

**Observer Advisory Committee – Meeting Report
January 29, 2010**

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

Committee present: Denby Lloyd (Chair), Bill Tweit (co-Chair), Bob Alverson, Christian Asay, Jerry Bongen, Julie Bonney, Richie Davis, Kenny Down, Michael Lake, Todd Loomis, Paul MacGregor, Tracey Mayhew, Brent Paine, Kathy Robinson, Anne Vanderhoeven. (Not present: Matt Hegge, Theresa Peterson)

Council and NMFS Staff: Nicole Kimball (NPFMC), Martin Loefflad (AFSC), Brandee Gerke (AKR), Craig Faunce (AFSC), Sue Salvesson (AKR), Chris Oliver (NPFMC), Chris Rilling (NMFS), Tom Meyer (NOAA GC), Bill Karp (AFSC), Patti Nelson (AFSC), Darrell Brannan (NPFMC, consultant), Bob Maier (AFSC), Mike Adams (NOAA OLE), Jerry Berger (AFSC).

Other participants: Troy Quinlan (Techsea International), Jason Anderson (Best Use Cooperative), Josh Boyle (USCG), Mary Schwenzfeier (ADF&G), Karla Bush (ADF&G), Stefanie Moreland (ADF&G), Pat Hardina (Icicle Seafoods), Merrick Burden (Environmental Defense Fund), Ken Stump (Marine Fish Conservation Network), Rob Wurm (Alaskan Leader Fisheries), Tom Casey, Linda Kozak (Kozak & Associates), Dan Falvey, Julianne Curry (PVOA), Jeff Farvour.

Agenda

- I. Review and approve agenda
- II. Update on status of the proposed rule for regulatory changes the Council approved in 2008
- III. Review October 2009 Council motion & current suite of restructuring alternatives
- IV. Review second draft of NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program
- V. Discuss feedback and/or recommendations on the implementation plan
- VI. Scheduling & other issues

I. Review and approve agenda

Introductions were made. The agenda was approved, with one addition from Martin Loefflad, to provide a brief update on Observer Program activities and Federal funding for regional observer programs.

Martin introduced Chris Rilling, the new National Observer Program lead in NOAA HQ. Martin noted that currently 225 observers are deployed, and a new data entry form was installed this year. Observer Program staff are also working on the BSAI Amendment 91 rulemaking (monitoring for Chinook salmon bycatch), and working with the Auke Bay lab on genetic sampling. Martin also updated the U.S. Delegation at the 2010 IPHC meeting on observer program restructuring efforts, and the inclusion of the commercial halibut fleet off Alaska in the alternatives under consideration by the Council.

There is not a substantive increase in the 2010 budget for the North Pacific observer program. The program received a \$300k increase from the National Observer Program (NOP), which will cover inflationary costs. However, two regional programs received substantial increases in Federal funding: \$3 million each to the New England and Western Pacific observer programs. These are line item Congressional increases, earmarked for direct observer deployment in these programs, and thus do not represent discretionary funding by the NOP. The North Pacific observer program has requested a \$6 million increase for 2012 and beyond.

II. Update on status of proposed rule for regulatory changes the Council approved in 2008

On September 30, NMFS published a proposed rule for an observer regulatory amendment previously approved by the Council in April 2008 (74 FR 50155). In November, NMFS sent a letter to the Council outlining four changes NMFS is considering to the proposed rule as it proceeds to the final rule. Two of those changes are related to the requirement for observer providers to submit invoices, and two address observer conduct regulations. The only significant change is to require observer providers to submit monthly invoices every year, as opposed to every third year, as was originally approved by the Council. As these changes differ from the Council motion, NMFS is required to consult with the Council per Section 304(b)(3) of the MSA, and did so at the December 2009 Council meeting. The Council approved a motion that concurred with NMFS' proposed changes; the final rule is expected in March 2010. One committee member noted that the rule includes changes to the definition of a fishing day (30% coverage by quarter), thus, an effective date at the beginning of a quarter would be preferable.

III. Review October 2009 Council motion and suite of restructuring alternatives

Staff reviewed the October 2009 Council motion, which revised all of the restructuring alternatives to explicitly include shoreside processing plants. Alternative 2 was also revised to include the <60' BSAI groundfish sector in the restructured program. In effect, all of the restructuring alternatives include the halibut sector and <60' sector, thus, no sector is entirely exempt. In October, the Council also requested that a second draft of the implementation plan be developed prior to the development of the analysis for observer program restructuring. The Council motion directed the OAC to convene and provide feedback on the revised implementation plan, prior to the Council's review in February 2010.

