

**Observer Advisory Committee – Meeting Report
May 25 - 26, 2010**

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Traynor Conference Room
8:30 am – 4:30 pm (Thurs); 8:30 am – 12:30 pm (Fri)

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

Council and NMFS Staff: Nicole Kimball (NPFMC), Martin Loefflad (AFSC), Craig Faunce (AFSC), Sue Salvesson (AKR), Chris Oliver (NPFMC), Tom Meyer (NOAA GC), Patti Nelson (AFSC), Darrell Brannan (NPFMC, consultant), Bob Maier (AFSC), Doug DeMaster (AFSC).

Other participants: Jason Anderson (Best Use Cooperative), Dave Benson, Karla Bush (ADF&G), Tom Casey, Tim Carroll (Saltwater, Inc.), Ruth Christiansen (ADF&G), Ruth Finch (Freezer Longline Coalition), John Gauvin, Stacey Hansen (NWO, Inc.), Jan Jacobs (American Seafoods), Stefanie Moreland (ADF&G), Peggy Parker (Halibut Association of North America), Glenn Reed (PSPA), Mary Schwenzfeier (ADF&G), Troy Quinlan (Techsea International), Gregg Williams (IPHC), Dave Wood (U.S. Seafoods).

Agenda

- I. Review and approve agenda
- II. Update on status of observer regulatory packages
- III. Review February 2010 Council action
- IV. Update on outreach meetings with small boat/halibut sectors
- V. Review initial review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)
- VI. Discuss feedback and/or recommendations on the analysis
- VII. Scheduling and other issues

I. Review and approve agenda

Introductions were made, and the agenda was approved. Staff outlined the schedule for the analysis and confirmed that the purpose of the meeting is to provide feedback to the Council on the initial review draft analysis for the June 2010 Council meeting, including any new data requests, additional analysis, revisions to the approach, etc.

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 was 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, and the final rule is in regional review with

NOAA GC. NMFS expects publication of the final rule in late June, with the effective date likely in the fall. One committee member noted that because the rule includes changes to the definition of a fishing day (30% coverage by quarter), an effective date at the beginning of a quarter would be preferable.

III. Review February 2010 Council action

Staff reviewed the February 2010 Council action, in which the Council reviewed a revised version of the implementation plan for restructuring and the January 2010 OAC report. While a formal motion was not determined necessary, the Council concurred with OAC recommendations regarding further development of the implementation issues for June, recognizing that the next iteration of the implementation plan would be provided as part of the initial review draft analysis. The Council also recommended that the upcoming analysis provide information such that the public and Council can understand the implications of excluding vessels with FFPs participating in State-managed, State water fisheries from the Federal observer restructuring plan. In addition, the Council encouraged NMFS to conduct outreach meetings in coastal communities, specifically with members of the halibut and small boat sectors, in order to help inform the sample design, vessel selection process, and logistical issues related to deploying observers in those sectors. NMFS conducted outreach meetings in March and April, and provided a progress report to the Council at its April meeting (see agenda item IV). In February, the Council also directed the OAC to convene and provide feedback on the initial review analysis, prior to the Council's review in June 2010.

IV. Update on outreach meetings with small boat/halibut sectors (March/April 2010)

Martin Loefflad (AFSC) provided an overview of several outreach meetings conducted with various fishing associations in Seattle and Alaska. The organizers and locations of the outreach meetings include: Fishing Vessel Owners Association in Seattle; United Fishermen of Alaska in Juneau; the Alaska Longline Fishermen's Association in Sitka, the Petersburg Vessel Owners Association in Petersburg; K-Bay Fisheries and the North Pacific Fisheries Association in Homer; and several organizations (Alaska Groundfish Data Bank, Alaska Marine Conservation Council, and United Fishermen's Marketing Association) in Kodiak. Martin also noted that there is interest in outreach in Alaska Peninsula communities, but further in the process.

Martin provided an overview of the primary categories of questions and comments received: fee issues; the rationale for observer coverage; feasibility of deploying observers in various sectors; and the implementation and logistics associated with the proposed program as a whole. The AFSC committed to responding to several of these concerns in the initial review draft analysis.

Bill Tweit questioned whether committee members attending the outreach meetings heard any feedback from the community on their effectiveness. One member noted that the Kodiak meeting served to reduce confusion over the proposed action, and it was especially worthwhile for the small boat fleet, which has not had observer coverage requirements in the past. Participants appeared more receptive to working within the process to help develop a program that would work for their sector. Most participants provided input on deployment logistical issues specific to their sectors, and highlighted the differences among various fleets within the same port. The IFQ fleet emphasized the need for accommodations for small boats and the variability within the IFQ sector. One member stated that it was important for the larger vessels to have their input solicited prior to Council action. In sum, regardless of whether participants agreed with the proposed action, members confirmed that the outreach meetings were useful and clarified many outstanding questions.

