

Discussion Paper

Scoping and Prioritization of Proposed Amendments to the North Pacific Groundfish and Halibut Observer Program

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1 Introduction

The North Pacific Groundfish and Halibut Observer Program (Observer Program) provides the regulatory framework for NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the Bering Sea and Aleutian Islands and Gulf of Alaska groundfish and halibut fisheries. Observers collect biological samples and fishery-dependent information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

In 2013, the North Pacific Fishery Management Council (Council) and the National Marine Fisheries Service (NMFS) restructured the Observer Program to place all vessels and processors in the groundfish and halibut fisheries off Alaska into one of two categories: (1) the full coverage category, where vessels and processors obtain observers by contracting directly with observer providers, and (2) the partial coverage category, where NMFS has the flexibility to deploy observers when and where they are needed based on an annual deployment plan developed in consultation with the Council. Funds for deploying observers in the partial coverage category are provided through a system of fees based on the ex-vessel value of retained groundfish and halibut in fisheries and landings that are not in the full coverage category.

Restructuring of observer coverage for vessels and processors in the partial coverage category was designed to reduce sources of bias that reduce the statistical reliability of catch and bycatch data collected by observers. Restructuring also was designed to address longstanding concerns about cost inequality among fishery participants and to expand observer coverage into currently unobserved fisheries.

The purpose of this discussion paper is to provide information to further prioritize five proposed revisions to regulations governing the Observer Program that were submitted to the Council for consideration in 2013. A number of these proposals also were made in public comments on the proposed rule for Observer Restructuring, but could not be accommodated in the final rule.

Further consideration of any of these proposals requires prioritization and the preparation of analyses to assist the Council to identify the specific problem that needs to be addressed and to identify specific alternatives to analyze in an initial draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA). This discussion paper does not provide thorough scoping or analysis of any of these five proposals. Rather, it provides information that may be used by the Council and its advisory committees to prioritize the projects for further analysis and future consideration by the Council.

The five regulatory amendment proposals under consideration for further analysis are (in the order tasked for scoping by the Council):

1. Evaluate moving trawl catcher vessels participating in the Bering Sea Aleutian Islands Pacific cod fishery from partial coverage to full coverage. (June 2013)
2. For vessels that previously operated as catcher vessels and catcher/processors within a year, consider options to allow these vessels to be in the partial coverage category through an annual election, to revise the control date for making the election, and to specify production tonnage criteria. (June 2013)
3. Change the method of observer fee collection for the IFQ fleet to use standardized current year ex-vessel prices, rather than standard prices lagged one year. (June 2013)
4. Develop alternatives to exempt from observer coverage vessels used to harvest small amounts of IFQ under several scenarios. (June 2013 and October 2013)
5. Develop alternatives related to observer coverage or other options to monitor vessels used to fish for IFQ in multiple regulatory areas on the same trip. (December 2013)

In addition, the discussion paper includes information for comparison and prioritization purposes about two regulatory amendment proposals that would revise Observer Program regulations that the Council has already requested Council and NMFS staff to further analyze. These two proposed regulatory amendments packages are:

1. Alternatives to improve observer coverage on catcher vessels delivering to tenders, and
2. Revisions to regulations governing fishing for Pacific cod by small hook-and-line catcher vessels in the Western Alaska Community Development Quota (CDQ) fisheries.

2 Background

Observer requirements for fisheries off Alaska have been in place since the mid-1970s and remained mostly unchanged from 1990, when regulations for the domestic Observer Program were first implemented, through 2012. In October of 2010, the North Pacific Fishery Management Council (Council) took final action to recommend Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery

Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76 or “Observer Restructuring”). These amendments added a funding and deployment system for observer coverage to the existing Observer Program and amended existing observer coverage requirements for vessels and processing plants. The final EA/RIR/IRFA for Amendments 86/76 is dated March 2011 and is available on NMFS’s website:
(http://www.alaskafisheries.noaa.gov/analyses/observer/amd86_amd76_eairirifa0311.pdf)

The rationale for restructuring the Observer Program under Amendments 86/76 was based on the following problem statement approved by the Council at its December 2008 meeting:

The North Pacific Groundfish Observer Program (Observer Program) is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990 and do not include observer requirements for either the <60’ groundfish sector or the commercial halibut sector. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

The final rule for Amendments 86/76 took effect on January 1, 2013 (77 FR 70062; November 21, 2012). More information on the history of the Observer Program, the Council’s preferred alternative, and details of the requirements and provisions of the new Observer Program can be found in the proposed and final rules for this action, which are posted on the NMFS Alaska Region website <http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/>.

Under the restructured Observer Program, all vessels and processors in the groundfish and halibut fisheries off Alaska are assigned to one of two observer coverage categories: (1) a full coverage category, and (2) a partial coverage category.

The full coverage category includes:

- catcher/processors (with limited exceptions),
- motherships,
- catcher vessels while participating in programs that have transferable prohibited species catch, (PSC) allocations as part of a catch share program,
- inshore processor when receiving or processing Bering Sea pollock.

Vessels and processors in the full coverage category obtain observers by contracting directly with observer providers.

NMFS recommended that all catcher/processors and motherships be placed in full coverage to obtain independent estimates of catch, at-sea discards, and PSC for these vessels. At least one observer on each catcher/processor eliminates the need to estimate at-sea discards and PSC based on industry provided data or observer data from other vessels.

Catcher vessels participating in programs with transferable PSC limits as part of a catch share program also are included in the full coverage category while they are participating in these programs. These programs include Bering Sea pollock (both AFA and CDQ), the groundfish CDQ fisheries (CDQ fisheries other than halibut, fixed gear sablefish, and pollock), and the GOA Rockfish Program.

Under the catch share programs, quota share recipients are prohibited from exceeding any allocation, including, in many cases, transferable PSC allocations. All allocations of exclusive harvest privileges create some increased incentive to misreport as compared to open access or limited access fisheries. Transferable PSC allocations present challenges for accurate accounting because these species are not retained for sale and they represent a potentially costly limitation on the full harvest of the target species. To enforce a prohibition against exceeding a transferable target species or PSC allocation, NMFS must demonstrate that the quota holder did, in fact, have catch that exceeded his, her, or its allocation. Supporting a quota overage case for target species or PSC that could be discarded at sea from an unobserved vessel requires NMFS to rely on either industry reports or estimated catch based on discard rates from other similar observed vessels. These indirect data sources create additional challenges to NMFS in an enforcement action. In addition, the smaller the pool from which to draw similar observed vessels and trips, the more difficult it is to construct representative at-sea discard and PSC rates for individual unobserved vessels.

Inshore processors taking deliveries of Bering Sea pollock are in the full coverage category because of the need to monitor and count salmon bycatch in the Bering Sea pollock fishery.

The partial observer coverage category includes:

- catcher vessels designated on a Federal Fisheries Permit (FFP) when directed fishing for groundfish in federally managed or parallel fisheries, except those in the full coverage category,
- catcher vessels when fishing for halibut IFQ or sablefish IFQ (there are no PSC limits for these fisheries),
- catcher vessels when fishing for halibut CDQ, fixed gear sablefish CDQ, or groundfish CDQ using pot or jig gear (because any halibut discarded in these CDQ fisheries does not accrue against the CDQ group's transferable halibut PSC allocation),
- catcher/processors that meet criteria that allows assignment to the partial coverage category (see Section 5.2),
- shoreside or stationary floating processors, except those in the full coverage category.

