

North Pacific Fishery Management Council

Eric A. Olson, Chairman
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November 1, 2010

Mr. Eric Schwaab, Assistant Administrator for Fisheries
NOAA
1315 East-West Hwy
SSMC3, Room 14636
Silver Spring, MD 20910

Dear Mr. Schwaab:

Thank you for your response to our initial letter on June 30 regarding potential Federal funding to support the North Pacific Groundfish Observer Program (observer program). On October 8, the North Pacific Fishery Management Council (Council) took final action to restructure the observer program, in order to improve what is already a very successful data collection program. This action by the Council, if approved by the Secretary of Commerce, will provide the first full-scale, all fisheries, industry-funded observer program in the Nation. We are again writing to request the agency's support to help facilitate the Council's recent action and ensure that the program is implemented in a timely manner, such that the conservation and management objectives of both the Council and the agency can be supported by reliable and scientifically valid observer information. The program approved by the Council (detailed below) retains a pay-as-you-go structure for many of the largest fisheries, and implements a fee-based structure for the remaining fisheries, thereby significantly reducing the necessary start-up funding needs, relative to earlier projections. **In order for this precedent setting program to be fully implemented in a timely manner, we are requesting NOAA to provide first-year, start-up funding of approximately \$3.8 million, beginning in January 2013.**

In October, the Council selected a preferred alternative that restructures the observer program for vessels and processors that are determined to need less than 100% observer coverage in the Federal fisheries (i.e., Alternative 3), including all previously uncovered sectors such as commercial halibut vessels and groundfish vessels less than 60 feet length overall. The Council recommended restructuring the program such that NMFS would contract directly with observer companies to deploy observers according to a scientific annual sampling and deployment plan, and the program would be funded by an industry fee equal to 1.25% of the ex-vessel value of the landings included under the program, as authorized under the Magnuson Stevens Act. As all sectors benefit from the resulting data, the Council chose to apply the same fee percentage to all restructured industry sectors, in order to develop a fee program that is fair and equitable. The design of the new program serves to reduce sources of bias that jeopardize the statistical reliability of catch and bycatch data, which can occur under a program in which NMFS does not control when and where observers are deployed in fisheries that are not required to carry an observer 100 percent of their fishing days. In addition, the new program serves to fill data gaps by including sectors that are not subject to observer requirements under the existing program.

Given that many of the North Pacific fisheries are managed under catch share programs which require either one or two observers on vessels at all times to generate vessel-specific data for fisheries

monitoring,¹ the Council was cognizant of the need to ensure that the new observer program design provides sufficient funding to meet these high coverage levels. To that end, the Council's action specifies that sectors that are determined to need at least one observer onboard or in processors at all times of operation (i.e., $\geq 100\%$ sectors) would continue to meet observer coverage requirements by contracting directly with observer companies under the status quo service delivery model. This system ensures that those sectors continue to meet their high coverage requirements by paying the direct cost of observer deployment, while allowing sectors with less than 100% coverage requirements to pay into, and receive observer coverage through, the ex-vessel fee system. The entire Council motion is attached to this letter for your reference.

As conveyed in our previous letter, the Federal groundfish observer program in Alaska is the oldest and largest observer program in the Nation and the only one whose direct costs of deploying observers are entirely funded by industry.² NOAA and the Council have continued to refine, improve, and expand the program over time, but the funding mechanism has not changed. The North Pacific Groundfish Observer Program typically receives just over \$5 million in Federal funds to cover agency expenses associated with training, debriefing, and supporting observers in the field, as well as costs associated with data quality control, management, and analysis. The North Pacific groundfish industry pays the remaining \$13 million to \$15 million to cover the actual costs of deploying observers, including travel, accommodations, and insurance. In total, Federal funds typically represent about 25%–30% of the total program costs. The Council is aware that the majority of other regional observer programs are funded through appropriations from Congress, or otherwise from within the NOAA budget, and that NOAA is proposing \$54 million in catch share funding for FY 2011, a significant portion of which will fund observer programs in fisheries managed under catch share programs other than the North Pacific. Your letter of August 27, 2010, notes that both the New England and Pacific groundfish fisheries will receive observer funding for up to three years in order to support the transition to new catch share programs. **The North Pacific Council is at this time simply requesting sufficient, one-year funding to support its transition to a restructured observer program.**

