

Observer Advisory Committee Report

May 21 – 22, 2007

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Room 1055

May 21: 12:30 pm – 5 pm

May 22: 8:30 am – 4:30 pm

Committee present: Joe Kyle (Chair), Bob Alverson, Jerry Bongen, Julie Bonney, Rocky Caldero, Paul MacGregor, Tracey Mayhew, Brent Paine, Susan Robinson, Thorn Smith

Committee not present: Kathy Robinson, Pete Risse

Staff: NPFMC – Chris Oliver, Nicole Kimball
NMFS/AFSC – Bill Karp, Martin Loefflad, Bob Maier, Heather Weikart, Jennifer Ferdinand
NMFS AK Region – Jason Anderson, Sue Salveson
NMFS HQ – Dennis Hansford
NOAA GC – Tom Meyer
NOAA Office for Law Enforcement (Alaska Division) – Mike Adams

Other participants: John Gauvin, Stacey Hansen, Jan Jacobs, Earl Krygier, Michael Lake, Todd Loomis, Dave Money, Diana Starr, Lori Swanson, Mike Vechter

AGENDA

- I. Review and approve agenda
- II. Review discussion paper and provide recommendations on proposed regulatory changes to existing North Pacific Groundfish Observer Program
- III. Update on the National Bycatch Report initiative
- IV. Update on Observer Program operations
- V. Scheduling & other issues

SUMMARY OF OAC RECOMMENDATIONS

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

Issue 1: Alternative 2.

Issue 2: Alternative 2. The committee recommended making the notification requirement an option under Alternative 2, and requested that staff provide some discussion or options in the analysis which would allow a longer timeframe in which a provider must report an incident.

Issue 3: Alternative 2. The committee also expressed desire to retain flexibility for observer providers to work with NMFS on the issue of allowing an observer to redeploy for an EFP prior to debriefing from their last observer deployment.

Issue 4: The committee recommended that the agency further develop two additional options: 1) establish that a 'water tow' does not count towards an observer coverage day; 2) add a provision in 50 CFR 679.7 that defines and prohibits the activities NMFS is trying to prevent (i.e., fishing solely for observer coverage).

Issue 5: Replace Alternative 2 with the following changes to Federal regulations:

- Require observer providers to provide the total billing information from the invoices to industry (and amount of observer days) by GOA and BSAI subareas; shoreside, 30%, and 100% coverage level fisheries; and gear type.
- Prohibit allowing a person/entity that receives this confidential information on behalf of the government from being certified as an observer provider in the North Pacific, or alternatively, implement a non-competitive clause.
- Establish a time limit on the data collection (e.g., 2 - 3 years).

Issue 6: Remove Issue 6 from the proposed regulatory amendment package.

Issue 7: Alternative 2.

The committee also recommended:

1. The Council request that NMFS provide a breakout of the percentage of harvest observed for each year 2004 – 2006 for the subset of observed vessels >60' LOA, in order to evaluate the effective rate of coverage in particular target fisheries. The data should be broken out by observer coverage category (30%, 100%), gear type, area (BSAI, and Western and Central Gulf subareas), and component of the catch by the ≤60' fleet that is unobserved.
2. The Council send a letter to NOAA HQ asking to see the draft National Bycatch Report before it is finalized.
3. The committee expressed interest in reviewing the analysis for the amendment package prior to the Council taking final action, in order to make final recommendations on preferred alternatives.

I. Review and approve agenda

The agenda was approved with two additions: 1) Tracey Mayhew asked to provide an update on issues related to observer worker's compensation issues, and 2) Julie Bonney asked to discuss whether updated data could be provided on observer coverage by target fishery and Central and Western Gulf areas. The Chair noted that the primary purpose of the meeting was to review the discussion paper (dated May 2007) and recommend any changes or additions. This task is in preparation for the Council's review of the discussion paper at its June 2007 Council meeting. The paper was provided to the OAC prior to the meeting to facilitate its review.

