

Observer Advisory Committee Report
January 30, 2006

Alaska Fisheries Science Center
7600 Sand Point Way, NE, Seattle
Building 4, Room 1055
8:30 am - 5 pm

Committee present: Joe Kyle (Chair), Julie Bonney (by phone), Tracey Mayhew, Paul MacGregor, Susan Robinson, Jerry Bongen (by phone), Brent Paine, Arni Thomson

Committee not present: LeeAnne Beres, Kim Dietrich, Rocky Caldero, Kathy Robinson, Peter Risse, John Gauvin

Staff: NPFMC – Chris Oliver, Nicole Kimball, Kent Lind (contractor)
NMFS/AFSC – Bill Karp, Martin Loefflad, Bob Maier, Doug DeMaster,
Heather Weikart, Jerry Berger, Allison Barns
NMFS AK Region – Jason Anderson, Sue Salveson
NOAA GC – Tom Meyer
NOAA Office for Law Enforcement (Alaska Division) – Mark Kirkland

Other participants: Anne Vanderhoeven, Lisa Butzner, Mark Buckley, Bob Alverson, Michael Lake, Bill West, Tim Meintz, Peggy Parker, Amanda Saxton

AGENDA

- I. Review and approve agenda
- II. Review NMFS letter on restructuring (1/22/06)
- III. Review draft analysis to establish a new program for observer procurement and deployment in the North Pacific Groundfish Observer Program (BSAI Am. 86/GOA Am. 76)
- IV. Receive report from NMFS on pilot projects from summer 2005
- V. Scheduling & other issues

SUMMARY OF OAC RECOMMENDATIONS

- In light of concerns outlined by NMFS, including the lack of Congressional authority to support the type of fee-based programs currently proposed, ongoing cost uncertainties related to overtime requirements of the Fair Labor Standards Act, and the upcoming expiration of the observer program on December 31, 2007, the committee recommends that the Council select Alternative 2 (extension of the current program) as the preferred alternative in BSAI Amendment 86/GOA Amendment 76 to meet the short-term need of continuing an observer program beyond 2007.
- The committee further recommends that, due to the continued need to restructure the observer program and the absence of a sunset date in Alternative 2, a new amendment proposing restructuring alternatives should be considered by the Council at such time that: 1) legislative authority is established for fee-based alternatives; 2) the FLSA 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) the Council requests reconsideration in response to changes in conditions that cannot be anticipated at this time.

I. Review and approve agenda

The agenda was approved with two additions: an update from NMFS on the Federal Observer Compensation Act (FOCA) and an update from Chris Oliver on Magnuson Stevens Act (MSA) reauthorization. The Chair noted that the primary purpose of the meeting was to review the draft analysis to change the funding and deployment mechanism in the North Pacific Groundfish Observer Program (Observer Program) and recommend any changes or additions to the analysis or the analytical approach. This task is in preparation for the Council's review of the preliminary analysis at its February 2006 Council meeting. The analysis was provided to the OAC prior to the meeting to facilitate its review.

II. Review NMFS letter on restructuring (1/22/06)

Dr. Bill Karp reviewed a letter from the NMFS AK Region to the Council (1/22/06) ([Attachment 1](#)). The letter outlined several concerns, including: 1) the need for MSA authority to support the type of fee-based programs currently proposed in the analysis; 2) recent reaffirmation by NMFS that observers in all regional observer programs do not meet the professional exemption criteria in the Fair Labor Standards Act (FLSA) and thus both the overtime requirements of the FLSA and the requirements of the Service Contract Act (SCA) must be applied when determining observer wages for observers employed by companies which contract directly with NMFS or use Federal funds; and 3) increased agency costs associated with implementing the proposed fee-based programs.

The first issue is related to the timing and status of MSA reauthorization. The Council and committee have been proceeding with the understanding that Congressional authorization is necessary to implement the types of fee-based programs proposed. The current administration bill would remove the existing Research Plan language and include broad authority for all regions that would support the restructuring programs being considered. The Senate version of the bill, however, does not currently include such authorization.