IV. Review NMFS implementation plan to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program

NMFS and Council staff (Nicole Kimball, Brandee Gerke, Martin Loefflad, Craig Faunce) provided a presentation of the revised implementation plan, with a focus on changes from the October 2009 draft. The committee limited its questions to clarifications, with the intent to review the most significant questions and concerns in the afternoon (agenda item V).

Changes to Section 1 (Introduction) focused on changes to the suite of alternatives approved by the Council in October 2009, and the addition of a table outlining the five alternatives with regard to which sectors are included in the restructuring program, the funding mechanism, and the general coverage strata (<100% versus \geq 100%).

Changes to Section 2 (Implementation plan framework) focused on an expansion of the discussion regarding the scope of the restructuring alternatives and whether vessels fishing in State waters are included. Vessels that carry an FFP that are participating in Federal waters or State waters parallel fisheries would be included in the restructured program. These vessels would be assessed a fee based on the ex-vessel value of their groundfish and halibut landings, whether they occur in Federal waters or in State waters in the parallel fishery. This approach explicitly excludes vessels fishing in the State managed groundfish fisheries in State waters from observer coverage requirements and associated fees under the restructured program, regardless of whether they have an FFP. NMFS does not have the authority to require observers on vessels that surrender their FFP and are fishing within State waters.

Section 2 also included an expanded discussion on the relationship between the research plan fee authority (fees for observer coverage) in Section 313 of the MSA and the LAPP cost recovery fees authorized in Section 304(d). In effect, any observer fees assessed under Section 313 must be credited against any fee for stationing observers or electronic monitoring systems and the actual cost of inputting

collected data to which a vessel or processor is subject under Section 304(d). One member noted that the text should be revised to clarify that these two fees are additive, just not for observer purposes.

The majority of the changes to the implementation plan are in Section 4 (Implementing a restructured Observer Program). NMFS presented a new table on the limitations of the use of fee proceeds (p. 17), which outlines the current and future tasks that necessitate funding (e.g., training and debriefing, managing collected data, observer deployment logistics, observer pay, etc.); whether NMFS has the authority to use the Section 313 fees to fund the specified task; and the intended source of funding (e.g., NMFS funding versus industry fees). Tom Meyer (NOAA GC) also presented a new section on the relationship between the Halibut Act and Section 313, concluding that it is not likely that the Halibut Act provides authority to place observers onboard groundfish vessels without FFPs or IFQ fishing in State waters, for the purpose of observing halibut bycatch.

Several changes were made to Section 4.1.2, on the ex-vessel value based fee system. NMFS provided additional information on establishing standardized prices and the potential use of the Commercial Operator's Annual Report (COAR) data to establish groundfish ex-vessel value prices. Changes also included: discussion on the potential to incorporate delivery condition to estimate standardized ex-vessel prices on which to base the fee for groundfish; further rationale for the 50:50 split in fee liability between shoreside plants and CVs delivering to shoreside plants; penalties that could be imposed for delinquent fee payments; information on State fisheries taxes and how it compares to the proposed observer ex-vessel value fee derivation and collection process; and the approach to calculate a daily fee under Alternative 4.

Additional changes were also made to Section 4.3 (Sample design and observer deployment). NMFS updated the committee on progress on the continued division of the <100% stratum, by identifying groups/sectors that have similar properties. NMFS has analyzed 2008 data and will evaluate other years to see if patterns are consistent. NMFS has not developed a size threshold for small vessels that may be prohibitive in placing observers on the vessels, but recognizes that it may not be possible to deploy at-sea observers on all vessels. The draft results of the <100% stratum analysis are currently being reviewed by Pacific States and NMFS AKR, and are not yet included in the revised implementation plan. NMFS also described progress on the vessel selection process and call-in system, having consulted with the Northwest groundfish observer program. This program samples at-sea discards instead of total catch, and they have a vessel selection process whereby the observer samples continuously on a vessel during a two-month period. Comparisons between the current North Pacific and Northwest programs were discussed.

A second analysis of bias in the current system (in both the GOA and BSAI) has been drafted and is undergoing internal review, but was not contained within the draft implementation plan. Results may be provided as an appendix to the June analysis, if requested by the Council. It was reiterated that a major objective of the restructured program is to establish an observer deployment method that facilitates the development of a design-based estimator of catch and discards. In this manner, the program will collect baseline data in year 1 that would allow for the calculation of variance estimates associated with catch data. Those variance estimates from the first year may be then subsequently used to target when and where NMFS needs lesser or greater coverage in subsequent years (i.e., optimization approach).

