

North Pacific Groundfish Observer Program – Proposed Regulatory Revisions May 2007 Discussion Paper

Introduction

At its June 2006 meeting, the Council adopted a motion to extend regulations governing the North Pacific Groundfish Observer Program (Observer Program) beyond December 31, 2007. This action was necessary to avoid expiration of the current Observer Program and ensure the continued collection of observer data for supporting science and management functions. This action has been published as a proposed rule and the public comment period closed on March 23, 2007.¹

The Council's June 2006 motion indicated its intent to consider initiating a new amendment proposing restructuring alternatives for the Observer Program at such time that: 1) legislative authority is established for fee-based (restructuring) alternatives; 2) the Fair Labor Standards Act issues are clarified (by statute, regulation, or guidance) such that it is possible to estimate costs associated with the fee-based alternatives; and/or 3) a response is necessary to changes in conditions that cannot be anticipated at this time.

On January 12, 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act, Pub. Law No. 109-479, (MSA). The reauthorized MSA authorizes the Council to adopt fee-based alternatives which were considered in the observer program restructuring analysis. Specifically, Section 313 of the MSA was amended to state that the Council may prepare a fisheries research plan which "establishes a system, or system, of fees, which may vary by fishery, management area, or observer coverage level, to pay for the cost of implementing the plan." This language, along with other clarifying MSA language, provides the flexibility the Council needs to develop a new fee-based Observer Program. However, the exact nature of the fee program authorized by the Magnuson-Stevens Act must be determined, the Council must consider a new amendment to restructure the current Observer Program, and NMFS must undergo rulemaking to implement a new Observer Program.

A second impediment to restructuring, however, remains unresolved. NMFS has not yet received a response to its November 29, 2005 letter to the Department of Labor (DOL) which requested guidance on several observer compensation issues, including computing hours worked and the associated rules governing compensation of fisheries observers, and the applicability of the Service Contract Act and Fair Labor Standards Act on land, in the territorial sea, in the Exclusive Economic Zone, and in international waters. NMFS continues to seek guidance from DOL and has initiated an internal process to document labor costs associated with current direct NMFS contracts for observer services.² The intent is to have comprehensive observer cost information available later this year.

While NMFS continues to believe that the substantive data quality and operational issues facing the Observer Program can only be properly addressed through restructuring the entire program, restructuring the Observer Program is not likely feasible until the remaining impediment identified by the Council is adequately resolved. Upon resolution, it would likely take several years before a restructured Observer Program could be implemented through rulemaking.

In the meantime, NMFS has identified several issues which may be addressed through regulatory amendments, in order to make improvements to the existing Observer Program. NMFS does not expect

¹72 FR 7948, February 22, 2007.

²In addition, the Council approved a motion at its April 2007 meeting to send another letter to Dr. Bill Hogarth, NOAA Fisheries, requesting a response from the Department of Labor on the applicability of the SCA and FLSA, in order to make further progress on observer restructuring.

the identified issues to be labor intensive to analyze or implement, and intentionally did not propose to address complex issues which would best be solved by restructuring. This discussion paper briefly describes the issues NMFS proposes to address under the existing program structure, and offers some potential solutions in terms of alternatives for analysis.

Potential Council action in June 2007

At its April meeting, the Council requested that the Observer Advisory Committee (OAC) meet to review and further develop these issues and potential alternatives, prior to the June Council meeting. Council action at the June meeting is to review this discussion paper and the OAC recommendations. At that time, the Council could potentially take action to initiate and approve alternatives for a regulatory amendment package to make changes to the existing Observer Program.

The following is a proposed outline for the actions that NMFS recommends analyzing, for the OAC and Council review. Each of seven issues is described separately, and they represent mutually exclusive decision points. As structured, the Council would ultimately select a preferred alternative under each of the seven separate issues.

Issue 1. Observer certification and observer provider permitting appeals processes

Background

Current Federal regulations at 50 CFR 679.50(j)(1)(iv) grant appeal rights to a candidate for observer certification that fails training and is notified through an Initial Administrative Determination that they may not pursue further training.

In addition, current regulations allow an observer provider applicant who is denied an observer provider permit to appeal that decision (50 CFR 679.50(i)(1)(v)). Because there is no statutory entitlement to receiving observer certification or an observer provider permit, the granting or denial of observer certifications and observer provider permits are discretionary agency actions. Thus, there is no requirement that an observer candidate or new observer provider applicant be provided an appeals process.

Alternatives proposed for analysis

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.)

General impacts of the alternatives

Alternative 1 would not change Federal regulations related to the observer certification and observer provider permitting appeals processes; thus, regulations would continue to provide an appeal opportunity to initial observer candidates and observer provider applicants. Alternative 1 would continue to require that NMFS provide staff resources to the appeals process for both observer candidates that fail training and applicants that are denied observer provider permits. This would continue to draw on limited staff resources, and potentially negatively affect other areas of agency responsibility. Since the observer training program is relatively standardized, and work assignments and test questions do not vary between classes or on an annual basis, a poor quality observer candidate who is successful in his or her appeal may have an increased chance of passing subsequent classes without having adequate skills. As a result, additional NMFS staff resources are typically necessary, as poorer quality observers usually require more staff assistance during deployments, more extensive mid-cruise and final debriefings, and lengthier re-briefings before future deployments. Poor performing observers also have an overall negative effect on the quality of observer data, which is crucial to effective management of the fisheries.

Allowing unsuccessful observer provider applicants to appeal an agency denial may increase the chance of a lower quality applicant entering the pool of certified observer providers. This is expected to have negative effects on NMFS, the fishing industry, current certified observer providers, and observers. However, future observer provider applicants trying to gain an observer provider permit may benefit from Alternative 1, as it would retain their ability to appeal any agency denials, thus increasing their chances of receiving a permit upon final resolution of the appeal.