The Council's recent action to restructure the program represents a significant step toward providing NOAA the flexibility to deploy observers in response to fishery management needs, and to reduce the bias inherent in the existing program, to the benefit of the resulting data. The fee assessment approved by the Council is not an insignificant amount for fishermen and processors to pay, and the Council heard strong concerns about the impact of this cost, especially on sectors with lower profit margins due to poor market conditions or reduced stocks. In spite of the costs, the fishing industry spoke largely in favor of restructuring the program, showing a willingness to partner with NMFS in what is truly a very large and positive step forward in the conservation and management of fisheries in the North Pacific.

However, the Council strongly believes it is in NOAA's best interest to provide start-up funding to help implement the program that NOAA and the Council have worked so hard to develop. Upon review of the analysis to restructure the existing North Pacific observer program for the groundfish and halibut fisheries, the Council was provided with the associated start-up costs and annual costs estimated for the alternatives under consideration. **The total annual cost of the restructured portion of the program is estimated at \$3.8 million.** This level of funding would provide for coverage of the restructured sectors,

¹Specific, higher coverage requirements have been adopted for vessels and processors operating in catch share programs such as the American Fisheries Act (AFA) Bering Sea pollock fishery, the Community Development Quota (CDQ) Program in the Bering Sea and Aleutian Islands (BSAI), the BSAI Amendment 80 flatfish and Pacific cod fisheries, and the Rockfish Catch Share Program in the Gulf of Alaska.

²The only other fisheries with industry funding of observers are the offshore component of the West Coast Pacific hake fishery and the Atlantic scallop fishery. However, over 90 percent of the industry funding for observer programs is attributed to the North Pacific groundfish fisheries (Source: NMFS, 2009. National Observer Program Annual Report 2008, U.S. Department of Commerce, NOAA, NMFS, Silver Spring, MD.)

both groundfish and halibut, at an average rate of 30%, which NOAA has recommended as a target performance standard. Recall that sectors requiring one or more observers at all times will continue to pay for the direct costs of observers through the existing system. Industry funding through this portion of the program is estimated at about \$12.2 million; thus, the total cost to industry of the observer program is estimated at about \$16 million.³

Under the Council's preferred alternative, NMFS would enter into direct contracts with observer companies to provide observer services. Thus, start-up funds would need to be available to NMFS to move from the existing program structure to the new, contracted model, as NMFS cannot assign contractual task orders without having funds available. Thus, NMFS would need about \$3.8 million prior to the first year of deployment under the restructured program. Lacking Federal start-up funds, NMFS would need to collect sufficient fees from industry *in addition to* existing observer expenses for at least one year, in order to build up the funds necessary to issue task orders in the first year of a new program. Federal funds to transition to a restructured program would prevent the need to develop complex regulations and a fee collection system prior to deployment under a restructured program and allow NOAA to begin the new program more rapidly. This would represent one-time funding to initiate the transition from the status quo to a restructured observer program.

In summary, the North Pacific Council strongly encourages NOAA to provide start-up funding in the order of \$3.8 million, in order to facilitate our efforts toward receiving more reliable catch and bycatch data to manage the North Pacific fisheries. Given the magnitude of this observer program, and its critical importance to the management and sustainability of the Nation's largest fisheries, we believe that \$3.8 million is a relative bargain in terms of federal support of fisheries observer programs overall, and is an easily justified request. Please consider this request in your upcoming budget formulations. Please contact me, or our Executive Director, Mr. Chris Oliver, if you have any questions in this regard.