The second issue relates to NMFS's recently reconfirmed determination that observers do not meet the professional exemption criteria in the FLSA and thus the FLSA and SCA must be applied to determine observer compensation for observers employed by companies which contract directly with the agency or use Federal funds. Under the current service delivery model in the North Pacific, overtime requirements are likely less of a concern, as the majority of observers operate under a collective bargaining agreement which results in wages that likely meet or exceed the base wage rate established by the Dept. of Labor (\$5.15/hour) plus overtime. However, if the program is changed to a fee based program as proposed under Amendments 86/76, with direct contracts between NMFS and observer providers, the overtime requirements in the FLSA coupled with the SCA minimum wage requirements are estimated to increase observer costs compared to the status quo. These costs could be significant, but are not possible to estimate with any certainty.

Dr. Karp related that in December 2005, NMFS requested guidance from the Department of Labor (DOL) on how the FLSA is to be applied, what constitutes work hours, how to track worked hours, and related questions by January 2006 (see **Appendix II** of the analysis). Informal feedback from DOL indicates that a response could take several months, and that guidance related to cost uncertainties is unlikely to be definitive until a specific contract is in place. Thus, it is unlikely that the DOL could provide sufficient guidance to inform a cost analysis of the fee-based programs currently proposed in the analysis.

Finally, Dr. Karp relayed concerns with existing agency costs and likely cost increases due to implementation of a fee-based program. He related that the agency needs a mechanism to recover at least a portion of the added implementation costs, either through an appropriations increase or by using a portion of the fee proceeds. To date, the analysis includes an explicit assumption that the fee proceeds

would only pay for the direct cost of observers, and not for agency administrative costs. Committee members also noted that agency budget needs have not been previously highlighted as a concern. Dr. Karp reported that the agency budget is not linked to the number of observer days, so NMFS continues to have difficulty financing the increased seadays required of new programs approved by the Council. To date, these increased costs have been paid for through normal staff attrition. Dr. Karp relayed that a rough estimate of the total cost for deploying observers in the North Pacific is much lower than in other regions (at relatively the same observer wages), but in the future, any increase in observer days will require additional funding. The committee reiterated that industry would not agree to pay for NMFS administrative costs, and that has been an ongoing premise of the fee programs proposed in the analysis. One suggested option is to reduce observer coverage days and purchase the number of days that the budget can provide. Another approach suggested by NMFS is to determine the highest priorities for the program, agree on a fixed budget, put out a contract for bid, and once observer costs are known, purchase the amount of coverage possible under the budget.

In light of the above concerns, ongoing cost uncertainties, and the upcoming sunset of the Observer Program on December 31, 2007, NMFS recommends that the committee and the Council consider selecting Alternative 2 (extension of the current program) in the current analysis. Alternative 2 would effectively remove the expiration date on the program and establish the current program permanently until a new program is implemented.

Update on MSA reauthorization

Chris Oliver provided a brief update on MSA reauthorization and also reiterated the merits of convening the OAC prior to receiving a response from the DOL on FLSA application. It was noted that some form of the administration's MSA reauthorization bill (which would potentially authorize a fee program) may be in the House version, and reauthorization is expected this fall. The committee also discussed the possibility that the House bill would attempt to clarify the FLSA issue, either through establishing 'professional status' for observers or by an explicit exemption from the requirements of the FLSA, similar to other marine employment categories. Several members agreed that an explicit exemption appeared to be the most effective and direct solution. It is uncertain whether such an exemption could be included in the MSA or whether it is necessary as a direct amendment to the FLSA. Chris also noted that the language authorizing Dedicated Access Programs in the administration's bill currently includes a recovery fee associated with those programs of up to 3%, but it is uncertain whether the fee could be used to cover observer costs.

III. Review draft analysis (BSAI Am. 86/GOA Am. 76)

Kent Lind provided an overview of the preliminary draft analysis provided to the committee for review. Under the system proposed in the analysis, NMFS would contract directly with observer providers for observer coverage, funded by a broad-based user fee and/or direct Federal subsidy. Vessels and processors not covered under the new program would continue to operate under the existing program, whereby vessels contract directly with observer providers. The alternatives for the new program vary with regard to scope (i.e., which fleets or sectors are included in the new program and which remain in the current pay-as-you-go program). The three action alternatives range from including Gulf of Alaska (GOA) groundfish vessels and processors and halibut vessels in all areas to a comprehensive alternative that would include all vessels and processors fishing groundfish or halibut in Federal waters of the North Pacific. The following sections highlight committee discussion on specific issues within the analysis.

