

**Observer Program - Council Motion**  
**2/6/04**

The Council tasks the Observer Advisory Committee (OAC) with: reviewing and recommending any appropriate changes to the problem statement; refining the existing alternatives; and exploring new alternatives that will address the issue of combining the BSAI and the GOA as one program, including the concept of a direct NMFS contract with observer providers. Additionally, the OAC should explore the potential use of a mixed model for collecting observer costs in any service delivery model that may be chosen as well as the potential cost of these different models to industry.

Also, the OAC should address issues raised by the Advisory Panel at the February Council meeting:

- 1) the 'fishing operation exemption' of the Fair Labor Standards Act (FLSA)
- 2) the cost of NMFS' recommendation to provide overtime coverage for observers
- 3) how to increase flexibility in the current service delivery model to address NMFS observer program issues
- 4) observer insurance costs

Further, the Council urges NMFS Headquarters to reconsider its adoption of the policy on observer compensation issued on November 13, 2003. The Council requests a response from NMFS Headquarters addressing the following issues: (1) how the new overtime policy would impact observer compensation costs under a direct contract approach for the North Pacific Groundfish Observer Program (Observer Program); (2) whether the policy would require that observers be compensated on an hourly plus overtime basis for all non-productive waiting time spent on board the vessels; (3) whether and how the policy addresses the issue of whether observers fall within the FLSA exemption for employees engaged in fishing operations; and (4) how the number of hours worked by an observer will be verified if the policy requires contractors to compensate observers on an hourly basis. To permit the OAC to move forward with its work on the proposed restructuring of the Observer Program, the Council requests that agency headquarters address and resolve these issues prior to the OAC meeting scheduled for March 11 - 12, 2004. Council staff will prepare correspondence to NMFS Headquarters to this effect.