

**Observer Advisory Committee Report  
March 17, 2008**

Alaska Fisheries Science Center  
7600 Sand Point Way, NE, Seattle  
Building 4, Room 1055  
8:30 am – 4:30 pm

**Committee present:** Joe Kyle (Chair), Bob Alverson, Christian Asay, Jerry Bongen, Julie Bonney, Kathy Robinson, Paul MacGregor (by phone)

**Committee not present:** Todd Loomis, Tracey Mayhew, Brent Paine, Pete Risse, Thorn Smith

**Staff:** NPFMC – Chris Oliver, Nicole Kimball  
NMFS/AFSC – Martin Loefflad, Bill Karp, Bob Maier, Jennifer Ferdinand, Allison Barns, Lisa Thompson, Jennifer Calahan, Craig Faunce, Jerry Berger  
NMFS AK Region – Sally Bibb, Jennifer Hogan  
NOAA GC – Tom Meyer  
NOAA Office for Law Enforcement (Alaska Division) – Mike Adams, Nathan Lagerway

**Other participants:** Jan Jacobs, Michael Lake, Diana Starr, Lori Swanson, Ed Richardson, Stefanie Moreland, Troy Quinlan, Everette Anderson

**AGENDA**

- I. Review and approve agenda
- II. Review of observer data: 2004 – 2006 total catch, observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length (Jennifer Hogan, NMFS)
- III. Review analysis and provide recommendations on proposed regulatory changes to North Pacific Groundfish Observer Program
- IV. Scheduling & other issues

**SUMMARY OF OAC RECOMMENDATIONS**

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

- Issue 1: Alternative 2
- Issue 2: Alternative 2, Option 1 (72 hours)
- Issue 3: Alternative 2
- Issue 4: Alternative 2, Option 1
- Issue 5: Alternative 4. The committee also recommended Option 1 and Option 2 with revisions. Option 1 would be revised to state: "Limit the submittal of economic data to every third year." Option 2 would be revised to state: "Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider, or working for an existing observer provider, in the North Pacific."
- Issue 6: Alternative 1
- Issue 7: Alternative 2

The committee also recommended:

- With regard to the observer data request, the committee recommends breaking out the GOA and AI Pacific cod State fisheries from the Federal (including parallel) fisheries data. The committee also recommended showing the Central, Western and Eastern Gulf subtotals in Table 1 on p. 11.
- The committee recommends the Council send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the Fair Labor Standards Act (FLSA) and Service Contract Act, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.
- The OAC would like to convene in the future to re-evaluate the problem statement and objectives from the June 2006 observer program restructuring analysis, in order to explore whether some of the problems particular to the GOA fisheries can be resolved through regulatory measures as opposed to comprehensive restructuring.

### **I. Review and approve agenda**

The committee approved the agenda with one addition. Julie Bonney proposed adding a discussion about whether the quality of the observer data in the Gulf of Alaska (GOA) is sufficient to use for the type and level of extrapolations currently necessary in the catch accounting system, and whether any changes can be made under the current service delivery model that would improve the status quo. This item was added to the end of the agenda.

### **II. Review of observer data: 2004 – 2006 total catch, observed catch, and percent observed catch by area, harvest sector, gear type, trip target fishery, and vessel length**

The committee received a presentation from Jennifer Hogan (NMFS AKR) on updated data showing the effective annual rate of observer coverage in various target fisheries, areas, and sectors. The data tables presented were in response to a request from the OAC in May 2007. NMFS presented the percent observed catch in the Alaska groundfish fisheries from 2004 – 2006, specifying that the observer data included both sampled and unsampled hauls from when an observer was onboard the vessel. The total catch data was from the NMFS catch accounting database.

Jennifer presented background information on the sources of the data, including the databases used to estimate total catch for each vessel type. If a catcher/processor or mothership was 100% or 200% observed, observer data were used to estimate total catch; if the catcher/processor had 30% coverage requirements, WPR data were used for retained catch and observer data for at-sea discards. For catcher vessels delivering shoreside, ADF&G fish tickets were used for retained catch and observer data were used to estimate at-sea discards; if delivering unsorted catch to motherships, observer data were used. Jennifer also discussed how trip targets are assigned (based on a retained amount of groundfish on a weekly basis for CPs and motherships and a trip basis for CVs delivering shoreside), and how it is possible for trip targets to be mismatched between WPR and observer data. Production data often lags behind observer data, which can affect the derived target.