Other observers undergoing training may be impacted under Alternative 1, as students may be negatively affected if a poor performing observer candidate is allowed to retrain. This is because lower quality students often require more instructor attention and generally slow the pace of training. Generally, a lower quality observer candidate entering the ranks of other certified observers may have an overall negative affect on the image and credibility of the observer sector.

The fishing industry that relies on high quality observer data would be negatively affected if a lower quality observer candidate is certified or a lower quality observer provider applicant is permitted. Alternative 1 would continue to limit NMFS' discretion as to whether to grant or deny an initial observer certification or observer provider permit, by requiring that an appeals process be provided in the case of denials.

Alternative 2 would change Federal regulations to expand NMFS' discretion in whether to grant or deny an initial observer certification or observer provider permit. There is no statutory entitlement to receiving observer certification or an observer provider permit; thus, the granting or denial of observer certifications and observer provider permits are discretionary agency actions. NMFS discretion would be expanded two ways: 1) by revising regulations such that NMFS "may" grant a permit or certification rather than "will" grant a permit or certification; and 2) by establishing final agency action on the permit application as the point at which the observer program official issues a notice stating that the observer provider permit application is denied or that the observer candidate will not be permitted to re-enter the initial groundfish training course. Because final agency action will occur at this stage, the regulations allowing an appeal to the NOAA Office of Administrative Appeals would be unnecessary. 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.

Under Alternative 2, NMFS' role in granting observer certifications and observer provider permits will more clearly reflect the discretionary nature of these processes. NMFS will have more control over applying limited staff resources to the process of granting or denying certifications and permits. The

change in observer certification processes will better serve NMFS' interest in having well-qualified observers monitoring the North Pacific groundfish fisheries.

Current observer providers would not be directly affected by changes to the initial permitting process for new observer providers. Future entities seeking observer provider permits will experience a process less like applying for a permit that must be granted if all requirements of the application are met, and more closely resembling the submission of a contract proposal.

Observer providers are not anticipated to be substantially affected by the increased discretionary nature of issuing observer certifications. Since 2005, the observer candidate failure rate has been less than seven percent of trainees, and observer provider companies plan for this possibility while recruiting new observers. Under current Federal regulations, only two failing trainees have appealed the Agency's initial determination to deny certification and the opportunity to pursue further training, and neither candidate has been rehired by an observer provider company.

Current observers would not be affected by changes to the initial observer certification process. Future observers may be affected by proposed changes to the observer certification process; however, this action would not affect the failure rate of observer trainees taking the certification course. NMFS would continue to evaluate each observer candidate's performance carefully prior to issuing a final decision as to whether the candidate can re-take the course. NMFS would maintain the option for trainees in passing status to withdraw from the training course with no penalty should they feel unable to meet the performance standards required for certification.

Current and future observers are not anticipated to be significantly affected by proposed changes to the observer provider permitting process.

Industry is not expected to be affected by changes to the observer provider permitting or observer certification processes.

Issue 2. Observer conduct

Background

Current regulations attempt to control observer conduct so that certified observers present themselves professionally on vessels and at plants, at NMFS sites, and in fishing communities. NMFS has been advised by NOAA General Counsel (GC) that many of these regulations are unenforceable, and/or are outside of its authority and need to be clarified or deleted. For example, current regulations require observers to "refrain from engaging in any activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole" (50 CFR 679.50(j)(2)(ii)(D)). This wording is broad and ambiguous, and therefore unenforceable.

Alternatives proposed for analysis

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 conduct, and remove references to the Observer Program's drug and alcohol policy in the regulations.

General impacts of the alternatives

Alternative 1 would make no changes to the existing Federal regulations which govern observer conduct related to drugs, alcohol, and physical sexual contact. NOAA GC has advised that these regulations are unenforceable, and/or outside the authority of NMFS. In effect, there may not be a sufficient direct connection between the sanctioned behavior and the activity that NMFS has the statutory authority to regulate (i.e., the collection of statistically reliable fisheries data). Observer conduct while performing the job duties is relatively straightforward; however, sanctioning behavior outside of the workplace and work hours is more difficult. In that case, NMFS would be required to demonstrate the connection between the off duty behavior and the performance of the observer's duties (i.e., the collection of data). Making this connection would be relatively difficult for NMFS; and thus, Alternative 1 may not be a viable alternative for the agency in terms of enforceability.

In addition, Alternative 1 would likely cause confusion regarding NMFS's role in controlling observer behavior, as unenforceable regulations will remain. As a result, observer providers may fail to take remedial action on behavioral issues, given that they may believe this authority is the purview of NMFS. NMFS, however, would likely be unable to correct negative behaviors for the reasons noted above. As a result, negative behaviors may be tolerated that affect vessel and crew safety, as well as the integrity of the data collected.

Alternative 2 would remove current Federal regulations that attempt to control observer behavior related to activities involving drugs, alcohol, and physical sexual conduct. This also means that NMFS would discontinue the Observer Program's existing drug and alcohol policy, as the applicable drug and alcohol policy would instead be the purview of each observer provider. Thus, references to the Observer Program's existing drug and alcohol policy would be removed from Federal regulations.

NMFS continues to consider inappropriate conduct, especially the use of illegal drugs and the abuse of alcohol, a serious issue that warrants appropriate sanctions. However, NMFS asserts that the responsibility for addressing these types of issues lies with observer providers in their role as observer employers. In contrast to NMFS, observer providers also have more options available for addressing these behaviors, as well as the ability to take immediate action.