V. Review initial review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (i.e., restructuring)

NMFS and Council staff (Nicole Kimball, Darrell Brannan, Bob Maier, Martin Loefflad, Craig Faunce) provided a detailed presentation of the initial review draft analysis, focused primarily on the economic impact analysis in the Regulatory Impact Review (Chapter 2); start-up funding (Chapter 3); and changes to the sample design and deployment logistics (Chapter 3). The committee limited its discussion on the first day to brief statements and clarifying questions, with the intent to have more in-depth discussion and develop recommendations the following day (agenda item VI).

Chapter 1 outlined the layout of the analysis. Staff then presented **Chapter 2 (RIR)**, starting with the purpose and need for action, problem statement, and the proposed alternatives. Staff presented the primary analytical assumptions, including the scope of the action (i.e., which fisheries/sectors are included in restructuring). As part of the assumptions, the committee reviewed a revised section on the limited authority of NMFS to place observers (and assess a fee) on vessels in State waters, and data on the number of vessels and amount of groundfish that would be excluded from the restructured program because they are fishing State managed (GHL) fisheries in State waters. Staff also reviewed the legal guidance surrounding many of the issues associated with the language in the Magnuson Stevens Act that grants the authority to restructure the observer program such that NMFS: contracts directly with observer providers for observer services; has control over when and where observers are deployed, based on a scientifically valid sample design; and pays for such a program through a fee system.

The next significant section presented was Section 2.9, which outlines the two types of fees proposed under restructuring: a daily fee that represents actual costs and an ex-vessel value based fee (maximum 2%). This section also outlines the estimates of the existing cost of an observer day under the status quo. Staff presented the numerous assumptions and methods associated with the ex-vessel value based fee, including the strengths and weaknesses of the available data sources for landings and prices, and the methods used to establish standardized ex-vessel prices (by species, gear type, and port/area) to apply to landings in order to determine fee amounts. This section also outlines the impact of a two-year time lag in the groundfish price data (Commercial Operator's Annual Report, or COAR), which represents the best available information without requiring additional industry reporting. Staff also presented the effects of using a 3-, 5-, or 7-year rolling average price in order to reduce the annual variation in prices.

The OAC had several clarifying questions on the development of and need for standardized prices. One member questioned whether the agency should simplify the process and use the State landings tax list of standardized prices. The State of Alaska uses the COAR data to establish a statewide average price for each species and compares it to the data reported by businesses on their tax forms. Discussion ensued regarding the disadvantages of such an approach, even though the primary data source (COAR) is the same as that proposed in the restructuring analysis. The State of Alaska assesses the landing tax based on a statewide price by species, as opposed to a more refined price by area/port/gear type. In addition, only CPs and floating processors are assessed the State landing tax; thus, standardized prices are not currently developed for, or apply to, CV landings.

The committee also discussed the details of the fee remittal process (e.g., how would the processor know the fee amount to submit to NMFS?). Because the fee percentage and the list of standardized prices would be established, at the time of landing each operation should know its fee assessment (e.g., 1% of landings based on \$5/lb). It was noted that fee liability would be automated through eLandings, which spurred questions about whether there are processors (registered halibut buyers) that do not use eLandings. The committee also asked several questions about the level of aggregation of the price data, with regard to species and species complexes, gear types, area/port, and disposition codes. A member of the CP sector

also asked about the impacts of including discards in the total catch on which a fee is assessed for CPs. Staff responded that because discards receive a 'zero' price, but are counted in the metric tons on which the fee is assessed, it serves to lower the overall price for that species. So while it does not affect how much revenue is generated by the fee, it does have distributional impacts within a sector (i.e., affects the overall average price for that species and gear type).

As part of this discussion, staff presented its estimates of the daily observer cost under the status quo system (\$366/day) and the daily fee under Alternative 4 of the restructured system in which NMFS contracts directly with observer providers (\$450/day). The calculations to determine these estimates are detailed in Appendix 6. The committee requested that staff add discussion in the analysis about how a wage increase for observers in one area (e.g., GOA) under a contracted system could affect the daily wage for observers that remain under the status quo (and potentially subject to a collective bargaining agreement). Observer providers noted that their overhead may also increase with higher wages. In response to questions, staff noted that the daily wage estimate of \$450/day under a contracted model is in the range of estimates developed for other regions currently operating under a similar model.