The committee highlighted the utility of the data as a standalone product. While it does not feed directly into the analysis being considered by the Council in April, it is comprehensive background information that the agency intends to update annually.

The committee clarified that the GOA harvest in the data tables includes State fisheries (e.g., Pacific cod). Including the State water Pacific cod fishery (which does not have observer requirements) within the Federal fishery harvest totals underestimates the effective coverage rate in the Federal fisheries, particularly in the Gulf pot cod fishery. **The committee recommended breaking out the GOA and AI**

**Pacific cod State fisheries from the Federal (including parallel) fisheries data in order to see the effective coverage rate in the Federal fisheries. The committee also recommended adding the Central, Western, and Eastern Gulf subtotals in Table 1 on p. 11.**

It was also noted that there is no observer coverage in the directed halibut fishery. There is an effort by the IPHC and NMFS to look at the use of video in the hook-and-line halibut fleet through an NPRB study this summer.

The committee also discussed examples in Gulf trawl fisheries in which an increasingly large component of the catch is being harvested by <60' vessels, which are not subject to observer coverage requirements. This feeds into the extrapolation issues of concern to members. In the Gulf, the majority of the observer data is generated by the 30% fleet (reference Table 6, p. 14). These data are relatively sensitive and can be greatly influenced by the level of extrapolation that occurs for both the unobserved fleet and unsampled hauls of the observed fleet. The recent example cited was one observed trip that took one tow, resulting in one Chinook salmon caught in a 22 pound groundfish tow. The observer was dropped off and the vessel resumed fishing, which resulted in that one salmon being extrapolated across all pollock targets for an estimate of 21,000 Chinook.

A committee member noted that the above example highlights not only concerns with extrapolations, but that more unrepresentative fishing occurs under the current service delivery model as vessels try to control their observer costs by making 'observer tows' to meet coverage requirements. This behavior would be curtailed under a new service delivery model which would replace the current regulatory framework of observer requirements based on vessel length with a fee system in which NMFS determines when and where an observer would be placed. It was also noted that a relatively small amount of Federal funding could go a long way toward improving data quality in the Gulf, by placing observers on some of the unobserved fleet. However, this effort would not address the disproportionate cost issues that are also of concern in the Gulf.

In sum, the committee noted that on the whole, the data presented show that the fisheries with 30% coverage requirements (which are primarily in the Gulf) are obtaining about 30% coverage rates. Thus, there is relatively consistent compliance with the 30% requirement. What the data do not show is how representative that data is on a temporal or spatial basis, and how sensitive it is. Thus, one must be aware that the macro data masks some underlying issues in specific sectors, including how much of the catch is actually sampled by an observer. The committee discussed two major issues that create data gaps (which exacerbate the extrapolation issues) most notably in the Gulf: 1) the unobserved <60' sector; and 2) 30% coverage may not be representative on a temporal or spatial basis. The committee agreed that the issue of the unobserved sector could be resolved through a regulatory change, but that concern with the 30% sector could likely most effectively be resolved through a change to the service delivery model, under which NMFS would decide where and when to place observers based on a statistical sampling plan.

Martin Loefflad (AFSC, Director of FMA) provided a brief update on a request to HQ for cost analyses to inform the overall cost estimates that may result from a change to a NMFS-contracted observer program. This analysis of existing contracts (awarded contracts and bids that were not awarded) is intended to provide an overview of what other regions are paying for observer services. Combined with the current Service Contract Act (SCA) wage determinations from the Department of Labor, analysts may be in a better position to estimate costs based on a number of hours per day (e.g., 12, 16, 18 hours/day).