Sincerely,



Eric A. Olson, Chair
North Pacific Fishery Management Council

cc:	Dr. Jane Lubchenco	Senator Patty Murray
	Dr. Jim Balsiger	Senator Maria Cantwell
	Dr. Douglas DeMaster	Senator Ron Wyden
	Mr. Martin Loefflad	Senator Jeff Merkley
	Ms. Sue Salvesson	Mr. Arne Fuglvog
	Ms. Lisa Lindeman	Mr. Bob King
	Senator Lisa Murkowski	Mr. Dave Whaley
	Senator Mark Begich	

Attachment (1)

³ Source: Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for Proposed Amendment 86 to the BSAI FMP and Amendment 76 to the GOA FMP, October 2010. NPFMC, NMFS. These estimates are based on the cost of the direct deployment of an observer, including travel, accommodations, and insurance, which is the portion of the cost incurred by industry in the North Pacific. They do not include the expenses typically incurred by NMFS to provide operational oversight, observer training, definition of observer sampling duties and methods, debriefing of observers, and management of the data. Estimates are based on the estimated average daily observer deployment cost of \$467/day for those sectors included under the restructured program, and \$366/day for those sectors that remain under the regulated model, in which industry contracts directly with observer companies.

Council Final Motion on Observer Restructuring

BSAI Amendment 86/GOA Amendment 76

October 8, 2010

The Council adopts Alternative 3, the “coverage-based” restructuring alternative as its preferred alternative, with the following components that include a modified version of Option 2:

Two tier system for general coverage categories: All vessels and processors in the groundfish and halibut fisheries off Alaska would be placed into one of two observer coverage categories. These categories would be established in regulation:

1. the “greater than or equal to 100%” ($\geq 100\%$) coverage category, and
2. the “less than 100 percent” ($< 100\%$) coverage category.

Vessels and processors in the $\geq 100\%$ coverage category would not be included under the ex-vessel fee-based program and would continue to obtain observers by contracting directly with observer providers (“status quo”).

Vessels and processors that would be placed in the $\geq 100\%$ include:

1. all catcher/processors and motherships participating in the groundfish and halibut fisheries,
2. all catcher vessels while fishing under a management system that uses prohibited species caps in conjunction with a catch share program, and
3. all shoreside and floating processors when taking deliveries of AFA or CDQ pollock.

100% coverage would not be mandated for vessels $< 60'$ with a history of CP and CV activity in a single year or any catcher processor vessel with an average daily production of less than 5,000 pounds¹, in the most recent full calendar year of operation prior to January 1, 2010. These vessels would make a one-time election as to whether they will be in the $< 100\%$ coverage and ex-vessel based fee structure or the $\geq 100\%$ coverage and (status quo) fee structure category.

All other catcher vessel landings in the groundfish and halibut fisheries, and processors taking deliveries of this catch, would fall into the $< 100\%$ coverage category. Observer coverage for vessels and processors in the $< 100\%$ coverage category would be managed under an ex-vessel fee based observer service delivery model with the following features:

Basis of the fee assessment: A fee would be assessed on the ex-vessel value of the landed catch weight of groundfish and halibut. The landed catch weight would be the weight equivalents used to debit quotas (e.g., round weight for groundfish and headed and gutted net weight for halibut) which are reported on the processor’s or registered buyer’s landing report submitted to NMFS.

Ex-vessel value fee percentage of 1.25%: The fee percentage would be set in regulation at 1.25% of the ex-vessel value of groundfish and halibut. The fee percentage will be reviewed annually by the Council after the second year of the program (see Option 2 annual reports, below).

Selection of vessels and processors for observer coverage: The selection of vessels and processors that must carry an observer under the restructured program would be determined through a sampling and deployment plan. Observer coverage rates (trips or vessels) would not be in regulation.

¹Staff note: The 5,000 pounds would be calculated as the round weight equivalent. The Council clarified that this would be calculated by dividing total annual production by the number of days of processing activity.

Standard ex-vessel prices to apply to (non-IFQ) groundfish landings to determine the ex-vessel value based fee liability would be based on standardized ex-vessel nominal prices calculated using data derived from COAR using the methodology developed by the CFEC for their gross earnings estimates.

Standard ex-vessel prices would be established for groundfish by species, port of landing, and gear. Three gear type categories would be established: pelagic trawl gear, non-pelagic trawl gear, and fixed gear (everything else besides trawl gear). Because of data confidentiality issues, standardized price data must be aggregated if there are fewer than 3 entities in a price category.

A 3-year rolling average would be used to calculate the standard ex-vessel prices for groundfish (excluding fixed gear IFQ/CDQ sablefish).

