

MEMORANDUM

TO: Policy & Planning Committee

FROM: Jim H. Branson
Executive Director

DATE: August 28, 1987

SUBJECT: Domestic Observers

Action Required

1. Progress report on Council's pilot program.
2. Review draft federal policy on domestic observers.

Background

The Council's pilot domestic observer program will begin September 21. Three or four observers will be hired September 15 and given refresher training at NWAFC for one week. Item E-1 is an Alaska Sea Grant letter dated August 5 to the groundfish industry requesting volunteer vessels to carry observers. Item E-2 is a summary of the July 23 observer committee meeting. Table 1 summarizes the Committee's proposed observer coverage plan which concentrates on the fall Pacific cod, turbot and pollock fisheries, and the spring pollock, sablefish, rockfish, rock sole, and cod fisheries. Brenda Melteff, Alaska Sea Grant, will give a brief status report for the Committee. We'll know better by the September Council meeting how the industry responded to the call to take observers. A letter from AFTA expressing their concerns with the program is included under item E-2.

The second item on domestic observers is the draft federal policy (item E-3), including my letter to Bill Evans on the subject. Alaska Groundfish Data Bank comments are under E-4. We need to get our comments to NMFS as soon as possible.



University of Alaska

Statewide System of Higher Education

OFFICE FOR FISHERIES

ALASKA SEA GRANT COLLEGE PROGRAM
August 5, 1987

Dear Federal Groundfish Permit Holder:

The University of Alaska is working with the National Marine Fisheries Service, the North Pacific Fishery Management Council, the Alaska Department of Fish and Game and the fishing industry to initiate a voluntary domestic fishery observer one-year pilot program. You are invited to participate in this program and, after your careful consideration of the information presented below, we hope you will offer to carry an observer aboard your vessel during some part of your fishing season.

The objective of the pilot program is to collect data on the biology of the groundfish stocks and on catch rates of target and bycatch species to be used in future management of the fisheries. It is not to monitor the fisheries on a daily basis with an eye toward making in-season adjustments or closures. Observers will be employees of the University of Alaska and will have no enforcement authority or responsibility.

All vessels fishing for groundfish in the Gulf of Alaska (GOA) and Bering Sea (BSA) are being invited to voluntarily carry observers. The two periods of greatest observer activity will be September-November 1987 and February-April 1988. The fisheries being emphasized for this fall include those by all gear types for GOA Pacific cod and BSA Greenland turbot and pollock, and for spring GOA sablefish and rockfish and Shelikof Straits pollock and BSA rock sole and Pacific cod. A complementary program administered by the Alaska Department of Fish and Game will concentrate on vessels making shoreside deliveries. ADF&G also has an extensive shellfish observer program. All data gathered from the pilot program will be kept highly confidential. Each skipper will be given a copy of the data collected while aboard his/her vessel. Integrity and quality of the information will be maintained within the NMFS fisheries data system at the Northwest and Alaska Fisheries Center.

We realize that the question of liability for an observer will be an important consideration in deciding to carry an observer. In order to alleviate this obstacle, we will reimburse the vessel owner for the cost of a rider to his/her policy to cover an observer during this program. In addition, we will reimburse the vessel owner for the expense of providing meals to the observer at the rate of \$15.00 per day for each day the observer is on board. We will be working closely with the various vessel associations to assure close coordination and the least burden possible to you, the fisherman, in arranging for and carrying an observer.

If you are interested in participating in the pilot observer program, fill out and return the enclosed questionnaire. Please write or call me at the address and phone number below if you need further clarification before deciding to participate in this program. Thank you for considering this invitation. I hope to hear from you soon.

Yours truly,

Brenda R. Melteff
Coordinator

BRM:ibd
Enclosure

Domestic Fisheries Observer Pilot Program

Vessel Participation Questionnaire
(please type or print)

Are you interested in discussing participation in this pilot program? yes no

Vessel name: _____ Home port: _____

Vessel size: _____ Gear type(s): _____

Anticipated operational port for upcoming seasons: fall _____ spring _____

This vessel usually fishes: Southeast _____ Gulf of Alaska _____ Bering Sea/Aleutian _____

Vessel owner: _____ Phone: _____

Address: _____
(incl. zip code)

Vessel captain: _____ Phone: _____

Address: _____
(incl. zip code)

Who should we contact for vessel participation? _____

If you belong to a particular vessel association, would you prefer that we work through them to schedule observers on your vessel? yes no If yes, which association? _____

Anticipated fisheries: Sept-Nov 1987 _____

Anticipated fisheries: Feb-Apr 1988 _____

Is vessel insured? yes no Do you want additional coverage for the observer? yes no

What are your transmitting and receiving capabilities and what is the range? _____

Return completed questionnaire to:

Brenda Melteff
University of Alaska Sea Grant Program
590 University Avenue #102
Fairbanks, AK 99709-1046
(907) 474-7086

VOLUNTEER VESSELS FALL FISHERIES AS OF 9/1/87

Owner	Fishes out of	Gear	Vessel Size	Fishery	Area
Arctic Select Seafoods, Inc.	Dutch Harbor	Longline	97'	Turbot/P. Cod	BS
Harville	Kodiak	Trawl & Longline	50',80',80' 90',100'	No Info	GOA/BS
Alaska Sea Ventures	Homer	Longline	43'	Cod, Rockfish	GOA
Winther	Petersburg	Longline	115'	P. Cod	GOA
FV Carolyn Jean, Inc.	Juneau	Pots	98'	P. Cod	GOA
ERB	Sitka	Longline	70'	No Info	GOA
Dyson	Kodiak	Trawl	100'	Pollock/Cod	GOA(Kodiak)
Hall	Kodiak	Trawl	94'	Pollock/Cod	GOA(Kodiak)
Tenacious, Inc.	Kodiak	Trawl	58'	Cod	GOA(Kodiak)
Haggren	Kodiak	Trawl	66'	Cod/Pollock (?)	GOA(Kodiak)
Amfish, Inc.	Kodiak	Trawl	219'	Cod/Pollock Turbot Black Cod	GOA/BS
Amer. Fishing Venture 1983	Kodiak	Trawl	132'	Cod/Pollock Turbot Black Cod	BS/GOA
Amer. Fishing Venture 1983-B	Kodiak	Trawl	132'	Cod/Pollock Turbot Black Cod	GOA/BS
Ocean Enterprise, Ltd.	Dutch Harbor	Trawl	155'	Turbot, Cod Pollock	BS/GOA
Ocean Enterprise, Ltd.	Dutch Harbor	Trawl	155'	Turbot, Cod Pollock	BS/GOA
Northwest Enterprise, Ltd.	Dutch Harbor	Trawl	162'	Turbot, Cod Pollock	BS/GOA

Owner	Fishes out of	Gear	Vessel Size	Fishery	Area
Aleutian Enterprise, Ltd.	Dutch Harbor	Trawl	162'	Turbot, Cod Pollock	BS/GOA
Bering Enterprise, Ltd.	Dutch Harbor	Trawl	183'	Turbot, Cod Pollock	BS/GOA
Arctic Enterprise, Ltd. (1)	Dutch Harbor	Trawl	115'	Turbot, Cod Pollock	BS/GOA
Arctic Enterprise, Ltd. (2)	Dutch Harbor	Trawl	115'	Turbot, Cod Pollock	BS/GOA
Arctic Enterprise, Ltd. (3)	Dutch Harbor	Trawl	180'	Turbot, Cod Pollock	BS/GOA
Harvester Enterprise, Inc.	Dutch Harbor	Trawl	188'	Turbot, Cod Pollock	BS/GOA

North Pacific Fishery Management Council's
Domestic Observer Policy *

1. The North Pacific Fishery Management Council should have the lead in determining observer placement;
2. Observer placement should not be punitive and should be on all gear types;
3. Observers should be used to verify bycatches, handling mortalities and to gather data for use in determining equilibrium yield levels;
4. The observer program should not be an enforcement program.
5. When the Council decides domestic observers are needed in a fishery, an ad hoc committee will be established consisting of participants in the relevant fishery and SSC members. The ad hoc committee will set specific observer duties and the level of observer coverage. The percentage of vessels required to carry observers will vary by fishery but may be at a level less than 100% for all fisheries.