While almost all of the fisheries/sectors included in the analysis would start with about the same observer coverage levels as the status quo, NMFS has recommended 100% coverage on all catcher processors included in the new program. The analysis includes various ways to pay for such coverage under the

alternatives: place all CPs in Tier 2 (100% coverage) and continue to have them in the pay-as-you-go program (Alternative 4); place all CPs in Tier 2 and assess a daily observer fee (Alternative 5); place all CPs in Tier 3 and increase the ex-vessel value fee percentage on all vessels to accommodate 100% coverage on all CPs (possible under Alternative 3, 4, or 5).¹

The committee also discussed that a rollover of the existing program for those sectors not included in the fee-based system is embedded in both Alternative 3 and 4. Because those alternatives do not include all fisheries in the new fee-based program, the existing program would be extended indefinitely for those sectors. In addition, it may be necessary to roll over the existing program for some period of time under any alternative, in the case that the time necessary to implement the new program exceeds the current expiration date of 12/31/07.

The committee also discussed that it may be logical to keep halibut and sablefish vessels together under Alternative 3, as they commonly undertake combined trips.

In addition, the committee reviewed the proposed fee percentages that result from the action alternatives. It was suggested that the analysis should better clarify how the fee would be assessed. For example, if a fee was established at 0.6% of ex-vessel value, the vessel would pay 0.6% and the shoreside processor would pay 0.6% of the ex-vessel value of the catch. In the case of catcher processors, which both catch and process the fish, the catcher processor would pay both fees, for a total of 1.2% of the ex-vessel value of the catch. This mirrors the approach in the original Research Plan.

It was noted in the presentation that tables were included at the request of the Council to delineate total catch between vessels <60', 60' – 125', and >125' length overall, by sector and area. While the data show a much lower scale of harvest in the GOA compared to the BSAI, the data do not indicate a trend of increased tonnage by larger vessel sizes in the GOA. In effect, the harvest level does not seem to be dependent on vessel size in the GOA, for all gear types except pelagic trawl. Trawl fisheries also harvest the greatest volume of fish, and the majority of unobserved harvest (in terms of tonnage) is from the <60' trawl fleet.

Given the concerns outlined by NMFS and the upcoming expiration of the current observer program, the committee recommended that the Council select Alternative 2 as the preferred alternative. The committee emphasized that this selection should be construed as the only feasible choice at the current time. As additional information on cost and Congressional authorization become available, the committee supports reconsidering the restructuring alternatives currently proposed under Alternatives 3 – 5, recognizing that it may be preferable to consider additional alternatives in the future as well.

The committee also recommended updating the analysis to include the most recent NMFS letter (1/22/06) and a comprehensive discussion of the cost uncertainties and timing issues with both MSA reauthorization and the sunset date of the current program, in order to better reflect the current situation and short-term needs. Staff noted that the analysis of Alternative 2 would be expanded in this regard in the next draft of the analysis.

The committee also agreed that Alternative 2 should not be modified to include a new sunset date. As it stands, Alternative 2 would remove the sunset date and establish the current program until such time that a new program is approved. While members supported a mechanism to maintain priority status for changes to the observer program, many asserted that the sunset date does not do this effectively. In

¹Note that Alternative 3 only applies to vessels and processors in the Gulf of Alaska and halibut vessels in all areas.

addition, development of the requisite analyses and regulations to further extend a program ties up staff resources that could be better spent on developing the new program.

The committee also expressed concern with the perception of abandoning the restructuring alternatives in making the above recommendation. The intent is that Alternative 2 would address the short-term needs to have an authorized observer program in place for 2008, and that the restructuring alternatives would remain viable approaches, given additional information, to meet long-term needs as expressed in the current problem statement. While the committee discussed whether to create a new problem statement and separate analysis to address the short-term concerns, it agreed that the discussion in the analysis could be sufficiently expanded to explain the problems, timeframes, and intent of the preferred alternative.