II. Review discussion paper and provide recommendations on proposed changes to existing North Pacific Groundfish Observer Program

Jason Anderson (NMFS) presented a discussion paper outlining seven issues that NMFS is proposing to address in a regulatory amendment package, in order to make improvements to the existing North Pacific Groundfish Observer Program (observer program). Each of the seven issues is described separately, with proposed alternatives for analysis; each issue represents a mutually exclusive decision point.

Issue 1. Observer certification and observer provider permitting appeals processes

There is no statutory or other requirement that a new observer candidate be provided an appeals process if the candidate fails observer training and is denied initial certification and the opportunity to pursue further training. Similarly, there is no requirement that a new observer provider applicant be provided an appeals process if they are denied a permit. The granting or denial of observer certifications and observer provider

permits are discretionary agency actions. The action alternative (Alternative 2) would remove the Federal regulations that provide an appeals process to an observer candidate or new observer provider as described above. NMFS would continue to issue a letter to the candidate stating that they cannot pursue further observer training, but this decision would not be subject to appeal to NOAA. An observer candidate would continue to have the opportunity to pursue a challenge to that decision in district court.

The committee questioned whether this issue warranted changes, as NMFS reported that only two observers have appealed the decision not to allow further training and certification in the past. The committee also asked about the training pass/fail rate in recent years. Most recently, about 7% of the observer candidates failed training, which represented fewer than 24 observers. All of those who failed were told they could not re-take the training, and only two appealed that decision. NMFS reported that those who pass the training typically do so with a very high score.

Some concern was also expressed that better performance in training does not always translate to a better field biologist. Members noted that if an observer candidate wins an appeal under the current regulations, and if they eventually pass the training and become certified, they still have to be hired by an observer provider. Thus, allowing for the appeals process does not necessarily directly translate into poorer quality observers in the field.

However, concerns were also expressed that a poorer quality observer could take advantage of the appeals process to keep taking the test and eventually be successful in certification, potentially degrading the quality of the observer program and the data it produces. Given these concerns, and the fact that this is a discretionary provision by NMFS that does not affect compliance with the Administrative Procedure Act, **the committee recommended Alternative 2.**

Issue 2. Observer conduct

Current regulations attempt to control observer conduct so that certified observers present themselves professionally on vessels and at plants, at NMFS sites, and in fishing communities. NMFS has been advised by NOAA GC that many of these regulations are unenforceable, and/or are outside of its authority and need to be clarified or deleted. The action alternative (Alternative 2) would remove Federal regulations attempting to control observer behavior related to activities including drugs, alcohol, and physical sexual contact. The applicable policies addressing these behavioral issues would be the purview of each observer provider (the observer's employer).

Generally, most members agreed that the providers should be responsible for policies related to standards of conduct. However, several members asserted that if providers were to be fully responsible, then they should not be required to report incidents related to behavioral problems to NMFS, which is part of the proposed alternative. Further discussion occurred related to whether an observer provider should have to report the incident to NMFS, similar to the current requirement that the provider must report information on observer conflict of interest or breaches of the other standards of conduct within 24 hours of becoming aware of the information.

NMFS contends that they need to continue to be informed because some of these problems can affect the observer's performance and data quality. Several members were concerned that the proposed changes would remove NMFS' authority to deal with or decertify observers upon such incidents; NMFS and NOAA GC noted that NMFS can continue to use reports of such incidents in the decertification process. This type of information is relevant as mitigating circumstances, if an observer behaved in such a way that their job performance and data quality were negatively affected.

One member suggested having every observer sign a document that says that they understand they are working under a zero tolerance policy. It was noted that observers under the union contract sign a 'letter of understanding' acknowledging that the observer will abide by the observer duties and responsibilities, standards of conduct, conflict of interest standards, and confidentiality standards; although it is not enforceable. Another member suggested that if vessel owners and shoreplants are not satisfied with an observer provider's drug and alcohol policy, industry should address these issues when negotiating contracts with observer providers.

In general, most members agreed that it is not NMFS' role to regulate and attempt to enforce observer behavioral policies. Members wanted to ensure that there would continue to be a policy in place (through the providers) and that the expectations for conduct are made clear during observer training. Many noted that industry, the observer union, and the observer providers should work collaboratively, with NMFS' input, to redevelop such policies. Most members wanted to keep industry involved but did not think that this involvement needed to be federally regulated.