Alternative 2 would impact the (currently five) observer providers, as NMFS would be removed from regulating non-work behavior and observer providers would have the responsibility of addressing observer conduct issues. In effect, each observer provider would be required 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. However, NMFS would not formally evaluate and approve the submitted policies; the agency's role would be limited to ensuring that the observer providers had developed a policy. All of the existing permitted observer providers currently have standards of professional conduct in their contracts with observers, so expanding or maintaining these standards may involve a minimal amount of time and resources to implement. It is expected that the OAC and public testimony at the June Council meeting will provide additional input as to the benefits and costs of this alternative for observer providers.

Alternative 2 is intended to clarify the responsibilities between NMFS and observer providers, which may result in less confusion for observers if and when behavior issues arise. NMFS would retain its responsibility for maintaining data quality and integrity without the responsibility of enforcing observer standards of behavior. Because certain negative behaviors have the potential to affect data quality and

integrity, NMFS would need to continue to be informed of these behaviors when they occur; the difference under Alternative 2 is that the responsibility for taking remedial action would clearly reside with the observer's employer (i.e., the observer provider). Current regulations at 679.50(i)(2)(x)(I)(5) require 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.³ Under Alternative 2, this language would likely be revised to include the requirement that observer providers must also submit information to NMFS concerning a breach of the observer provider's policy on observer conduct.

The proposed action is not expected to have significant impacts on the vessels and processing plants that contract with observer providers for observer services. To the extent that roles and responsibilities of NMFS and observer providers are clarified, this action may serve to resolve behavioral issues more expeditiously. Many in the industry currently perceive the observer provider as the point of contact for observer behavior issues, thus, there may not be a substantive practical effect.

Finally, NMFS would benefit from Alternative 2 in that it would not be responsible, and not be perceived to be responsible, for developing and enforcing standards of professional observer behavior that it cannot effectively enforce.

Issue 3. Observer providers' scope of authority regarding research and experimental permits

Background

Currently, regulations at 679.50(i)(3)(i) state that observer providers:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific Fishery managed under an FMP for the waters off the coast of Alaska, including, but not limited to,

(A) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or stationary floating processor involved in the catching, taking, or harvesting or processing of fish,

(B) Any business involved with selling supplies or services to any vessel, shoreside or stationary floating processors participating in a fishery managed pursuant to an FMP in waters off the coast of Alaska, or

(C) Any business involved with purchasing raw or processed products from any vessel, shoreside or stationary floating processors participating in a fishery managed pursuant to an FMP in the waters off the coast of Alaska.

These regulations were implemented to limit observer providers from other business relationships with industry that could be perceived as compromising objectivity in the Observer Program. However, observer providers have historically provided observers and scientific data collectors to researchers operating under exempted fishing permits (EFPs) in the North Pacific. Other research activities, such as scientific research permits (SRPs) and stock assessment cruises, also occasionally employ scientific data collectors. While the regulations above do not specifically prohibit observer providers from providing observers or scientific data collectors in support of research activities, they are ambiguous as to whether these activities are allowed.

³The conflict of interest and standards of behavior provisions are at 679.50(j)(2)(i) and (j)(2)(ii), respectively.

It is important to distinguish between the roles of observers and scientific data collectors. First, NMFS may require observers as a condition of an EFP (see 679.6(e)(5)). Typically, an observer is required when the permit holder will be conducting research within the context of the normal groundfish fishery, and the data collected by the observer is entered into a commercial groundfish fisheries database for use by NMFS managers. Observers in this role are trained and directed by NMFS and all of the regulations that apply to observers and observer deployments are applicable. In this case, the captain, crew, and research staff of the vessel do not dictate sampling activities of an observer.

In contrast, NMFS may require a permit holder to employ a scientific data collector for purposes of monitoring catch and other activities. Additionally, the permit holder may need scientific data collectors to do work specific to the project. Scientific data collectors are not trained or directed by NMFS. Their work is typically directed by the research plan for the specific project, under the supervision of the principal investigator or vessel personnel. The data is not collected using NMFS observer protocols, it is not used by NMFS to manage fisheries in the normal manner, and it does not undergo the same rigorous quality control as observer collected data. Lastly, regulations that apply to observers and observer deployments do not apply to scientific data collectors.

Significant confusion results for the permit holder, crew, observer or scientific data collector, and NMFS program managers when permits are not clear as to the role of the personnel, or if a person switches between observer and scientific data collector roles during the same deployment. NMFS staff at the Sustainable Fisheries Division, Alaska Region, address this issue by communicating with NMFS staff at the Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division prior to issuing a permit that would require an observer or scientific data collector. Staff determine whether an observer or a scientific data collector would be needed for the EFP, and outline their expected activities.

However, Federal regulations are ambiguous as to whether observer providers are prohibited from providing observers or scientific data collectors for purposes of research activities. Two alternatives are proposed under this issue, one of which would revise Federal regulations to explicitly allow observer providers to provide staff for purposes of EFPs, SRPs, and other research activities.

Alternatives proposed for analysis

Alternative 1. No action. No change would be made to existing Federal regulations, which are unclear as to whether observer providers may provide employees 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.⁴

General impacts of the alternatives

Alternative 1 would not clarify whether observer providers could provide observers or scientific data collectors for research activities in Federal regulations. Likely, NMFS would continue to allow these activities without pursuing enforcement action. However, it is possible that NMFS Enforcement and

⁴Note 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.

NOAA GC could determine that observer providers are in violation of Federal regulations. If this occurs, researchers would likely have to obtain scientific data collectors from a different source. In addition, NMFS may not be able to require observers as a condition of a permit, and research may not be able to be conducted within the context of the normal groundfish fishery.