DEC 14 1987

ACTION

ALASKA FACTORY TRAWLER ASSOCIATION

4039 21ST AVE. WEST, SUITE 400
SEATTLE, WASHINGTON 98199
(206) 285-5139

TELEFAX 206-285-1841
TELEX 5106012568, ALASKA TRAWL SEA

August 7, 1987

Mr. Oscar Dyson
Chairman
Domestic Observer Committee
Box 1728
Kodiak, AK 99615

Dear Mr. Dyson:

The Alaska Factory Trawler Association (AFTA) would like to take this opportunity to comment on the progress your Committee has made in the development of the Council's Pilot Domestic Observer Program. AFTA supports the Council's effort to develop an equitable, federally-funded voluntary program designed to obtain biological fishery data through the use of on board observers. We hope these comments will be taken into consideration before the Committee presents the program to the Council in September.

Research Plan

The first step that must be taken is the development of a research plan. This plan should identify the fisheries to be covered, describe the data needs for management of each fishery, set forth the methods for collection of data and indicate how the information collected will be utilized.

A research plan is needed to provide guidance in the deployment of observers. The Northwest and Alaska Fisheries Center (NW&AFC) has the role of developing this plan, with Sea Grant responsible for actually placing the observers on board vessels. For example, in the Gulf Pacific cod fishery, the research plan should indicate the coverage needed, by gear type and area, to get the information required for management of the resource. Information requirements must be stated. Presently, only the most general guidance is given (eg. 6 man-months to be used on all gear types).

A well-reasoned research plan is likely to induce greater industry cooperation. If the data needs are well-documented and the intended use of the data is described, the degree of apprehension surrounding this program will be lessened. If the vessel owners

are not given a clear picture of how the data to be gathered will be used, many are likely to assume that enforcement is the real task of the observers. Also, if industry is presented with a plan that describes the degree of coverage necessary for valid statistical use, the perception of inequitable deployment will be lessened.

Of course, since this is a voluntary program, the degree of coverage will serve more as a "wish list" than an actual plan for deployment. Still, showing the degree of coverage desired, by fishery and gear type, may induce vessels to volunteer and fill the data gaps. Vessels are less likely to volunteer if the program is vague.

AFTA believes that the research plan should focus not only on perceived bycatch problems, but also on obtaining stock assessment information that can lead to enhanced fishing opportunities. This includes the Port Moller cod fishery and rockfish in the Gulf. The Committee implied that observers from this program would not be available to cover fisheries in which a data collection system was required. I am not certain that the Council has taken that position. Such a position has a punitive effect on the vessels that participate in those fisheries.

Deployment of Observers

The planned deployment of observers, as described at the Committee's July 23d meeting, does not assuage our fears that an inequitable burden will be placed upon certain segments of the industry. It was AFTA's belief that this pilot program was to be as comprehensive as possible under the given financial constraints. Yet the draft summary of the Committee meeting states that the Council program will not cover the halibut fishery, the crab fishery or vessels delivering shoreside. This leaves little to be covered - only catcher/processors.

AFTA urges the Committee to reconsider its decision not to include the halibut and crab fisheries in the Council's program. Although they may present logistics problems, the intent of this program was supposedly to identify such problems and resolve them. Little information on groundfish bycatch is available from these fisheries, and the participants in these fisheries have been among the most vocal advocates for domestic observer coverage.

The Committee's rationale for not including the crab fisheries and vessels delivering shoreside is that the state will provide observer coverage for these vessels. Neither the NW & AFC, the Committee nor ourselves have had the opportunity to review the state's crab observer plan. Such a review must take place before we can judge whether it is an adequate substitute for the Council's. We hope that the difficulties NMFS has experienced in getting fisheries information from the state is a thing of the past, but the results of the attempted state/federal coordination with the fish ticket reporting system does not instill us with

confidence that a bifurcated observer program can be a success.

We believe that it is possible to provide observer coverage for the halibut fishery through this program. Some logistics problems may exist, but this is an opportunity to resolve them.

Liability

Our research into P&I coverage for observers on catcher/processors leads to the conclusion that the same type of coverage that applies to crewmen is necessary for the observer. That coverage costs \$5000-7000 per man per year. In addition, these policies carry large deductibles that increase the cost to the vessel owner in the event of an accident. These insurance expenses need to be factored into the cost of the program.


More information needs to be made available on how the liability for accidents will be handled. The Committee must make certain that it is able to provide vessel owners with information on what his liability is and what type of insurance coverage should be obtained.

AFTA PARTICIPATION

AFTA will work with Sea Grant to assist the placement of observers on board member vessels that volunteer to participate. At this stage, I cannot guarantee the degree of participation to expect. AFTA members were very concerned that the program as described in the draft summary of the July 23d meeting did not respond to our concerns about equitable and rationale coverage.

We will continue to work with the Committee to help develop a program that will induce wide-spread participation, not only from our fleet but from the entire industry.

Sincerely,


William R. Orr

cc: North Pacific Fishery Management Council ✓
Rich Marasco
Alaska Groundfish Data Bank
North Pacific Fishing Vessel Owners Assoc.

Policy

1. Mandatory observers may be a good way to collect monitoring data.
2. ^{Any such program} Has to be implemented through RMP process with attendant standards of review
3. NMFS will not fund an observer program that ~~has~~ ^{collects} monitoring data. ~~collection~~

Definition: Monitoring Data - Page 1

examples: Catch/Effort - when girth reached
Compliance - gear type / area.

ie - data that would be the basis for an in season mgmt decision.

Policy does not govern use of voluntary scientific observer programs for research - ie next seasons decisions

Guidelines

1. Standards of Secretarial review
2. Program design
3. Must establish that non-federal funding mechanism is fair and equitable
4. Accountability to funding source
5. Standard analysis needed - ED 12291, Ray flex etc
6. Program administration must be cost efficient

Part 1

1. Identify a business need to a good way to solve existing business
2. This is to implement things that have not been done before with attention to details of each
3. Needs will not find an answer program that has been implemented before

Definition: Marketing Plan

is - data that would be the basis for a marketing plan

examples: Case Study - also give answers

Company - Green - Green

Sales does not give use of relevant amounts

economic factors for success is next years

decisions

Consideration

1. Consideration of environmental issues
2. Program design
3. Business - Business - Business
4. Business - Business - Business
5. Business - Business - Business
6. Business - Business - Business

North Pacific Fishery Management Council

James O. Campbell, Chairman
Jim H. Branson, Executive Director

411 West 4th Avenue
Anchorage, Alaska 99510



Mailing Address: P.O. Box 103136
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 271-4064

July 21, 1987

Dr. William Evans
Asst. Administrator for Fisheries
National Marine Fisheries Service
Universal South Building
1825 Connecticut Avenue NW
Washington, DC 20235

Dear Bill:

After our discussion of the draft Domestic Observer Policy last week I came back and carefully re-read the document of March 6. Looked at in the monitoring/compliance mode as opposed to the scientific/research mode, it becomes much more comprehensible. The confusion must exist in the minds of most of us who received the draft because of the gray area that exists between those two modes.

