logs, some of which may be electronic and provide recommendations for updates. Oversees the maintenance of field equipment and supplies. Use and complete a pre-boarding vessel safety checklist. Collect scientific, management, compliance information, observations of fishing operations, measure selected portions of catch including incidentally caught marine mammals, sea birds and sea turtles. Participates in tagging species of interest including sharks, tunas, sablefish, spiny lobsters, swordfish and sea turtles. Use calculator and/or PC for calculations and recording data. Enters and transfers data electronically. Obtains and record information on electronic equipment, socio-economics and gear characteristics of fishing gear types while working either on board vessels, on an alternative platform, or at a shore-based facility. Uses knowledge of interpersonal and communication skills while contacting fishermen to schedule observer sampling trips and coordinate observer activities with appropriate State agencies. Observes and documents compliance with fishery regulations, and write affidavits as required. Camps at remote sites and operates All Terrain Vehicles (ATV's) and skiffs as required. Participate in aerial surveys and vessel surveys to provide abundance data or describe fisheries to be used in observer data analysis and program design.

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

THE DIRECTOR

NOV - 6 2002

Ms. Sandra W. Hamlett
U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

Dear Ms. Hamlett:

This is in response to your letter regarding the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) Observer Position Descriptions. Your letter requested Federal Grade Equivalencies for the three levels of Fishery Observer positions that NOAA Fisheries submitted for inclusion in the Department of Labor's Service Contract Directory of Occupations.

The Federal Grade Equivalencies for the three Fishery Observer positions are as follows:

- Fishery Observer I = GS-5 step 1
- Fishery Observer II = GS-6 step 1
- Fishery Observer III = GS-7 step 1

If you require any additional assistance in this matter, please contact Dennis Hansford at 301-713-2328, Ext. 217.

Sincerely,

William T. Hogarth, Ph.D.

cc: F/ST:F/CU:F/ST1:F/ST1:DHansford:Cornish
Drafted by:DHanfords:713-2328:11/5/02:a:GSequiv.forDOL.wp

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

Attachment 4.

Vacancy Announcement for Fisheries Observers in Honolulu, Hawaii (July 1999)

U. S. Department of Commerce

VACANCY ANNOUNCEMENT

National Oceanic & Atmospheric Administration (NOAA)

Opening Date:	07/23/99
Closing Date:	08/23/99
Position Title:	Biological Science Technician (Fisheries)
Series & Grade:	ZT-0404-II (equivalent to GS-05 through GS-08)
Duty Station:	Honolulu, HI
Vacancy Number:	W/NMF/SWR/99~~000~~0475.LN
Organization:	National Marine Fisheries Service (NMFS) Southwest Region (SWR) Pacific Islands Area Office
Area of Consideration:	Any U.S. citizen
Work Schedule:	Full-Time Seasonal
Type of Appointment:	Term Appt NTE Fifteen Months and may be extended without further competition
Number of Vacancies:	Twelve
Service:	Competitive
Salary Range:	Annual: $20,588 to $36,711 Hourly: $9.86 to $17.59 (plus a 25% cost of living allowance) **Starting salaries may be set anywhere within the pay range of a pay band.**

Notes: DOC applicants may be considered before all others. Payment for relocation expenses is not authorized. All status applicants who wish to be considered under both Merit Assignment Plan (MAP) as well as Agency-Based (AB) procedures must submit two complete applications. When only one application is received, qualified status candidates will be considered under MAP only and qualified nonstatus applicants will be referred under AB procedures. If in doubt as to which category applies to you, submit two applications. Work is expected to last more than 6 months but less than 11 months per year. Qualified individuals with ocean experience aboard small boats are especially encouraged to apply. Selectees must be able to pass a preemployment physical examination administered by the NMFS in Honolulu, HI or Long Beach, CA. Work is full-time, however it may be interrupted by short periods of nonpay status due to lack of fishery activity.

Duties: Sea-going observers work 40 or more hours per week as the only government employee aboard privately-owned commercial fishing vessels. The observers collect needed information to assess the incidental involvement of protected species in the Hawaii longline fishery, including data on fishing effort and animal life history.

Supplemental Information:

Training: Begins upon appointment and continues for 3 weeks. Trainees must satisfactorily complete written tests with an overall average score of 85% or greater, demonstrate their potential to collect accurate field data, and

exercise their astuteness and reaction to unfamiliar situations at sea in a professional manner in order to qualify for sea assignments. Failure to meet these criteria will result in termination of employment.

Cruises: Vessels operate from Hawaiian ports on the islands of Oahu and Hawaii. Observers travel by public transportation to meet their assigned vessels, and are expected to remain with their assignments until the fishing trips end. Typically, trips are 2 to 6 weeks in duration. Vessels operate in the open ocean in all weather and sea conditions.

Vessel Description and Accommodations: The commercial fishing vessels are small, generally from 50 to 110 feet in length. Crew members and observers live and sleep in cramped quarters, often in damp conditions, and share common toilet facilities. The majority of vessels have no showers, and many lack permanent toilets. Although vessels do not have separate facilities for women, federal law requires reasonable privacy. Observers work at sea aboard some vessels where the crew does not speak English and serve exclusively ethnic food such as rice and raw or dried fish. Because of the small size of these vessels and their response to sea conditions, motion sickness can be debilitating for some individuals and should be seriously considered by all applicants.

Mandatory Nonduty/Nonpay: During times of low levels of fishing activity, and when vessel assignments are unavailable, observers are placed in nonduty/ nonpay status. They may be placed, although rarely, in nonpay status for up to 3 months per year.