The OAC recommended Alternative 2, with the implementation concerns discussed above. The committee understood that this alternative requires NMFS to ensure that the observer providers have policies in place to address these types of activities, and that these are part of the contracts that providers employ with industry. The committee also understood that this alternative includes the requirement that NMFS must be notified by the provider upon learning of an incident, and that the notification requirement does not constitute an approval mechanism for NMFS to remove an observer from a boat for incidents related to these specific activities (drugs, alcohol, physical sexual conduct). This type of sanction would be the responsibility of the observer provider. The committee recommended making the notification requirement an option under Alternative 2, and requested that staff provide some discussion or options in the analysis which would allow a longer timeframe in which a provider must report the incident (e.g., more than 24 hours).

Issue 3: Observer providers' scope of authority regarding research and experimental permits

Current Federal regulations are unclear as to whether observer providers can provide observers or scientific data collectors for research activities. The action alternative proposed by NMFS (Alternative 2) would clarify that this is allowed, for purposes of exempted fishing permits (EFPs), scientific research permits, or other scientific research activities. NMFS observer program regulations would apply to observers operating under NMFS certification but would not apply to scientific data collectors. (There are circumstances in which observers would be required to account for harvest removals or the research is being conducted within the context of the normal fishery.)

Generally, the committee was supportive of this regulatory change, given that several members represent operations that use EFPs for various research activities. Members noted that revisions to the regulations could serve to clarify the responsibilities of both the observer provider and the observer.

One provider asked whether Alternative 2 addresses the question of whether an observer can move from a normal observer role to an EFP in the same deployment, i.e., whether an observer can be deployed on another vessel (for an EFP) prior to completing the debriefing process. NMFS' concern is that some research activities can take a long time, thus significantly delaying the necessary closure on an observer's deployment (i.e., debriefing). In addition, NMFS conveyed that switching roles within the same deployment has at times caused confusion; an observer isn't always aware of the changes in rules or sampling protocol if a vessel abruptly switches from normal operations to operating under an EFP. Thus, NMFS would like to maintain the ability to require that observers complete their work as observers before they are re-deployed in another capacity (e.g., as a scientific data collector). However, the existing language proposed under Alternative 2 is not clear in this regard.

The industry and providers' concern with this intent is related to the likelihood of a back-up in the debriefing process at peak times in the season, thus precluding the observer from being available for deployment immediately on an EFP. The providers expressed the desire to retain some flexibility for this purpose. NMFS committed to working with the providers on this issue, and agreed that it is more appropriately a policy and program operations issue than a requirement that must be included in Federal regulations under Alternative 2. Note that there is no proposal to remove the current regulation that requires that an observer must be de-briefed within five days of the fishing trip.

The committee recommended Alternative 2, but expressed desire to retain flexibility to work with NMFS on the issue described above.

Issue 4: Fishing day definition

In January 2005, the NMFS Sustainable Fisheries Division received a memorandum from NOAA Enforcement requesting revision of a regulation defining "fishing day" for purposes of enforcing observer coverage requirements. Specifically, Enforcement relates concerns that Federal regulations governing the 30 percent observer coverage requirement are unclear as to whether they allow vessel owners and operators to use *any* amount of observer coverage incurred during a 24-hour period to count towards coverage requirements. While many vessels operate with an observer as they would without an observer, others intentionally alter their fishing behavior specifically to meet observer coverage requirements. For example, if a vessel needs two additional days to meet coverage requirements, the owner or operator could retrieve a haul at 11:30 pm and retrieve a second haul at 12:30 am the next day, and obtain two observer coverage days. Often these hauls are not representative of normal haul durations, location, and depth, and catch composition could vary significantly.

NOAA Enforcement recommended revising the definition of "fishing day" to resolve this concern (Alternative 2 requires that an observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage). However, during the course of internal agency discussions, NMFS and Council staff agreed that Alternative 2 may not be preferable, as it may adversely affect normal fishing operations and substantially increase costs. Therefore, NMFS specifically requested input from the OAC on a regulatory revision that reduces vessels' ability to operate in this manner, but does not significantly adversely affect normal fishing operations.