Many of the questions raised by the draft policy will of necessity have to be answered on a case-by-case basis and we therefore should be cautious about developing a policy so restrictive it would preclude flexibility as applied to specific cases.

Some areas are clear enough. Obviously it is monitoring and compliance if an FMP requires observers in order for a fisherman to use a certain type of gear, or to fish in a certain area, or to fish at a certain time. These are situations similar to that in the Bering Sea groundfish plan that requires observers in the area between 160° & 162°W longitude. Monitoring bycatch in a program that requires only 20% to 30% observer coverage to be statistically valid, but that closes a fishery when a certain catch level is reached for one or more species, should probably also be considered monitoring. But would it be monitoring or scientific research if the data gathered in a fishery this year was used to set OYs or allocations next year? That's a question that could be critical to the development of a management program for a multi-species fishery. I'm not suggesting that these questions be resolved at this time, only that any policy be flexible enough so they can be resolved on an ad hoc basis so management will not be crippled.

Other areas that require caution are those operational elements at the top of page 4, particularly (b) and (c), requiring notice and opportunity for comment by individual boat operator/owners on placement of observers on their vessels. If fishing operations are foreclosed without an observer, that requirement could be unduly restrictive on fishing operations. If fishing can continue in the interim, however, then we can be sure that it will be used as a stalling tactic and the management program will probably be ineffective because of the

delays. Good communication with industry in any program of this sort is absolutely necessary, there's no question about that, but let's make sure we have the ability to maintain that communication without killing the program.

Similarly, under Operational Element 3a, the requirement to identify the benefits derived from an observer program can be too broad. Since we have not been able to identify an existing funding source or method of charging individual fishermen for observers, we must assume that at least initially observer costs will be borne by the vessel. The benefits to the fisherman are obvious if that is a requirement to fish in a particular area, time, etc. In the case of a monitoring/compliance program, however, that requires only partial observer coverage, say 25%, the vessels in that fishery without observers are obviously going to benefit as much of the 25% with observers. Is that equitable and how do we analyze the effects on participants and make them share the cost? That's problem enough, but if the analyses are then extended to, for instance, a line fishery that is affected by a trawl bycatch of halibut, the assumption is that we should task that halibut line fishery with sharing the cost for observers. That's probably fair enough, but is it operationally possible?

Item 3c under Operational Elements requires demonstration that an observer program will not result in a lowering of overall industry efficiency. That statement could have a lot of hooks in it. Improving or maintaining industry efficiency has never been a major part of any management program in the United States, not because it isn't an estimable goal, but because our management system requires the use of regulated inefficiency to obtain conservation goals. Until that changes this is hardly a valid criteria for an observer program. Efficiency, of course, is by itself hard to define. It will mean different things to different people but I assume the measurable area will be in profits. We have the ability to calculate gross profits in some cases. I know of no instance where our database is sufficient to give us any reasonable estimates of net profits.

Finally, I'd suggest that on page 9 under Issues Conclusions, that the phrase, "in very limited circumstances," be struck from the second one, so that it would read, "Mandatory observer program programs should only be implemented on a fair and equitable, non-Federal funded basis. I don't think that we should commit a mandatory observer program to very "limited circumstances" until we can come up with another method of obtaining catch information. Good information on what is caught is usually more important than information on what is landed.

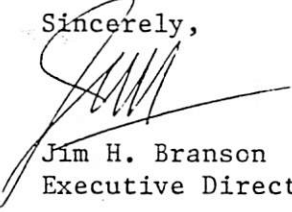
These are all very difficult questions. This Council has been working on goals, methods, and policy for observer programs for several years. We are now in the throes of implementing a modest pilot program due to start September 1, thanks to the recent programmatic grant from NMFS. I am enclosing our preliminary observer policy as well as summaries of two recent domestic observer committee meetings. They may be useful as you continue work on the NMFS policy. I look forward to working with you on this very important problem. There is probably no other way of getting some of the information we need to manage the fisheries for the overall benefit of the United States and most of the people involved in this business would agree with you that the

Dr. William Evans
July 21, 1987
Page 3

industry should bear the costs of information gathering programs. Putting these elements together is going to require time and changes in existing legislation. While that is being done we should be as careful as possible not to foreclose the short-term requirements for information that can only be gotten through observer programs.

The Council as a group has not had an opportunity to review your draft policy. They will not meet again until September 23. It would be very desirable to give them an opportunity to respond to the draft policy if the comment period can be extended. In the meantime, I am giving it as wide a distribution as possible.

Sincerely,



Jim H. Branson
Executive Director

enclosures

cc Regional Councils



APR 24 1987

F/M11:SC

MAY - 6 1987

MEMORANDUM FOR: Regional Fishery Management Councils
Center Directors
Regional Directors

FROM:

for William E. Evans *W. Evans*
Assistant Administrator for Fisheries

SUBJECT: Domestic Observer Policy

Dr. Anthony J. Calio, Under Secretary, NOAA, has approved in principle a draft National Marine Fisheries Service (NMFS) domestic observer policy. The scope of this draft policy paper is confined to the mandatory placement of observers on U.S. fishing vessels under the provisions of the Magnuson Fishery Conservation and Management Act (MFCMA).

Attached is a copy of the draft NMFS domestic observer policy paper for your review and comment. I would appreciate having all comments for consideration no later than June 15, 1987. Comments and questions should be addressed to:

Richard B. Roe
Office of Fisheries Management (F/M1)
National Marine Fisheries Service, NOAA
Washington, D.C. 20235
Phone: (202) 673-5263

All comments received will be considered as we prepare the final policy paper.

Attachment

Mr. Jim Branson



NATIONAL MARINE FISHERIES SERVICE
POLICY FOR REQUIRING OBSERVERS TO BE
CARRIED ON U.S. FISHING VESSELS (DRAFT)

March 6, 1987

INTRODUCTION

The Americanization of the U.S. Exclusive Economic Zone (EEZ), and the development of sophisticated fishery management plans (FMPs) under the Magnuson Fishery Conservation and Management Act (MFCMA), have accelerated the need for more accurate and timely fisheries monitoring and research data. As a result, some Regional Fishery Management Councils (with support from some members of Congress) are requesting the use of observers on domestic fishing vessels to collect this essential data.

PURPOSE

This paper establishes the policy and addresses the issues related to the placement of National Marine Fisheries Service (NMFS) employees or agents on U.S. fishing vessels.

SCOPE

The policy focuses on the use of mandatory observer programs to collect essential fishery monitoring data to meet the objectives of FMPs implemented under the MFCMA. The policy does not govern the use of any voluntary observer program, including voluntary scientific observer programs, that are carried out for research purposes.

DEFINITIONS

For the purposes of this policy:

Monitoring Observer: means a NMFS employee or authorized agent placed onboard a U.S. fishing vessel to collect monitoring data for management purposes.

Monitoring Data: means catch and effort monitoring data and compliance monitoring data.

Catch and Effort Monitoring Data: means group/fishery data used to assess the performance of the fishery (e.g., to establish when fishery quotas have been reached).

Compliance Monitoring Data: means individual/specific data used to assess the performance of industry participants (e.g., to verify that specific fishing gear is being used).

Scientific Observer: means a NMFS employee or authorized agent placed on board a U.S. fishing vessel to collect scientific data for research purposes.

Scientific Data: means biological and fishery-dependent catch data used to assess fish stocks, their habitat and the effects of fishing.

Authorized Agent: means a person employed by an organization under contract to NMFS to carry out observations on board U.S. fishing vessels.

Secretary: means the Secretary of Commerce.