Other Conditions:

- Vessels carry no trained medical personnel aboard and rely upon the first aid knowledge of the operators and crews.
- Observers must be capable of moving animal carcasses up to 200 pounds each and have clear distant vision (correctable to 20/20 in one eye and to 20/40 in the other) for observing marine animals in the wild.
- Psychological stress may be potentially high since the observer is the sole government employee living in confined quarters with commercial fishermen whose work may conflict with observer duties.
- Observers do not choose vessel assignments. Vessel suitability is determined by the U.S. Coast Guard and management. Management selects sea assignments through a predetermined sampling plan and confirms that the boats meet U.S. Coast Guard safety requirements. Fishing activity dictates vessel departures and arrivals. Since vessel notification requirements limit response time, observers must be prepared for sudden sea assignments of extended and uncertain duration. Refusing assignments may be grounds for dismissal.
- When at sea, observers work in a self-supervised capacity, and receive premium pay above their base salary.

Qualifications: A minimum of 1 year of specialized experience at least equivalent in difficulty and responsibility to the next lower grade/band level in the federal service is required. Specialized experience must have been in the field of fisheries and included ~~functions such as:~~ (a) observing ocean surroundings and vessel operations during harsh ocean conditions; (b) recording data on protected species observations and fishing operations; (c) recording sea turtle, seabird, and marine mammal encounters incidental to fishing operations; (d) collecting biological samples from postmortem specimens; and (e) entering data into a data base via computer.

Substitution of Education for Experience: Successful completion of a full 4-year course of study leading to a bachelor's degree with major study or 24 semester hours in any combination of scientific or technical subjects such as biology, chemistry, statistics, entomology, animal husbandry, botany, physics, agriculture or mathematics, of which at least 6 semester hours was directly related to fishery biology, may be substituted for the required experience.

Equivalent combinations of education and experience may also be used to meet the qualification requirements--only education in excess of the first 60 semester hours is creditable toward meeting the specialized experience requirement. Two full academic years of study (60 semester hours) beyond the second year is equivalent to one year of specialized experience.
Quality Ranking Factors (* = critical): (1) * Working knowledge of shipboard collection of biological, oceanographic, and management data; (2) * Ability to live and work in isolated situations under adverse conditions; (3) * Ability to interpret and follow written and verbal instructions for data collection protocols.

APPLICANTS MUST INDIVIDUALLY ADDRESS ALL OF THE ABOVE QUALITY RANKING FACTORS ON A SUPPLEMENTAL SHEET ATTACHED TO THEIR APPLICATIONS. FAILURE TO DO SO MAY RESULT IN NOT BEING REFERRED AMONG THE BEST QUALIFIED FOR THIS VACANCY

Application Address:
WASC/HRD, WC24, BIN C15700
7600 Sand Point Way N.E.
Seattle, WA 98115-0070
Attn: W/NMF/SWR/980000.LN

Internet Information Address:
http://www.rdc.noaa.gov
FAX: (206) 526-6673
TDD: (206) 526-6105

FOR RECORDED SELECTION RESULTS FOR THIS VACANCY AND OTHER EMPLOYMENT INFORMATION, CALL (206) 526-6294. THIS MESSAGE WILL BE UPDATED EVERY OTHER MONDAY AFTERNOON.

IF YOU WANT CONFIRMATION THAT YOUR APPLICATION HAS BEEN RECEIVED, SEND YOUR APPLICATION MATERIALS VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED OR OTHER FORM OF SELF-NOTIFICATION OF DELIVERY. PLEASE DO NOT CALL THE HUMAN RESOURCES OFFICE ON PHONE NUMBERS OTHER THAN THOSE LISTED ABOVE TO INQUIRE ABOUT THE STATUS OF YOUR APPLICATION.

Demonstration Project: Effective March 29, 1998, these positions converted to the DOC Personnel Management Demonstration Project. This project replaces the federal GS pay plan and structure. Under the project, positions are classified by career path, pay plan, and pay band. The following charts show how each of the 4 career paths correspond to the GS grades:

Career Path	PP	Pay Bands				
Scientific & Engineering	ZP	I	II	III	IV	V
Corresponding	GS	1-6	7-10	11-12	13-14	15
Sci & Engnr Technical	ZT	I	II	III	IV	V
Corresponding	GS	1-4	5-8	9-10	11-12	13
Administrative	ZA	I	II	III	IV	V
Corresponding	GS	1-6	7-10	11-12	13-14	15

General Support	ZS	I	II	III	IV	V
Corresponding	GS	1-2	3-4	5-6	7-8	9-10

Salary increases within pay bands occur through the pay-for-performance system only.

APPLICATION REQUIREMENTS

1. Provide the following information:
   a. The vacancy announcement number, position title, and grade level(s);
   b. Your full name, social security number, day and evening phone numbers, mailing address, country of citizenship, veterans preference, reinstatement eligibility, and highest federal civilian grade ever held on a permanent basis;
   c. The name, city and state of high schools attended and date of diploma or GED;
   d. The name, city and state of colleges/universities attended, majors, type and date of degrees **(IF QUALIFYING BASED ON EDUCATION, PROVIDE COPIES OF ALL COLLEGE TRANSCRIPTS; COMPLETED OPM 1170/17; OR LIST OF COURSES INCLUDING COURSE TITLES, GRADES, DATES COMPLETED, AND SEMESTER/QUARTER HOURS)**;
   e. The job titles, duties and accomplishments, salaries, employers' names and addresses, supervisors' names and phone numbers, starting and ending dates, and hours per week of any paid or non-paid work experience that relates to this vacancy;
   f. A statement as to whether or not we may contact your current supervisor; and
   g. Any job-related training courses, special skills, certificates and licenses, honors, or awards.
2. Use a resume, Optional Application for Federal Employment form (OF-612), Application for Federal Employment (SF-171), or any other written format, and send it to the Application Address.
3. Meet all eligibility and qualification requirements by the closing date.
4. Ensure that the application is postmarked by the closing date and received within the Human Resources office within three work days. Applications transmitted by facsimile machine are acceptable but must be received by the closing date. This agency bears no responsibility for ensuring that our machines are available for receipt of applications or for the quality of the copies. Note: Department of Commerce Career Transition Assistance Program eligibles may apply at any time until a certificate of eligibles is issued.
5. Apply at your own expense. Applications mailed in government postage-paid envelopes will not be accepted. Facsimiles from non-government machines are acceptable.
6. Current permanent (competitive status) applicants and those who have reinstatement eligibility must include a copy of their Notification of Personnel Action (SF-50) reflecting a "1" or "2" in block 24 and a "1" in block 34.