Alternative 2 would clarify that, in addition to the provision of observer services for purposes of groundfish fisheries managed under the FMPs, observer providers could provide scientific staff for purposes of EFPs, SRPs, and other NMFS sponsored research activities. There would likely be minimal impacts resulting from Alternative 2, as current practice is to allow these activities, but all parties involved would understand an observer provider's role. Additionally, there would be no chance of enforcement actions as a result of these activities. Alternative 2 is NMFS' preferred alternative.

Issue 4. Fishing day definition

Background

On January 3, 2005, the NMFS Sustainable Fisheries Division received a memorandum from NMFS Enforcement (**Attachment 1**) requesting revision of a regulation defining "fishing day" for purposes of enforcing observer coverage requirements. Specifically, Enforcement relates concerns that Federal regulations governing the 30 percent observer coverage requirement are unclear as to whether they allow vessel owners and operators to use *any* amount of observer coverage incurred during a 24-hour period to count towards coverage requirements.

Observer coverage requirements are currently based on the following regulations at 679.50(c)(1)(v):

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish categories defined under paragraph (c)(2) of this section in which the vessel participates.

Furthermore, "fishing day" is defined at 679.2 as:

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.

For purposes of meeting observer coverage requirements, these regulations have been interpreted to mean that an observer must only be aboard a vessel at any point during a 24-hour period to count as a "fishing day." While many vessels operate with an observer as they would without an observer, others intentionally alter their fishing behavior specifically to meet observer coverage requirements. For example, if a vessel needs two additional days to meet coverage requirements, the owner or operator could retrieve a haul at 2330 and retrieve a second haul at 0030 the next day, and obtain the needed observer coverage days. Often these hauls are not representative of normal haul durations, location, and depth, and catch composition could vary significantly. Thus, there is a concern that the resulting observer data do not comprise a representative sample.

To clarify 30 percent observer coverage regulations, and to reduce a vessel's ability to conduct unrepresentative fishing operations specifically for purposes of obtaining coverage, NMFS Enforcement recommends revising the definition of "fishing day." This recommendation is included as Alternative 2.

However, during the course of internal agency discussions, NMFS and Council staff agreed that Alternative 2 may not be preferable, as it may adversely affect normal fishing operations and increase costs (see *General impacts of the alternatives* below). **Therefore, NMFS specifically requests input from the OAC and the Council on a regulatory revision that reduces vessels' ability to operate in this manner, but does not significantly adversely affect normal fishing operations.**

Alternatives proposed for analysis

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 and 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.

General impacts of the alternatives

Alternative 1 would not clarify 30 percent observer coverage requirements, which pertain to all catcher/processors and catcher vessels greater than 60 ft LOA, but less than 125 ft LOA. Vessels would likely continue to conduct non-representative fishing, specifically with the intent of meeting observer coverage requirements. Observers would continue to collect information on total catch, and that information likely would be used by NMFS to manage the groundfish fisheries.

NOAA Enforcement has documented instances in which vessel operators intentionally structure fishing activities such that they fish unobserved until late in the day, pick up an observer and make a short tow prior to midnight, make one more tow immediately after midnight, and then return the observer to port. Additional fishing activities then occur during the remainder of the day the observer was not onboard. Another example of this issue is when the vessel has an observer onboard, does not deploy fishing gear when the observer is onboard, and returns to port early in the day. Later, the vessel returns to the fishing grounds without an observer and resumes fishing. Under the current regulations, this may be interpreted as an "observer" day.

For most 30 percent vessels, NMFS currently bases its calculation of species composition, including halibut and crab prohibited species catch (PSC), on basket samples of approximately 300 kg (approximately 660 lb) or less, depending on the time and space available to the observer. Catch composition data are extrapolated (the term commonly used is "expanded") to determine species composition and PSC use for the entire haul. The sampled hauls are expanded to determine the quantity of a given groundfish species and the PSC that would be attributed to the unsampled hauls during a trip. NMFS then calculates the species composition and PSC catch rate from the sampled hauls for each directed fishery. These species composition and PSC catch rate estimates are then applied to all unobserved catch to determine total species composition and PSC use. The degree to which a given

quantity of groundfish or PSC in a sample is expanded varies substantially, depending on the fraction of total observed hauls and the fraction of sampled catch in each of the observed hauls.

To the extent that catch composition estimates based on vessels that conduct fishing operations expressly to meet observer coverage requirements are not representative of normal fishing operations, additional error could be introduced into the management system. This error could result in inaccurate fishery removal information, and result in managers making more conservative closure decisions, therefore affecting fishery participants.

Alternative 2 would affect all catcher/processors and catcher vessels greater than 60 ft LOA, but less than 125 ft LOA that are subject to 30% observer coverage requirements. Alternative 2 would revise Federal regulations to require that affected vessels carry an observer for all fishing activities that occur during the 24-hour period for that fishing day to count as an observer coverage day. This would likely reduce instances in which vessels conduct fishing operations specifically to meet coverage requirements, and likely increase data quality for this sector. Another potential effect is improved accuracy in NMFS closure decisions, which may result in allowing vessels to fish for longer periods of time and increase revenues.

The discussion under Alternative 1 provides examples in which NOAA Enforcement has documented situations in which vessel operators with 30% observer coverage requirements intentionally structure fishing activities to accrue “observer coverage days” without having an observer present during normal fishing activities. Under Alternative 2, it is anticipated that these situations would be mitigated. Under Alternative 2, the observer must be present for all hauls within the 24-hour period in order to meet the definition for “fishing day” and accrue an observer coverage day.

Alternative 2 would thus increase costs for vessels in some cases, requiring them to carry observers longer than they would be required to under Alternative 1 (status quo). Alternatively, vessels could choose to postpone fishing (in the example described above) such that they do not retrieve hauls without an observer during a 24-hour period in which they also retrieved hauls with an observer, thus increasing trip length and costs. For these reasons, Alternative 2 may have some significant cost implications for industry.