The OAC agreed that there could be a legitimate situation in which this applies to a vessel, most notably when nearing a fishery closure or due to (inadvertent) poor planning. This provision likely would apply primarily to the 30% hook-and-line and trawl fleets in the Gulf, as pot vessels are subject to different coverage requirements. Gulf representatives noted that there have been, at times, observer availability problems, resulting in some vessels becoming nervous that they won't be able to meet their coverage requirements before the fishery closes. One vessel may drop an observer off at the dock early, simply so another vessel can take them and not be found in violation. However, members also generally agreed that non-representative fishing occurs in various forms, and that this serves to degrade the credibility of observer data. Alternative 2 would increase costs to both a legitimate operator and one who is purposefully manipulating the system.

In general, three types of problem activities were identified:

1. Taking an observer part of the day (with limited gear retrievals), dropping them off mid-day and going back out to fish.
2. Completing one tow before midnight and one tow after midnight to receive two days of observer coverage.
3. Conducting only 'water hauls' with the observer onboard, in which no or few fish are harvested.

Several members also noted that NMFS has not provided sufficient quantitative analysis to document the problem. For example, members wanted to know how many vessels have conducted one tow in a 24-hour period, or a few tows only between 10 pm and just after midnight, etc, in order to groundtruth the issue. NMFS noted that while some of these data can and will be provided, it would not clarify whether the instance is normal fishing behavior or intentional manipulation of the regulations. In addition, understanding the percentage of the catch that is affected by this behavior does not sufficiently define the problem, since the data are also supposed to provide an adequate representation of the spatial and temporal distribution of the harvest in a target fishery.

Several members and NMFS agreed that true resolution of this issue in the 30% fleet is only possible through a change in the service delivery model (i.e., restructuring of the observer program). Any other potential solution within the current service delivery model will only offer limited benefits. The OAC thus discussed whether these limited benefits were worth potentially penalizing legitimate operations. One member noted that a similar discussion was had several years ago in the context of the restructuring analysis, and at that time the committee agreed that it was not equitable to address the issues within the 30% fleet absent restructuring or some level of subsidized observer coverage for the Gulf.

Other members stressed that this problem would be mitigated in part by improving communications between observer providers and industry, which may not require Federal regulations. Some providers noted that if industry knows it will be a three day fishery, some vessels wait until the last minute before requesting an observer, anticipating an observer availability problem.

Members were concerned with the possibility of severely penalizing all vessels due to the unacceptable behavior of a few. Alternative 2 as proposed in the discussion paper was not regarded as a preferable solution due to the potential cost implications. The OAC discussed several alternative regulatory solutions to the problem identified by NMFS and NOAA Enforcement, including:

- Requiring a minimum percentage of gear retrievals to be done with an observer onboard that would constitute statistically sound PSC estimates. One member noted that this is not likely feasible, as one retrieval might represent an entire vessel load.
- Change the regulatory definition of a “Fishing Day” from a 24-hour period, from 0001 hours A.I.t. through 2400 hours, to a 24-hour period from noon to noon. Require that an observer be onboard and observe all gear retrievals for one of the two consecutive 12-hour periods. Members noted that while this may represent a compromise position relative to the proposed Alternative 2, it does not resolve all of the identified problem activities.
- Establish that a gear retrieval that does not result in any target fish does not count towards observer coverage. The committee questioned whether the entire day of observer coverage is foregone if one gear retrieval during the period does not result in any target fish.
- Require the observer to bring back the logbook pages, and require NMFS or NOAA Enforcement to evaluate them to determine whether vessels were purposefully fishing in a non-representative manner with the observer onboard.
- If only one gear retrieval is completed in a fishing day, require that that retrieval must meet a minimum time period or tonnage (e.g., at least 20 minute tow, at least one ton, etc.)
- Require that a vessel provide additional advance notice to an observer provider when it needs an observer (e.g., 30 day notice). Some industry members noted that a vessel cannot always know what it needs ahead of time and wants to avoid paying for more coverage than necessary.
- Retain the current 30% observer coverage regulations and add a requirement such that 30% of the tonnage of each target species must be covered.
- Increase the current 30% coverage requirement to 35% or greater, in order to create a buffer in the system to produce at least 30% coverage. Members expressed concern with simply increasing the amount of ‘non-representative’ fishing data under this option.