**Given the discussions relative to observer restructuring, and the cost estimates necessary to develop an analysis, the committee recommended the Council send another letter to NOAA HQ: 1) urging resolution of the outstanding observer compensation issues with regard to the Fair Labor Standards Act and Service Contract Act, and 2) to re-evaluate its policy determination that North Pacific observers should be classified as technicians rather than professionals under the FLSA.**

The OAC also discussed whether some of the current problems identified in the GOA could be mitigated through management measures (regulatory changes), given the previously unsuccessful attempts to change the service delivery model for the entire program. **The OAC would like to convene in the future to re-evaluate the problem statement and objectives from the June 2006 observer program restructuring analysis, in order to explore whether some of the problems particular to the GOA fisheries can be resolved through regulatory measures as opposed to comprehensive restructuring.**

### **III. Review analysis and provide recommendations on proposed regulatory changes to North Pacific Groundfish Observer Program**

The committee received a presentation on the public review draft analysis of proposed regulatory changes to the Observer Program from Nicole Kimball (NPFMC). The following sections represent committee discussion and recommendations on each issue analyzed in the amendment package.

#### Issue 1: Observer certification and observer provider permitting appeals processes

The committee questioned whether a current contractor that loses their permit and needs to reinitiate the process to receive a new permit would be granted an appeals process if the new permit is denied. Staff responded that the appeals process would be removed from the regulations for all observer providers that are denied a new permit. However, this issue does not affect the appeals process available to existing permitted providers, should their current permit be sanctioned. The committee agreed with the rationale for removing an appeals process that is not required by law. The committee supports Alternative 2.

#### Issue 2: Observer conduct

This issue was primarily discussed by the three observer providers represented at the meeting (i.e., AOI, Saltwater, and TechSea). The committee agreed that observer conduct relative to drugs, alcohol, and physical sexual contact with vessel or processing facility employees is more appropriately addressed through the employee/employer relationship. In addition, all providers currently have policies addressing such behaviors in their current observer contracts. The OAC generally agreed that NMFS needs to continue to be notified in the case that there is a breach of the providers' policies on drugs, alcohol, and sexual contact, so that the agency is aware of any potential effects on data quality or can use the information as mitigating circumstances in an enforcement case. The providers agreed that a longer notification period is preferred, so there is sufficient time to obtain correct information. It was noted that notification under the proposed regulation would be similar to that under existing regulations for other issues (e.g., harassment, safety issues, etc). Contractors provide the best information they have at the time, and often follow up with clarifying details if necessary. The committee recommends Alternative 2, Option 1 (72 hour notification period).

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

The committee agreed that regulatory language that clarifies that observer providers are allowed to supply observers and scientific data collectors for the purpose of exempted fishing permits (EFPs) and scientific research permits (SRPs) is necessary. This would clarify the approach taken to supply these services. The committee understood there were no changes proposed to the 90-day cruise limit and 4 vessel limit prior to debriefing.

The committee's primary question was whether the language proposed under Alternative 2 was broad enough to encompass other scientific and research activities. The observer providers gave several examples of potential scenarios in which they may receive a request for an observer or scientific data collector for research that is not formally approved by NMFS, but is sponsored by a university, commission, or industry. Providers did not want the language to preclude providing observers for these types of activities.

The committee discussed whether the language used in Alternative 2 that allows observer providers to provide “scientific data collector and observer services to support NMFS approved scientific research or experimental fisheries as defined under 50 CFR 600.10,” limits these other activities that are outside of NMFS’ purview. There was some discussion about whether a letter from NMFS would suffice to meet the intent of “NMFS approved” research for the types of activities that fall outside of 600.10, understanding that the regulations would then remain unclear about some activities, requiring NMFS to make subjective decisions on a case by case basis.

Staff responded that Alternative 2 was intended simply to clarify an observer provider’s ability to provide observers for exempted and scientific research activities as defined in Section 600.10.<sup>1</sup> NMFS suggested that the regulatory text proposed under Alternative 2 could be revised to be clear that the activities being added to the list of things that do not present a direct financial interest are only those SRP or exempted activities specifically defined under 600.10 and not any type of scientific or experimental activity. The majority of the activity to date has been under SRPs or EFPs, which is why the alternative was developed to address those specific activities.

The committee agreed Alternative 2 clarifies that these types of activities are allowed, and it is preferable to the status quo, even if some activities may remain in question and require further discussion with NMFS. The committee supports Alternative 2.