Issue 5. Observer program cost information

Background

Currently, NMFS lacks precise information on the total costs, and components of those costs, of the industry-funded component of the groundfish observer program. Existing Federal regulations (50 CFR 679.50(i)(2)(x)(G)) require that observer providers must submit a completed and unaltered copy of each type of signed and valid contract between the observer provider and those entities requiring observer services. Signed and valid contracts include the contracts an observer provider has with vessels and shoreside or stationary floating processors required to have observer coverage, and observers. Upon request by NMFS, observer providers must also provide a complete and unaltered copy of the most recent contract between the provider and a particular vessel or processor or a specific observer. This includes any agreements or policies with regard to observer compensation or salary levels.

The cost information in the current contracts submitted by observer providers is generally limited to the daily fees charged by the observer providers or daily rates of pay for observers (e.g., \$355/day). NMFS has collected some other cost information voluntarily from observer providers but cooperation has varied. NMFS has used this information as the basis for developing estimates of airfare costs and per diem rates in past analyses, but its use is relatively limited and likely not representative of the entire industry.

The need for more detailed cost information has been highlighted by recent requirements for vessels and processors participating in the BSAI crab rationalization program and the cooperative structure proposed under BSAI Amendment 80 for the non-AFA trawl catcher processor fleet. Only in these recent programs has socioeconomic data collection been mandated, in order to conduct sufficient economic analysis to determine whether and how these programs are working.

In addition, NMFS staff in the Economic and Social Sciences Research Program at the Alaska Fisheries Science Center are currently working with the Council and State agencies to develop a comprehensive mandatory data collection program for vessels and processing plants participating in Alaskan fisheries. The intent is to develop a comprehensive program for collecting revenue, ownership, employment, cost, and expenditure data from vessels and processors. Prior to implementation, Federal fisheries management actions must first undergo sufficient economic analysis as required by the MSA, NEPA, Executive Order 12866, and other applicable Federal laws. At present, analysts can rarely calculate the net benefits generated by Alaska's fisheries, and thus frequently cannot quantitatively account for all of the parties affected by proposed fisheries management decisions.

The comprehensive mandatory economic data collection program is thus intended to capture a core set of data that is currently unavailable, yet necessary, to answer many of the analytical questions raised when evaluating past and future management decisions and conducting regulatory analyses. The primary goal is to better inform decision-makers and improve decision-making capability by improving 1) the ability to account for the relevant entities whose net benefits are affected by Alaskan fisheries; and 2) the knowledge of the elements that comprise each entity's net benefits.⁵ In terms of relevant entities, the Council has expressed a need to consider not only the harvesting sector, but also the shoreside processors, motherships, crewmembers, and communities involved in Alaska's fisheries.⁶

The need to require cost data from observer providers is similar to the need identified for economic data collection described above for the rest of the industry. The most significant factor affecting the ability to estimate net benefits, or understand the effects of various management actions, is the lack of data on costs incurred by vessels and processors to harvest and process fish. Analysts generally provide quantitative data where available, but rely heavily on qualitative analysis of the costs and benefits that are expected to result from a specific, proposed action. Because costs vary substantially across different fishery sectors, it is very difficult to estimate the differing effects on different sectors.

Similarly, NMFS currently lacks sufficiently detailed information on the costs incurred by observer providers in order to inform analyses as to the costs of the portion of the groundfish observer program funded by vessels and processors required to meet specified observer coverage levels. Recent analyses have provided an estimation of about \$16 million annually to implement the program, with about \$12 million funded by industry.⁷ The average cost of the program funded by industry in both the BSAI and GOA combined during 2000 – 2003 represented about 1.66% of groundfish ex-vessel values. These estimates are based on a daily observer cost of \$355/day (2000 – 2003), which includes estimated travel costs of \$25/day and meal costs of \$15/day, based on information provided by observer providers and a salary range for observers that approximates the 2003 unionized salary rate.

⁵*Comprehensive Socioeconomic Data Collection for Alaskan Fisheries: A Discussion and Suggestions*, AFSC, Seattle WA. Presented at the April 2007 Council meeting.

⁶See the October 2006 Council motion on this issue.

⁷NMFS groundfish observer program data provided in the *Public Review Draft EA/RIR/IRFA for BSAI Amendment 86/GOA Amendment 76: Extension or modification of the program for observer procurement and deployment in the North Pacific* (May 2006). Note that the NMFS cost for the groundfish observer program was \$4.8 million in 2007.

The standard observer cost of \$355/day is typically used in analyses supporting a proposed fisheries management action, although these costs vary on case by case basis, depending on the fishery, duration of observer coverage, and logistics. Specifically, in some smaller scale, short duration fisheries that operate out of remote ports, observer costs may greatly exceed the \$355/day average. Thus, observer costs differ greatly by sector, fishery, and year, as do the cost components that factor into the daily rate. More accurate estimates are necessary to adequately assess the baseline component of any proposed regulatory change to the observer program on the various fishery sectors; mandatory cost reporting is one approach to meet this goal.

Alternatives proposed for analysis

NMFS has proposed the following two alternatives for analysis. Staff is interested in feedback from the OAC and the Council as to the general impacts of Alternative 2, as well as whether there are additional alternatives that should be considered.

Alternative 1. No action. Observer providers would continue not to 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. All mandatory cost information would be confidential information.