- Establish that a 'water tow' does not count towards an observer coverage day.
- Add a provision in 50 CFR 679.7 (prohibitions section) that defines and prohibits the activities NMFS is trying to prevent (i.e., fishing solely for observer coverage). NOAA Enforcement could review on a case by case basis and prosecute as necessary.

NOAA Enforcement reminded the OAC to focus on solutions that are enforceable. In addition, NMFS would not want an observer to have to judge whether a tow constitutes an observed tow or not.

NMFS also noted that due to the rockfish pilot program (100% coverage) and the July flatfish sideboards, this will not be an issue in the rockfish fishery in the future. In addition, the Gulf trawl pollock and cod fisheries are fairly short, 3-day fisheries, so there is not time for a vessel to manipulate the system. In effect, the only Gulf fisheries in the near future to which this issue could apply are the flatfish fisheries and the longline fisheries, although it was noted that very few vessels greater than 60' fish in the Gulf with longline gear (and are thus subject to 30% coverage requirements).

The discussion of this issue also spurred discussion of a broader data request, similar to what was provided in the restructuring analysis in 2006. **The committee requests that NMFS provide a breakout of the percentage of harvest observed for each year 2004 – 2006 for the subset of observed vessels >60' LOA, in order to evaluate the effective rate of coverage in particular target fisheries. The OAC requested that the data also be broken out by observer coverage category (30%, 100%), gear type, area (BSAI, and Western and Central Gulf subareas), and component of the catch by the ≤60' fleet that is unobserved.** Some of these data may be provided as appropriate in the analysis under Issue 4 of the proposed regulatory amendment, but the intent is that the overall data represent a separate product. NMFS emphasized that this type of data analysis will show the strengths and weaknesses of the overall system more so than what is attributable to the particular problem identified in Issue 4.

Given that there is no clear solution within a regulatory environment, the OAC discussed whether to set this issue aside at this time and ask NMFS to conduct a separate assessment of the scope of the problem, and whether it is potentially limited to the flatfish trawl fishery. **The committee ultimately recommended that the agency further develop the last two bulleted ideas suggested in the above list.** While the committee did not endorse Alternative 2 as proposed in the staff discussion paper, it did not recommend removing that alternative, as it may serve as comparison in the analysis. In addition, the committee noted that if after reviewing the draft analysis there is not consensus that there is a problem, the committee could recommend eliminating Issue 4 or recommending Alternative 1 (status quo) as its preferred alternative.

Issue 5. Observer program cost reporting

Currently, NMFS lacks precise information on the total costs, and components of those costs, of the industry-funded component of the groundfish observer program, and is thus limited in the type and scope of analysis it can support. The cost information required under current regulations is limited to a copy of the general type of each signed and valid contract between the observer providers and industry. The information provided is generally limited to the daily fees charged by the providers or the daily rates of pay for observers (e.g., \$355/day). NMFS has proposed (Alternative 2) to require that observer providers report annual costs to NMFS according to the following categories: labor, overhead, transportation, housing, food, and insurance. These would be further broken out by BSAI versus GOA fisheries, and by 30%, 100%, and 200% covered vessel/processor categories. The discussion paper explicitly noted that all cost information provided is considered confidential, and thus must be aggregated sufficiently in order to be provided in a public document.

The committee appeared to have fewer problems with providing proprietary information to NMFS than it did with the potential implementation of the confidentiality provisions provided in the Magnuson Stevens Act (MSA). Several examples were cited to support a lack of confidence in the confidentiality aspects of the proposed alternative. First, in 2005, a company that was under contract with NMFS in a previous year to audit the observer program (and thus, received confidential business information from each existing observer provider) was certified to become a competing observer provider for the North Pacific groundfish fisheries. While this concern was made known to NMFS at the time, there were no regulations that prevented the company from becoming legitimately certified.

