

**Council Alternatives for Proposed Regulatory Revisions to the
North Pacific Groundfish Observer Program
revised February 10, 2008**

Issue 1. Observer certification and observer provider permitting appeals processes

Alternative 1. No action. No change would be made to existing Federal regulations at 50 CFR 679.50(j)(1)(iv) that provide an appeals process to an observer candidate in the case that NMFS denies an observer candidate who failed training the opportunity to pursue further Alaska groundfish observer training. No change would be made to existing Federal regulations at 50 CFR 679.50(i)(1)(v) 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.

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. (Note that this alternative does not affect the ability of observers and observer providers to appeal any decision to revoke or sanction a certification or permit that is already issued. Nor does this alternative affect 15 CFR Part 4 hearings addressing MSA violations where permit sanctions can be imposed.)

Issue 2. Observer conduct

Alternative 1. No action. No change would be made to existing Federal regulations that require that observers refrain from engaging in specified behaviors related to violating the drug and alcohol policy established by the Observer Program; engaging in illegal drugs; or engaging in physical sexual contact with vessel or processing plant personnel (50 CFR 679.50(j)(2)(ii)(D)). NOAA GC advises that these regulations are unenforceable, and/or outside the authority of NMFS.

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 allegations or reports regarding a breach of the observer provider's policy on observer conduct.¹ Notification of such information is required within [24 hours, 48 hours, or 72 hours] after the provider becomes aware of the information.

¹This notification requirement would mirror the current requirement at 679.50(i)(2)(x)(I)(5) that requires observer providers to submit information to NMFS concerning allegations or reports regarding observer conflict of interest or breach of the standards of behavior within 24 hours after the provider becomes aware of the information. Observer conflict of interest and standards of behavior provisions are at 679.50(j)(2)(i) and (j)(2)(ii), respectively.

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

Alternative 1. No action. No change would be made to existing Federal regulations, which are unclear as to whether observer providers may provide scientific data collectors to aid in research activities, including exempted fishing permits, scientific research permits, or other research. Current practice is to allow these activities, but the existing regulations are ambiguous.

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.²

Issue 4. Fishing day definition

Alternative 1. No action. The current definition of "fishing day" in Federal regulations allows vessel owners or operators to use any observer coverage incurred during a 24-hour period to count towards observer coverage requirements, which has resulted in vessels fishing being observed in ways that are not representative of actual fishing behavior. No change would be made to existing Federal regulations at 50 CFR 679.2 which define "fishing day" as follows:

Fishing day means to (for purposes of subpart E) a 24-hour period, from 0001 hours A.l.t. through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Alternative 2. 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 hours A.l.t. through 2400 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.

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~~ 1200 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.

Alternative 3. Establish regulations under 50 CFR 679.7 prohibiting activities that result in non-representative fishing behavior from counting toward an observer coverage day.

²Note that there are circumstances in which observers would be required to account for removals or the research is being conducted within the context of the normal fishery.

Issue 5. Observer program cost information

Alternative 1. No action. Observer providers would not be required to report various subcategories of costs to NMFS.

Alternative 2. Require observer providers to report annual costs to NMFS according to the following subcategories: labor, overhead, transportation, housing, food, and insurance. This information would be reported on an annual basis, broken out by BSAI versus GOA fisheries, and by shoreside, 30 percent, 100 percent, and 200 percent covered vessel/processor categories and gear type.

Option 1: Limit the mandatory economic data collection program to three years.

Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

Alternative 3. Require observer providers to report annual costs GOA and BSAI subareas; shoreside, 30%, 100% and 200% coverage level categories; and gear type.

Option 1: Limit the mandatory economic data collection program to three years.

Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

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.)

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Option 2: Prohibit a person/entity that receives this confidential information on behalf of NMFS from being certified as an observer provider in the North Pacific.

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.

Alternative 2. Revise regulations to require that observers who collect fishing data in one fishing year during a deployment that extends into a second fishing year return from sea and be available for debriefing by February 28 of the second fishing year.

Issue 7. Miscellaneous modifications

Alternative 1. No action. Do not revise existing Federal regulations to address inaccuracies or housekeeping issues.

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.