The concerns outlined above and the absence of a sunset date spurred the committee to further recommend that a new amendment proposing restructuring alternatives should be considered by the Council at such time that: 1) legislative authority is established for the fee based alternatives, through MSA reauthorization or other Congressional action; 2) the FLSA 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) the Council requests reconsideration in response to changes in conditions that cannot be anticipated at this time. If the first two criteria are met, the Council would also be in a much better position to estimate start-up funding for a fee-based observer program and NMFS implementation costs.

IV. Receive report from NMFS on pilot project from summer 2005

Todd Loomis (NMFS) presented a brief summary of two research projects conducted this past summer. The first tested a new deployment model, the application of video to monitor discards, and alternative sampling methods in the GOA rockfish fishery. The alternative observer deployment model was a continuation of a 2003 study. This project included nearly the entire Kodiak trawl catcher vessel fleet and all of the shoreside processors. The second project was a cooperative research project designed to explore the use of technology to improve catch sampling and discard monitoring. This study was conducted on the *F/V Seafisher* under a scientific research permit in cooperation with the International Pacific Halibut Commission, Marine Conservation Alliance Foundation, and Cascade fishing.

The primary objectives of the GOA project were to: 1) test whether electronic monitoring/video could be used to monitor at sea discards; 2) test an alternative observer deployment model (instead of vessels being responsible for their coverage, NMFS used a decision matrix to determine when and where observers would be deployed); and 3) test brailer bags for sampling species composition in the rockfish fishery. NMFS anticipates that the data analysis and report on the video component of the Kodiak project will be completed in the next several months. Preliminary results indicate a more consistent stream of data and better distributed coverage which was more representative of actual fishing effort and location (~36% coverage). Drawbacks to the decision matrix included the need to maintain a pool of observers ready for deployment on short notice and having staff on call 24/7. Brailer sampling was not successful in the rockfish fishery, but may have application in other fisheries.

The objectives of the *Seafisher* project were to: 1) determine the efficacy of video for monitoring pre-sorting and discard activities on trawl catcher processors; 2) evaluate the functionality of an automated catch sampling system; and 3) determine the (haul-specific) accuracy and precision of observer sampling based estimates of target and non-target species weights. Nine cameras were installed to monitor catch (yellowfin sole and arrowtooth flounder targets) from landing to point of discard. Results have not been fully analyzed but indicate that video has potential for use as a catch monitoring tool on catcher processors and automated catch sampling systems may be a viable way of randomly selecting samples of the catch.

V. Scheduling and other issues

The committee also discussed the following three issues summarized below.

Changes to the existing Observer Program

The committee and NMFS noted that there may be changes desired in the existing observer program that could be included in a new amendment package. The committee noted a couple of issues to frontload those discussions, should such an 'omnibus' type amendment be initiated. These included a proposal to increase the number of observer trips that can occur before de-briefing. The committee is interested in addressing fisheries that have very short openers (a few days) and are required to have 30% observer coverage (effectively creating 100% coverage).

A member of the public also suggested a requirement for <60' vessels to have logbooks if they catch 50,000 pounds or more of groundfish annually. It was suggested that this be included in the annual recordkeeping and reporting package developed by NMFS.

Federal Observer Compensation Act (FOCA)

Dr. Karp provided an update on the status of FOCA. This proposed legislation is intended to reduce the costs for observer insurance, limit vessel liability in the case of negligence claims, and provide a more comprehensive program for compensating observers in the event of work-related illness or injury. Dr. Karp noted that the most recent FOCA language available to the public continues to be the QuanTech report (March 2003) provided to the committee last May. No significant changes have been made to the substance of the bill since that version. The proposal continues to undergo internal agency review.