Under partial coverage, vessels are placed into three "strata" (statistical subgroups) or "pools" with differing requirements. These pools and requirements are as follows:

1. No Selection pool. This category applies to all vessels less than 40 feet LOA and catcher vessels fishing with jig gear (which includes handline, jig, troll, and dinglebar troll gear). Inclusion in this pool is re-evaluated each year in the Annual Deployment Plan and may change in the future. Eligible landings from vessels in the no selection pool are included in the observer fee assessment.
2. Vessel Selection pool. This category applies to catcher vessels fishing with hook-and-line and pot gear that are less than 57.5 feet LOA and greater than or equal to 40 feet LOA. Each fall, owners of vessels placed in this pool receive a letter that lists their vessels assigned to this pool. Vessel owners

or operators in this pool are not required to log trips into the Observer Declare and Deploy Systems (ODDS). However, a sub-set of vessels, randomly selected by NMFS, are required to take observers for every groundfish or halibut fishing trip that occurs during a specified 2-month period. Owners of selected vessels are contacted by NMFS at least 30 days in advance of the 2-month period.

3. Trip Selection pool. This category applies to all catcher vessels of any length fishing with trawl gear, and to hook-and-line and pot gear vessels that are greater than or equal to 57.5 feet LOA. Each fall, owners of vessels placed in this pool receive a letter that lists their vessels assigned to this pool and describes how to access and log trips into ODDS. Owners or operators of vessels in this selection pool are required to log each fishing trip into ODDS. Upon logging a trip, the vessel owner or operator is immediately informed if the trip has been randomly selected for observer coverage. If the logged fishing trip is selected, then the vessel must take an observer on that trip. The observer will be provided by a NMFS contractor. Vessel owners or operators in this pool must log fishing trips at least 72 hours before anticipated departure.

FFP holders are not required to carry observers while they fish in the State of Alaska guideline harvest level groundfish fisheries, unless they are retaining IFQ species or halibut CDQ during those fisheries.

3 Current Analytical Priorities

The priorities for statistical and policy analysis about the Observer Program between February and June 2014 are:

1. Complete the 2013 Annual Report for June 2014 (see NMFS's separate report on the Annual Report outline). The Annual Report will require the work of numerous NMFS staff during the period February to June 2014, particularly those staff with statistical and quantitative analysis skills.
2. Continued development of electronic monitoring technologies, as requested by the Council and the fishing industry and as identified by NMFS as a national priority.
3. Analysis of alternatives to improve observer coverage for vessels delivering to tenders. In December 2013, the Council tasked staff with an analysis of revising regulations to improve our ability to randomly deploy observers on vessels in the partial coverage category that deliver to tenders and to allow observers on catcher vessels selected for observer coverage to monitor deliveries on the tender vessel. In the June 2013 preliminary evaluation of observer deployment NMFS identified potential data quality concerns with this portion of the partial coverage category. Therefore, NMFS supports the need for this analysis and has assigned staff to assist in its development.
4. Analysis of alternatives to encourage local development and participation in the harvest of Pacific cod CDQ by the small hook-and-line vessels. One component of this analysis involves revising observer coverage requirements for CDQ catcher vessels that currently are in the full observer coverage category. NMFS staff assisted in the development of the discussion paper for February 2014 Council review and will continue to assist with this proposal if the Council advances it for further analysis.

Staff to prepare the statistical, policy, and economic analyses; descriptive statistics; and recommendations for these four priority projects are limited. If these priorities remain in effect, these projects will be fully

staffed before assigning key NMFS staff to any of the five regulatory amendment proposals described in this discussion paper.

4 Factors to Consider in Prioritizing Additional Regulatory Amendments Proposals

In June 2013, the Observer Advisory Committee (OAC) identified the four criteria for evaluating the regulatory proposal and any alternatives developed in analysis of the proposal. These criteria are “bias in data quality, cost equity, cost savings, and enforcement.” Below is a description of the issues and questions that may be associated with each of these criteria, with two of the criteria re-worded slightly to encompass a broader list of issues:

1. Data quality – Was the proposal made as a result of concern about the quality of observer data being collected under the current regulations and ADP? Would the proposed regulatory amendment improve data quality or negatively affect data quality? If so, in either case, why and how? Does assessment of the impact of the proposed regulatory amendment on data quality require quantitative analysis by staff with statistical expertise? Or, can the impact be assessed by an analysis of descriptive statistics (proportion of historical catch, production, or amount allocated) or assessed qualitatively (meaning no complex statistical analysis required although construction of data sets can be complex and time consuming). Will any information to address the data quality concerns about a specific proposal be included in the Observer Program Annual Report?
2. Cost savings – Was the proposal made as a result of concerns about the overall cost of the Observer Program or observer coverage to industry participants or the NMFS? Could one or more of the Council’s and NMFS’s objectives be accomplished at a lower cost? Can we reduce the cost of observer coverage or gain efficiencies in spending observer fees through this regulatory amendment? How would the proposal affect agency costs?
3. Cost equity – Was the proposal made as a result of concerns about the distribution of costs for observer coverage among the various industry sectors? Does an element of the current program create an unfair distribution of costs or an unfair imposition of costs? Is the cost of carrying an observer too burdensome for some operations? Is additional information needed to assess the impact of the current program or proposed regulatory amendment on the cost of carrying an observer (costs other than the fee assessment)?
4. Monitoring and enforcement – Is concern about monitoring or enforcement an issue with this proposal? Can the proposal be effectively monitored and enforced? If so, are there any additional requirements needed for effective monitoring and enforcement? How much would these elements cost vessel owners and operators and NMFS?

In addition to these four criteria, NMFS also recommends consideration of staff resources available to prepare the analysis needed for these five regulatory amendments. Further analysis of any of the five regulatory amendment proposals requires NMFS, Council, or contracted staff to prepare an analysis that identifies the objective of the proposed action, alternatives considered, and the impact of each of the proposed alternatives. None of the projects can be completely prepared by one person and many require input from a variety of staff with expertise in statistical, economic, and policy analyses; legal issues; catch monitoring and data quality; equipment and technical requirements; Observer Program operations; enforcement; and administration.

5 Summary of the Proposals and NMFS Recommendations

Following are some comments from NMFS about factors to consider in prioritizing the five regulatory amendment proposals and issues to consider should a particular proposal be selected as a high priority for further analysis.

5.1 Monitoring options for vessels IFQ fishing in multiple regulatory areas

Retaining halibut IFQ, halibut CDQ, and sablefish IFQ from multiple regulatory areas on a vessel at the same time is allowed under current regulations if the amount retained does not exceed the total amount of unharvested IFQ or CDQ available in the regulatory area in which the vessel is fishing, and the halibut are identified by regulatory area (by individual marking or storage in separate areas). In addition, halibut IFQ or CDQ fishing in multiple regulatory areas in Area 4 is allowed if an observer is on board the vessel or the vessel carries either VMS and does not possess at any time more halibut than the IFQ or CDQ available in the area being fished. In both cases for Area 4, the halibut need to be identified by regulatory area (by individual marking or separation).