SPECIAL INTEREST INSTRUCTIONS

1. Career Transition Assistance Program (CTAP) and Interagency Career Transition Assistance Program (ICTAP) eligibles:
   a. CTAP eligibles must submit a copy of their specific RIF notice and documentation from their agency reflecting the promotion potential of their most recent federal position;

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

AGENDA C-6(b)
DECEMBER 2004

November 30, 2004

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

Dear Madame Chair:

In December, the North Pacific Fishery Management Council (Council) is scheduled to review a preliminary analysis prepared by Council staff on restructuring of the North Pacific Groundfish Observer Program (Observer Program). During the past few months, NMFS staff at the Alaska Regional Office and the Alaska Fisheries Science Center also have been working on a number of issues that are germane to the discussion on restructuring. These include NMFS policies regarding observer remuneration and overtime, and a range of interrelated considerations regarding data quality, agency development and implementation of observer service contracts, and establishment of criteria and procedures for deploying observers in less than 100% observed fisheries. In an attachment to this letter, we offer some guidance on the remuneration issue, and we provide information on the process we have established for addressing the data quality, contracting, and deployment issues.

Since its implementation in 1990, the domestic Observer Program has provided data that is essential to the scientific understanding and management of the groundfish fisheries of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands. The program owes its success to a shared commitment by the Council, fishing industry, and NMFS to develop and maintain a state of the art system for determining overall catch quantity and composition, and providing the biological information required for stock assessment and improved understanding of the regional ecosystems. During the last 15 years, the Observer Program has been able to adapt in support of changing information needs as the Council has adopted new and increasingly complex management strategies.

The ability of the Observer Program to adapt in response to future management information needs, such as those likely to be required under GOA Rationalization, is constrained by some aspects of the fundamental design of the program. These design constraints impede NMFS' ability to make adjustments to coverage levels in response to changing needs, preclude our ability to determine where and when observer coverage will occur in less than 100% observed fisheries, constrain our ability to hold observers and observer contractors accountable for work related performance and data quality, prevent us from deploying our most experienced and capable observers in the most challenging

monitoring situations, and discourage development and possible implementation of innovative technologies which hold promise for supplementing (and perhaps substituting for) observer coverage in some situations. The linkage between these constraints and data quality, flexibility and responsiveness, and efficiency is readily apparent. The Council has recognized the need to address these concerns in the problem statement and analytical alternatives it has developed as the basis for restructuring the Observer Program. It is now important for us to build on our original shared commitment and move forward with the changes required to meet our collective future fishery-dependent information needs.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

Attachment

NMFS Perspectives on Observer Remuneration, Data Quality and Service Contracts
November 30, 2004

Observer Remuneration

In a letter dated September 17, 2004, Dr. Hogarth updated Chris Oliver on a number of issues regarding observer remuneration and applicability of certain provisions of the Fair Labor Standards Act. While we are still waiting for the Department of Labor to schedule workshops which will, hopefully, clarify a number of outstanding questions on this topic, we understand that observer remuneration would likely continue to be determined through collective bargaining agreements under any of the alternatives currently under consideration. We suggest, therefore, that the analysis be based on this assumption and that it allow for normal inflationary increases in labor costs.

Data Quality, Service Delivery, and Observer Deployment

Data quality, service delivery, and observer deployment factors are closely linked and should be considered collectively. Staff from the Alaska Fisheries Science Center (AFSC) Observer Program and the Sustainable Fisheries Division of the NMFS Alaska Regional Office have been assigned to work on these issues. These staff are working closely with Council staff to ensure consistency with the analysis for Observer Program restructuring. Other AFSC and AKR staff, NOAA General Council, NOAA contracting officials, and other agency staff are providing input as necessary.

Data Quality

Concerns regarding data quality are emphasized in the problem statement developed by the Council in support of the analysis for Observer Program restructuring. We have identified several factors that influence data quality. Some of these factors are not related to service delivery or observer deployment (e.g. access to catch, ability to obtain random subsamples of catch, presorting by vessel personnel). These factors are not considered in the following discussions.

Observer deployment in less than 100% observed fisheries

Under the current service delivery model, NMFS is unable to direct deployment of observers on vessels which are allowed to have less than 100% observer coverage. This leads to a number of data quality issues including bias associated with non-random placement of observers and inadequate coverage of some sectors. These issues are problematic at present and are expected to become increasingly troublesome under options under consideration for rationalization of Gulf of Alaska (GOA) groundfish fisheries. The draft analysis discusses these issues in detail and proposes strategies for ameliorating the problem under a restructured program. Considerations include development and implementation of suitable contracts with observer providers and development of criteria and protocols for prioritizing catch monitoring information requirements and deploying observers. Further details of some of these considerations

are provided below and more comprehensive information will be provided to the Council early next year.