BACKGROUND

Prior to the implementation of the Marine Mammal Protection Act (MMPA) in 1972, the U.S. fishery agencies responsible for scientific research and joint international management of living marine resources beyond the territorial sea had a long history of using scientific investigators on board U.S. vessels to collect fishery monitoring and/or scientific data. These programs were carried out on a voluntary basis and provided a high level of valid fishery-dependent data.

After 1972, fishing which required authorization under the MMPA became subject to certain obligations. One of these obligations was the regulatory requirement that, in certain circumstances, a Government employee or authorized agent be carried on board particular vessels. The purpose of this action was to collect data to monitor the level of marine mammal take and to monitor the performance of individual fishermen. This was the first use of mandatory observers by NMFS.

The passage of the MFCMA in 1976 proclaimed the right of the U.S. Government to manage the marine living resources of the fishery conservation zone (FCZ) and that fishing in these waters was subject to the fulfillment of specific legislative requirements. In the case of foreign fishing, one of these requirements was the mandatory stationing of observers on all vessels. The objective of this program was to gather accurate monitoring and scientific data for both management and research purposes.

Since 1972, NMFS has continued to use scientific investigators or scientific observers, on a voluntary basis in a number of domestic fisheries, as part of the information-gathering matrix required to perform the organization's management and research functions.

Under the MFCMA, Regional Fishery Management Councils (Councils) have systematically "Americanized" the U.S. EEZ and developed more sophisticated FMPs. This process has resulted in the loss of foreign fishing monitoring and scientific data and the need for more timely and accurate U.S. fishing vessel data. Consequently, some Councils have requested that NMFS use mandatory domestic observer programs to collect essential data to meet the objectives of some FMPs.

NMFS, Councils, and the fishing industry generally accept the voluntary use of scientific observers on board U.S. fishing vessels on a non-industry-funded basis. However, the mandatory placement of industry-funded monitoring observers on board U.S. fishing vessels is viewed by many as costly, intrusive, and imposing a management burden on the development of an efficient domestic fishery. Others believe that in non-selective multi-species fisheries managed by way of by-catch limits, or where fisheries products are exported directly from the EEZ, the mandatory use of monitoring observers is an appropriate data-gathering technique.

POLICY

- o NMFS considers that, in some circumstances, the use of mandatory observer programs involving U.S. fishing vessels is a legitimate and cost-effective technique of collecting essential fisheries monitoring data.
- o Mandatory observer programs will only be implemented when the Secretary, through the MFCMA fishery management planning process, is satisfied that:
 1. The program, being an integral part of the FMP, is reasonable and the results essential for the conservation and management of the fishery; and
 2. The program will not place a significant inequitable or undue financial or social burden on industry, measured against the overall benefits accruing from the FMP.
- o Mandatory domestic observer programs that have monitoring data collection objectives or a combination of monitoring and scientific data collection objectives will only be implemented on a fully non-Federal funded basis.

GUIDELINES

1. A Council/NMFS management team seeking Secretarial approval for an FMP containing provisions for a mandatory observer program must be able to demonstrate that the program is reasonable and that the program results are essential to achieve the FMP's conservation and allocation objectives. It must be clearly established, by examining all the options, that there is no other less costly or intrusive method of collecting the data and that these data are essential to the success of the plan.
2. The program design is to be included in the justification for the FMP and regulation approval. To be reasonable, the following operational elements must be included:

- a. A system of informing all vessel operators and/or vessel owners involved of the objectives and their legal obligations with respect to the observer program. The specific role, responsibilities, and powers of an observer must also be clearly communicated to industry members involved in the program;
 - b. A system of giving the vessel operator and/or vessel owner adequate notice of an observer being stationed on board at a particular place and time;
 - c. A system that allows the vessel operator and/or vessel owner an opportunity to comment on the decision to place an observer on a particular vessel at a particular place and time;
 - d. A system of training and written instruction that ensures that all observers understand their roles, responsibilities, and powers, and that they are fully competent to perform clearly defined activities on board the vessel.
3. To establish that the system of non-Federal funding is fair and equitable, the Councils/NMFS must demonstrate that:
 - a. All those benefiting from the results of the program contribute to the costs;
 - b. It will not favor one size or type of vessel over another, and
 - c. It will not result in a lowering of overall industry efficiency.
4. Any form of non-Federal funding of a mandatory domestic observer program managed by NMFS dictates that there be direct accountability to the funding source. To this extent, NMFS will present an annual domestic observer program report. The annual report shall contain:
 - a. Program objectives;
 - b. Program activities;
 - c. Program costs; and
 - d. Program results.
5. The analysis required to meet MFCMA national standards, Executive Order 12291, and the Regulatory Flexibility Act must be completed. It must be clearly shown that if a mandatory observer program is likely to have a significant adverse effect on existing cultural, economic, and social relationships in the fishing community, the conservation and economic benefits of the FMP outweigh the costs.

6. Any mandatory observer program must be operated in the most cost-efficient manner considering the total management responsibilities of both the Councils and NMFS. When developing program objectives, a substantiated rationale, through a cost-benefit analysis outlining the potential gains and losses, as to why the program should or should not have particular objectives must be completed. A cost-benefit analysis relating to the management and staffing options will also be required.

ISSUES

Program Objectives: collecting scientific vs. monitoring data

The information-gathering technique of placing an observer on a U.S. fishing vessel can be operated in different ways to achieve different objectives. Two fundamental, but not mutually exclusive, reasons have been expounded for the implementation of domestic observer programs: the collection of scientific data, and the collection of monitoring data. This policy does not address the criteria under which voluntary scientific observer programs will be implemented. However, it is important to understand the characteristics of each in order to recognize the unique legal context of a mandatory program.

Scientific: NMFS views the use of scientific observers to collect scientific data as one of many information-gathering techniques that may be cost-effective in some situations. To obtain scientifically valid fishery-dependent catch information from this data collection technique, a fisherman's behavior must not be influenced from the norm. To achieve this, such programs should, where possible, be research-focused, distanced from programs with monitoring objectives, and carried out on a voluntary Government-sponsored basis. NMFS will determine the level of observer coverage, taking into account such variables as species characteristics, fleet profile, type of fishing gear and methods used, fishing patterns, etc., and the precision of information required for the research being carried out.

Monitoring: The use of observers to collect accurate real-time monitoring data for management purposes has been used successfully on both foreign and U.S. fishing vessels and is being increasingly requested by the Councils to achieve their FMP objectives. While the level of observer coverage will be determined by factors specific to each fishery and the standard of information required for management decisions, a relatively high level of coverage may be required for effective monitoring at critical times during a fishing season. This, along with the possibility that information collected by monitoring programs may be used in individual enforcement cases or to close a fishery when a quota has been reached, generally necessitates mandatory implementation. Experience in domestic fisheries where NMFS has

tried to implement monitoring programs with voluntary observers supports this assumption.

When establishing the objectives for a mandatory monitoring observer program, the question arises as to whether or not compliance monitoring, along with catch and effort monitoring, should be a program objective. Observers are not enforcement agents, however, individual/specific data collected by observers may be used for enforcement purposes in programs with compliance monitoring objectives.

Legal Authority

NMFS believes that the Secretary has the authority, under the broad rule-making provisions of Section 303 of the MFCMA, to place observers on U.S. fishing vessels. This authority is subject to the program being essential to achieving FMP objectives, the program being reasonable and equitable, and the economic and social benefits of the program outweighing the costs. Mandatory observer programs will only be approved by the Secretary when fully justified against these conditions through the FMP process.

Liability

To recover monetary compensation for personal injury from a private vessel owner, an observer, whether a Government employee or a contracted representative, would have to prove the vessel owner or operator breached a duty of reasonable care. Although the issue has not been litigated, NMFS believes that an observer would not qualify as a "Seaman" under the Jones Act or admiralty law concepts of maintenance and cure. As a result observers would not be entitled to additional compensation beyond that available under general maritime law.

