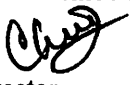


MEMORANDUM

TO: Council and AP Members
FROM: Chris Oliver 
Executive Director
DATE: May 27, 2013
SUBJECT: Observer Program

ESTIMATED TIME 6 HOURS

ACTION REQUIRED

- (a) Review EM strategic plan and first year performance report
- (b) Develop criteria and priorities for consideration of regulatory proposals
- (c) Review 3rd party discussion paper
- (d) Review OAC report and provide direction

BACKGROUND

- (a) Review EM strategic plan and first year performance report

In April the Council reviewed a draft Electronic Monitoring (EM) strategic plan and developed additional requests for NMFS to include in the strategic plan for review at this meeting. The Council's motion from April is included as Item C-3(a). A summary of previous Council requests is included under Item C-3(b). The updated EM strategic plan is included as Item C-3(c). The Council is also scheduled at this meeting to receive a mid-year performance evaluation report on the overall restructured observer program. That report is included as a supplemental attachment. For reference, Item C-3(d) is the recently signed NMFS national Policy Directive on EM.

In April the Council also noticed its intent to appoint an EM working group (likely a subset of the OAC membership) to work with NMFS and the OAC to help design processes to facilitate the implementation of EM with a priority on the small boat fixed gear and Pacific cod fleet. That workgroup will be formed following this meeting and the Council's review of the EM strategic plan.

- (b) Develop criteria and priorities for consideration of regulatory proposals

During the course of the last two OAC meetings, a number of regulatory changes to the restructured program have been suggested by various segments of the fishing industry. Neither the OAC nor the Council have acted upon any of these proposals, pending a more formalized process for consideration of such proposals. Thus far the following specific proposals have been suggested:

- long-term solution for the BSAI pacific cod trawl CV fleet to allow 100% coverage (possibly for GOA trawl fleets on short term basis).

- solutions for full coverage vessels that act as both CVs and CPs during the fishing year (e.g. allow vessels to switch CV/CP designation during the year for observer coverage categories).
- allow vessels to choose to be in either the trip or vessel selection pools, or only have a trip selection pool.
- change the method of fee collection in the IFQ fleet (use same year's data and bill IFQ holder directly)
- develop performance measures to allow EM to be a substitute for human observer (likely a longer term action tied to further EM development)

Additional proposals are likely to be generated, either at this meeting or subsequently. The Council needs to identify a process and/or criteria for considering and prioritizing such proposals. An 'omnibus' regulatory package could then be initiated for formal analysis (recognizing that such an omnibus package will likely represent a significant staff tasking workload for Council and agency staff, recognizing that we have only 6 months of the newly restructured program under our belts and we should be cautious about initiating a 'restructuring' of the restructured program, and recognizing the priority already in place for expedited EM implementation). The OAC will be discussing this issue also and provide its recommendations to the Council.

(c) Review third party discussion paper

In earlier discussions of the restructured program, including discussions of the costs per observer day under the restructured program, the Council requested a discussion paper on the concept of using a 'third party' entity to run the program, primarily in the interests of cost savings and/or other operational efficiencies. Following the repeal of the Research Plan back in 1995 (the previous attempt at a fee-based system for observers, which was ultimately repealed by the Council prior to full implementation) the Council and NMFS explored this concept, specifically using the Pacific States Marine Fisheries Commission (PSMFC) as a third party program administrator, under a Joint Partnership Agreement (JPA) between NMFS and the PSMFC. Under this JPA program, fishing and processing operations required to obtain observers would make payments to the 3rd party (PSMFC in this case), and the 3rd party would enter into contracts with approved observer provider companies and direct vessels and processors to a specified provider for services. Payments received by the 3rd party would be used to pay observer contractors and to cover administrative costs of the program. It was anticipated that this JPA structure under 'pay-as-you-go' would evolve into a new fee-based program. This 3rd party JPA initiative ultimately failed, due to two primary reasons: (1) an inability to ascertain, with any degree of certainty, whether the 3rd party structure would indeed result in significant administrative and operational cost savings, and (2) an inability to indemnify PSMFC against legal liability associated with its role as a 3rd party observer program administrator.

In order to provide a meaningful discussion of the current potential for a 3rd party arrangement, staff would have to explore once again the legal and contractual aspects, staff would need to work with NMFS, observer providers, and a potential 3rd party entity to explore the potential cost (or cost savings) implications of such an arrangement, and the Council would need to more specifically identify what role is envisioned for such a 3rd party entity. For example, at one end of the spectrum of possibility, a 3rd party arrangement could involve running all administrative and operational aspects of the program, including observer training, deployment, and debriefing (i.e., all aspects of the program which NMFS currently administers with a staff of ~30 persons and a \$4-\$5 million annual budget). Alternatively, a 3rd party entity could focus on one particular aspect of the program, such as expediting the EM component, either by itself or through some type of EFP structure with industry. The specific role of a 3rd party will largely define the potential cost savings, operational advantages, and contractual/legal considerations to be addressed. For example, using PSMFC as an example, they are currently engaged in the west coast groundfish observer program at 3 different levels:

1. In the pre-catch share fishery, vessels/processors are assigned a 'science observer' by NMFS, and they have to obtain that observer through an approved observer contracting company. The observer

provider has a contract with PSMFC and invoices PSMFC periodically for payment for services. PSMFC has grant from NMFS which provides the funding to pay the observer provider (industry does not pay anything). PSMFC also has role in debriefing, also supported by grant. Legal liability is retained by observer contracting company.

2. In the catch-share fishery, industry contracts directly with observer providers to obtain and pay for 'compliance monitors' (observers). PSMFC has no contractual role, but, through NMFS grant, provides partial reimbursement to vessels/processors applying for such. PSMFC also has training/debriefing function for the shoreside observers in this program.
3. Using funds from the NMFS grant process, PSMFC initiated a volunteer 'pilot program' for EM. Under this program, vessels can volunteer to take a camera, and PSMFC has contract with private company(s) to place video camera on those vessels. Primary purpose is to advance EM, camera does not take the place of any required observer coverage.

Additionally, from 2003-2010 it is my understanding that EM technology was used, through an EFP process, to deploy video cameras in the west coast hake fishery, though as previously explained that was in a zero discard scenario. In summary, I am asking the Council to provide further specificity regarding the objectives and role of a potential 3rd party entity, prior to devoting additional staff time (Council and NMFS resources) to this effort.

(d) Review OAC report and provide direction

The Observer Advisory Committee (OAC) is meeting June 3-4, 2013 in Juneau, AK. The agenda is attached as Item C-3(e). The OAC report will be available by the time this agenda item comes up before the Council.