

North Pacific Fishery Management Council

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May 14, 2012

Mr. Glenn Merrill
Assistant Regional Administrator
National Marine Fisheries Service
PO Box 21668
Juneau, AK 99802-1668

RE: Notice of Availability of FMP Amendment and Proposed Rule on Observer Program Restructuring

Dear Mr. Merrill:

The Council has reviewed the proposed rule that has been published to implement the restructured observer program (Amendments 86/76 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area / FMP for Groundfish of the Gulf of Alaska). We acknowledge that the proposed rule is largely consistent with the Council's final motion from October 2010 and the draft proposed rule that was reviewed and approved by the Council in October 2011. However, the Council was greatly disappointed with one significant change from the draft that was reviewed by the Council, as relates to the provisions for an electronic monitoring system.

In the proposed regulations at 679.51(a)(1)(ii)(F)(1), relating to observer requirements for vessels in the vessel selection pool if selected for observer coverage (75 FR 23351), the original language allowed a vessel to select whether to carry either an observer or an electronic monitoring system onboard, with the final determination by the agency. The proposed regulations have been changed to remove the requirement for a vessel to carry an electronic monitoring system. While the second paragraph in this section (679.51(a)(1)(ii)(F)(2)) has been modified to allow NMFS discretionary authority to provide electronic monitoring equipment to a vessel owner or operator if they have been released from the requirement to carry an observer, there is no longer any obligation on the vessel owner or operator to accept or use it. This is a significant deviation from the Council's intent with respect to the implementation of this provision of the program.

At the March/April Council meeting, the agency explained that the original language could not be included as written, because there is insufficient specificity in the regulation about the requirements for electronic monitoring. The Council notes that the development of electronic monitoring has been an important element of this program for several years, both as an immediate priority for vessels 40 feet to 57.5 feet that fish halibut and sablefish individual fishing quotas (those vessels that are not managed by real-time data and are not constrained by prohibited species catch), as well as an independent tool in the long-run in the research plan. Additionally, in the past year, the agency has partnered with the halibut and sablefish industry in a pilot project on electronic monitoring, which was intended to provide operational experience and thus a basis for adding any necessary specificity to the regulation.

The restructuring of the observer program has many objectives; however, major among them is to address the fact that the existing program does not include observer requirements for either the less than 60 foot groundfish sector or the commercial halibut sector, and therefore observer data from these sectors are not available to fishery managers. The use of electronic monitoring is an important alternative on smaller vessels that, because of logistical and economic challenges with accommodating an observer onboard, may otherwise be released from observer coverage. Although voluntary efforts have been made by members of these sectors to experiment with electronic monitoring systems, the impetus for these efforts has largely been the promise that, at some point, the use of an electronic monitoring system would be a viable alternative to having an observer onboard. The Council is concerned that the change to the proposed rule will severely undermine NMFS's incentive to continue development of electronic monitoring systems as a tool in the restructured observer program.

The Council proposes that NMFS consider alternative ways to meet the Council's intent, which is to incentivize the agency and the fleet to actively develop appropriate standards for the use of electronic monitoring, at the outset of the newly restructured observer program. It is the Council's view that a critical component of this effort is for the regulations to allow a vessel in the vessel selection pool, that would otherwise be required to take an observer, to use an electronic monitoring system instead (at the agency's discretion).

Therefore, the Council requests that the agency consider the following options:

1. Return to the original language. 679.51(a)(1)(ii)(F)(1) would be rewritten to read: "A vessel selected for observer coverage is required to have an observer or electronic monitoring system onboard, as directed by NMFS, for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) for the time period indicated by the Deployment System."
2. Insert new language, such as: "In order to encourage the development of electronic monitoring as a pilot project, a vessel that is selected for observer coverage, and is able to carry an observer, may be released from the observer requirement if they agree to carry an electronic monitoring system onboard, in lieu of an observer, subject to the discretion of NMFS".

If these options are not feasible, or if additional specificity is required, the Council encourages NMFS to include other language in the final rule that would both meet the Council's intent and avoid the concerns that the agency identified after the proposed rule was brought to the Council for review and approval.

Overall, the Council is encouraged that funding has been procured for the implementation of this program for 2013. If the changes that are requested in this letter are likely to endanger the implementation of the program on this timeframe, the Council will pursue these issues in a follow-on amendment. However, it is our strong hope that the agency will be able to include provisions in the final rule to accommodate the Council's intent, and ensure active development of electronic monitoring systems for use on smaller vessels.

Sincerely,



Chris Oliver
Executive Director