If the observer is a Federal employee, he or she may file a claim against the Government under the Federal Employees Compensation Act. If the Government pays a FECA claim, it is assigned, to the extent of payment, the right to bring a negligence action against the vessel owner or operator. This does not preclude the observer from also taking a negligence action.

The Government cannot indemnify the vessel owner or take away, by way of contract or regulation, the right of an observer to take a negligence action. It would require specific statutory authority, which is improbable in this circumstance, to indemnify the vessel owner or operator from a negligence action.

Conclusion: The risks of transporting an observer aboard a domestic fishing vessel, therefore, rests ultimately with the vessel owner or operator. This risk can be insured against with a standard protection and indemnity policy. For all practical purposes, the issue of legal liability comes down to the question of who pays the Protection and Indemnity (P&I) insurance premium

to cover the vessel owner and/or operator from the extra liability incurred by carrying an observer. Costs involved in a mandatory program with catch and effort and/or compliance monitoring objectives can be treated as a legitimate business expense in a pervasively regulated industry, payable by those who derive direct economic benefit from the conservation and management of the public resource. This principle is not foreign to the commercial utilization of other publically managed resources including fish stocks conserved and managed by many State governments.

Financing

Experience in the foreign fishing vessel observer programs and the domestic tuna purse seine observer program indicate the operational costs of implementing any domestic program will be very high. In FY 85, the foreign fishing vessel observer program cost foreign nations a total of \$8.5 million, an average of \$240 per observer day. In FY 85, a 60-day observer trip on a domestic tuna purse seiner cost an average of \$14,000 or \$217 per observer day.

There are two primary financing options available to implement a domestic observer program. They are not mutually exclusive.

1. Government-funded: based on the principle that the management of national natural resources should be paid for by the U.S. taxpayers; or
2. Industry-funded: based on the principle that the management of national natural resources should be paid for by those deriving economic benefits from the utilization of those resources.

It is the NMFS' policy that mandatory observer programs will only be implemented on a non-Federal funded basis. This policy is based on the conviction that a mandatory observer program, as an essential component of an FMP, be treated as a cost of doing business in a pervasively regulated industry and paid for by those who receive direct economic benefit from the management of that fishery. In the realities of today's economic environment, even with the reduction and/or termination of other programs and Congressional reprogramming approval, the NMFS budget could not be stretched to fund the operational costs of any significant mandatory domestic observer program. A Congressional line addition to the NMFS budget for a specific mandatory domestic observer program, such as that which operates in the tuna/porpoise program, is a remote funding option.

The funding options for a non-Federal funded mandatory observer program include:

1. Direct charging of vessel owners required to carry observers;
2. Funding by way of a non-Federal organization(s);
3. A fee or levy on those resource users benefitting from the FMP.

The direct charging of vessel owners is being used in some existing programs as it is the only viable financing alternative presently available. Using this method, all those benefitting economically from the management of the resource may not be sharing in the costs. It can also act in a punitive and discriminating way against vessel size and/or gear type and may lead to serious economic distortions in the harvesting sector.

The voluntary program funding by way of a non-Federal organization(s), such as industry groups and/or State governments, provides the best possible option. However, it may not always be available for consideration.

The option of funding mandatory programs with a fee or levy paid by those deriving direct benefit from the management of the fishery is viewed as being consistent with the principle on which this policy is based. However, the MFCMA does not provide authority to collect fees from domestic fishermen at this time.

Example: In the Alaskan groundfish fishery mandatory observers could be placed on trawlers to collect monitoring data related to the incidental by-catch limits on crab or halibut. The trawlers benefit by being able to fish at times or in areas where they may not have been able to fish without the observer program. The crab or halibut fishermen also directly benefit from the more effective management of the crab or halibut resource based on the information gained from the mandatory trawler observer program. The funding options consistent with this policy would be:

1. Funding by way of non-Federal organization(s) such as non-profit fishermen's organizations and/or state government;
2. Funding by way of a fee paid by those benefitting from the FMP (in this example, the trawlermen and the crab or halibut fishermen).

The financial impact on industry of non-Federal funded observer program may be considerable. The extra costs that may lower profitability and reduce competitiveness must be evaluated against the conservation and economic benefits that may be derived from the management plan. Rigorous testing and evaluation against Executive Order 12291, the Regulatory Flexibility Act, and MFCMA national standards is legally required to avoid undue burden on industry.

Conclusion: Until such time as the MFCMA is amended to allow for the charging of resource user fees mandatory domestic observer programs will only be approved under this policy if other forms of non-Federal funding is available.

Organization

Mandatory observer programs with monitoring or a combination of monitoring and scientific data collection objectives may only be approved by the Secretary through the FMP process.

While program responsibility for all domestic observer programs will be with field managers, headquarters will maintain an appropriate standard-setting and oversight role.

Confidentiality

Section 303(d) of the MFCMA and the subsequent regulations at CFR 50 CFR 603 provide for the confidentiality of fishery statistics submitted to the Secretary in accordance with the Act. All individual business and personal information collected as a result of any observer program on U.S. fishing vessels, whether that program is mandated by the MFCMA or not, will remain confidential to NMFS and the individual vessel owner. The Secretary will release such information only when required by a Court order or in aggregate or summary form such that it will protect the identity of vessels and vessel owners. NOAA circular 82-40, filed as NOAA Directive 88-30, outlines specific policies and procedures to protect the confidentiality of information collected by NMFS.

Issues Conclusions:

NMFS concludes that:

- o The Secretary has the authority, under the MFCMA to implement mandatory observer programs on U.S. fishing vessels.
- o Mandatory observer programs should only be implemented in very limited circumstances on a fair and equitable, non-Federal funded basis.
- o Observer programs with monitoring or a combination of monitoring and scientific data collecting objectives should, in most circumstances, be implemented on a mandatory basis.
- o The risks involved in the transporting of any observer rests with the vessel owner and/or operator.
- o All information collected on mandatory observer programs will remain confidential to NMFS.

Alaska Groundfish Data Bank

017 1987

Aug. 11, 1987

Jim Campbell, Chairman
 North Pacific Fishery Management Council
 P.O. Box 103136
 Anchorage, Alaska 99510

Director	Staff Asst. 10
Asst. Dir.	Staff Asst. 9
Admin. Serv.	Staff Asst. 8
Spec. Sec.	Staff Asst. 7
Staff Asst. 6	Staff Asst. 6
Staff Asst. 5	Staff Asst. 5
Staff Asst. 4	Staff Asst. 4
Staff Asst. 3	Staff Asst. 3
Economist	Staff Asst. 2
Sec./Bkkr.	Staff Asst. 1
Sec./Typist	

Dear Jim:

We noted in the Aug. 7 newsletter that the council's policy and planning committee will be reviewing the NMFS draft observer policy.

Enclosed for your information is our draft review of the policy. Our basic concerns are as follows:

1. This should be viewed as a policy implementing existing powers, not a new program. As such, language stating that NMFS will not pay for any observer is unnecessary and will make it difficult, if not impossible, to gain future funding for observers.
 2. We feel observers in the domestic fishery should be used to gather data which will allow for management systems which do not require continued observer monitoring.
- From our point of view this is scientific data collecting and to assure the statistical validity of any research program NMFS may have to use its mandatory powers. The draft policy precludes this.
3. We feel NMFS should hold the power to mandate observers and use that power on behalf of any agency conducting a project which requires observers provided the project has been reviewed and approved by the regional council. The current policy precludes this.
 4. We see observers being used as part of research, not as part of an FMP. The policy precludes this.
 5. We feel a mandatory observer policy would be best enacted on regional basis through the councils, rather than on a national basis.