For all regulatory areas, vessel operators may retain IFQ or halibut CDQ *exceeding* the amount available in the area being fished if they have an observer onboard the vessel (50 CFR 679.7(f)(4)). This allowance was in effect at the time NMFS developed regulations to restructure the Observer Program. Unfortunately, NMFS did not identify at that time that this regulation needed to be revised with implementation of the partial observer coverage category. **For this reason, and for data quality, cost savings, and monitoring and enforcement reasons described below, NMFS recommends a high priority for further scoping and analysis this proposal regulatory amendment.** The caveat to this high priority recommendation is that NMFS is uncertain how many IFQ and halibut CDQ vessel owners are facing restrictions due to the current regulations. We could spend considerable time developing regulatory amendment alternatives that benefit a small number of people or offer solutions that will not be used by fishermen.

Because regulations governing halibut IFQ and CDQ fishing in multiple regulatory areas are addressed in both Federal fishery regulations and IPHC regulations, implementation of proposed regulatory amendment requires coordination with the IPHC and may also require a complementary by the IPHC.

In June 2013, representatives of IFQ fishermen identified the conflict between NMFS's regulations that allow IFQ fishing in multiple areas with an observer and the limitations for vessels in the partial coverage category on voluntarily taking an observer. Industry expressed the importance of being able to fish IFQ in multiple regulatory areas **to reduce the costs of fishing**, the potential for increased amounts of unfished IFQ if vessel owners cannot combine "clean-up" trips for multiple areas, and the possibility that the situation will become more costly and limiting if halibut and sablefish catch limits decline in future years.

Under current Observer Program regulations, most vessels fishing for IFQ or halibut CDQ are in the partial observer coverage category where observers are deployed randomly by NMFS under the ADP. NMFS regulations do not authorize voluntary observer coverage for vessels in the partial coverage category. NMFS is concerned that voluntary observer coverage would create the potential for data quality problems (fishing behavior may change if observers can be taken voluntarily on selected trips) and operational issues (the need to identify these trips separately in observer data, and the need to re-program the catch accounting system to exclude these data for catch estimation). In addition, NMFS requirements for safety, support, and assistance to observers do not apply for observers taken voluntarily. In addition, NMFS does not support using observer days in the partial coverage category to provide an observer for

this strictly compliance monitoring role. For these reasons, vessel operators no longer have the option to hire an observer directly from an observer contractor if they wish to fish in multiple regulatory areas and retain catch in excess of the available IFQ or halibut CDQ for the area. The only option available is to conduct fishing in multiple areas if the vessel is randomly selected for observer coverage.

NMFS's Office of Law Enforcement (OLE) also has advised that VMS alone is not an adequate tool to monitor IFQ fishing in multiple areas because the transmission rate of VMS is inadequate to determine where, how much, or how often fishing occurs and VMS currently deployed in Alaska only provides speed and heading on an intermittent basis.

NMFS is concerned that vessel operators seeking observer coverage to IFQ or halibut CDQ fish in multiple areas will attempt to manipulate trip logging through ODDS by logging and then cancelling a trip until the vessel is selected for coverage. This behavior would undermine the goal of random sampling and create **data quality concerns**. NMFS will continue to monitor whether logging of trips in ODDS is being intentionally manipulated to obtain observer coverage.

Potential issues/alternatives for analysis:

1. Participants in the December 2013 IFQ Implementation Committee requested that NMFS and the IPHC reconfirm that some additional method of compliance monitoring is needed for vessels fishing IFQ or halibut CDQ fishing in multiple regulatory areas and retaining more IFQ/CDQ onboard the vessel than is available for harvest in that regulatory area. This question would be addressed in the analysis.
2. Allow vessel operators to voluntarily hire an observer from an observer provider if they are not selected for observer coverage. NMFS does not recommend this alternative because this is a strictly compliance monitoring role and the data collected by the observer would not be used for catch or discard estimation purposes. However, this alternative should be analyzed.
3. Use electronic monitoring (EM) instead of observer coverage to monitor this fishing activity.

More information on the proposed EM alternative: NMFS recommends that analysis of this issue also consider the use of electronic monitoring (EM) to monitor IFQ fishing in multiple regulatory areas, rather than using an observer for this compliance monitoring role.

The EM components could include:

- GPS receiver,
- gear sensor(s),
- a data storage device, and
- a data transmission method.

These components are already developed and could be deployed aboard vessels now. Almost all the camera based EM systems have components that include sensors attached to parts of the gear to determine when fishing is occurring and GPS units to determine where the vessel is located and how it is moving. NMFS believes that an EM system without the use of the cameras could provide the necessary monitoring for IFQ fishing in multiple areas. However, this proposal would be more thoroughly analyzed to determine if this is the case.

The system would require a reliable power source that would be operating 24 hours a day and it would be required to be operating at all times after the vessel left port to conduct IFQ fishing in multiple areas.

The data storage device would likely be a computer with a removable hard drive. Depending on what is developed for the transmission method this hard drive may need to have the storage capacity for several weeks of data. The data to be stored on this hard drive is not likely to take up more than 500 gigabytes of storage space.

The GPS receiver and antenna are integrated into a single plastic dome that is wired directly to the EM computer, there is no attached display interface. The GPS receiver should be mounted away from other antennae and radars to avoid interference. This receiver delivers a digital data stream of the vessel's position, speed, heading, and corresponding time. Speed is recorded in nautical miles per hour (knots) to one decimal place and heading to the nearest degree. The data can record at 15-second intervals.

Gear sensors: The electronic transducer can be installed on a vessel's hydraulic winch to collect hydraulic pressure data to provide a record of fishing activity. The sensor has a 0 to 2500 psi range, high enough for most vessel hydraulic systems, and a 15,000 psi burst rating. An increase in system pressure signals the start of fishing operations. The activation of the winch for gear retrieval produces a record of the hydraulic pressure on the EM computer.

Other sensors can be used if hydraulics are not available. Such as a drum rotation sensor for vessels using snap gear or sheave rotation sensor for conventional vessels. However, there is varied success with the use of rotation sensors. A photoelectric drum rotation sensor is usually mounted on the warp winch. The small waterproof sensor is aimed at a prismatic reflector mounted to the winch drum to record winch activity.

Electronic logbook: NMFS proposes that an electronic logbook (elogbook) would be required, but would not have to transmit at sea and could be transmitted once the vessel returned to port or had access to a wireless modem. It may be possible to modify the elogbook so that the GPS and sensor data could be attached to the elogbook transmission. This data might be sent to NMFS OLE and housed and reviewed by the contracted technicians or OLE staff.

Some IFQ vessels that may use this exception may not have a NMFS logbook requirement. However, OLE proposes that logbook data is needed as it commits the operator to his or her fishing activity. The NMFS logbook would be a crucial piece of evidence in any multiple area case. Additionally, NMFS OLE is not permitted access to IPHC logs. Elogbooks also are recommended to improve the efficiency of reviewing the EM data.