General impacts of the alternatives

Alternative 1 is the no action alternative, or status quo, in which observer providers would not be required to report cost information to NMFS. The general impacts of the alternative are outlined in the previous section; primarily, NMFS would continue to lack sufficiently detailed information on the costs of observer services in order to inform baseline analyses of the industry-funded portion of the groundfish observer program. Analyses to support proposed regulatory changes would continue to rely on an average daily rate, multiplied by the number of observer days incurred by vessels and processors. Thus, NMFS and the Council would continue to make use of the best available data in the development of these analyses, recognizing the data limitations discussed previously under the status quo.

Alternative 2 would require observer providers to report costs to NMFS by a specified date, according to various subcategories. The proposed subcategories of cost information include labor, overhead, transportation, housing, food, and insurance. The intent is that this information would be reported on an annual basis, broken out by BSAI versus GOA fisheries, and by 30 percent, 100 percent, and 200 percent covered vessel/processor categories. NMFS is not able to assess the various cost components of the existing groundfish observer program under the information currently required; most if not all of the contracts submitted to NMFS provide only the daily rate for observer services (e.g., \$355/day). The proposed cost categories identify the specific types of information that could be collected to address common questions regarding the baseline costs of the existing program.

The primary benefit of this action is that this information would allow for a more accurate assessment of costs and benefits under potential program changes, which may benefit the groundfish observer program and the fisheries dependent upon observer data for management. The primary cost of this action would be the administrative costs incurred by the observer providers, in effect, the staff time and resources necessary to provide cost information on an annual basis. It is uncertain at this time whether the incremental cost of providing this additional information, along with the information already required under Federal regulations, would represent a substantial cost to the observer providers. It is expected that the OAC and the Council will provide feedback as to the general impacts of Alternative 2. The OAC and

the Council may also be able to provide suggestions as to the types of information that should or could be collected, as well as the timing for submittal of this information.

Approaches to data collection

A primary issue to consider when designing a data collection program is whether to collect information from all fishery participants or only specific sectors of the fishery. NMFS's current approach under Alternative 2 is to collect observer cost information from the observer providers that provide observer services in the North Pacific groundfish fisheries. This approach is preferable to collecting observer cost information from individual vessels and processors, in part because only observer providers can provide actual cost information relevant to some of the identified categories (e.g., overhead). In addition, the information would be submitted by a small number of observer providers and aggregated consistently by category, compared to receiving information from a large number of vessels and processors. Given that there are only five observer providers, data would be collected from all five companies, as opposed to sampling a subset of the entities.

Authority for and confidentiality of data collected

Under Section 402(a) of the Magnuson-Stevens Act, the Secretary is authorized to develop an information collection program if the Secretary determines that additional information is beneficial for developing, implementing, or revising a fishery management plan, or for determining whether a fishery is in need of management. This program may also be initiated by a regional Council request to the Secretary. Fishery management plans must, according to Sec. 303(a)(5), specify pertinent economic data necessary to meet the Act's requirements. Sec. 303(a)(9) adds support for economic data collection: in addition to specifying necessary economic data, fishery management plans must also be accompanied by impact statements that describe the economic and social impacts of the action. National standards also support economic data collection from observer providers. Sec. 301(a)(2) provides that FMPs be developed with the best scientific information; a data collection program would provide economic data about observer costs and contribute the best scientific information to FMP revision or development.

Section 402(a) is provided below, as amended by the Magnuson-Stevens Reauthorization Act of 2006.

SEC. 402. INFORMATION COLLECTION⁷ 16 U.S.C. 1881a

(a) COLLECTION PROGRAMS. –

- (1) **COUNCIL REQUESTS.** – If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.
- (2) **SECRETARIAL INITIATION.** – If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan,

or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

Alternative 2 proposes mandatory reporting of detailed cost information by the (currently five) entities operating as observer providers in Alaskan fisheries. These data would meet the definition of confidential information under a number of Federal statutes as summarized in NOAA Administrative Order (NAO) 216-100. This NAO provides the principal administrative guidance on protection of confidential data, including definitions, policies, operational responsibilities and procedures, penalties, and statutory authorities. The NAO specifies conditions for authorization for access to confidential data by Federal, Council, and state employees and contractors. Any individual who receives access to confidential data must sign an agreement of nondisclosure, violation of which is punishable by dismissal, fines, and imprisonment. The NAO is not the exclusive guidance for administrators handling confidential fisheries data. Federal regulations at 50 CFR 600.405, et seq, also address how to handle confidential fisheries data.

Collection, maintenance, and protection of confidential data are routinely conducted by NMFS, and procedures for preventing disclosure are well-established. For example, to prevent the release of confidential data in public documents, there are rules for aggregating data. Given that there are only five observer providers serving the North Pacific groundfish fisheries currently, it is assumed that all cost data provided would need to be highly aggregated for release to the public. Note that there are ongoing concerns raised by the Council and industry with regard to the nature of the financial data intended to be collected under the comprehensive socioeconomic data collection program currently being developed for vessels and processors by the AFSC. In addition, at the December 2006 meeting, the Council requested that staff develop protocols for Council review to address rules for aggregation to maintain data confidentiality, and assess the quality of the data to ensure accuracy of data collected in the crab economic data reporting system. AFSC staff noted at the April 2007 Council meeting that because the comprehensive data collection program is similar in nature to the crab economic data reporting program, it is expected that the data handling protocols developed for the crab data will also apply to these new data.⁸ The Council will have an opportunity to review these protocols as they are developed. It is expected that confidential financial information from observer providers collected under Alternative 2 would also be subject to protocols consistent with those developed for crab and the comprehensive socioeconomic data collection program.

Section 402(b) of the Magnuson-Stevens Act, as recently amended by the Magnuson Stevens Reauthorization Act of 2006, pertains to confidentiality of information. Section 402(b) provides that any information submitted to the Secretary in compliance with any requirement under the Act is considered confidential. This section is provided as **Attachment 2** to this paper.