Matching deployment complexity to observer skill and experience level

Requirements for sampling by observers vary according to vessel and gear type, and target fishery. For example, monitoring and sampling on board a pollock catcher vessel is very straightforward whereas sampling on some of the small "head and gut" factory trawlers can be extremely challenging. Inexperienced observers are often unable to sample effectively in some of these complex situations. This can result in unusable data, undetected errors, and inefficient operations. Under the present service delivery model, experienced observers are able to avoid more complex and challenging assignments by negotiating with contractors. This construct does not promote data quality and should be taken into account when evaluating restructuring alternatives.

Observer and contractor performance

An effective service delivery model should provide incentives for contractors and observers to deliver high quality data and disincentives for failing to meet data quality standards. Provisions for terminating observers or contractors who demonstrate egregious violations of standards (or less drastic corrective action under less serious circumstances) would provide an important tool for use in unusual circumstances and would also, in itself, provide a powerful disincentive. Data quality is, to a large extent, dependent on the commitment, professionalism, and effectiveness of observers. We will ensure that the necessary provisions are implemented in contracts established between NMFS and observer providers in a restructured program. We are unable to implement these types of provisions under the current service delivery model because there is no direct contract between NMFS and the observer providers and we would be unable to do so for any sector that continue to operate under the current service delivery model in a restructured program.

Technological Innovation

Some emerging technologies hold promise for supplementing and/or replacing at-sea monitoring by observers in support of specific information requirements. For example, video systems may be appropriate for monitoring compliance with retention requirements or seabird avoidance measures at sea or routine sorting and weighing on shore. An effective and efficient monitoring system should be configured by using a cost effective combination of technological and human resources that best meets the need of scientists and managers. The current system lacks the flexibility to implement innovative monitoring approaches.

NMFS is taking steps to become familiar with monitoring technologies and to evaluate potential applications. We are working closely with the Northwest Fisheries Science Center Observer Program during their pilot video monitoring study, and with colleagues at the Norwegian Institute of Marine Research who are evaluating promising

technologies for remote species identification. Provisional funding has been awarded for a cooperative research study with Groundfish Forum which will, among other things, further evaluate possible applications of video monitoring. NMFS staff also are working on applications which use near real-time VMS and logbook data to assist in observer deployment decision making.

Service Delivery

Changes in the service delivery model will likely require implementation of a fee-based system for funding observer contracts. This issue is discussed in the draft analysis and will not be detailed in this document.

NMFS will be considering a type of contract to provide observer services referred to as an indefinite-delivery, indefinite-quantity (IDIQ) contract under Federal Acquisition Regulations. An IDIQ contract has the advantage of increased flexibility and lower requirements for start-up funding. IDIQ contracts permit flexibility in both quantity and delivery scheduling and in ordering supplies or services after requirements are defined. This would prove to be advantageous since the details of observer coverage and funding may not be fully known when the newly restructured Observer Program is implemented and changes will likely occur from year to year. In addition, IDIQ contracting requires that preference be given to awarding multiple contracts under a single solicitation for the same or similar services. This will allow the Government to benefit from the cumulative expertise of more than one observer provider.

At present, NMFS is responsible for all administrative functions of the Observer Program including training and briefing (in partnership with the University of Alaska Anchorage's Observer Training Center), debriefing, inseason advising, and data management. Contractors hire and deploy observers in accordance with established regulations and in response to requests from vessel and plant owners and operators. We expect NMFS to retain its current functions under a restructured program, as well as responsibilities associated with award and oversight of contracts with observer providers. Under a restructured program, NMFS would also work with contractors to establish procedures for matching observer skill level with deployment complexity. NMFS would also take the lead responsibility for determining when vessels and plants will be required to obtain observer coverage in less than 100% observed sectors and contractors would be required to work with industry to ensure that coverage is provided consistent with NMFS' directions. This will require ongoing communications among NMFS, contractors, and fishing companies. Staff are currently considering alternatives for configuring this process. We will update the Council as these plans evolve.

Observer Deployment

A discussion of observer deployment considerations in less than 100% observed fisheries is provided in the preliminary analysis. Observer Program staff have initiated discussions with the AFSC stock assessment scientists and AKR inseason managers to better understand the information needs of these two primary clients and begin to evaluate

tradeoffs associated with alternative deployment strategies. Research conducted during the summer 2003 GOA rockfish fisheries reinforced the potential for using near real time information on fleet operations and targeting behavior to guide observer deployment. Further research is planned for 2005 to evaluate tradeoffs between at-sea and shore based monitoring in the same fishery. NMFS has also initiated and funded a cooperative agreement with Pacific States Marine Fisheries Commission to conduct analyses and fieldwork to evaluate alternative deployment and data collection strategies. This work is expected to start in 2005. NMFS will keep the Council informed of the status of this work, and solicit input from the OAC and industry members when designing and implementing research projects.

AGENDA C-6
DECEMBER 2004
Supplemental

UNITED STATES DEPARTMENT OF C
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center
Resource Ecology and Fisheries
Management Division
P.O. Box 15700
7600 Sand Point Way, N.E.
Seattle, Washington 98115-0070

December 1st, 2004

Mr. Ed Luttrell
Groundfish Forum
4241 21st Ave W., Suite 200
Seattle, WA 98199

Dear ~~Mr. Luttrell~~ Ed:

I am writing to follow up the letter I sent you last June and to provide an update on actions we are taking in response to the concerns expressed by you and several other fishing industry leaders regarding certain aspects of the work of the North Pacific Groundfish Observer Program.