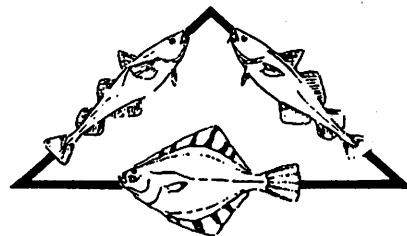
Sincerely,



Chris Blackburn, Director
 Alaska Groundfish Data Bank

Alaska Groundfish Data Bank

July 6, 1987



DRAFT

Richard B. Roe
Office of Fisheries Management (F/M1)
National Marine Fisheries Service, NOAA
Washington, D.C. 20235

Dear Dick:

We have reviewed the draft "National Marine Fisheries Service Policy for Requiring Observers to be Carried on U.S. Fishing Vessels."

The goals of the draft observer policy and the goals of the industry are, we feel, the same -- the best possible management of our fisheries resources.

However, the draft mandatory domestic observer policy leaves us very uneasy.

In early June I met with Ann Terbush and others in Washington, D.C., to discuss the NMFS' draft domestic observer policy. We were all using the same words, but it became obvious that NMFS and I were operating from very different sets of assumptions and that words like "observer program" mean quite different things to NMFS than to the fishermen in Kodiak.

In Kodiak our concept of "observer program" is based on the Alaska Department of Fish and Game observer programs in shrimp, crab and groundfish. The ADF&G program has won widespread support among the local fleet -- support sufficient to induce the state legislature to appropriate funding to continue the program.

In view of the state support for observers, I have found it puzzling that support was lukewarm to negative at the federal level -- and I think here again this is a result of different assumptions about what an "observer program" actually entails.

After much thought it appears that the best way to comment on the draft policy is to outline clearly the assumptions, goals, objectives and procedures we feel are appropriate for a domestic observer program in a discussion paper, which is enclosed, so that we all are talking about the same thing, and then review the proposed NMFS' draft policy. The review is also enclosed.

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To Roe - page 2

The goal is to come to a common understanding of what we are all trying to do and the direction we are going so that we are all working together, in the interest of the resource, to find the best way to manage the fisheries.

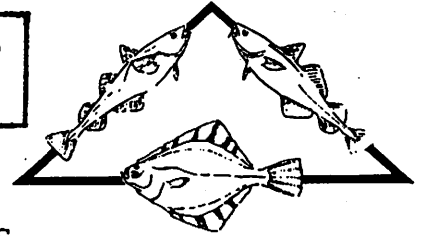
We thank you for the opportunity to review the draft mandatory domestic observer policy.

Sincerely,

Chris Blackburn, Director
Alaska Groundfish Data Bank

CC: Jim Campbell, Chairman, North Pacific Fishery Management
Council
Bob McVey, Director, Alaska Region, NMFS
Rich Marasco, NMFS, Northwest and Alaska Fisheries Center
Rep. Don Young
Sen. Ted Stevens
Sen. Frank Murkowski

DRAFT



I. DISCUSSION ON USE OF OBSERVERS IN THE DOMESTIC FISHERIES

From an industry point of view the major problem created by the developing trawl fisheries is bycatch; therefore, the perceived purpose of a domestic observer program is to collect enough information that management strategies can be developed which control bycatch without using observers.

INDUSTRY ASSUMPTIONS:

- A. An observer program should be directed at a specific problem, i.e. determining which areas during which times produce large king crab bycatches in the trawl fisheries or large halibut bycatches in the Pacific cod longline fisheries.
- B. The observer program should only be as large as is necessary to collect statistically valid information, i.e. perhaps 20 percent coverage.
- C. The observer program should sample all segments of the fleet involved in the fishery, area and/or time in question.
- D. The observer program ends as soon as adequate information for creating a management strategy -- time and area closures, prohibited catch limits, quotas, gear restrictions or other regulations -- necessary for keeping bycatch at a predetermined level has been collected.

In summary, industry expects agencies to

1. Define a problem
2. Define the data needed to solve the problem
3. Design a program to collect the data -- the program may involve a number of research methods, including domestic observers, port sampling and surveys.
4. Using the information gained through research to design a management strategy that will resolve the problem. The strategy should be
 - a. Fair to all segments of the industry
 - b. Minimize dislocations and reallocations of resource
 - c. Conserve the resource
 - d. Minimize management costs
 - e. Minimize costs to the industry

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BASIS FOR ASSUMPTIONS:

1. The costs of trying to manage fisheries through an ongoing observer program will be prohibitive; therefore, observers should be used to collect data in an effort to find less costly ways of management than observers.
2. On many domestic vessels, which can be as small as 25-feet, there is little or no space for an observer.
3. Domestic vessels can be expected to oppose any management based on a continuing observer program, but are generally cooperative if the program is for a limited time period and has specific goals supported by the fleet.
4. To date there is no method of handling the liability problem. All vessel owners know they could be sued by an observer. Therefore, to have fleet cooperation, the vessel owners must feel that the program's value exceeds the risk of carrying an observer and that the program is for a specific duration.

WHO PAYS FOR THE OBSERVER?

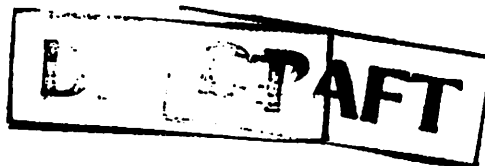
All the discussion above assumes that any observer program will collect specific information needed to design a management policy, regulation or strategy to control bycatch; and that this research is a normal research function of an agency and therefore that the costs should be borne by the agency.

There is no real difference between this type of observer program and stock surveys, port sampling or other research.

The use of observers for this type of research does not constitute a "new program." It is, instead, simply another tool to be used as part of ongoing fisheries management programs. Criteria do need to be established to allow NMFS to mandate that a vessel take an observer when necessary.

Though in the foreign fisheries the observer program was a separate program, this need not be true for the use of observers in the domestic fisheries.

Instead, the use of observers in the domestic fisheries should be viewed as an integral part of a specific management or research program, i.e. conserving king crab may include surveys to determine biomass; lab research to determine fecundity, parasites and disease; onboard observers during the directed fishery to determine shell condition, handling mortality and catch composition; and onboard observers in other fisheries to determine bycatch and bycatch mortality.



To separate out the trawl observer portion of this program and say industry will pay for this one portion of the research is a serious discrimination against one segment of the industry.

Further, it should be noted that a small vessel whose monthly net may be only a few thousand dollars cannot possibly pay for an observer.

It is assumed that observers will collect as much data as possible, not just the data needed for the specific program.

MANDATORY OBSERVERS

In the type of observer program discussed above, it is assumed that a statistically valid sampling of the fleet involved will be essential. Even assuming that most of the industry involved is supportive an observer program and voluntarily carries observers, it is to be expected that certain vessels or segments of the fleet will refuse observers.

In cases where these refusals jeopardize the research, agencies should have the power to mandate observers, within the guidelines of the program and with full attention to all federal confidentiality and non-discriminatory statutes.

It is felt that this power should belong to NMFS, but that NMFS should be able and willing to use this power to assist any state when the research program has been approved by the Regional Council involved.

OTHER TYPES OF OBSERVER PROGRAMS

CATCH AND EFFORT MONITORING:

All shorebased deliveries can be accounted for through a fish ticket program or port sampling. No onboard observers are needed.

For U.S. at-sea processors or catcher-processors, transfer logs may be all that is needed. Spot checking can verify the transfer logs. Once again, no onboard observer program is needed.