Administration's MSA Bill (Dec 2005 version)

The committee reviewed the draft observer language proposed in the December 2005 version of the administration's MSA reauthorization bill (Attachment 2), provided by NMFS at the request of the committee. The committee noted that the language authorizing the collection of fees from industry (all regions) to cover the costs of observers is very broad, and no cap is specified. The language also refers to Secretarial authority, and does not mention the Councils as developing the fee programs. This spurred the question of whether the intent was for the Secretary to implement a fee program without going through the Council. Staff noted that statutes often reference the Secretary without mention of the Council, with the understanding that the Council would develop and recommend an amendment package with corresponding regulations in order for the Secretary to exercise the authority established in the statute.

The committee also noted that the administration's language defining for what an observer fee could be used is ambiguous; notably, it is uncertain whether it would allow the fee to be used for any agency administrative costs. Lastly, the committee did not favorably view the intent of the language that required that no new observer programs could be funded through direct contracts with industry and that existing such programs must undergo an independent peer review to evaluate the accuracy, precision, and potential biases of the data from the program.

Staff noted that they will inform the OAC of revised proposed MSA language as it becomes available. The administration's MSA reauthorization bill (December 2005 version) is provided in entirety at:

<http://www.nmfs.noaa.gov/msa2005/>.



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

January 22, 2006

Attachment 1

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501-2252

Dear Madam Chair:

During the last several months, staff from the Alaska Regional Office, the Alaska Fisheries Science Center and the North Pacific Fishery Management Council (Council) have prepared an analysis of the five alternatives for restructuring the North Pacific Groundfish Observer Program (NPGOP) that were identified by the Council at its June 2005 meeting. This analysis will be presented to the Observer Advisory Committee (OAC) at its January 2006 meeting and carried forward to the Council for initial review at its February 2006 meeting in Seattle.

At the June 2005 meeting, some Council members and members of the public expressed concern that changes in the observer service delivery model which would occur under certain alternatives might result in increases in industry costs associated with observer labor. The Fair Labor Standards Act (FLSA) governs pay rate and overtime provisions of observer compensation of both current and future service delivery models. NOAA Fisheries Service has recently reaffirmed its position that observers employed by companies which contract directly with the agency or use federal funds for provision of observer services must apply FLSA and Service Contract Act (SCA) criteria to determine observer compensation requirements. These criteria are specified in federal labor regulations and include exemptions to the requirement to pay overtime for hours worked in excess of 40 hours per week. The exemption criteria include, among others, whether observers are paid on a salary or hourly basis, examination of their specific duties, responsibilities and education, and whether a collective bargaining agreement is in force.

Even though this reaffirmation by NOAA Fisheries Service addresses some of the concerns that were raised at the June 2005 Council meeting, we still are unable to provide a definitive assessment of observer costs under a new service delivery model. The applicability of some FLSA provisions and the actual number of hours worked by observers each day may not be determined until contracts between NOAA and observer providers are finalized. Furthermore, the Department of Labor (DOL) has yet to respond to a November 2005 NOAA Fisheries Service request to clarify uncertainties regarding classification of working and non-working hours, and verification of hours worked in an unsupervised environment. Initial feedback from DOL indicates that we may not receive a reply for several months, and that they may be unable to provide definitive answers to some of the labor-cost related questions.

Changes in industry costs associated with observer wages under different service delivery models are not the only costs warranting evaluation. The preliminary analysis presented to the Council at the June 2005 meeting identified some of the increased costs that would be incurred by NOAA Fisheries Service under alternatives other than status quo. These include:



- Costs of increased staffing for contract development, implementation and management;
- Additional staff that would be necessary to support the AFSC's more "hands-on" role in directing and adjusting observer coverage;
- Increased costs for the development and implementation of technological monitoring approaches and vessel specific monitoring plans (VMPs) also are expected, although these costs will occur even under the status quo alternative; and
- Increases in observer coverage that may be necessary to meet new fishery management program monitoring requirements and which would increase the AFSC's costs for observer training, briefing, debriefing and database management (and a range of other functions).

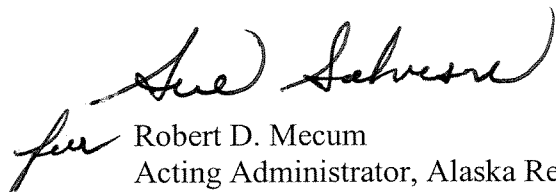
The magnitude of these increased costs depends on the design of the new monitoring system, the complexity and number of VMPs that are put in place and the overall increase in observer deployment days. However, at a minimum, salaries for new FTEs and operational costs would be required.