Upon presentation of the assumptions and methods used to determine the fee estimates, staff presented the cost to industry under the status quo (Alternative 1) compared to the various restructuring alternatives (Alternatives 2 – 5). The baseline for comparison under status quo is the 2008 fishing year. The average 2005 – 2008 price and catch data was used to estimate the ex-vessel fees under the action alternatives. The increase in total estimated (mean) observer costs to industry under the action alternatives ranges from \$5 million to \$8.3 million above the status quo (\$14.4 million annually). This section also provides the number of observer days that would be funded under each alternative, which ranges from an increase of 4,000 to 11,000 observer days¹ above the status quo (39,000 observer days).

AFSC staff presented **Chapter 3 (Implementation Issues)**, focusing on new information on start-up funding needs and changes to the sample design. The estimates of start-up funding (Section 3.1) are based on the assumption that Federal funding is not available to fund observer deployment, beyond what is currently provided to fund agency costs. The approach to collecting start-up funding is the same as was implemented under the Research Plan in 1995; fees would be collected from industry in the year prior to the implementation of a restructured program in order to fund year-1. Under a proposed 2% fee, in year-0, a vessel or processor would pay the difference between the 2% fee assessment and their actual year-0 observer costs under the status quo.

Staff provided a retrospective analysis to show the estimates of the 2% ex-vessel value fee, the revenue needed to fund observer costs for the restructured portion of the industry, and the estimated fee surplus on an annual basis. This analysis results in the estimated number of years required to acquire start-up funding under this approach, which ranges from 6 months under Alternatives 2 and 3, to 3.5 years under Alternative 4, to 10 years under Alternative 5 (Table 46). Committee members asked clarifying questions and expressed frustration that funding for observer coverage under new limited access privilege programs in the Northeast and Pacific (west coast) regions are 100% and 90% Federally funded, respectively.

Staff then provided an overview of the sample design section (Section 3.3), including an analysis of bias in the 2008 catcher vessel sectors (Appendix 8). The analysis shows that the deployment of observers in Alaska is non-random and that there is a significant deployment effect (i.e., the selection of trips to be observed under industry control are not representative of unobserved fishing trips). To a lesser extent, analyses also demonstrated that in some fisheries, an observer effect is also present (i.e., a change in fishing behavior by individual vessels was evident when they were observed compared to when they were not observed).

¹Based on the mean estimate of ex-vessel revenues 2005 – 2008.

Staff focused the presentation on changes to the proposed observer deployment in the sectors that require <100% coverage, particularly an analysis that guides further stratification within that stratum. Because the primary sample unit is the individual fishing trip, staff conducted an analysis of trips with similar total weights that could be identified by characteristics known before a trip begins (Appendix 9). At the request of the committee and public input, staff also evaluated landings data to determine whether there is a vessel size class below which onboard observers may not be required (Appendix 10). The result is a proposed further stratification in the <100% coverage category for the first year of the program: fixed gear catcher vessels $\geq 58'$ LOA and trawl catcher vessels would be subject to a call-in (trip) selection system; fixed gear catcher vessels $<40'$ to $<58'$ LOA would be subject to a vessel selection system (random approach to selecting a vessel to be observed for all fishing operations in a specified duration); and fixed gear catcher vessels $\leq 40'$ LOA, jig, and troll vessels would have no selection in the first year of the program. Staff noted that vessels in the 'no selection for one year' category are not exempt from the restructured program; they would be subject to the observer fee and NMFS would retain the authority to put an observer on the vessel if necessary. To maximize efficiency and the probability of success of the deployment of at-sea observers in a restructured program, for the first year at least, these vessels would expect to have zero probability of being selected to carry an observer.

The committee observed that the analysis supporting delineation between the vessel selection and trip selection systems resulted in a $<57.5'$ LOA criterion, but the sample design section proposed rounding to a $<58'$ LOA criterion (p. 121). Members recommended using the $<57.5'$ LOA criterion. Another member stated that vessel size categories are problematic in general, and establishing a new criterion for any purpose based on vessel length becomes confusing. Staff noted that the further stratification in the partial coverage stratum is not proposed to be in regulation and would be expected to change as new data become available.

A committee member representing the IFQ fishery expressed concern with the trip selection system and the potential for vessels to 'game the system.' If a vessel is selected to carry an observer, the permit holder can decide to fish his IFQ on another vessel that has not been selected for that trip or time period. He emphasized that selecting a vessel in the IFQ fishery to carry an observer should be based on the amount of IFQ pounds held by the permit holder and fished, not vessel length. Members also noted that the analysis should specify the duration expected under the vessel selection system (e.g., a month, a season, etc.)