#### Issue 4: Fishing day definition

The committee discussed Issue 4 at length, including exploring other options that may better close the loophole in existing 30% coverage regulations. Most members agreed that the problem has a negative effect on data quality, often at a time high quality data is most needed (e.g., near the end of the fishery). Many 30% vessels take observers at the beginning of the fishery, in order to ensure they meet their coverage requirements before the fishery closes (at a future uncertain date). This means that in the 30% fleet, a relatively substantial amount of observer data are available at the beginning of the fishery, and data taper off toward the end of the fishery. Thus, a relatively small amount of observer data at the end of the fishery can greatly influence both the total catch and PSC estimates, which in turn influences fishery closures. At times these data may also extend a fishery, thus, one may see a peak in observer data at the end of the fishery as vessels suddenly need more coverage due to the unexpectedly longer season.

The committee also agreed that no regulatory option would completely resolve the problem of observer tows/sets within the 30% sector, but that Alternative 2 would serve to mitigate strategic behavior to some extent as vessels would need to carry an observer for the entire fishing day (any fishing time in a 24-hour period) in order for it to count as an observer coverage day.

In addition, Option 1 appears to improve Alternative 2. Option 1 would change the 24-hour period definition of a fishing day to noon to noon (from midnight to midnight). Because most fisheries open and close at noon, changing the definition to noon to noon removes the ability to receive an entire coverage day by carrying an observer on the fringes of short pulse openings. In addition, the best fishing occurs during daylight hours, so there is a greater likelihood that vessels may forego strategic behavior in order to maximize fishing time and revenue. The committee questioned whether the observer providers would revise their fee schedule to match the definition of an observer coverage fishing day under Option 1.

The committee also discussed a suggestion to include a restriction such that one may not receive more than one day’s worth of observer coverage in any calendar day under Option 1. While the proposal appeared to have some merit, it was confusing to some members to define a fishing day (noon to noon) differently than you would an observer coverage day (calendar day, midnight to midnight). In addition,

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<sup>1</sup>NMFS approved activities defined under 50 CFR 600.10 include: scientific research activities; exempted educational activities; and exempted or experimental fisheries.

some members were concerned with the increase in costs over and above the costs assumed under Alternative 2, Option 1. In general, Option 1 would prevent a vessel from being able to obtain three days of observer coverage in any period slightly exceeding 24 hours. A vessel could obtain a maximum of two days of observer coverage in any period slightly exceeding 24 hours. The committee noted that while data quality could increase, costs will increase for both vessels trying to manipulate the system and those that are not, as vessels must carry an observer longer in order to receive the same number of coverage days they could earn under the status quo.

The committee ultimately agreed that Alternative 2, Option 1 is the preferred alternative. The alternative could serve to modify behavior, as vessels may not risk their ideal fishing time during daylight hours by fishing solely for observer coverage. In addition, a vessel could not obtain more than two days of coverage in a 48-hour period, and an observer would need to be present for all gear retrievals in a 24-hour period in order to receive an observer coverage day. The committee thought that this would result in more full calendar days (and fewer partial days) with an observer onboard, and that observer data could be more temporally representative. The committee noted that while the fleet continues to be responsible for ensuring they meet coverage requirements, the observer providers currently assist vessels in planning to meet those requirements. It may be more difficult for providers to help individual vessels plan under Alternative 2, because providers will not know if vessels return to fishing (without an observer) in the same 24-hour period, thus negating the observer coverage day.

#### Issue 5: Economic Data Collection

The committee reviewed the suite of four alternatives proposed under Issue 5, recognizing that each action alternative varies in the cost and time required for observer providers to comply with data collection. Alternative 4 is the least burdensome to observer providers, as it only requires providers to submit copies of actual invoices to NMFS. The listed information required in the invoices under Alternative 4 is common to the existing invoices. Alternatives 2 and 3 would require providers to compile, sort, and summarize their cost data differently than they do now, in addition to requiring cost data that some providers do not currently account for separately.