Second, in the recent past, Oceana submitted a FOIA request for vessel specific fishery information that NMFS agreed was confidential and thus could not provide. Subsequently, the Dept. of Commerce General Counsel disagreed and stated they intended to provide the requested data. As a result, industry filed suit in Federal district court. While the request was eventually withdrawn by Oceana, it was expensive for industry and resulted in a lack of confidence in the confidentiality provisions.

The confidentiality issue is exacerbated by the fact that there are only five observer providers, three of which provide the vast majority of observer days. In addition, one provider (Saltwater, Inc.) services the majority of the Gulf fisheries. Thus, even aggregation rules may not prevent the public from being able to discern confidential information relative to a specific provider.

NOAA GC noted that Section 402(b) of the MSA was recently amended in 2006 to add 1) a few additional disclosures for information that is considered confidential under the act, and 2) stricter standards by which the government can disclose information to entities that are authorized to receive this information.

The OAC also questioned the analytical gains from providing the cost components (breakdown by subcategory) as proposed in Alternative 2. Some members noted that the disproportionate observer costs experienced within the Gulf fisheries would be better understood if these variable costs could be provided, even in aggregate form. NMFS also noted that it is not possible to provide a comprehensive economic analysis of a restructured program (i.e., new service delivery model in which NMFS contracts directly with observer providers) without more detailed costs than the average observer cost per day. Variable costs would allow analysts to provide the difference in costs by sector, deployment, and region, as well as the fraction of the total cost associated with observer remuneration versus travel/overhead (fixed costs). This information is necessary to analyze the cost of the status quo, as well as costs under a restructured observer program. If NMFS and the Council reconsider restructuring, which includes a maximum fee level to cover the cost of observer services, it is necessary to know how much observer coverage is afforded under that maximum.

Most members agreed that NMFS needs to gather enough information to inform the public process, while at the same time considering the observer providers' concerns about confidentiality. Support for requiring cost information was stronger from those representing Gulf fisheries that want to enable observer restructuring efforts to proceed. Given that, several suggestions were raised for discussion, including:

- Finding other ways to receive cost information other than a mandatory economic data collection program, such as industry invoices, research on airplane fares, etc.
- Establishing a time limit on the data collection effort, for example, two to three years
- A prohibition on allowing a person/entity that receives this confidential information on behalf of the government from being certified as an observer provider in the North Pacific. Similarly, a non-competitive agreement could be developed, such that it must be agreed that a person/entity that receives confidential information on behalf of the government would not engage in competition with the businesses providing the information.
- Requiring submittal of this information from individual vessels and processors

Concerns were expressed about requiring submittal of this information from individual vessels and processors, as only the total cost of what boat owners pay (as opposed to the cost components) would be available. In addition, it complicates the data collection process in shifting from five observer providers to potentially hundreds of entities.

In sum, NMFS noted that the more detailed the information provided, the better the ability to provide a comprehensive economic analysis on related issues. NMFS noted it does not want to be more intrusive than necessary or implement an overly complicated system. The agency would still benefit from receiving overall information by BSAI and GOA subareas, if not by all categories proposed in Alternative 2.

The OAC recommended replacing Alternative 2 with the following:

- Require observer providers to provide the total billing information from the invoices to industry (and amount of observer days) by GOA and BSAI subareas; shoreside, 30%, and 100% coverage level fisheries; and gear type.
- Prohibit allowing a person/entity that receives confidential observer provider information on behalf of the government from being certified as an observer provider in the North Pacific, or alternatively, implement a non-competitive clause.
- Establish a time limit on the data collection (e.g., 2 - 3 years).

Issue 6. Completion of the fishing year

Currently, NMFS completes quality control checks and finalizes all observer data as soon as possible after the close of the fishing year; these data are then available to NMFS and Council analysts who need the full year data set to develop requested analyses. Because current regulations allow observer cruises to span two different fishing years and deployments can last up to 90 days, observers deployed late in one fishing year can delay completion of the entire data set and its availability until as late as March of the following year. Under Alternative 2, NMFS proposes to establish a cutoff date (February 28) whereby observers collecting fishing data over a span of two years in the same deployment would be required to return to port and be available for debriefing.