Several questions regarding implementation of such a program are outstanding that require further discussion, including:

- It is unclear if the service providers would install the GPS and sensor components of the EM system without the integration of the cameras.
- Who would be required to pay for the systems?
- How and when would they be installed aboard the vessels?
- Would the systems stay onboard the vessels even when not fishing in multiple areas on one trip?
- If the electronic transmission of the data is not possible retrieving or requiring submittal of the data from the vessel could be more complicated and would require more thought before implementation. For example, would it be possible to copy the data to a hard drive and mail it to NMFS OLE? What would the chain of custody requirements be?

Development of EM is a high priority for NMFS nationwide and in the AKR. The question relative to this particular regulatory amendment proposal is how best to allocate staff with EM expertise among the EM initiatives already underway and this additional EM application.

Next steps if this proposal is a high priority:

Seek additional input about the priority of this issue relative to other regulatory amendments proposed by representatives of the IFQ permit holders.

Determine if there are any vessel owners or operators interested in talking further with NMFS about development of an EM alternative.

This project does not require statistical analysis by key staff needed to complete the Annual Report and 2015 ADP.

This project needs assignment of staff with policy, regulatory, operational (EM), and economic analysis skills to complete an initial review draft EA/RIR/IRFA and will compete with the existing priorities and other four regulatory amendments for these staff resources.

5.2 Evaluate allowances for small catcher/processors to choose to be in the partial coverage category

In June 2010, the Council released the analysis of Amendments 86/76 for public review. In October 2010, the Council adopted Alternative 3, with modifications, as the preferred alternative. Alternative 3, as evaluated in the public review draft, placed all catcher/processors in the full coverage category for reasons explained above in Section 2. However, in response to public testimony at the October 2010 meeting, the Council included in its preferred alternative the following two allowances for catcher/processors to choose to be in the partial coverage category:

1. The “hybrid” allowance: The owner of a catcher/processor less than 60 feet may make a one-time election of partial coverage, if that catcher/processor had a history of catcher/processor and catcher vessel activity in one (or more) years between 2003 and 2009 and if that owner makes the election at least 30 days before that vessel’s first trip under the restructured program.
2. The “under 5000-pound” allowance: The owner of a catcher/processor make a one-time election of partial observer coverage, if that catcher/processor had an average daily production of less than 5,000 pounds round weight equivalent in its most recent full calendar year of operation from 2003 through 2009 and if the owner makes the election before the vessel’s first trip under the restructured program. This exception is also based on the historical activity of the vessel between 2003 and 2009 but is not limited to vessels under 60 feet.

NMFS added a third allowance in the proposed rule for Amendments 86/76:

3. The “one metric-ton” allowance: Under this allowance, the owner of a catcher/processor may be included in the partial coverage category if that catcher/processor processed one metric ton round weight of groundfish or less on every day in the immediately preceding year. This allowance is the only current exception to full catcher/processor coverage that is not based on the vessel’s activity between 2003 and 2009. This allowance is based on the vessel’s activity in any year after implementation of the restructured Observer Program, however, it only lasts for the one year after the year in which the vessel processed less than one metric ton daily. This provision also allows

any catcher vessel that is beginning to operate as a catcher/processor for the first time or after a one-year hiatus to be in partial coverage. If a vessel did not operate at all as a catcher/processor in the previous year, it would have processed zero catch in the previous year, which falls under the one metric ton threshold.

The rationale for the allowances recommended by the Council included:

- (1) the relatively high cost of full coverage for these small catcher/processors,
- (2) the relatively low amount of catch taken by these operations,
- (3) the intent to have a limited exemption for catcher/processors to elect partial coverage,
- (4) the intent to limit the exemption to vessels with a history of operations in the fishery before the Council's final action in 2010,
- (5) the intent to limit these exemptions to vessels that were purchased or converted before the Council's final action in 2010.

In recommending the third exemption, NMFS proposed that it was needed based on a provision in the License Limitation Program (LLP) under which a catcher vessel may harvest and freeze up to one metric ton of less a day even though the catcher vessel does not have an LLP with a catcher/processor vessel designation. NMFS concluded that allowing the owners of these vessels to elect partial coverage would "better align observer coverage with the data needs from these vessels." NMFS discussed this provision with the Council and with the OAC prior to publishing the proposed rule and there were no objections to including this provision in the proposed rule.

In 2013, two catcher/processors using hook-and-line gear and one catcher/processor using jig gear were placed in the partial coverage category based on these allowances. One vessel met the "hybrid" allowance, one vessel met the "under 5,000-lb allowance," and the third vessel met all three of the allowances.

In June 2013, the OAC identified vessels that act as both catcher vessels and catcher/processor as a potential category of vessels that should be considered for exemption from full observer coverage in certain circumstances. Based on the OAC recommendation, the Council adopted a motion in June 2013 requesting staff to provide further information about revising current regulations to expand the existing exemptions "for vessels that previously operated as catcher vessels and catcher/processors within a year, consider options to allow an annual election, revisions to the control date for making the election, and production tonnage criteria."

Since publication of the proposed rule in April 2012, NMFS has directly (outside of the Council process) received the following suggestions for expansion of the current allowances for catcher/processors to choose to be in partial coverage:

1. expand the period beyond 2003 - 2009 when an owner of a catcher/processor may elect partial coverage;
2. allow the owner of a catcher/processor to make an annual election of partial or full observer coverage;
3. assign a vessel to partial coverage when it operates as a catcher vessel and to 100% coverage when it operates as a catcher/processor;
4. allow catcher/processors to choose partial coverage if the vessel processed, on a daily basis less, the following amounts or less in the previous year: 4.5 metric tons, 5 metric tons, 7 metric tons, and 10 metric tons;
5. allow catcher/processors to choose partial coverage if the vessel carries a crew of seven or less;
6. allow all catcher/processors using jig gear to choose to be in partial coverage.

The rationale for the proposed regulatory amendment to re-evaluate the allowances for small catcher/processors to be in partial coverage is based primarily on potential **cost equity concerns**. The current exemptions that are based on a vessel's historical activity between 2003 to 2009 are based, in part, on the Council's desire to recognize activity and investment before the Council adopted its preferred alternative for the restructured Observer Program. Several members of the public have raised the argument that vessels that operate on a relatively small scale after 2009 should be able to pay the same amount for observer coverage as the vessel that operated on a small scale before 2009. Similarly, several members of the public have raised the argument that a vessel that operated as both a catcher/processor and a catcher vessel after 2009 should be able to elect partial coverage just as vessels that operated as hybrid vessels before 2009 may elect partial coverage. The commenter argued that full coverage is particularly inequitable for a vessel that operates as a catcher/processor for several months and then operates strictly as a catcher vessel for several months.

The proposals also likely would result in a **cost savings** to the owners of catcher/processors who are allowed to choose between full and partial coverage.

This proposal has implications for **data quality**, particularly for any catcher/processor in partial coverage whose PSC accrues to a PSC limit or a transferable PSC limit. NMFS recommended, and the Council agreed to include catcher/processors in the full coverage category to improve the quality of data collected from this class of vessels. The three catcher/processors that have qualified for the current allowances fish primarily in fisheries in which halibut discards do not accrue against a PSC limit.