Section 4.3.6 (p. 46) was also added, which outlines the requirement for a USCG safety decal if a vessel is selected to carry an observer. One member noted that safety requirements for 50' vessels are likely to change (through legislation), and that there are many reasons vessels do not carry a safety decal. Further discussions were tabled until the afternoon.

Finally, Section 4.3.7 was added to discuss the proposed observer deployment in shoreside plants and on stationary floating processors. Similar to vessels, the strata for processing plants would be <100%

coverage and $\geq 100\%$ coverage. The rationale behind plant observer requirements differs between various fishery management programs, and this drives the need for 100% coverage levels. In sum, shoreside plants taking AFA and CDQ pollock deliveries are the only sectors proposed to comprise the $\geq 100\%$ percent stratum for shoreside operations. This is because an observer needs to be present 100% of the time the processor takes delivery of or processes groundfish from these fisheries. For pollock deliveries, the observer deployed on the vessel conducts a census of the offload for prohibited species. Vessel-specific catch estimates are necessary in the pollock fisheries because prohibited species catch limits are vessel-specific, and transferable among vessels. Because offloads can exceed 12 hours, a primary duty of the plant observer during pollock deliveries is to relieve the vessel observer monitoring the offload. In other fisheries, the primary plant observer duty is for compliance monitoring and biological information collection, thus 100% coverage is not required. It was also noted that, similar to previous restructuring efforts, processors would be responsible for collecting the catcher vessel's half of the ex-vessel value fee, and remitting the entire fee to NMFS. If a daily fee is employed (Alternative 4), all vessels and plants in the $\geq 100\%$ stratum would pay a daily fee directly to NMFS.

V. Discuss feedback and/or recommendations on the implementation plan

The committee focused on its most significant questions and concerns, and provided recommendations to further revise the implementation plan.

1. Halibut IFQ fishermen operating without an FFP in State waters

The OAC questioned whether the restructured program would cover halibut IFQ fishermen without an FFP in State waters. Staff responded that the initial assumption is yes; NMFS has the authority under Section 313 to assess a fee and put an observer on halibut vessels in State waters. Halibut fishermen are required to have a Federal IFQ permit, thus an FFP may not be necessary to assert that authority. NMFS noted that further discussion of this issue, as well as treatment of incidental catch associated with halibut landings on non-FFP vessels in State waters, will be included in the analysis. The committee was most concerned with potential loopholes with regard to observer coverage, on an area or sector basis.

2. Two issues related to establishing the ex-vessel value based fee

a) Increased retention requirements mandate some sectors to retain fish that they wouldn't otherwise, due to their low value. These sectors will be assessed a fee on these low value fish, as well as their target catch.

Some committee members noted that it was not fair to require (high) retention of certain species, and subsequently assess a fee on species that vessels would not otherwise have retained. It was noted that one of the basic principles is to assess a fee on the extraction of the resource, not necessarily on whether that fish was targeted or caught incidentally to a target species. In addition, if a species has a very low ex-vessel value, the lower price will serve to lower the average weighted price for that species. For example, cod destined for meal will have a lower price than cod destined for fillets. Staff agreed to provide an explanation of how the COAR data capture the different delivery conditions, resulting in a blended price. In effect, delivery conditions are reflected in the mean price for a species, but staff does not intend to include different delivery conditions in the standardized list of prices. If, after assessment, delivery condition appears to have a considerable impact on prices, it could be included in the list of prices.

However, note that delivery condition only indicates the status of the fish that are landed. For example whole fish/food (code 01), whole bait (code 02), bled only (code 03), landed discarded (code 99), etc. Because the delivery code does not distinguish between fish harvested as the target species and those harvested incidentally to the target, applying the delivery code may be of little benefit in determining price differences paid based on whether it is target harvest or incidental catch. Members of the committee used pollock as an example. The ex-vessel price of pollock delivered as incidental catch in the cod fishery may only have a price of \$0.01/lb, but in the directed pollock fishery it could exceed \$0.10/lb. Assuming

both products are delivered as ‘whole fish/food’, the delivery code alone would not distinguish between the two deliveries and they would be assigned the same average price. If incidentally harvested pollock is taken with a different gear type than directed pollock, it may be possible to distinguish the two types of landings in the COAR.

b) There is seeming inequity between the data used for the CV and CP sectors to determine the catch on which to assess an ex-vessel value fee. NMFS would use the weight landed shoreside for CVs, while using observer estimates of total catch for CPs.