⁸*Comprehensive Socioeconomic Data Collection for Alaskan Fisheries: A Discussion and Suggestions*, AFSC, Seattle WA, pp. 17- 18.

Issue 6. Completion of the fishing year

Background

NMFS staff complete quality control checks and editing to finalize all observer data as soon as possible after the close of each fishing year. Once completed, data users can commence work using the full data set. Completion of the observer data set is dependent on observers returning from sea and completing debriefing for all cruises that have data for a given year. Current regulations allow observer cruises to span two fishing years and cruises may last up to 90 days. Thus, observers deployed late in one fishing year can delay completion of the data set and its availability for analytical work until they return, possibly in the following fishing year. For example, in 2006, 17 observers were on cruises which continued into 2007. One of these cruises lasted until March 24, effectively delaying completion of the data set. Additional data illustrating this issue are provided in **Table 1** and **Attachment 3**. Note that the proposed action only applies to cruises during which the observer collected fishing data in the first fishing year. Cruises where only noon positions were collected in the first fishing year are not included in the data presented and are not considered under this issue.

Alternatives proposed for analysis

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

Alternative 2. Revise regulations to establish a calendar date cutoff whereby observers who collected fishing data in one year would be required to return from sea and be available for debriefing. [NMFS proposes February 28 as the cut-off date.]

General impacts of the alternatives

Alternative 1 would continue to delay completion of the observer data set until all observers returned and debriefed. This means that the completed data would not be available to end users working on a variety of analytical documents until the observer returns.

Alternative 2 would establish a cutoff date whereby observers who collected fishing data over a span of two different years would be required to return from sea and be available for debriefing. NMFS is initially proposing February 28 as the cut-off date, and is interested in comments on the impacts of this date from affected sectors. It is anticipated that specific feedback on this issue will be generated through the OAC and Council meetings. Note that the general discussion of impacts which follows is based on the February 28 date and may change if a different date is established.

Alternative 2 would likely increase observer provider costs because the efficiency of each deployment that spans two different years would be reduced. Using the last fishing day as the cut-off, 7 observer deployments would have needed to be truncated in 2006. However, as the observer providers do not control the deployments, they would need to plan in advance. In other words, observer providers would not be able to deploy an observer on a trip if the trip had potential to go beyond the February 28 cut-off date. Thus, the number of affected observers may be greater than is indicated here. The actual impact is difficult to predict because it would depend on the composition of the providers' clients and the duration of the trips they take. For example, a provider could optimize the observer's deployment if they had some clients who took short, predictable trips. NMFS is interested in comments from observer providers on the potential cost and logistical implications of this action.

Only those observers whose cruises span two different fishing years would be impacted by this action. As provided in Table 1 below, 17 observers had cruises which spanned two fishing years, and 7 of them continued fishing into March (see Attachment 3 for the detailed breakdown of these data). The effect would be to shorten the duration of such cruises. This could provide a negative or positive impact, depending on the perspective of the individual observer. NMFS' experience is that there are a variety of perspectives on the desired duration of a cruise. Some individuals would like a cruise to be longer, thus, a reduction in cruise duration would result in a negative impact. Other individuals, however, prefer shorter cruises. These perspectives vary within the observer population.

Fishing industry costs could increase to the extent observer provider costs are incorporated into billable costs. These costs are difficult to predict without input from the observer providers. The industry would benefit to the extent they are dependent on receiving finalized observer information or completion of analyses using observer data generated from recent years.

This proposed change would benefit NMFS and the clients it serves with observer information. It would provide a date certain whereby observers would need to return from sea for debriefing, allowing consistency in the completion of the final data set. The data set would be available to end users in a more timely manner, allowing work on a range of analyses which use the recent years' data. A second benefit to NMFS is that these observers would debrief earlier than other observers deployed in the new fishing year, potentially reducing the number of observers who need to debrief at the same time. This could slightly increase efficiencies in the debriefing process, potentially benefiting observer providers, observers, and industry.

Table 1. The number of observers whose cruises spanned fishing years and the number of cruises on which fishing continued into March, 2002 - 2007

Fishing years	Number of cruises spanning the fishing year	Number of spanned cruises on which fishing continued into March
2002 - 2003	7	3
2003 - 2004	11	5
2004 - 2005	10	3
2005 - 2006	17	3
2006 - 2007	17	7

Source: NMFS, observer database, 2002 - 2007.

Note: The data only include cruises in which the observer collected fishing data in the first fishing year. Cruises where only noon positions were collected are not included and are not affected by the proposed action under Issue 6.

Issue 7. Miscellaneous modifications

Background

Several minor adjustments are necessary in order to correct inaccuracies or make clarifications in existing Federal regulations. These are simple changes, primarily housekeeping issues, which should not warrant extensive analysis.

Alternatives proposed for analysis

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.

General impacts of the alternatives

Alternatives 2a and 2c do not have any significant impacts, as they are housekeeping in nature and will only serve to correct technical inaccuracies in the current regulations. Alternative 2b will impact the (currently five) existing observer providers, as they will be required to submit contracts with observers and/or industry by a specified date each year. Effects are expected to be minimal, as the only addition to the current requirement is the deadline for submission. In addition, the majority of observer providers have been submitting example contracts at the beginning of each year, along with copies of certificates of insurance, which already have a submission date of February 1st. Thus, this proposed action would clarify the deadline for submission of the contracts, similar to other reporting requirements.