Next steps if this issue is identified as a high priority:

Initial analysis is needed to examine in more detail the proposals made to date for expanding the small catcher/processor allowances. This issue requires analysis of various proposed thresholds above and below which people will be treated differently. As evidenced by the number of suggested revisions to the current regulations, selection and analysis of alternative thresholds may complicate the analysis.

While in depth analysis of all proposals is not required, some level of addressing each of the suggestions should be included in the analysis, if only in the section for "alternatives considered but not analyzed further." Analysis of historical catch and production could identify the number of entities that would be affected by the various proposals and identify if there are any similarly situated entities close to a particular proposed threshold or if there are very clear breaks in the catcher/processor vessel categories analyzed.

The initial analysis needed for this proposal does not require statistical analysis by key staff needed to complete the Annual Report and 2015 ADP.

This project needs assignment of staff with policy, regulatory, and economic analysis skills to complete an initial review draft EA/RIR/IRFA and will compete with the existing priorities and other four regulatory amendments for these staff resources.

5.3 Allow catcher vessels in the BSAI Pacific cod fishery to be in full coverage

Catcher vessels participating in the BSAI Pacific cod fishery are in the partial coverage category under current Observer Program regulations. These vessels were placed in the partial coverage category based on the data needs for this fishery. The BSAI Pacific cod fishery is not a catch share program managed with transferable PSC allocations. Therefore, NMFS recommended that full coverage was not needed for these vessels.

In public comment on the proposed rule, owners of some of these vessels requested to be allowed to voluntarily carry full coverage in their BSAI Pacific cod fisheries so that they could use observer data to manage internal allocations of halibut PSC among American Fisheries Act (AFA) cooperative members rather than use the halibut PSC rates that would have been generated from partial observer coverage. NMFS could not make this change in the final rule but has allowed participants in this fishery to voluntarily take full coverage for an entire year under the following conditions:

If vessel owners voluntarily select full coverage, the vessel must stay in full coverage for all of the time during the year that it is fishing in the BSAI.

Vessel owners and operators voluntarily selecting full coverage are required to comply with all applicable regulations, including logging all fishing trips that are not AFA pollock in ODDS. Once the trips are logged, vessel owners may procure an observer through one of the five certified observer providers and pay for this observer coverage directly to the observer providers. In addition, vessel owners also are required to pay their share of the observer fee liability for landings subject to the observer fee. Therefore, owners of vessels voluntarily taking full coverage are paying both the per day cost of an observer in full coverage and the ex-vessel based fee.

Vessel owners also agree in writing that:

- individuals taken over and above existing observer coverage requirements are observers as defined at §679.2;
- vessel owners and operators will comply with the prohibitions protecting observers that are at §679.7(g) and will meet the vessel responsibilities described at §679.51(e);
- vessel owners and operators are subject to general requirements applicable to observers described at §600.746;

Summary information:

- 53 catcher vessels using trawl gear participated in the 2013 BSAI Pacific cod fishery.
- Owners of 40 of these vessels requested to be allowed to voluntarily take full coverage for all of their fisheries in 2013, and to pay for this coverage in addition to their observer fee assessment. All of these vessels were AFA-qualified vessels and the owners were members of an AFA cooperative.
- Owners of 37 of these vessels requested voluntary full coverage for 2014. All of these were AFA-qualified vessels and members of an AFA cooperative.
- Catch of BSAI Pacific cod in 2013 by the trawl catcher vessel sector was 43,693 mt.
- Initial estimates are that the value of the fee liability for all Pacific cod caught by catcher vessels in the BSAI was no more than \$313,000. Total observer fees billed for 2013 were approximately \$4,289,000. This estimate is based on applying an estimated standard ex-vessel value of \$0.26 to the 43,693 mt. This over-estimates the amount of the fee proceeds that would be lost if these catcher vessels are allowed to move into full coverage because it not all participants in this fishery would move to full coverage and the estimate is based on total catch without subtracting any discards that may have occurred. NMFS staff have not yet had the time to prepare a detailed

breakdown of the fees paid by vessel category and fishery. This information will be provided in the Annual Report.

Potential alternatives:

1. Permanently move all catcher vessels in the BSAI Pacific cod fishery into full coverage.
2. Allow owners of catcher vessels using trawl gear and participating in the BSAI Pacific cod fishery the choice annually to be in full coverage or partial coverage for all of their fisheries in the upcoming year.
3. Allow owners of any vessel in partial coverage the choice annually to be in full coverage for all of their fisheries for the upcoming year.

Data quality issues: Voluntary placement in full coverage can provide improved observer data because it removes the need to extrapolate a vessel's performance based on other similar observed vessels.

Cost savings and cost equity: Industry seeks a regulatory allowance to choose to be in full coverage and relief from the ex-vessel based fee for those coverage days.

Alternatives that allow an annual selection of coverage category or selection for anything less than a full year would **increase NMFS's administrative costs.**

Monitoring and enforcement: Complicated elements that allow for selection of observer coverage category for anything less than a full year or in areas smaller than BSAI vs GOA could complicate monitoring and enforcement.

Next steps if this proposal is a high priority: Assign staff to complete the initial draft EA/RIR/IRFA necessary to support the proposed regulatory amendments.

This project does not require statistical analysis by key staff needed to complete the Annual Report and ADP.

This project needs assignment of staff with policy, regulatory, operational, and economic analysis skills to complete an initial review draft EA/RIR/IRFA and will compete with the existing priorities and other four regulatory amendments for these staff resources.

5.4 Exempt from observer coverage vessels fishing for small amounts of IFQ

In October 2013, the Council requested that NMFS consider whether the 2014 ADP could

...accommodate relief for vessels with IFQ holders that have fished almost all of their IFQ, but have a small poundage remaining in their account, and are triggering the requirement to carry an observer when they switch into a State water fishery in which they would not otherwise be required to have observer coverage.

This request is similar to the request that the Council made at its June 2013 meeting that

NMFS provide information that would help inform a decision as to whether to create a new criterion for receiving a conditional release from observer coverage in 2014 based on a de minimus amount of halibut or sablefish IFQ in an IFQ holder's account.

Both of the requests above present the same challenges to NMFS. While we appreciate the desire to deploy observers in an efficient and cost effective manner, creating a new category of vessels or fishing circumstance that would be released from observer coverage requires analysis to determine the appropriate threshold and the impact of the conditional release on data quality. The Annual Report will provide valuable information on which to base further discussion of the need for and possible consequences of additional releases from observer coverage for vessels in the partial coverage category.

NMFS evaluated the June 2013 proposal in a September 3, 2013, letter to the Council. In discussions about NMFS's response at the September 2013 OAC meeting, industry representatives said that NMFS had misunderstood the June 2013 proposal and had evaluated a proposal more complex than was intended by the proposers. While acknowledging that this comment could be true, following is information from the September 3, 2013, letter that provides some information about the proposals in general. This information identifies some of the **data quality and monitoring and enforcement concerns** with what NMFS understood was the June 2013 proposal. NMFS has not assessed further the October 2013 proposal.

