

**Council motion on North Pacific Groundfish Observer Program  
April 5, 2008**

The Council approved three separate motions. The first motion recommended the following preferred alternatives under the seven issues evaluated in the RIR/IRFA for proposed regulatory changes to the observer program:

**Issue 1. Observer certification and observer provider permitting appeals processes**

Alternative 2. Remove the Federal regulations that provide an appeals process to an observer candidate in the case that NMFS denies an observer candidate initial certification and the opportunity to pursue further NMFS observer training. Remove the Federal regulations that provide an appeals process to an observer provider applicant in the case that NMFS denies an applicant an initial permit to become an observer provider.

**Issue 2. Observer conduct**

Alternative 2. Remove current Federal regulations at 50 CFR 679.50(j)(2)(ii)(D) that attempt to control observer behavior related to activities involving drugs, alcohol, and physical sexual contact, and remove references to the Observer Program's drug and alcohol policy in the regulations. Regulations would be revised to require each observer provider to have a policy addressing observer conduct and behavior, and current copies of each provider's policy would be required to be submitted to NMFS.

Option 1: Add a requirement under 679.50(i)(2)(x)(I)(5) to require observer providers to submit information to NMFS concerning reports regarding a breach of the observer provider's policy on observer conduct. Notification of such information is required within 72 hours after the provider becomes aware of the information.

**Issue 3. Observer providers' conflict of interest limitation regarding research and experimental permits**

Alternative 2. Revise Federal regulations to clarify that observer providers may provide observers or scientific data collectors for purposes of exempted fishing permits, scientific research permits, or other scientific research activities. In this role, NMFS observer program regulations would apply to observers operating under their NMFS certification but would not apply to scientific data collectors.

**Issue 4. Fishing day definition**

Alternative 2, Option 1. Revise the definition of "fishing day" in Federal regulations as follows:

*Fishing day means ~~to~~ (for purposes of subpart E) a 24-hour period, from ~~0001~~ 1201 hours A.l.t. through ~~2400~~ 1200 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. An observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.*

**Issue 5. Observer program cost information**

Alternative 4. Require observer providers to submit copies of actual invoices to NMFS on a monthly basis. Invoices must contain the following information:

1. Name of each individual vessel or shore plant
2. Name of observer who worked aboard each vessel or at each shore plant
3. Dates of service for each observer on each vessel or at each shore plant (include and identify dates billed that are not coverage days)
4. Rate charged per day for observer services
5. Total observer services charge (number of days multiplied by daily rate)
6. Specified transportation costs (i.e. airline, taxi, bus, etc.)
7. Any specified "other" costs not included above (i.e. excess baggage, lodging, etc.)

Option 1: Limit the submittal of economic data to every third year and limit access to these data to agency staff.

**Issue 6. Completion of the fishing year**

Alternative 1. No action. No change would be made to existing Federal regulations allowing observer deployments to span two different fishing years and last for up to 90 days.

**Issue 7. Miscellaneous modifications**

Alternative 2. Revise existing Federal regulations related to observer program operational issues as follows:

- a. Regulations at § 679.50(c)(5)(i)(A) incorrectly reference a workload restriction at (c)(5)(iii). Replace (c)(5)(iii) with the correct reference at (c)(5)(ii).
- b. Regulations at § 679.50 currently require observer providers to submit to NMFS each type of contract they have entered into with observers or industry. There is no deadline for submission of this information, although most providers currently operate as if there is an annual deadline for all submitted information. Establish a February 1 deadline for annual submissions of this information, which is consistent with the deadline for copies of 'certificates of insurance.'
- c. Update the NMFS Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division website address throughout 50 CFR 679.50.

In the second motion, the Council recommended three specific actions outside of the regulatory package that were suggested by the Observer Advisory Committee:

- With regard to the May 2007 observer data request, the Council 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 Council approved sending 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 Council stated its intent to have the OAC 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.

The Council also approved the following (third) motion:

The Council tasks staff to develop a discussion paper to evaluate the problem statement, issues, and alternatives in the observer restructuring analysis last reviewed by the Council in 2006. The discussion paper also will identify any new issues that have arisen in the meantime, including the Magnuson-Stevens Act amendments, the status of cost information, and any relevant changes in the fisheries. Staff will provide recommendations about possible modifications to the problem statement and alternatives. ADF&G and IPHC staff will be asked to participate with Council and NMFS staff in development of this discussion paper. The discussion paper will be provided to the Council for consideration at the December 2008 meeting.

The Council deems proposed regulations that clearly and directly flow from the provisions of this motion to be necessary and appropriate in accordance with section 303(c).

The Council authorizes the Executive Director and the Chairman to review the draft proposed regulations when provided by NMFS to ensure that the proposed regulations to be submitted to the Secretary under section 303(c) are consistent with these instructions.