Staff briefly reviewed the environmental assessment (**Chapter 4**) and the Initial Regulatory Flexibility Analysis (**Chapter 5**).

VI. Discuss feedback and/or recommendations on the analysis

Staff summarized the primary components of the analysis that were presented, and the committee focused its discussion and recommendations on significant issues.

One member of the CP sector requested a better explanation in the analysis of how an ex-vessel value fee (under Alternatives 2 and 5) would be applied to total catch for the CP sector, and the impact of including discards which receive a 'zero' price. Staff agreed to add this discussion to the analysis, outlined an example, and reiterated the reasons for using the same data (total catch, with discards derived from observer estimates) as is used for catch accounting and debiting quotas. Members also questioned how NMFS would determine an ex-vessel value price for CPs. Staff responded that if the species and gear are well represented in shoreside information, that price is applied to CPs. If not, the ex-vessel price is based on a fraction of the wholesale price (40% is used by NOAA in the Economic SAFE).

The committee also asked staff to clarify their assumptions in the situation in which a processor is under the pay-as-you-go (status quo) program and the CV delivering to it is subject to the ex-vessel value fee. Staff assumed that the processor would not pay twice for observer coverage: the processor would pay the daily rate under the status quo and the CV would pay half of the ex-vessel fee (e.g., 1% if the total fee is 2%). Members noted that this appears to be a policy decision, and that the Council and NMFS may want to charge the full 2% fee in this case, in order to provide additional resources to put toward monitoring in the plant. This situation would only arise if a CV in the partial coverage stratum (<100%) was delivering to a shoreside processor at a time it is in the full coverage stratum ($\geq 100\%$); the only processors in the full coverage stratum are those receiving pollock deliveries. Staff committed to providing discussion in the analysis outlining this assumption and the limited cases in which it may apply.

One committee member questioned whether the MSA mandates that NMFS fund shoreside plant observers through the fees authorized under Section 313. Staff responded that the MSA allows for different fees and fee systems to apply to various sectors, including shoreside processors. The Council could undergo a separate action in the future to exclude shoreside processors from the fee system, or it could change the current suite of alternatives to exclude shoreside processors (i.e., they would remain under pay-as-you-go). Staff noted that Council action in October 2009 explicitly included shoreside plants under all of the action alternatives, and the only shoreside plants in the full coverage stratum are those taking Bering Sea (AFA and CDQ) pollock deliveries.

The committee generally agreed with staff's recommended approach to aggregating price information in order to develop standardized prices. These include determining prices by: individual species, as opposed to species complex; fixed, pelagic trawl and non-pelagic trawl gear types; individual ports if possible and then by aggregating surrounding ports if necessary for confidentiality; and the weighted average of all delivery and disposition codes. One member also noted that ports like Sand Point and King Cove should be aggregated with Dutch Harbor and Akutan, as opposed to the Central Gulf, if individual port prices cannot be reported. Overall, the proposed approach increases the sensitivity of the price information compared to the Alaska Department of Revenue process.

The committee also discussed the potential use of a rolling average price as opposed to an annual price, in order to account for variability and volatility in the industry. Most members agree a 7-year rolling average is too long, but endorsed use of a rolling average to provide a level of predictability. Variations in the TAC are also a significant factor in creating stable revenues. If there is a relationship between price and quantity in some fisheries, a shorter rolling average (e.g., 3-year) responds more quickly.

Several committee members recommended that the analysis include 2009 data, as they reflect a much different scenario from the high prices of 2008. Staff committed to providing 2009 data where applicable in subsequent drafts, if it is available within the timeframe the Council establishes. The 2009 data are expected to be completed and available in the fall.

One member of the IFQ sector emphasized that using a trip selection process would not work in the IFQ fisheries, primarily because these vessels can choose when to fish under an IFQ system. He expressed that the IFQ sector should be selected for an observer based on the permit holder's IFQ poundage. In addition, he recommended mandating logbooks for the IFQ sector, so that NMFS could verify discard data eventually collected through the observer program. He also endorsed developing a pilot program for electronic monitoring. Staff concurred that it is difficult to correct for the observer effect; the primary objective of the new sample design is to correct for the deployment effect. Staff also noted that only fixed gear CVs >58' LOA would be subject to the trip selection system; vessels under this size threshold would be subject to the vessel selection system, in which the vessel would be required to carry an observer for all trips within a fixed, specified time period. The length of time one must carry an observer under the vessel selection system (e.g., one month, one quarter, etc.), as well as the probability of an IFQ vessel

being selected, mitigates some potential manipulations of the system. The committee recommended that NMFS explore and analyze some potential measures to mitigate the observer effect, such as 1) increasing the probability of a vessel being selected again if they have very little (non-representative) harvest on an observed trip; and/or 2) providing a definition of a representative sample size or trip. Such measures would be within the sample design, and not fixed in regulation.