NMFS relieves vessels in the partial coverage category from observer coverage through (1) placement of vessels meeting a certain criterion into the "no selection pool" (i.e., vessels less than 40 ft length overall (LOA), catcher vessels using jig gear), or (2) conditional releases from coverage based either on Council policy recommendations to exclude vessels that cannot accommodate an observer, or on logistical factors as determined by NMFS (i.e., observer could not get to the selected vessel in time). Placing vessels in the no selection pool or conditionally releasing vessels from observer coverage has the potential to bias estimates of catch and bycatch in the fishery as a whole if the fishing activity by vessels with observer coverage does not represent the fishing activity by vessels without observer coverage. Information about the catch and bycatch by small vessels or on trips with small amounts of catch could be important to include in observer data if these trips and catch have characteristics that differ from those of larger vessels or larger deliveries.

Notwithstanding NMFS's concern about data quality, it also is appropriate to consider other factors such as safety, logistics, and cost efficiencies in deciding whether to place observers on vessels. These factors were considered when NMFS recommended that vessels less than 40 ft LOA or catcher vessels using jig gear initially be placed in the no selection pool. This recommendation was based on the analysis in the EA/RIR/IRFA for Amendments 86/76 [section 3.2.7.2 (pages 160-161) and Appendix 10 of the EA/RIR/IRFA]. NMFS sought an initial vessel LOA threshold below which observers would not initially be placed on the vessel for logistical reasons. The analysis showed that a 40 ft LOA threshold was appropriate because it represented a break point in sampling efficiency where the relative gain in amount of fish harvested per trip differed above and below the vessel length threshold. A similar analysis of the proportion of catch represented by catcher vessels using jig gear relative to other gear types was used to justify not initially placing observers on these vessels.

In public comment on the proposed rule for observer restructuring (77 FR 23326; April 18, 2012), NMFS received a request to exempt vessels landing 3,000 pounds of fish or less on a trip from observer coverage. NMFS declined to add such an exemption to the final rule because it was not part of the Council's final action on observer restructuring and had not been adequately analyzed (see response to Comment 53, 77 FR 70076; November 21, 2012). In this response, NMFS stated that we "can consider additional options for exclusions from observer coverage under future annual deployment plans.

However, any such exclusions would be made after analysis of the impacts of specific exclusions from observer coverage on the data necessary to conserve and manage the groundfish and halibut fisheries.”

A proposal to consider releasing vessels from observer coverage if they are used to harvest small amounts of halibut or sablefish IFQ is more complicated to analyze than a threshold based on a vessel characteristic such as LOA or gear type because (1) observers are deployed on a vessel while IFQ is tied to a permit holder and not to a specific vessel, (2) the data set needed to analyze the impacts of the proposal requires linking historical landings data to IFQ account balances for all IFQ holders on board a vessel during a particular trip, and (3) small amounts of IFQ harvest can be associated with varying amounts of groundfish harvest on the same trip. In addition, adequate monitoring of conditional releases based on the amount of IFQ remaining in a permit holder’s account may require regulatory amendments.

The halibut and sablefish IFQ program authorizes a person specified on an IFQ permit to harvest an annual allotted amount of IFQ. The annual IFQ permit is not associated with a specific vessel. This program design allows the IFQ fishermen the flexibility to use multiple vessels during a fishing season or to stack multiple permits on a single vessel for greater operational efficiency. The only exception is when an IFQ permit holder hires a master to harvest the annual IFQ. When a hired master is used the IFQ permit holder is required, in most cases, to provide the name of the vessel on which the IFQ will be harvested by the hired master. However, the use of hired masters within the IFQ Program is limited to initial issueses and corporate permit holders; therefore, a majority of the IFQ halibut or IFQ sablefish harvested is harvested by individual IFQ permit holders who do not hire a master and are not required to identify the vessel on which the IFQ is being harvested until they initiate a Prior Notice of Landing (PNOL).

Creating a conditional release based on a de minimus amount of IFQ remaining in a permit holder’s account would require identification of the specific pounds of IFQ halibut or IFQ sablefish below which a vessel carrying an IFQ permit holder would be released from observer coverage. The Council would need to address whether this threshold applied to each single permit holder, all permits held by a single permit holder on a vessel, or the cumulative amount of IFQ pounds remaining for all permit holders onboard a vessel during a particular fishing trip. Selection of the appropriate threshold would require consideration and comparison of the impacts of alternative thresholds (e.g., 500 lbs, 1,000 lbs). The analysis would examine the number of vessels or trips that would be released from observer coverage under the alternative thresholds. Creation of the data set to conduct this analysis would require combining information from a prior year or years for landings data for each trip in which IFQ was harvested with information about the amount of IFQ remaining in the accounts of all of the IFQ permit holders onboard the vessel during that trip.

The greatest challenge to implementing a proposal such as this would be creating a tracking system that would allow NMFS to track a specific IFQ permit with a specific vessel. That system would require new reporting requirements for both IFQ holders and vessel operators. To be effective, this would require a “real-time” tracking mechanism to ensure effective dockside enforcement and monitoring.

The application for a release would have to be submitted before the fishing trip started and would be required to include the names and permit numbers of the IFQ permit holders that would be on board the vessel. NMFS would then need to verify that the cumulative amount of IFQ remaining in the specified accounts was below the specified threshold and if it were, release the vessel from observer coverage. After a trip was completed by the released vessel, NMFS also would have to check the landing or delivery information to verify that the vessel maintained compliance with the conditions of the release from observer coverage (e.g., no additional permit holders were onboard the vessel, no IFQ from additional permit holders was landed). The analysis would need to consider whether effective enforcement would require revisions to the PNOL regulations to track IFQ landings and link all permit holders onboard to a

vessel prior to a landing. Regulations governing PNOLs only require the IFQ permit associated with the landing of halibut to be reported. Thus, enforcement has no method of verifying that a vessel complied with the conditions of a release from observer coverage, noting that an IFQ holder can transfer IFQ while at-sea. In addition, an IFQ holder's account balance would need to be associated with a date such that any halibut transferred into the IFQ account after that date could be considered against the de minimus criteria and the conditions of a release.

The analysis also would need to look at the other groundfish species harvested on the same trips in which IFQ species are harvested. These trips could involve any range of other species and catch amounts and could involve releases from coverage for trips in groundfish target fisheries.

Next steps if this proposal is a high priority:

The Council would need to clarify the specific alternatives it wanted analyzed.

This issue requires the selection of a threshold above and below which people will be treated differently. This aspect may complicate the identification of alternatives to analyze and the analysis.

This project does not initially require statistical analysis by key staff needed to complete the Annual Report and 2015 ADP. Initial analysis of various thresholds or conditions for releasing vessels from observer coverage could be done by any analyst with access to confidential fishery catch data and the knowledge of the fisheries and data sets necessary to conduct the analysis. Once the number of vessels, trips, and distribution of catch associated with each of the proposed alternatives is identified, the Council could request NMFS to review of the analysis, provide input about the possible consequences of the proposed releases from observer coverage, conduct a quantitative analysis of the proposed alternatives, and assess whether regulatory amendments would be needed to implement the proposed alternatives.