NOAA FISHERIES OFFICE FOR LAW ENFORCEMENT

Mail to: P.O. Box 21767
Location: 709 W. 9th St., Room M09C
Juneau, Alaska 99802-1767

DATE: January 3, 2005

MEMORANDUM FOR: Jim Balsiger, Regional Administrator

FROM: Jeff Passer, Special Agent-in-Charge 

SUBJECT: Request for Regulation Change - Clarification of definition of "fishing day" for clear and consistent enforcement of vessel observer coverage requirements.

The current definition of "Fishing Day" (for purposes of enforcing observer coverage requirements) does not clearly address situations where a vessel carries an observer for only a portion of the fishing activities occurring on a particular day. This is a frequent practice in the 30% CV fleet.

Regulations at 50 C.F.R. 679.50(c) (1)(v) state:

"(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates."

Recently, field enforcement staff have been unclear if a less than fully observed day counted as an "observer day". A recent enforcement action brought by GCAK was based upon their interpretation of the regulation as requiring an observer to be onboard for all gear retrievals during a 24-hour period if it is to be counted as an "observer day".

Enforcement fully supports GCAK's position, from the "enforceability" position, and recommends the definition be amended to clearly address current ambiguity regarding this application of the regulation.

Enforcement recommends the following change (strikeout and italics) to the definition of Fishing Day, at 50 CFR 679.2:

Fishing day means ~~to~~ (for purposes of subpart E) a 24-hour period , from 0001 hours ALT, through 2400 hours ALT, 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.

While the Observer Program staff is best able to comment on the effects on data quality, it is well documented that a significant component of the 30% fleet is utilizing the existing ambiguity of the regulation to their advantage by fishing for a portion of a day unobserved, then embarking an observer late in the day, then making one small set or haul on the first day, and reversing this process on the last fishing day, thereby accruing two “observer days for very little observed fishing activity or resultant data”.

I would appreciate your consideration of this proposed change.

Section 402(b) of the Magnuson Stevens Act**(b) CONFIDENTIALITY OF INFORMATION.--**

- (1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except--
 - (A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;
 - (B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity or business of any person;
 - (C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement agreement with the Secretary and the agreement is in effect;
 - (D) when required by court order;
 - (E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);
 - (F) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act;
 - (G) when such information is required to be submitted to the Secretary for any determination under a limited access program; or
 - (H) in support of homeland and national security activities; including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).
- (2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—
 - (A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;
 - (B) when such information is necessary in proceedings to adjudicate observer certifications; or

- (C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—
 - (i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or
 - (ii) to validate the accuracy of the observer information collected.

- (3) The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

Detailed list of cruises which had catch data spanning two calendar years, 2002 - 2007

The following list comprises the breakdown of cruises that are provided in Table 1 under Issue 7. Starting in 2002, the following lists cruises which had catch data which spanned two calendar years. Note that the data only include cruises in which the observer collected fishing data in the first fishing year. Cruises where only noon positions were collected are not included and are not affected by the proposed action under Issue 7.

2002 - 2003

8047 11/2/02 – 1/17/03
 8064 12/17/02 – 2/24/03
 8066 12/20/02 – 1/27/03
 8074 12/31/02 – 3/8/03
 8079 12/30/02 – 3/13/03
 8080 12/28/02 – 3/13/03
 8087 12/30/02 – 1/31/03

2003 - 2004

8735 11/23/03 – 1/10/04
 8738 11/24/03 – 2/13/04
 8745 12/1/03 – 2/16/04
 8751 12/19/03 – 1/20/04
 8764 12/3/03 – 2/16/04
 8767 12/29/03 – 2/29/04
 8768 12/31/03 – 3/4/04
 8772 12/31/03 – 3/20/04
 8774 12/31/03 – 3/13/04
 8780 12/27/03 – 3/13/04
 8785 12/29/03 – 3/13/04

2004 - 2005

9471 11/29/04 – 2/13/05
 9472 11/24/04 – 2/12/05
 9495 12/30/04 – 2/15/05
 9496 12/29/04 – 2/22/05
 9498 12/30/04 – 3/10/05
 9500 12/31/04 – 2/25/05
 9503 12/31/04 – 1/13/05
 9504 12/31/04 – 3/5/05
 9510 12/31/04 – 3/6/05
 9515 12/31/04 – 2/22/05

2005 - 2006

10169 11/6/05 – 1/25/06
 10172 11/13/05 – 2/3/06
 10174 11/16/05 – 2/5/06
 10178 12/3/05 – 1/25/06
 10179 12/30/05 – 1/27/06
 10193 12/29/05 – 3/5/06
 10196 12/31/05 – 2/18/06
 10202 12/30/05 – 3/1/06
 10203 12/30/05 – 3/10/06
 10204 12/28/05 – 2/25/06
 10211 12/31/05 – 2/18/06
 10212 12/28/05 – 2/18/06
 10213 12/31/05 – 2/19/06
 10216 12/31/05 – 2/21/06
 10217 12/30/05 – 2/19/06
 10221 12/30/05 – 2/18/06
 10233 12/29/05 – 1/15/06

2006 - 2007

10897 12/31/06 – 3/1/07
 10899 12/31/06 – 2/11/07
 10902 12/31/06 – 2/12/07
 10904 12/30/06 – 3/17/07
 10908 12/30/06 – 2/18/07
 10909 12/30/06 – 2/12/07
 10918 12/29/06 – 3/14/07
 10920 12/31/06 – 3/9/07
 10921 12/29/06 – 2/10/07
 10923 12/29/06 – 2/26/07
 10925 12/29/06 – 2/14/07
 10927 12/30/06 – 3/8/07
 10931 12/30/06 – 3/24/07
 10934 12/29/06 – 2/10/07
 10943 12/29/06 – 1/24/07
 10946 12/29/06 – 3/14/07
 10959 12/30/06 – 2/9/07