Effort monitoring can be done through a registration program. Onboard observers are not required. CPUE data can be gathered through skipper interviews. Onboard observers are not required.

It should be noted that the Alaska Department of Fish and Game has for years managed its short and intense crab fisheries through registration and skipper interviews to determine catch and effort. In these cases it has been necessary for ADF&G to estimate the crab in the holds of vessels at sea, catch rates and effort in order to avoid exceeding the quotas. ADF&G's record for meeting, but not exceeding the quota in these fisheries is excellent.

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COMPLIANCE MONITORING:

Enforcement of time and area closures, gear regulations, etc., have traditionally been done in the domestic fleet with surveillance, following up on tips from industry and undercover work. There is no reason to change this policy; therefore there is no need for onboard observers for enforcement.

In the case of enforcing prohibited species catch limits, a research program can determine the average prohibited species catch rates and these rates can be used to determine when the ceiling is hit.

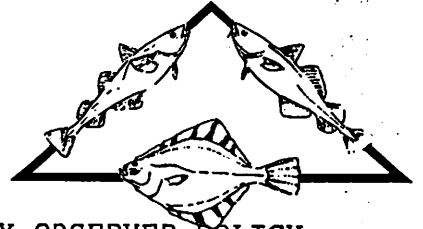
If industry feels that the data used to estimate prohibited species catch has become obsolete due to changes in fishing methods or gear, then the initial cost of observers might be reasonably assigned to industry.

Should industry prove correct, then follow up data collection would become a research program with the costs borne by the agency -- just as the agency would bear the costs of surveys if a drastic inseason change in stock abundance or condition were noted.

Estimates of discards can be made just as estimates of bycatch rates can be used. A continuous onboard observer program is not needed.

In fisheries where a size-limited has been implemented and the size of the animals delivered cannot be determined from the finished product, it may be necessary to use observers onboard at-sea processors to assure compliance with the size limit restrictions. In this case, if no other method can be found to monitor compliance, the vessel itself should probably pay for the observer.

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II. COMMENTS ON THE DRAFT NMFS DOMESTIC MANDATORY OBSERVER POLICY

It is obvious from the above discussion that the NMFS draft observer policy and the industry view of the purpose of observers are at direct odds.

This, we feel, is because the NMFS experience with observers is based on the foreign observer program where enforcement and monitoring were the prime objectives.

Foreign ships did not offload in U.S. ports; their activities were not being viewed by competitive peers who could report violations; there was no interest in efficient and economical management; foreign vessels bore all the costs and the foreign fleets were composed of large vessels which could bear the costs and easily accommodate observers.

A domestic observer program is a completely different program. Efficiency and economy must be a prime consideration management. Many of the vessels are small and cannot bear the costs nor easily accommodate observers. A DOMESTIC OBSERVER PROGRAM MUST FOCUS ON GATHERING SCIENTIFIC DATA TO BE USED IN DESIGNING MANAGEMENT STRATEGIES WHICH DO NOT REQUIRE OBSERVERS.

As discussed above, monitoring is not a valid function of a domestic observer program.

However, the draft NMFS observer policy appears to focus primarily on monitoring. It is rather as though industry asked for a recipe for baking an apple pie and received a recipe for apple cobbler. Many of the ingredients are the same, but the end result is very different from that anticipated.

Rather than review the draft policy, we offer the following rewrite which focuses on three elements:

1. The primary use of observers is for research
2. Observers are used for specific research projects when no other means of collecting the data are available
3. The research program has a goal and is not considered to be infinitely continuous
4. The policy is a policy stating under what conditions NMFS can mandate that a vessel must take an observer. THE POLICY IS NOT TO BE CONSTRUED AS SETTING UP A DOMESTIC OBSERVER PROGRAM.

DRAFT

REWRITE OF
NATIONAL MARINE FISHERIES SERVICE
POLICY FOR REQUIRING OBSERVERS TO BE
CARRIED ON U.S. FISHING VESSELS

INTRODUCTION

The Americanization of the U.S. Exclusive Economic Zone (EEZ), and the development of sophisticated fishery management plans (FMPs) under the Magnuson Fishery Conservation and Management Act (MFCMA), require an increased focus on the need for better research data in the domestic fisheries. Some Regional Fishery Management Councils (with the support of some members of Congress) feel that the use of observers on domestic fishing vessels must be part of this ongoing research.

PURPOSE

Under some programs adequate sampling of catches onboard vessels must involve all segments of the fleet working a particular fishery, time or area. There may be times when NMFS must use its powers to mandate observer coverage in order to assure the integrity of a research program.

There may also be cases where only an onboard observer can assure compliance with regulations.

For both cases there is a need for a policy related to the mandatory placement of National Marine Fisheries Service (NMFS) employees or agents on U.S. fishing vessels.

SCOPE

The policy focuses on the criteria under which NMFS may mandate that a vessel engaged in fishing a particular species, time or area carry an observer.

DEFINITIONS

(This section is okay except for the definition of Authorized Agent.)

Authorized Agent: We would like this definition to reflect that an authorized agent may be a person employed by an organization under contract to NMFS to carry out observations on board U.S. fishing vessels, OR a person employed by an organization under contract to another federal or STATE agency to carry observations onboard U.S. fishing vessels under a program approved by the regional management council or being carried out under a cooperative agreement with NMFS.

Since many fisheries and fish stocks are interjurisdictional, we anticipate cooperative programs among NMFS, Regional Councils and/or State Agencies which operate in both federal and state waters. States, particularly, which fund research programs requiring observers in both state and federal waters should be able to request NMFS assistance in mandating observer coverage on

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Comments on draft - page 3

vessels operating outside state waters, if the program has been approved by the Regional Council.

In the Kodiak area, because the groundfish stocks and crab stocks move back and forth across the state-federal line, no observer program makes sense if it does not cover state and federal waters. Currently the state of Alaska is more willing to fund observer time than the federal government and should be allowed to draw on NMFS mandatory observer powers to assure that the research covers all segments of the fleet working in a fishery, time or area.

BACKGROUND

Rewrite the last two paragraphs:

Under the MFCMA, Regional Fishery Management Councils (Councils) have systematically "Americanized" the U.S. EEZ and developed more sophisticated FMPs. This process has resulted in the shift in emphasis from monitoring foreign fishing efforts to focusing on research and monitoring to provide data for management of domestic fisheries.

As part of this shift in focus, some Councils have requested that domestic observers are an important part of some research programs and have requested that NMFS be in a position to use its mandatory observer powers to assure the collection of essential data to meet the objectives of some FMPs.

NMFS, Councils and the fishing industry generally accept the voluntary use of scientific observers onboard U.S. fishing vessels on a non-industry-funded basis and prefer voluntary programs; however, there may be cases where it will be necessary to mandate the use of observers. Though NMFS has the authority to mandate the use of observers, the policy under which this power may be used has not been clearly laid out.