5.5 Change the method for fee collection from the IFQ fisheries

At its June 2013 meeting in Juneau, the OAC forwarded to the Council a recommendation made to the OAC by representatives of IFQ fishermen to:

- change the method of fee collection for the IFQ fleet so that a standardized current-year price, rather than a standardized price based on the previous year was used, and to
- bill the vessel rather than the processors or registered buyers to collect the fees.

Although the Council's June 2013 motion addressed only the first element of this request, both aspects are considered in this discussion paper because they are linked. The primary rationale for this proposal likely is **cost equity**. The closer the basis of the fee assessment is to actual ex-vessel value of the catch, the more it is viewed as fair and equitable. The proposal **may or may not result in a cost savings to industry**. The proposal would result in an **increase in administrative costs to NMFS**. The proposal could have **data quality impacts** if we used observer fee proceeds to pay for some or all of the administrative costs of the fee billing (NMFS is not proposed to do this). Analysts have **not identified significant monitoring and enforcement concerns** with the proposal to use current year standard ex-vessel prices or to bill fishermen separately from processors and registered buyers. However, use of actual ex-vessel prices (which currently is NOT proposed) would pose concerns in this area. These issues are addressed in more detail following an explanation of the current regulations.

Through the observer fee collection, NMFS levies a fee of 1.25% of ex-vessel value on all landings subject to the fee. These landings include catch that accrues against a Federal total allowable catch

(TAC) for groundfish or a commercial halibut quota by vessels that are not in the full coverage category. Under Observer Restructuring, the Council recommended that the intent of the program is that the fee liability is split 50/50 between vessel owners or operators and the processors or registered buyers. Any catcher/processor in the partial coverage category pays the full fee liability.

In developing recommendations to the Council for administration of the observer fee collection program, NMFS considered billing processors, registered buyers, vessel owners, and permit holders separately for the observer fee. However, due to concern about the administrative cost of billing several thousand entities versus several hundred entities, NMFS strongly recommended and the Council agreed that NMFS would collect the entire observer fee liability directly from the processor or registered buyer. Therefore, under existing regulations, the owner of the processor or registered buyer is responsible for collecting the fee, including the catcher vessel's portion of the fee, at the time of landing and remitting the full fee amount to NMFS by February 15 of the following year. Federal processing permits or registered buyer permits are not issued by NMFS for processors or registered buyers who do not pay their observer fee liability.

For some perspective on the numbers of entities involved in observer fee assessments under the current program versus those that could be involved under the proposed regulatory amendment:

- For the first year of the program (2013), NMFS billed 101 processors and registered buyers for observer fee liabilities totaling approximately \$4,289,000. These bills are due by February 15, 2014.
- In 2013, NMFS issued IFQ cost recovery bills to 2,204 permit holders.

The decision to hold processors and registered buyers responsible to collect the fishermen's portion of the observer fee and submit the entire fee liability to NMFS limited the options for when and how to determine the ex-vessel value of the landings subject to the observer fee.

The decision to bill only processors and registered buyers required NMFS to provide an accurate estimate of the observer fee liability associated with each landing at the time of the landing. This information is necessary so that the processor or registered buyer can withhold the vessel owner's or IFQ permit holder's portion of the observer fee liability before paying for the catch.

The need to know the observer fee liability at the time of landing required NMFS to use either *actual ex-vessel prices* or to create a *standardized ex-vessel price* that could be applied at the time of landing.

- Actual ex-vessel value is the amount of all compensation, monetary or non-monetary, that a vessel owner or permit holder actually receives as payment for the fish sold.
- Standard ex-vessel value is an average value for all deliveries for a species over a particular time period and sometimes incorporating other characteristics of the landing, such as area and gear type.

NMFS recommended against the use of actual ex-vessel prices for establishing the observer fee liability for the following reasons:

1. actual prices are not always known or reliably recorded on landings reports at the time of landing,
2. some prices are adjusted later in the season,

3. some processors and catcher vessels do not have an independent relationship, which could make the determination of ex-vessel price different from sales of fish between independent fishermen and processors, and
4. it would be costly for NMFS to audit or investigate reports of inaccurate reporting of actual prices.

NMFS assesses each landing report submitted via eLandings and each manual landing entered into the IFQ landing database. If the landing is subject to the observer fee, NMFS then assesses which groundfish and halibut in the landing is subject to the observer fee. NMFS then applies the appropriate standard ex-vessel prices for the species, gear type, and port, and calculates and displays in eLandings the observer fee liability associated with the landing. Note that fee liabilities are shown at the time the landing is made; this is only possible if the standardized prices to be used are known in advance of the landing. For this reason, lagged year, rather than current year, standardized prices are used for these calculations. Under current regulations, the standard ex-vessel prices that lag one year for halibut IFQ and CDQ, sablefish IFQ, and sablefish from the fixed gear sablefish CDQ reserve and lag at least 2 years for groundfish. A “current year” standard ex-vessel price cannot be used because the data to calculate a that standard ex-vessel price is not available until late in the year (in the case of halibut IFQ/CDQ and sablefish IFQ) or late in the next year (in the case of groundfish).

Standard ex-vessel prices for groundfish are based on the State of Alaska’s Commercial Fishery Entry Commission’s (CFEC) gross revenue data, which are based on landings data from Alaska Department of Fish and Game fish tickets and information from the Commercial Operator Annual Report (COAR) and Alaska Department of Fish and Game fish tickets. The COAR contains statewide buying and production information, and is considered the best routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska. Standard ex-vessel prices for groundfish are based on a 3-year rolling average to stabilize the variability in fish prices from year-to-year. Increasing the period of time over which prices are averaged decreases the effect of a price that is substantially different from other years on the average price. Using fewer years for the average price allows the price to respond more quickly to increases or decreases in ex-vessel price. In recommending the 3-year moving average, the Council balanced the need to use recent and relevant data against the need to reduce the possible undue influence of unusual annual values.

The standard ex-vessel prices for groundfish for 2014 were calculated by adding the annual volume (weight) and ex-vessel value from the CFEC gross revenue files for 2010, 2011, and 2012 by the species, port, and gear category, and then dividing total ex-vessel value over the 3-year period in each category by total volume in each category. This calculation results in a weighted average ex-vessel price by species, port, and gear category. Three gear categories were used for the standard ex-vessel prices: pelagic trawl gear, non-pelagic trawl gear, and other gear (hook-and-line, pot, and jig). CFEC ex-vessel value data are available in the fall of the year following the year the fishing occurred. Thus, it is not possible to base ex-vessel fee liabilities on standard prices that are less than 2 years old.

Standard ex-vessel prices for halibut IFQ or CDQ, sablefish IFQ, and sablefish accruing against the fixed gear sablefish CDQ reserve are based on the volume and value data collected in the IFQ Buyer Report from the previous year. Thus, the standard ex-vessel prices used for 2014 are based on the IFQ Buyer Report submitted in October 2013, and are based on volume and value information collected for the period from October 1, 2012 through September 30, 2013.