In my earlier letter, I invited you and your members to attend any sessions of the training sessions we provide observers. I would like to re-state that invitation. Industry members, Council members, and other interested individuals who are concerned about or interested in the way we train observers are always welcome to attend our training sessions. Several industry members have attended parts of classes in past years. I believe they found the experience informative, and we also found their presence added to the class. I hope that, by encouraging industry participation in training we will improve awareness of the work of observers, stimulate productive discussion and suggestions, and generally facilitate improved communication.

We are also planning to provide an overview of the current Observer Program during an evening session at the North Pacific Fisheries Management Council's February meeting in Seattle. This workshop is still in its early stages of development so I would welcome your suggestions on its content.

I would like to summarize processes that we currently have in place for providing fishing company personnel access to observer data collected on their vessels. The specific data submitted to NMFS while observers are deployed is available to the owners of observed vessels through a web site we maintain. Many owners access this data through third party data services like Seastate and FIS, but the service is also directly available to owners. The data we provide to industry is the same data the observer submits to us, and the same data we provide to NMFS staff at the Alaska Regional Office in Juneau to support inseason management. Vessel owners who wish to gain access to these data should submit written requests along with documentation of ownership. To maintain confidentiality, owners will only be allowed access to data from the vessels they own.

When observers return from their deployments, they are debriefed. At this time they may complete written reports and draft affidavits; they also submit final copies of the data submitted while they were deployed. We routinely provide copies of these reports and documents to industry members upon request. As I mentioned in my earlier letter, we are unable to provide copies of reports and affidavits when we are asked by the Alaska Enforcement Division of the NOAA fisheries law enforcement office to withhold material that may be germane to an ongoing investigation. Because reports are completed during debriefing, they cannot be made available until debriefing is concluded. A considerable volume of information is collected by observers and industry information needs are often quite specific. Therefore, we encourage industry members to be as specific as possible when submitting requests. We believe this process has been very responsive to industry in the past and I would appreciate your efforts in ensuring vessel owners are aware of this service we provide.

Vessel operators can also gain access to observer data while at sea by asking observers directly. We instruct observers to share sampling information with captains to facilitate understanding of the sampling process and communication between observers and captains. Please note that we do instruct observers to keep daily notes documenting their work and any problems encountered and we ask them not to share this information with industry personnel until it has been reviewed by NMFS during debriefing. After debriefing, these logbooks are also available to industry upon request.

We are considering additional ways to make access to observer information easier for industry. As mentioned above, we have found that internet access to data works well in many cases. I would be interested in any suggestions you might have for enhancing and improving access to data.

We also discussed the importance of putting in place a process for obtaining feedback from vessel operators regarding observer performance. We initiated a project to develop this process and we completed canvassing other observer programs around the country on this topic. We plan to build upon their efforts and tailor a system to our needs in the North Pacific. We plan to develop a draft before the end of the year which we will circulate for industry comment and implement as soon as possible thereafter.

Our staff in Dutch Harbor and Kodiak have extensive experience in problem solving with observers and industry personnel. We prefer to be proactive, so it is always helpful to hear about concerns before they become problems. Field staff frequently conduct pre-cruise meetings aboard vessels before they go to sea. During these meetings, staff work with the observers and vessel operators to review protocols and address any specific sampling concerns. We have found this process to be very effective and I encourage you to ask your members to contact Todd Loomis at 907-271-1313 to schedule a pre-cruise meeting or to address any sampling or deployment issue. If the best way to resolve a problem requires us to send staff to sea, we are willing to make arrangements to do so through close coordination with the fishing companies involved.

We are developing a letter of introduction for observers. That letter is in draft review and we will also send it out for industry comment before finalizing it for the next fishing year. I hope this will help communicate the observer's role and help keep mutual expectations and responsibilities clear.

All of the aforementioned measures should help prevent problems from occurring at sea, but, given the large numbers of people, and the difficult conditions under which they work, problems will inevitably occur. Our field office staff are available to respond immediately when problems do arise. Also, we have good communications with the vessels via phone or e-mail and we can work together with industry and observers to resolve any problems. I believe it is in all of our best interests to involve NMFS and industry management as soon as problems of any kind are identified. Small problems can become magnified at-sea and quick response and good communication is very effective in resolving problems. If you or your members have problems with observers or concerns with observer sampling you can contact me directly (206-526-4194), Todd Loomis in Anchorage (907-271-1313), or Martin Loefflad in Seattle (206-526-4195). Todd is our primary contact for operational problems, and Martin or myself should be contacted when there are concerns with the data collected or any issues involving harassment, safety, or possible falsification of data. Please note that while I have given you primary points of contact, all of our managers can respond to issues and one of us will always be available should you have a problem which needs attention.

Last, but not least, we have continued to work to address observer safety. We have developed a checklist which observers will complete and share with vessel masters for use in the 2005 fishing year. This checklist was developed with input from industry. We think this input has improved the quality and usefulness of the checklist. A copy is enclosed with this letter for your reference.

Thank you for continuing to work with us to improve the Observer Program. With many changes proposed for fisheries management in Alaska, I expect we will face significant challenges in the coming years. These challenges will bring with them continuing opportunities for us to work together to design and implement efficient and effective systems for monitoring our groundfish fisheries.

Let's take a few moments to discuss this letter during the December 2004 meeting of the North Pacific Fishery Management Council.