NMFS noted that the sooner the data are available, the better. The February 28 proposed date (as opposed to the current potential of not receiving data until the end of March), while still not ideal, is preferable to the status quo. NMFS noted that this issue relates almost exclusively to freezer longline vessels harvesting Pacific cod late in the year, in both the CDQ and non-CDQ fisheries. These vessels can then start new fisheries on January 1.

Members expressed concerns about shortening the length of observer deployments in such situations, as it potentially causes a hardship on both the observer and industry. In addition, many members thought that the scale of the problem is relatively small and thus does not warrant a regulatory fix. Table 1 in the discussion paper shows that only 7 observer cruises spanned 2006 and 2007 as part of the same deployment and had fishing continue into March. Members wanted to know what level of harvest (pounds) these trips represented. Other members interpreted this table such that the solution proposed by the agency would not cause an undue burden on a significant number of observers.

Some members questioned, if timing is the issue, whether this data is necessary for a 'complete' data set for the fishing year. NMFS noted that data from late in the year, most notably size and age distribution data, are often different from those earlier in the year. Thus, it is not solely an issue of having fewer data if data late in the year were excluded. These data are used for both stock assessment purposes and for other Council analyses. It is the users of the data at the Alaska Fisheries Science Center that have requested expediting this information.

Other potential solutions to the identified problem were also discussed. One member suggested that because all of the vessels at issue have ATLAS software, the observer could complete a mid-cruise debriefing at such time that a vessel comes into port for a delivery. This would mitigate the need to fly an observer to Anchorage to debrief and find a new observer to 'finish' the trip. NMFS noted that mid-cruise debriefings typically take a considerable amount of time, and they have had problems in the past working with providers to ensure the observer is in port long enough to complete a comprehensive debriefing. One member also noted that contrary to the discussion paper, observers on freezer longliners typically prefer to be on longer deployments, thus, the observer would not benefit from being required to cut the deployment short.

One observer provider suggested a replacement for Alternative 2, as follows:

- The observer generates a set of data for the first year under a NMFS issued cruise code.
- On January 1 of the second year, the observer starts a new data set with a second cruise code.
- At the first offload in the second year, the observer submits data from the previous year to the NMFS field office. If there is adequate time, the observer completes their computer input and debriefing for that data in the field.
- If there is not adequate time to debrief at the first offload, observers offloading in remote ports would send data by certified mail to NMFS in Anchorage or Seattle, and follow-up with debriefing on a subsequent offload.

In general, most OAC members understood the issue but were not supportive of the solution proposed in the discussion paper. The committee did not see a pressing need for a regulatory solution, as the number of cruises affected is relatively small. NMFS could first attempt to implement the intent of the (bulleted) alternative above through working with the observer providers in the next couple of years (i.e., debrief some observers in Dutch Harbor), and then re-evaluate whether a regulatory solution is necessary. **The committee recommended that Issue 6 be removed from the proposed amendment package.**

Issue 7: Miscellaneous modifications

Issue 7 outlined three minor housekeeping issues related to regulatory language that needs to be updated or corrected. The OAC agreed with such revisions. **The committee recommended Alternative 2.**

III. Update on the National Bycatch Report initiative

As requested by the Council, Dr. Bill Karp provided a similar update on the National Bycatch Report initiative to the OAC as provided to the Council in December 2006 and March 2007. This is a NOAA HQ driven initiative to develop a report on regional and fishery-specific bycatch of fish, marine mammals, and seabirds. The intent is to provide current information to inform the U.S. public and international community on the status of bycatch in our nation's fisheries. Bycatch levels in each Federal commercial fishery would be quantified and used to monitor progress in bycatch over time. A tier system was developed to characterize the level of data available relative to bycatch in specific fisheries, such that fisheries can be comparably ranked across regions. The initial version of the report is expected sometime in 2008, and will contain 2005 data and estimates.