Another member endorsed the use of NMFS observer staff to solve sampling or logistical problems or be available for deployment on a vessel that appears to be fishing in a non-representative manner when a regular observer is onboard (i.e., formerly the NMFS cadre). NMFS noted that it has this authority on vessels currently subject to observer requirements (vessels $\geq 60'$), and there is nothing proposed under this action that would preclude NMFS staff or a contractor from this kind of work. Under restructuring, NMFS would also add the explicit authority to deploy staff on $<60'$ vessels. Some members expressed interest in: 1) placing NMFS staff on $<60'$ and halibut vessels on a voluntary basis, during the next few years prior to restructuring implementation; and 2) adding a NMFS staff program within the sample design in a restructured program. Staff stated that this authority is implicit in the proposed sample design, but discussion could be added to the analysis to explicitly state that NMFS would be able to use fee proceeds to place NMFS staff on vessels to resolve sampling issues and facilitate the collection of unbiased data. The committee also discussed which vessels have VMS requirements, as VMS could be used to determine whether the vessel is fishing in the same general location with and without an observer.

It was also expressed that the fee structure essentially provides NMFS a pool of funding to pay for observers, and the analysis does not provide an idea of the level of observer coverage proposed for the various sectors in the $<100\%$ coverage stratum. NMFS has not made coverage level decisions at this juncture, and the primary goal of restructuring is to provide flexibility such that the agency can adjust coverage levels based on conservation and management needs. One member endorsed a flexible system, but recommended establishing a minimum (baseline) observer coverage level for each fishery in order to collect adequate data. Another member expressed concern at establishing a minimum coverage level prior to program restructuring, and alternatively endorsed collecting unbiased data in the first few years of a new program, and then consider whether a minimum coverage level is appropriate. This type of information could be included in an annual report from NMFS to the Council.

The committee also discussed whether it would be appropriate to recommend a preliminary preferred alternative to the Council at this time, in order to allow staff to focus its analysis on the implementation issues and sample design associated with that alternative. One member suggested that Alternative 3 currently appeared the most feasible, while also meeting the objectives of the problem statement. Alternative 3 would allow for a restructured program on all segments of the industry that are required to have $<100\%$ coverage. Estimates also show that under current revenue streams and absent Federal funding, it would take about half a year to collect start-up funds to implement. Alternatives 4 and 5 are estimated to take significantly longer.

The public was also provided an opportunity for comment at the meeting. One participant emphasized the need for statistically valid and unbiased data resulting from the observer program, stating that the program should focus on obtaining data from the sectors most responsible for halibut bycatch. He also asked the committee to recommend the Council petition NMFS AKR to request as much funding as possible through the National Observer Program budget.

Recommendations

1. The OAC recommends that the Council release the June 2010 draft analysis for public review.
2. The OAC recommends expanding the implementation section (p. 118 – 119) to include examples of operational control rules that NMFS could implement within the sample design (not regulations) to address the ‘observer effect’.
3. The OAC recommends providing a section in the analysis that details when and how NMFS would provide information to the SSC and Council related to how NMFS deployed observer resources in the previous year and how fee proceeds were used. The approach discussed for consultation was an annual report under an existing item (e.g., NMFS B report, research priorities, etc). The analysis should describe the types of information to be reported and how it would be reported.
4. The OAC recommends that the Council support development of a voluntary pilot program for monitoring on small vessels in the near-term, or on any operational aspects that would assist observer providers in testing a new system prior to implementation. While the committee recognizes that this type of program could be undertaken on a voluntary basis between vessels and observer providers, it recommends the Council promote such efforts and relay that support to NMFS.
5. The OAC recommends that the Council request that NMFS request funding for start-up costs of the restructured program.
6. The OAC recommends that it convene to review the public review draft analysis prior to the Council’s scheduled final action (currently October 2010).

VII. Scheduling and other issues

The committee reviewed the timeline for implementation (Section 3.7), which details the Council, rulemaking, and contracting timeline associated with observer restructuring. Council initial review of the analysis is 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 would be determining when start-up funds would be available to initiate contract task orders.