While agency and industry cost issues should be determined and resolved to the extent possible before restructuring can proceed, they are but one aspect of an effective restructuring program. To be most effective, restructuring alternatives must provide flexibility to adjust coverage levels in all sectors to optimize coverage relative to information needs, and encourage technological innovation when appropriate and cost effective. This requires us to take a more comprehensive approach to restructuring and to ensure that funds are available to cover costs associated with oversight and management of the observer program, as well as direct observer deployment costs.

At the January 2006 OAC meeting, we will discuss these issues with committee members and work towards developing new fisheries monitoring approaches for consideration by the Council. These approaches must recognize the need to constrain industry costs, provide funds necessary for NOAA Fisheries Service to operate the NPGOP, provide flexibility to optimize the benefits of observer coverage when resources are limited, and encourage appropriate use of video and other technologies for fishery monitoring.

We are hopeful that, through our collective efforts, we can build on the analytical work already completed and move forward to design and implement a comprehensive, flexible, and cost effective observation and monitoring system which will meet the needs for fishery-dependent information in the North Pacific groundfish fisheries for the foreseeable future. However, during the time period that the uncertainties outlined above remain unresolved, we recommend that the current structure of NPGOP be maintained and that the OAC and the Council consider Alternative 2 as the approach best suited to address current needs.

Sincerely,


for Robert D. Mecum
Acting Administrator, Alaska Region

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

provisions, a broad framework regulation would control aspects that are common to all buyback programs; additional, program-specific regulations would address the particular details of each fishery, as necessary. If a particular buyback program were to be industry-funded, a referendum of participants in the fishery would be required.

SECTION 19. FUNDING FOR FISHERY OBSERVER PROGRAMS

This section amends the Act to address the funding of observer programs and is intended primarily to establish an observer funding program that provides national guidelines but also incorporates sufficient flexibility to meet the unique needs of different regions. Accordingly, the Secretary may establish an observer funding mechanism to cover the cost of an observer program. With a few exceptions, private contractual arrangements between fishermen and non-government observers may not be established. Existing private contracts shall be evaluated by an independent peer review established by the Secretary to evaluate accuracy, precision, and potential biases in the program. The details of observer funding mechanisms should be tailored flexibly to the circumstances of the fishery. Notably, monies deposited in the Fishery Observer Fund must be used for that observer program.

SECTION 20. WESTERN PACIFIC FISHERY DEMONSTRATION PROJECTS

This section makes a technical amendment to section 111 of the Sustainable Fisheries Act to clarify that Western Pacific communities with indigenous inhabitants are eligible for fishery demonstration projects under that section, even if those communities have not developed and submitted a community development program under section 305(i)(2)(B)(v) of the Act to provide fisheries access to indigenous communities.

SECTION 21. AMENDMENTS TO NORTHERN PACIFIC HALIBUT ACT

This section amends the Northern Pacific Halibut Act of 1982 to increase the maximum civil penalty to \$200,000 and to authorize permit sanctions under that Act. The new permit sanction authorization is modeled on the permit sanction regime under section 308(g) of the Act. This section also amends section 9 of that Act to increase the maximum fines to \$200,000 for a fishing violation under that Act and to \$400,000 for using a dangerous weapon in committing a fishing violation, engaging in conduct that causes bodily injury to an enforcement officer, or placing an enforcement officer in fear of imminent bodily harm.

SECTION 22. MAINE POCKET WATERS

This section corrects the coordinates in section 809 of the Atlantic Coastal Fisheries Cooperative Management Act for the waters known as "Maine pocket waters." That Act was amended in 1996 to exempt Maine commercial lobster permit holders from Federal permitting requirements in Maine pocket waters.

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1 reasonably necessary to meet the program's proposed objectives.