Sincerely,

William Karp

William A. Karp, Ph.D.
Director, North Pacific Groundfish
Observer Program

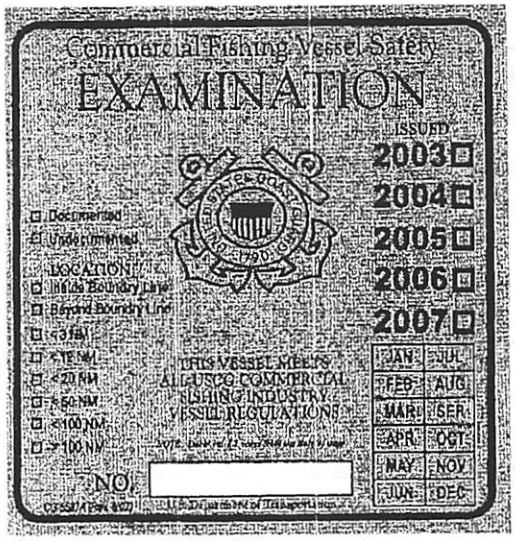
CC:
P. MacGregor
L. Swanson
B. Atkinson
T. Smith
L. Butzner
B. Paine
G. Reed
J. Kyle
J. Balsiger
D. DeMaster
J. Coe
C. Oliver
S. Salveson

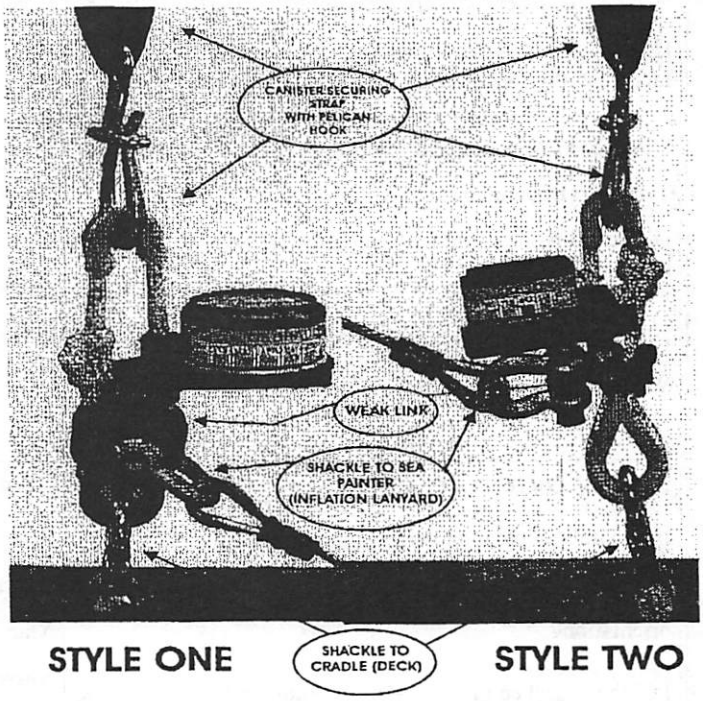
Enclosure

VESSEL SAFETY CHECKLIST

VESSEL NAME: _____ VESSEL CODE: _____

Check the USCG Commercial Fishing Vessel Safety decal or ask for documentation. Decal is valid 2 years from ISSUED date.





LIFE RAFTS:

Number of: _____

Total capacity: _____

# of crew & observer/s on board _____

Life raft(s) able to float free? Y N

Service Due sticker exp. date: ___/___ (expires on date displayed)

Hydrostatic release exp. date: ___/___ (exp. on date displayed)

Your raft assignment: _____

EPIRB: (Visual inspection only. Please leave all testing/handling to crew)

Location(s): _____

Battery not expired (expires on date displayed): Y N

Hydrostatic release not expired (expired on date displayed): Y N

Located in a float free location: Y N

NOAA Registration Sticker:

Exp. date: _____ (expires on date displayed)

Registered to this vessel (name of vessel displayed): Y N

Alphanumeric code on sticker matches code on EPIRB: Y N

Signal tested (or asked to see station log in wheelhouse for most recent test. Signal should be tested monthly): Y N

IMMERSION SUIT/PFDS:

Available for everyone on board? Y N

Location(s): _____

Functioning strobe on personal suit? Y N

FIRE EXTINGUISHERS:

Extinguisher(s) found in every main area/corridor? Y N

Extinguishers in 'good and serviceable condition' (gauge in the green, low amounts of rust, canister in good condition, unobstructed, hoses attached, service tags available)? Y N

FLARES: (ask captain for assistance)

Location(s): _____

Expiration dates checked? (expires on date displayed) Y N

If checked, number of flares: _____

LIFE RINGS/SLINGS:

Number of: _____/_____

Easily accessible?: Y N

Name of vessel displayed on each? Y N

Location(s): _____

ADDITIONAL SAFETY CHECKS:

Watertight doors - do they close properly? Y N

Hatches/passageways - are they unobstructed? Y N

Discussed safe places to work on deck and in factory with captain/crew? Y N

Discussed refrigerant leak procedures? Y N

Type of refrigerant used_____

Discussed reporting/identifying inoperative alarm/fire systems? Y N

Did you hear the general alarm? Y N

Where will you go during emergencies:

_____

FIRST AID MATERIALS:

Location(s):_____

Is there an individual trained in CPR/First Aid onboard? Y N

Who?:_____

RADIOS:

How many SSB and VHF radios?: _____ / _____

Are emergency call instructions posted? Y N

Were procedures for making an emergency call discussed? Y N

SAFETY ORIENTATION:

If you did not complete drills upon embarking the vessel, did the captain use this safety checklist to complete the required vessel safety orientation? Y N

Did the vessel conduct a safety orientation? Y N
Who gave the orientation? _____

(Detail what was covered in the comment section below)

EMERGENCY DRILLS AND DATE(S) CONDUCTED:

Fire_____

Abandon Ship _____

Man Overboard _____

Vessel Flooding/stabilization _____

General alarm activation _____

Donning immersion suits _____

Radio/visual distress signals _____

Where the drills hands-on involving actual gear? Y N

Did you participate in the drills? Y N

Observer Name: _____ Cruise #: _____

Observer Signature: _____ Date: _____

Captain Name: _____

Captain Signature (optional): _____ Date: _____

*Did the vessel request a copy of the Checklist? Y N

*If so, where you able to supply them with a copy? Y N

Additional Comments: (All "N" responses require a comment)_____

PUBLIC TESTIMONY SIGN-UP SHEET FOR AGENDA ITEM C-6 Observers

	NAME (PLEASE PRINT)	AFFILIATION
1	Robert Mikol	OceanLogic
2	Bob Alverson	FVOA-Seattle
3	PAUL MACGREGOR	At-Sea Processors Assn.
4	THORN SMITH	NPLA
5	GERRY MERRIGAN	PROWLER FISHERIES
6	Joe Kyle	OAC Chair
7	Julie Bonney	AGDB
8	BRENT PAINE	UCB not present
9	Michael LAKO	Alaska Observers
10	ERIC OLSON	BBEDC
11		
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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.

Pub Test: 12-12-04 Bob Michael C-6 hand-out

Supplemental Information on Electronic Logbooks
Report to the NPFMC: OceanLogic Report

December, 2004

Current Status of electronic logbooks in the North Pacific fisheries: December 2004

The following is an overview of the electronic data collection program for the catcher vessel trawl fleet in the North Pacific. It includes a bulleted history of the electronic logbook development, two projects in which the electronic logbook was involved and the lessons learned from those projects.

Brief history of Electronic LogBook (ELB) development

2000:

- OceanLogic receives private contract for data visualization project
  - GIS based data collection and interpretation project for harvest enhancement
- Electronic logbooks are developed as a need for data standardization arises
  - Several iterations of ELB's occur

2001

- Fishermen request that the ELB be compliant with NMFS data collection standards in order to avoid double entry of harvest data

2002

- OceanLogic starts working with NMFS Sustainable Fisheries (for their specific data needs) and NMFS/OLE (in order to develop evidence-grade data collection standards)
- During 2001 and 2002 we enjoyed tremendous support from fishermen at WFC and NMFS
- Receive waivers for ELB to use as alternative to DFL (Daily Fishing Log, paper log)
- ELB Prototype in 2002 and expanded into the GOA

2003

- NMFS approves ELB
  - OceanLogic conducts training for Industry and Enforcement agencies
    - USCG
    - NMFS/OLE
  - The dynamics of "Acceptance" changes
    - In general, the change is positive giving our work a high degree of legitimacy within the fleet

- However, to some who were very supportive of our work, the legitimacy brings about a deepening sense of "Big Brother"

Two NMFS Projects: (1) General ELB distribution for economic study - fifty stand-alone ELB licenses distributed to fishermen in the catcher vessel trawl fleet in the Bering Sea/Aleutian Islands fisheries and (2) Evaluation of Observer coverage in the Gulf of Alaska Rockfish fishery

Alaska Fisheries Science Center buys 50 Licenses:

- The AFSC was looking for an efficient way to collect economic data from the catcher vessel fleet
- The paper logbook contains enough raw data that when properly matched to a fish ticket and queried can yield valuable economic data. The ELB provides that access to the logbook data much faster and accurately that the paper DFL.
- AFSC and PSMFC purchase 50 licenses
  - We install ~ 35 (mostly in the BSAI)
  - ~ 80% use them regularly and continue to use them
  - ~ 30% send data to NMFS

NMFS/AKR initiates Gulf of Alaska Rockfish Project:

- AKR purchases ~25 ELB licenses and OceanLogic services to install and maintain software and provide training to ELB users in order to evaluate fleet fishing patterns in the GOA rockfish fishery
- We install ~25 copies
  - ~90% use them
  - Some confusion arises when NMFS/Kodiak personnel fail to retrieve catch data from fishing vessels (via the shore-side plants) as previously arranged.

Note worthy to both projects:

- Almost all vessels have to spend additional financial resources in order to use ELB
  - Biggest financial installation issue: GPS-to-computer hardware hookup. Some expenses included (from most common to least common):
    - Signal splitter
    - New COM ports
    - More memory
    - New GPS
    - New computer

2004

- Electronic LogBooks enter their second year of fleet-wide operation.
- NMFS/AFSC provides funding for up to 40 maintenance and upgrade packages along with five new ELB packages.
- NMFS/AKR schedules training funds for Kodiak fleet for January and June.

- GOA - Kodiak (January): Due to Congressional priorities NMFS/AKR refocuses their resources on Aleutian Pollock and Crab Rationalization. In the process, funding for ELB/Kodiak training operations for January 2004 is no longer available. OceanLogic continues training program as scheduled. Thirteen vessels ask for ELB upgrades in the Kodiak groundfish fishery fleet. OceanLogic holds a ½ day training session on the ELB with the support of the Alaska Draggers Association. Individual training is conducted onboard upgraded vessels. NMFS/Kodiak no longer picks up data from plants causing vessel operators to think that the electronic data collection program has ended.
- BSAI – Dutch Harbor (January): Most of the current ELB users are re-supplied, three more new users come on board.
- GOA - Kodiak (June): NMFS/AKR cancels continuation of the previous year's Rockfish Pilot Project.
- BSAI – Dutch Harbor (June): Another three new vessels pick up the ELB. OceanLogic expands ELB coverage to Akutan. Approximately 14 new vessels are upgraded in Dutch Harbor.