Some members were concerned with this potential inequity, which is relevant only under Alternatives 2 and 5. For CVs, sector-wide at-sea discards are estimated based on rates derived from observer data collected across all vessels in the sector, thus, vessel specific discard rates are not available for CVs. At-sea discards are not required to be reported on fish tickets because the processor filling out the fish ticket does not always have first-hand knowledge of discards that occurred while the vessel was at-sea. All fish landed at the plant would be subject to the observer fee because plant discards can be determined by the processor. In order to calculate a total weight to be assessed a fee, an aggregate at-sea discard rate would have to be applied, which is not preferable because of the variability at the CV level. For CPs, the total observed catch are the best data available; the same data used to debit quotas. One member questioned whether self-reported landings production data could be used for CPs, in order to derive landings data (retained catch values) similar to CVs. Staff has indicated that they will further discuss available data sources. Staff will also attempt to estimate the aggregate difference in fees that would be collected if the CV were charged for at-sea discards. This estimate should be considered an academic exercise, as it is not possible to apply the fee difference at the individual CV level.

3. How might logistical concerns or limitations influence the sample design?

The committee suggested that NMFS observer program staff visit some fishing communities with small boat fleets in order to evaluate the logistical concerns with placing observers on these vessels. This information may feed into the sample design for the small boat and halibut sectors. The committee emphasized that the variability in size, operations, and area within these small boat sectors make a standardized sample design improbable. One member noted that not only is it logistically difficult, but adding an observer takes away from space designated for crew, and there may not be space to bunk an observer on overnight trips. One member related that it may be reasonable to determine that some segment of the fleet should not be required to carry observers. Another member noted that other programs and regions have extensive experience deploying observers on small boats (e.g., Alaska Marine Mammal Program), and the North Pacific observer program can learn from their experience.

Staff has noted that the current intent is not to wholly exempt a segment of the fleet based on vessel size, but some segments may have a different probability of having to carry an observer. In addition, the great majority of the catch in small boat fisheries is landed by a relatively small portion of the fleet – this is the population on which NMFS should focus. NMFS will continue to work on refining the <100% stratum, specifically with respect to the <60’ and halibut sectors. The practical reality of some of these issues is that it may force a change in sampling design (i.e., it may warrant accepting some increased variance). NMFS intends to meet with several halibut vessel representatives to discuss logistical concerns.

4. Payment of fees for deliveries that occur outside of Alaska

Committee members asked whether shoreside plants located outside of Alaska that receive deliveries from fisheries included in restructuring would be required to collect and remit observer fees to NMFS. Staff noted that in the original research plan, any processor receiving fish from research plan fisheries was required to collect and remit the fees. That authority extends to Washington and other U.S. ports, but not likely to international ports. Staff committed to adding discussion to the implementation plan describing this scope of this issue.

5. USCG safety regulations and the safety decal

Representatives of the halibut and small boat fleets expressed concern with the need to get a USCG safety decal prior to carrying an observer. Currently, while vessels must comply with USCG safety regulations, they are not required by the USCG to have a decal. The primary burden related to the safety decal is the difficulty in complying in a remote location, where it may take weeks or months to schedule the re-inspection by the USCG to prove compliance. Other concerns relate to the potential for increasing the threshold for safety regulations by adding another person (observer) to the vessel. One member noted that in the Alaska Marine Mammal Program, the USCG provided inspections and decals to small skiffs, with adjusted safety requirements. This member reported that the USCG was very efficient at providing inspections in small, remote villages.

6. Hybrid issues – vessels that have trips that cross over between Gulf and BSAI

The discussion highlighted that these issues may need to be further explored in the implementation plan. Staff undertook a preliminary evaluation and found that about 1% of the total catcher vessel trips crossed areas in 2008. The committee questioned how many individual vessels that included, and whether there are logistical concerns for vessels that operate in two areas under two different fee programs. Several members expressed that it does not appear to be a significant issue, and separate fee programs by area are only applicable under Alternative 2. Staff committed to providing further discussion in the analysis.

7. Timeline for contracting process & the advantages/disadvantages of the contract approach

Observer providers asked about the timing of the task orders that would result after the contract is awarded. NMFS related that they can issue task orders the same day the contract is issued, under the proposed ID/IQ contracting system. Observer providers cautioned against establishing task orders of short duration (e.g., one year), as they require significant time and effort to prepare and bid on contracts. NMFS also noted that it is not preferable to award such a sizeable contract to only one provider, but it is not possible to speculate on the number of contracts until the scope of the restructured program is determined. NMFS would attempt to reduce risk by using more than one provider.