2 “(4) The Secretary shall contract with each person participating in a program, and each
3 such contract shall, in addition to including such other matters as the Secretary
4 deems necessary and appropriate to effectively implement each program (including,
5 but not limited to, penalties for contract non-performance) be consistent with the
6 framework and implementing regulations and all other applicable law.

7 “(5) Each program not involving fair market assessment shall involve a reduction auction
8 that scores the reduction price of each bid offer by the data relevant to each bidder
9 under an appropriate fisheries productivity factor. If the Secretary accepts bids, the
10 Secretary shall accept responsive bids in the rank order of their bid scores, starting
11 with the bid whose reduction price is the lowest percentage of the productivity
12 factor, and successively accepting each additional responsive bid in rank order until
13 either there are no more responsive bids or acceptance of the next bid would cause
14 the total value of bids accepted to exceed the amount of funds available for the
15 program.

16 “(6) Each program shall proceed by the Secretary issuing invitations to bid setting out the
17 terms and conditions for participation consistent with the framework and
18 implementing regulations. Each bid that the Secretary receives in response to the
19 invitation to bid shall constitute an irrevocable offer from the bidder.”.

20 **SEC. 19. FUNDING FOR FISHERY OBSERVER PROGRAMS.**

21 (a) NORTH PACIFIC RESEARCH PLAN. – Section 313 (16 U.S.C. § 1862) is amended-

22 (1) by striking subsections (a), (b), (c), (d), (e), and (i);

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1 (2) by redesignating existing subsections (f), (g), and (h) of Section 313, as subsections (a),

2 (b), and (c), respectively;

3 (3) by redesignating existing subsection (j) of Section 313 as subsection (d);

4 (4) in subsection (a), as so redesignated, by striking "and this section"; and

5 (5) in subsection (b), as so redesignated-

6 (A) by striking "North Pacific Fishery Observer Fund" and inserting "Fishery Observer

7 Fund established under Section 403(e)"; and

8 (B) by striking "303(b)(10)" under paragraph (2)(A) and inserting "303(b)(8)" in its

9 place.

10 (b) OBSERVER PROGRAM FUNDING. – Section 403 (16 U.S.C. § 1881(b)) is amended by-

11 (1) striking "GUIDELINES FOR CARRYING OBSERVERS" in the heading of subsection

12 (a), and inserting "GUIDELINES FOR OBSERVER SAFETY" in its place; and

13 (2) inserting after existing subsection (c) of Section 403 the following new subsections-

14 "(d) OBSERVER PROGRAM FUNDING MECHANISM.

15 "(1) The Secretary may establish a funding mechanism to cover the cost of an

16 observer program to monitor any fishery managed under this Act or any other

17 Act administered by the Secretary, including the Northern Pacific halibut

18 fishery.

19 "(2)(A) The Secretary may exercise broad discretion in developing a funding

20 mechanism under this subsection, which may include, but is not limited to, a

21 system of fees, payments collected from dedicated access privilege

22 programs, or any other cost recovery mechanism to pay for the cost of-

Attachment 2 - Administration's MSA reauthorization bill (Dec 2005)

1 “(i) stationing observers on board fishing vessels and United States fish
2 processors, and

3 “(ii) the actual cost of inputting collected data, less any amount received
4 for such purpose from another source or from an existing surplus in the
5 Fishery Observer Fund established in subsection (e).

6 “(B) The moneys collected under a funding mechanism established under this
7 subsection for an observer program shall be-

8 “(i) deposited into the Fishery Observer Fund established by
9 subsection (e); and

10 “(ii) used only for the observer program covering fisheries from
11 which the moneys were collected.

12 “(3) Except where provided under subsection (d)(4), no new observer programs
13 may be funded through direct contractual agreements between the owner or
14 operator of a fishing vessel or United States fish processor and any non-
15 governmental observer provider company.

16 “(4) Fishery management plans and regulations under this Act that currently allow
17 for direct contractual agreements between the owner or operator of a fishing
18 vessel or United States fish processor and any non-governmental observer
19 provider company shall be evaluated by an independent peer review
20 established by the Secretary to evaluate the accuracy, precision, and potential
21 biases of data from the program. Based on the results of this and other
22 germane reviews, the Secretary, in consultation with the Council, will