Achievements and Challenges:

- Achievements…
  - Fishermen are using the ELB because they want to, they see value in it:
  - They are taking ownership of their data
  - They are collecting better data
  - For most skippers, it is easy to use (buttons & reports)
  - Electronic access to vessel harvest data
    - Catch database
    - Vessel management
    - Fleet management
    - Fishing history with fish ticket augmentation
    - More efficient at-sea boardings
  - EFH (…and other Council issues)
    - Where fishermen fish
    - When they fish
    - How they fish
  - NMFS is using the ELB data
    - Timely information
    - Accurate catch information
      - Set & Haul positions and times
        - Effort & location
      - Est. Weights
      - Accurate ADF&G stat areas attribution
        - Percentage of time and catch in area
- Challenges…
  - Technical

        - Old computers
            - (Proposed solution: New computers or upgrades)
        - Overloading computer systems
            - (Proposed solution: New computers or upgrades)
        - Boat electricity infecting computer software
            - (Proposed solution: Automate computer software maintenance to daily schedule)
        - Data transfers from the vessel
            - (Proposed solution: Move away from Standard C)
    - Social
        - Computer literacy
            - (Proposed solution: Industry specific training programs)
        - Understanding the regulations
            - (Proposed solution: Better outreach)
        - Big Brother stigma
            - (Proposed solution: Better outreach)
        - At-Sea Enforcement boardings
            - (Proposed solution: Better training at the USGC/NPFTC in Kodiak)
    - Sending data to NMFS
        - This proved to be a bigger issue than we anticipated. We expected that fishermen would email their data to NMFS once the reached shore. In most cases that happened, when fishermen were comfortable sending in their data. Here it is important to note that many fishermen were not comfortable sending in data. These reasons included:
            - Fear of mistakes: This was the biggest reason. Fishermen, who were not comfortable using a computer, knew that NMFS was really going to look at their data for the first time on a consistent and regular basis. Data submission increased as fishermen's comfort levels grew.
            - Not having access to email in some ports prevented fishermen from sending in catch data.
            - In cases where data was to be dropped off for pick-up, the pick-up person did not always show up.

- **Lessons Learned:**
    - ELB's collect better data than paper logbooks.
    - Management personnel have faster access to decision quality data with ELB's.
    - Fishermen will respond positively to electronic data collection programs when they are co-owners and users of the data.
    - Fishermen must trust that the data they collect will be used to benefit their fishery and assist them in their livelihoods

- Data collection projects require initial investment of time and financial resources due to technical and social challenges that come with implementing an electronic data collection program. However, once rolling, they produce seamless, inexpensive, accurate data, in real and near-real time.
  - Our experience is similar with other projects around the country
- Implementing an electronic data collection program is as much social science as it is computer science

For more information, slides or written report, please contact:
Robert Mikol
rmikol@oceanlogic.com
OceanLogic LLC
234 Gold Street, Juneau, Alaska 99801
ph: 907-586-0145 fx 907-586-0165

Robert Mikol

From: Albert Geiser [oneocean@harborside.com]

Sent: Sunday, December 05, 2004 8:05 PM

To: Dave Smith; Skip Woodard; Dan Hees; Skip Bolton; Jay Stinson; Harold Jones; Wayne Tipler; Mike Martin; Ben Hogvel; Al Burch; Craig Cochran; Doug Hoedel; Stomy Stutes; Rick Willis; Brian Beaver; Kurt Cochran; Steve and Laurie Drage; Julie Bonney; Bob Krueger

Cc: Katherine@seastateinc.com; Robert Mikol

Subject: SeaState in the GOA

Ms. Stephanie Madsen
Chair, NPFMC
605 West 4th Avenue Suite 306
Anchorage, AK 99501-2252 December 2, 2004

Re: SeaState reporting for the GOA, Electronic Log Book as a tool?

Dear Stephanie,
The Electronic Log Book (ELB) program that NMFS has made available (OceanLogic VVS) to the groundfish fleet in the North Pacific for longline, pot, and trawl fishing could be use for reporting to SeaState also. The current system requires that each participating vessel email their trip log at the end of each fishing trip to NMFS speeding up the reporting to nearly real time when compared to the quarterly mailing of the yellow copies in the DFL. The ELB provides for every set the federal/state statistical areas fished, latitude/longitude, date/time of set/retrieval, catch size, discard amounts, bycatch count and provides observer name and cruise number if present.
This system could be implemented very quickly by adding SeaState to the email address, this would put the tracking of bycatch in the GOA on the same level of salmon bycatch reporting in the Bering Sea at the plant delivery point. SeaState is able to very quickly identify hot spots in the BS pollock/flatfish fisheries showing trends and predicting potential closures. The groundfish fleet in the GOA could pick up reports of the bycatch trends by ADF&G areas each time a delivery is made and take appropriate action to lower bycatch. The cost to the vessel would be very low at start up only and it would greatly help NMFS's current program of voluntary vessel implementation of ELB. I have used the ELB aboard my vessel for the past two years and love the ease with which it has lowered the logbook burden and have thought that NMFS/SeaState could use this type of reporting for this exact purpose. It was real time reporting in the joint venture years that lead to many of the gear improvements to lower bycatch and the find and move from hot spots. The additional benefit at the plant level is discard reports are printed at the vessel level (blue copy, confidential format) and are very clear about the discard amounts and the state/federal reporting areas fished and the percentage of catch assigned to each area.
Please take the steps necessary to not only improve reporting to NMFS but to speed up the utilization of all the available data to lower bycatch and extend the value of all fisheries for the net benefit to the coastal communities.

Respectfully,
Albert Geiser
541.332.6720