The agency reiterated its desire to collect this information, in order to inform analyses regarding the cost components of the industry-funded portion of the observer program. Past analyses have used \$355/day as an ‘average’ daily rate, which does not account for the wide variability in the different fishery sectors’ observer costs nor does it allow analysts to differentiate between sectors. It was noted that the disadvantage to Alternative 4 is that it would not allow analysts to determine fixed costs versus variable costs, overhead versus travel, etc. But because Alternative 4 allows NMFS to easily verify the data provided are accurate and allows the agency to sort raw data to suit its purposes on a case by case basis, NMFS noted its general support for Alternative 4.

The committee noted that #7 listed under what is required in invoices submitted under Alternative 4 (“any specified ‘other’ costs not included above”) may need to be removed. It was intended as a ‘catch-all’ such that observer providers would not feel they had to remove items from an invoice that were not specifically listed under Alternative 4. Because the introductory language states that invoices *must* contain the following information, staff agreed that #7 spurs confusion and should be removed.

None of the three providers present at the meeting voiced concerns with the ability to submit invoices under Alternative 4. The primary concern was related to the use of the data submitted, and whether it would remain confidential. One observer provider noted that industry invoices are not protected information currently. However, due to concerns with a previous contractor to NMFS with access to the providers’ business information then entering the business as a competitor, the committee endorsed Option 2. Option 2 would disallow a person that received this confidential information as a contractor to NMFS to become a permitted observer provider in the North Pacific. The committee recommended that Option 2 be revised to also disallow an individual to work for an existing observer provider. Staff noted

that this would only apply to individuals/companies under contract with the agency or Council, as agency and Council staff have different restrictions.

The committee also discussed relaxing the requirement to submit cost data on an annual basis. Option 1 as currently written would limit the collection of these data to a total of three years. Given the limited utility of collecting only three years' worth of data, the committee recommended revising Option 1 to require that the data only be submitted every third year. In effect, observer providers would not be required to submit data for each year of operation; they would be required to submit cost data every third year.

#### Issue 6: Completion of the fishing year

The committee reviewed the analysis and noted that upon further review, the analysts determined that it is not necessary to establish a cutoff date by which observers who collect fishing data that span two years must return for debriefing (Alternative 2). Consultation with the primary internal agency users of the data prompted this conclusion, noting that completion of the annual observer data set will continue to be delayed until all observer data is submitted, which could be as late as the end of March of the following year. The cost tradeoff to industry in artificially shortened fishing trips was sufficient rationale not to support Alternative 2. NMFS is recommending Alternative 1 (no action) under this issue. The committee also supports Alternative 1.

#### Issue 7: Miscellaneous modifications

The committee did not identify any problems with making the proposed changes that clarify regulations or revise inaccuracies (i.e., housekeeping issues). The committee recommends Alternative 2.

### **IV. Scheduling & other issues**

The committee also addressed the issue added to the agenda: whether the quality of the observer data in the GOA is sufficient to use for the type and level of extrapolations currently necessary in the catch accounting system, and whether any changes can be made under the current service delivery model that would improve the status quo. One member noted that there is a need for a more statistically robust system in the GOA, since it is not nearly as data-rich as the Bering Sea. Given the large unobserved fleet and 30% fleet in the GOA, the data is sparse enough to be very sensitive to only a few observer reports, which can create a relatively variable fishery and reduces the ability of vessels to plan for their coverage.

One of the examples a committee member related was in the WGOA, where there is not a trawl vessel over 60' participating in a specific target fishery that can carry an observer. In this situation, extrapolating from the CGOA to the WGOA results in a perceived overestimate of halibut PSC. In addition, more of the GOA catch is being harvested by the unobserved <60' fleet (e.g., trawl cod), many vessels of which can pack more and are more efficient than much of the >60' – 125' fleet. While the majority of this discussion occurred under agenda item II, the committee further discussed the suggestion of using a different algorithm in the GOA to extrapolate data across fisheries, potentially weighting observer reports at the end of the season less than those at the beginning of the season.

Martin Loefflad related that the Observer Program is currently working with the Alaska region to develop a contract that would evaluate ways to incorporate some statistical estimators into the catch accounting system. The intent is to capture the level of error around the existing point estimates (catch and PSC estimates), which becomes more necessary as we ask NMFS to manage increasingly fine levels of sector allocations and bycatch caps. When completed, this report will be available to the public.