The committee asked about the definition of bycatch used in the development of the report, as all regions should be compared using the same definition. Dr. Karp reported that the definition being used is consistent with that in the MSA (i.e., at sea discards). Dr. Karp will continue to update the OAC as this effort progresses.

The OAC recommended that the Council send a letter to NOAA HQ asking to see the draft report before it is finalized.

IV. Update on Observer Program operations

Dr. Karp provided an update on observer program operations, noting that a fully staffed program equates to 45 observer program FTEs, at an annual cost of \$5 million. Due to increased costs over the last several years (e.g., salaries, rent, etc.), the program has not been fully staffed. There are 32 current staff, and NMFS is in the process of hiring 3 more. While most staff are located in the Seattle office, a field office was opened in Anchorage three years ago with the intent of building the observer cadre. The cadre has typically consisted of 6 – 7 individuals, with 1 in Kodiak and another 1- 2 in Dutch Harbor.

The demands on the observer program resulting from new Council programs have increased substantially over the past five years, without resulting in a larger budget. NMFS is thus obligated to maintain the observer data system and coverage levels in regulations with fewer resources. In sum, there is not a sufficient budget to support maintaining the observer cadre (Anchorage field office) at a level at which it can function effectively. Thus, the observer cadre will not be continued, and NMFS will focus primarily on core functions.

Another example of the challenges surfacing recently has been the major debriefing backlogs at certain times of the year, which are driven by external factors such as the fishing calendar, timing of fishing closures, etc. NMFS has recently developed a contract to hire individual debriefers to assist in peak debriefing times.

In addition, the Observer Training Center (OTC) in Anchorage has been responsible for the majority of observer training and briefing. The OTC has typically been provided funds through a grant. As a result of a legal review of that arrangement, NMFS was asked to change its relationship with the OTC due to oversight issues and because funding must be based on negotiated costs relative to contract provisions.

Dr. Karp also noted that NMFS is undertaking some test monitoring in the halibut fishery, in cooperation with the Fishing Vessel Owners Association, as well as undertaking a rockfish EFP. The rockfish EFP is a NMFS AKR/AFSC/industry collaboration to evaluate how one might employ electronic monitoring (EM) for halibut PSC accounting. PSC accounting is the primary factor driving the need for the 100% observer coverage requirement in the Gulf rockfish catcher vessel fleet, as it is operating under individual bycatch accounts in the new rockfish pilot program. The EFP has two phases: 1) compare basket samples versus whole haul samples versus EM for halibut PSC¹; and 2) use video in combination with 100% observer coverage to find ways to potentially shift away from 100% observer coverage in the future.

V. Scheduling and other issues

Observer worker's compensation

This issue was added to the agenda at the request of a committee member (Tracey Mayhew). Ms. Mayhew provided a brief update on recent issues related to the Federal Employee Compensation Act (FECA). In the case an observer is injured, they are considered federal employees and can receive worker's compensation under FECA. She noted that some insurance companies are insisting that an observer go through FECA for compensation. As a result, it is taking a long time for observers to be approved for medical compensation and overtime pay is not being included in the compensation calculation. Some long-term solutions were discussed at the 2007 International Fisheries Observer Conference on how to improve service out of FECA, and the National Observer Program is going to contact the Department of Labor, Office of Worker's Compensation to develop short-term solutions.

¹ Electronic monitoring is intended to provide a length estimate in order to estimate halibut weight.

One provider noted that this issue was a problem for several years, but that they are now relatively satisfied with the current system. Dr. Karp noted that the Federal Observer Compensation Act (FOCA) continues to be a proposal within the Department of Commerce; if there is no longer industry support for FOCA, industry should notify the agency.

Schedule for next OAC meeting

If the Council initiates an analysis for the proposed regulatory amendment package that was discussed under agenda item II, initial review could be scheduled as soon as October 2007, with final action at a subsequent Council meeting. Implementation could not likely take place until the beginning of 2009. **The committee expressed interest in reviewing the analysis prior to the Council taking final action.** The committee noted that it is not feasible to hold an OAC meeting in November, due to the end of the fishing season and peak debriefing time.