One member mentioned that in some other observer programs, the providers determine the logistics of observer deployment and that this is one aspect of the proposals used to determine contract award. Concern was expressed that detailed discussion and decisions of logistics in the Council and regulatory process would result in all providers submitting similar proposals leaving nothing to differentiate them when determining contract award.

One member also related that while the advantages of the contracting system are well described in the implementation plan, the primary disadvantage is the increased industry cost of changing the service delivery model and invoking the Service Contract Act. In addition, any mandated coverage levels (100% or 200%) will take priority for coverage generated by a fixed funding pool; thus, high coverage levels may come at the expense of coverage in the remaining (<100%) fleets. These cost/benefit issues will be the focus of the regulatory impact review in the analysis.

8. Transmission of observer data

One member emphasized that, while not directly related to restructuring, it is important to enter observer data into the NORPAC system on a timely basis. In a short fishery, and/or one that is PSC-limited, observer information needs to be available as soon as possible. Examples noted were the GOA shoreside fleets (with the exception of the rockfish pilot program), in which observer data is faxed to NMFS and the data is manually entered. On virtually all CPs, the observer enters data while onboard the vessel and it is transmitted directly to NMFS. It was recommended that NMFS work toward a more uniform electronic data system, with observers trained to submit information quickly. NMFS noted that agency control over all of the hardware (e.g., observers having their own laptops) would provide more consistency.

9. Is there a formal mechanism by which the Council can provide input on which tasks/activities can be funded by industry fees?

NMFS presented a table which outlines the tasks or activities associated with the observer program for which NMFS has the authority to use industry fees, and whether NMFS intends to use industry fees to cover those tasks. NOAA GC reviewed this list, and it is based upon an interpretation of the broad authority granted in the MSA, to be able to use industry fees for stationing observers and inputting collected data, or toward other costs directly incurred in carrying out the plan. Members were concerned that even if the Council agreed with the list of tasks that NMFS intends to fund in a restructured program, NMFS could modify that list in the future without consultation with the Council.

As NMFS has the authority to modify the list of tasks as determined necessary without Council action, it is important for the Council to build a record and provide statements of intent such that high levels of NMFS management support the original approach. The agency typically consults the Council on major decisionmaking, but the Council cannot drive budget decisions. One option would be for the Council to request that NMFS provide a periodic report, outlining how fee monies are disbursed.

10. Enforcement issues

The committee discussed whether enforcement tasks/costs needed to be added to Table 2, as several of the alternatives may require increased enforcement (e.g., fee collection; increasing observer coverage into segments of the fleet that have not previously been covered; administrative costs). Staff noted that the agency costs of each alternative, including enforcement, would be a separate section in the analysis. NMFS would most likely have to fund increased enforcement costs, as opposed to using the industry fee.

11. Does NMFS have hot-spot observer coverage authority under the current program?

The OAC asked whether NMFS currently has ‘hot-spot’ authority to place observers on specific vessels if necessary. Current regulations at 50 CFR 679.50 provide the Regional Administrator with this authority, for vessels and processors that are already required to have observer coverage under the current regulations. Thus, this authority does not extend to the halibut sector or <60’ groundfish sector. Members noted that if Federal funding was available, the RA could increase observer coverage on the Gulf 30% fleets. A blanket increase in observer coverage levels does not meet all of the data quality objectives of restructuring, however, as coverage still would not follow a scientifically based sampling plan, with a vessel selection process designed to reduce bias.

The public was also provided an opportunity for comment at the meeting. Several members of the halibut sector discussed the need for alternative processes for vessels that are not suited to carry observers, as well as the concern with obtaining a safety decal prior to carrying an observer. One member noted that NMFS should be cognizant of the actual safety requirements that the decal represents on small boats. The public also endorsed community outreach prior to implementation, such that fleets could provide input necessary to the agency. One member related that his fleet was concerned about further consolidation within the halibut fleet, if vessel owners find it is too costly to carry an observer.

V. Scheduling and other issues

The committee reviewed the timeline for implementation (Section 6 of the implementation plan), which details the Council, rulemaking, and contracting timeline associated with observer restructuring. Council initial review of the overall analysis, of which the implementation plan will become a part, is tentatively scheduled for June 2010. Council final action is tentatively scheduled for October 2010, with the associated rulemaking developed through 2011. Contract development for a contract of this projected scope is about two years to completion, with the potential implementation of a newly restructured observer program in 2013. A key issue for the implementation schedule will be determining when start-up funds will be available to initiate contract task orders.

The OAC recommended convening again in late May 2010 to review the initial review draft analysis, prior to the Council's review in June. The committee noted that fleshing out issues early in the analytical process would increase the likelihood of having final action in late 2010.