Standard annual ex-vessel prices for halibut and sablefish IFQ and CDQ: The most recent available standard annual ex-vessel price for IFQ halibut and IFQ sablefish developed for the IFQ cost recovery program would be applied to landings by:

- catcher vessels in the <100% observer coverage category of halibut IFQ,
- halibut CDQ,
- sablefish IFQ, and
- sablefish that accrues against the fixed gear sablefish CDQ allocation.

This standard ex-vessel price is established annually by port or port group from registered buyer reports.

How to define a catcher/processor: The determination of whether a vessel is a catcher/processor or a catcher vessel for assignment to an observer coverage category would be based on the designation that is on that vessel's Federal Fisheries Permit (FFP). Once established prior to the beginning of each fishing year, the designation as a catcher/processor or catcher vessel determines the vessel operation category assignment within the restructured observer program sampling and deployment plan for the calendar year. A different approach would be used for vessels that are included in the program, but not required to obtain an FFP. The appropriate approach would be determined during development of the proposed rule.

The following exclusions would be made:

State water GHL and state-managed fisheries: Vessels participating in GHL groundfish fisheries and other state managed non-groundfish fisheries (e.g., lingcod) would be excluded from Federal observer coverage requirements, but non-GHL groundfish incidentally caught in the State GHL and other non-groundfish managed fisheries that are landed by vessels with FFPs would be subject to the fee assessment.

Vessels with an FFP fishing in the State of Alaska parallel groundfish fisheries would be subject to the Federal observer coverage requirements and the ex-vessel fee assessment.

Catcher vessels delivering unsorted cod ends to a mothership: As is the case under status quo, observers would not be required on catcher vessels delivering groundfish in unsorted codends to a mothership. Because all motherships are in the $\geq 100\%$ observer coverage category, no fee would be assessed on these groundfish landings, and observer coverage of the catch would occur on the mothership under the status quo system of observer coverage requirements.

Landings from catcher vessels in the <100% coverage category that deliver groundfish or halibut catch that is retrieved onboard the catcher vessel before delivery to the mothership ("sorted catch") would be subject to the fee assessment and observer coverage under the restructured program.

Start-up funding: Funds must be collected prior to deployment of observers under the restructured portion of the program to initiate contracts for observer deployment. Alternative 3 is expected to provide start-up funding in one year. During the start-up period (“year-0”), vessels and processors subject to the 1.25% fee assessment would continue to pay for current observer coverage requirements. Processors would be billed at the end of the year. Vessels and processors will only be required to pay the difference between the fee assessment and the actual year-0 observer costs under the status quo deployment model.

Federal funding for start-up costs: The Alaska Region NMFS will continue to seek federal funding for start-up costs of implementation of the restructured observer program. If federal funding is available, it would be used towards the initial deployment of observers under a restructured program.

Modified Option 2: Annual Report and Review of the Sampling and Deployment Plan and the 1.25% fee assessment:

The following statement replaces the existing language for Option 2:

NMFS will release an observer report by September 1 of each year. The report will contain the proposed stratum and coverage rates for the deployment of observers in the following calendar year, as well as a detailed financial spreadsheet by budget category on the financial aspects of the program. The Council may request its Observer Advisory Committee, Groundfish Plan Teams and/or the SSC to review and comment on this draft plan. NMFS will consult with the Council each year on the draft plan for the upcoming year, at a meeting of the Council’s choosing that provides sufficient time for Council review and input to NMFS.

NMFS also would prepare an annual report on the observer program for presentation to the Council each year, including information on how industry participants have adapted to and been able to accommodate the new program. As part of this annual report, the 1.25% fee percentage would be reviewed by the Council after completion of the second year of observer deployment in the restructured program. The Council could revise the fee assessment percentage in the future through rulemaking after it had an opportunity to evaluate program revenues and costs, observer coverage levels, fishery management objectives, and future sampling and observer deployment plans. This report would be provided to the Council at the same time the annual deployment plan is being provided.

Development of regulations (deeming):

The Council requests to see the draft proposed regulations prior to their submission to the Secretary of Commerce.

Program review:

The Council approved a review of the observer program, to begin five years after implementation (i.e., first year of deployment is year one), to assess whether the goals and objectives of the problem statement to restructure the observer program have been achieved.