POLICY

- o NMFS considers that, in some circumstances, the use of mandatory observers involving U.S. fishing vessels is a legitimate and cost-effective technique of collecting essential fisheries monitoring data.
- o Mandatory observers requirements will only be implemented when the Regional Council has approved the research plan which requires observers onboard U.S. vessels and is satisfied that:
 1. The program is designed to collect data essential for designing management strategies essential for the conservation and management of the fishery; and
 2. The program is a legitimate research program with designated objectives; and

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Comments on draft - page 4

3. Industry has been part of the planning process and is largely supportive of the program; and
 4. The use of onboard observers is the only method of collecting essential data; and
 5. The use of observers will not place a significant inequitable or undue financial or social burden on industry, measured against the overall benefits accruing from the FMP.
- o The use of domestic observers for research purposes may be funded by NMFS as one component of a research project, by another federal or state agency or by industry itself. When funded by NMFS the observer cost will not be a new program in itself, but a portion of an ongoing research program.
 - o NMFS also considers that, in some circumstances, mandatory observers may be necessary to assure compliance in certain fisheries, times or areas.
 - o In this case observers will only be mandated when the Secretary, through the MFCMA fishery management planning process, is satisfied that:
 1. Mandating onboard observers is reasonable; the results essential for the conservation and management of the fishery; and
 2. There is no method other than mandating onboard observers to assure compliance; and
 3. Mandating onboard observers is consistent with enforcement policies in other U.S. fisheries; and
 4. The program will not place a significant inequitable or undue financial or social burden on industry, measured against the overall benefits accruing from the use of mandatory observers.
 - o The use of mandatory domestic observers to meet compliance objectives will only be implemented on a fully non-Federal funded basis.

GUIDELINES

1. A council, state or federal agency requesting that NMFS use its mandatory observer powers must demonstrate that mandating an observer is essential to achieve the goal of a council approved research program and that the research program is essential to conservation, management or allocation objectives. It must be clearly established, by examining all options, that there is no other less costly or intrusive method of collecting the data. Industry must have been

Comments on draft - page 5

involved in the design of the research program and supportive of the research goals.

2. Before NMFS can mandate that a vessel or vessels carry an onboard observer, the following steps must be taken:

(The steps as written in the draft are acceptable and splendid).

3. Before NMFS can mandate that onboard observers be used, NMFS, or the agency requesting that NMFS use its mandatory observer powers, must demonstrate

- a. One size or type of vessel will not be favored over another;

- b. The overall industry efficiency will not be lowered.

4. Any council approved research program which requires mandating the use of observers, whether conducted by the council, NMFS, another federal agency or a state agency, must show accountability to the funding source and in the research methods. To this extent, the agency using mandatory observers through a council approved research program and under the NMFS mandatory observer authority will submit an annual report which contains:

- a. Program objectives;

- b. Program activities;

- c. Program results; and

- d. Program costs.

5. (I'm not sure whether all these standards have to be met if the use of mandatory observers is not tied into the FMP -- simply a statement that National Standards must be met may be sufficient).

6. (This paragraph probably only needs to be here in relation to compliance monitoring programs where industry pays -- I assume agency funded programs have to automatically do this sort of analysis. If this is the case, then the paragraph needs to start with "In those cases where industry is required to pay for mandatory observers or is funding a program which includes contracting with NMFS for observers . . .").

ISSUES

Program Objectives: collecting scientific vs. monitoring data

Most of this section seems alright.

DRAFT

Comments on draft - page 6

Under Scientific: The last sentence would best be rewritten to start "A scientific program must include determinations of the level of observer coverage"

Monitoring: (I remain a little confused over the use of the term monitoring. In the discussion above we state that it does not appear appropriate nor cost effective to use onboard observers for catch and effort monitoring; however, we do concede that it may be necessary to use onboard observers for monitoring size limits in some cases -- with that caveat, this section appears acceptable.)

Legal Authority

No problems here

Liability

No problem here. However, we strongly suggest that NMFS joint the industry in looking for legislation which removes the liability from the vessel or find a way to cover the insurance costs.

Further, we feel that any agency placing observers onboard domestic vessels has an obligation to be familiar with the vessel, owner and crew; to avoid placing an observer on a vessel where his welfare may be jeopardized and to assume a certain responsibility for the observer's welfare.

This is why we strongly feel that for small vessels, particularly, agencies in situ whose employees are familiar with the fleet may have to do the actual placing of observers on vessels.

Financing

The first paragraph should be eliminated for several reasons:

1. The goals and percent coverage and overall costs in the foreign observer program do not reflect what should be the goals, percent coverage and overall costs for using domestic observers.
2. The use of domestic observers should be in conjunction with specific research programs designed to provide data to design management methods which do not depend on the continuous use of observers. Thus, there should not be a "domestic observer program" equal to the foreign observer program.
3. On a purely political basis, \$8 million dollar figures shouldn't be thrown around if they are avoidable.

The next three paragraphs are fair.

From there, rewrite to read:

"It is the intent of this paper to present a policy which will enable NMFS to use its existing mandatory observer authority under criteria outlined above. It is not the intent of this paper to set up a "domestic observer program."

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"Because this paper only provides the policy under which an existing authority belonging to NMFS may be implemented on behalf of NMFS, the Regional Councils, other agencies or the States, additional funding is not anticipated.

"It should be pointed out that the shift in focus from managing foreign to managing domestic fisheries, particularly in the Alaska region, is a recent change in focus and it would be premature to predict the form and direction the use of mandatory observers onboard domestic vessels will take.

"There are several plans for research funding, including the funding observers, now under consideration, including Congressionally mandated user fees and self-financing by industry. There are also ongoing research observer programs, which include work in federal as well as state waters, funded by state legislatures and a council funded pilot program."

Then insert the three paragraphs, beginning with "The direct charging of vessel owners is being used" and ending with "to collect fees from domestic fishermen at this time."

The example should be deleted. It reflects precisely the type of catch monitoring which we feel should not be looked at as an ongoing program. Observer data should be collected as research to determine the best strategy for managing the fisheries involved; where PSC caps appear to be the management measure of choice, sufficient research should be done to allow a reasonable estimate of when the PSC caps are reached.

Delete the conclusion.

Organization

While program responsibility for all domestic observer programs will be with the field managers, or non-NMFS agency sponsoring the program, NMFS regional headquarters will maintain an appropriate standard-setting and oversight role whenever the NMFS mandatory observer authority is used.

Confidentiality

Add a second paragraph:

"When NMFS' mandatory observer authority is invoked on behalf of a state or other federal agency research program, approved by the regional council, all federal confidentiality regulations will be adhered to by the agency (or agencies) funding and conducting the program."

Issues Conclusions:

Conclusios 1 and 2 stand.

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Comments on draft - page 8

Conclusion 3 should have added to the end on a mandatory basis only when necessary to meet the research or compliance objectives."

The last conclusion should have added on to the end " will remain confidential to NMFS or the agency collecting the data."

IN SUMMARY

The goal of the NMFS mandatory domestic observer policy should be to set the criteria under which NMFS can mandate that a vessel carry an observer. THE GOAL SHOULD NOT BE TO OUTLINE AN OBSERVER PROGRAM.

The primary use of observers should be to collect data needed to design management programs which will not require an ongoing observer effort.

Because this paper is implementing criteria for an authority already invested in NMFS and does not set up a program, the question of funding, in those cases where NMFS could reasonably be expected to fund the program does not need to be addressed. Further, the policy should allow for cooperative programs or programs coordinated with another state or federal agency.

Observer programs need not be part of FMP's.

Though not discussed above, it may be wiser to implement the mandatory observer policies through the Regional Councils, allow the policies to go through the full public and secretarial review and be implemented on a regional basis. Though the policies may not be consistent from region to region, this will assure that each policy best fits the region in which it will be implemented.

END

North Pacific Fishery Management Council's
Domestic Observer Policy *

1. The North Pacific Fishery Management Council should have the lead in determining observer placement;
2. Observer placement should not be punitive and should be on all gear types;
3. Observers should be used to verify bycatches, handling mortalities and to gather data for use in determining equilibrium yield levels;
4. The observer program should not be an enforcement program.
5. When the Council decides domestic observers are needed in a fishery, an ad hoc committee will be established consisting of participants in the relevant fishery and SSC members. The ad hoc committee will set specific observer duties and the level of observer coverage. The percentage of vessels required to carry observers will vary by fishery but may be at a level less than 100% for all fisheries.