Fees are collected as follows:

- Each year NMFS publishes a standard price per pound by port, species, and gear type in the *Federal Register*. Prices are annual standardized prices based on the previous year's IFQ Buyer Reports. These prices are made available to the eLandings system.
- Processors enter the delivery information and the pounds of each species landed into eLandings.
- eLandings evaluates the landings report (taking account of the information on species, gear, and landings port) and calculates the fee liability estimate for the landing.
- Processors access eLandings to view the landing-specific observer fee liability information and to print a copy of the fee liability report for harvesters. For IFQ halibut and sablefish, this information is available as soon as the IFQ report is submitted.
- Processors withhold the vessel operator's portion and self-collect the processor's portion of the observer fee liability at the time of landing. This is only possible because lagged year, rather than current year, standardized prices are used for the calculations.
- By January 15 of each year, NMFS invoices processors for their total fee liability determined by the sum of the fees reported for each landing for each processor for the prior calendar year.
- By February 15 of each year, processors must remit the fees for the landings in the previous year to NMFS using the online Processor Web. Access to the online system is through a User ID and password issued by NMFS. Instructions for electronic payment are provided on the NMFS Alaska Region website and on the observer fee liability invoice mailed to each permit holder.
- NMFS audits the payments to ensure all liabilities are paid in full.
- Full payment of the observer fee liability is required before NMFS will issue a new or renewed FPP or Registered Buyer permit.

Current year standard ex-vessel prices based on value and volume reports by processors in the same year can only be used if the fee assessment is being calculated and billed at the end of the year, as is done with the IFQ and Rockfish cost recovery programs. To use standardized ex-vessel prices for the current year for the observer fee would require NMFS to bill vessel owners and permit holders separately from processors and registered buyers. Separate billing would increase NMFS administrative costs.

Administrative costs for the observer fee billing include the costs of:

- computer programming for development and maintenance of applications to estimate the fee associated with each species in each landing, to generate fee bills, to generate internal and external reporting of fee liabilities and collections, and the systems to allow payees to view and pay their bills online;
- professional staff to manage the fee billing, internal and external accounting for the collection and disbursement of observer fee proceeds, tracking fee payments, monitoring and pursuing non-payment of fees, and internal and external reporting about the observer fee, administrative appeals of fee bills,
- user support to assist processors to develop the internal accounting systems to estimate and assess the observer fee at the time of landing,
- user support to explain the Observer Program in general and specific details of the observer fee bill to payees,

- administration, communication, support, legal advice, and enforcement input needed to withhold a permit if fees are not paid,
- printing, postage, and handling costs associated with mailing invoices and any follow up correspondence for those who do not pay fees by the deadline.

Even if NMFS included the observer fee billing on the IFQ cost recovery fee bill, many of the additional administrative costs noted above would be incurred. In addition, NMFS is concerned about the confusion and associated additional administrative costs that may be caused initially by including two different fee assessments that need to go into two separate U.S. Treasury accounts on a single bill and possibly through a single credit card payment.

The MSA authorizes NMFS to use observer fees to cover the cost of the fee billing portion of the program. The analysis for Amendments 86/76 (March 2011) addressed NMFS's authority to use observer fees to pay for administrative costs associated with the fee collection program. Following are excerpts from section 2.9.2.1 (from pages 41-43) of the analysis that address this question (emphasis added to highlight text related to the authority to use observer fees to pay for the administrative costs of the fee collection program):

Section 313(a)(2) [of the Magnuson-Stevens Fishery Conservation and Management Act] states that the Plan implemented under the section may establish a system of fees “[t]o pay for the cost of implementing the plan”. Although this provision initially grants broad authority to collect costs associated with implementation, section 313(b)(2) defines and appears to limit recoverable costs. According to section 313(b)(2)(A), the total amount of fees cannot exceed the combined cost of “(i) stationing observers, ..., on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data,...”. Further, under Section 313(b)(2)(C), fees may “not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan”. The question is what costs are associated with “stationing observers” on board fishing vessels and at fish processors, and “inputting collected data”. ...

*...
Increases in agency resources required to implement a restructured program will be associated with fee collection and government contract award and oversight. Depending on the timing and magnitude of fee collection from industry to pay for observer coverage, additional staff may be needed to implement fee collection and budgeting. A Contracting Officer's Technical Representative (COTR) would also need to be designated to provide oversight and management of the government contract(s).*

*NMFS views all of the activities described above, including those that would be additions to the status quo, as essential functions specific to the execution of a restructured program. In other words, **these are the functions necessary to station observers on fishing vessels and input collected data.** Some activities may be administrative by nature, but they are essential to program operations and NMFS would not be conducting them were it not for the observer program. **Thus, NMFS views all activities noted above as falling under the fee authority in the MSA.** However, NMFS would not use fee proceeds to fund other non-observer related NMFS activities or the cost of NMFS overhead. ... All funds collected would be used to pay for the direct costs of the observer program.*

*NMFS recognizes that the ongoing contribution of the Federal government in supporting the existing program must continue. **NMFS does not intend to use fee***

proceeds to offset the current government contribution to the observer program, because it recognizes that fee proceeds would best be used to procure and optimize the observer coverage needed in Alaska. NMFS intends to continue to fund, and expand to the extent National resources are available, the agency contribution in support of the observer program. However, to the extent new activities are required of NMFS, which are not currently funded, NMFS would use fee proceeds that are available. Depending on the types of activities that must be funded, they could reduce the total number of observer days that NMFS is able to purchase.

Next steps if this proposal is a high priority:

Assign staff to complete a more thorough analysis of the administrative costs associated with billing individual IFQ permit holders to determine more precisely the difference in costs with the current program.

This project does not initially require statistical analysis by key staff needed to complete the Annual Report and ADP. Review and analysis by these staff could be needed later in the analytical process to assess the impact of using observer fee proceeds to coverage agency administrative costs, because this approach would reduce the number of observer deployment days.

This project needs assignment of staff with agency operational and economic analysis skills and will compete with the existing priorities and other four regulatory amendments for these staff resources.

Information developed through this analysis could be beneficial to NMFS to better document administrative costs of fee collection and cost recovery program. However, this project would require assignment of staff who also could work on other high priority analytical projects that require the same expertise.

6 Summary Tables

See Tables 1 and 2

Table 1. Initial summary of the Observer Program regulatory amendment proposals based on four evaluation criteria.

Proposal	Data quality	Cost savings	Cost equity	Monitoring and Enforcement
Revise observer coverage for vessels delivering to tenders	Existing regulations create data quality concerns.	Effectively addressing this problem may increase costs to catcher vessels and tenders.	Vessels delivering to tenders may be able to avoid selection for observer coverage.	It may be challenging to develop regulations that effectively address this problem.
Revise regulations for small boat CDQ Pacific cod fishery	Analysis will address accounting for at-sea discards and PSC.	Relief from full coverage requirements for small vessels will reduce costs. Offset somewhat by observer fee.	This could be a consideration relative to small vessels in halibut and sablefish CDQ fisheries.	Any issues will be identified and addressed in future analysis.
Revise monitoring options for fishing IFQ in multiple regulatory areas.	Could occur if fishermen try to manipulate ODDS to obtain an observer.	Ability to fish IFQ in multiple areas reduces cost of fishing.	A potential cost savings option that was formerly available and inadvertently removed.	NMFS is concerned with the current situation, so supports an effective regulatory amendment.
Expand allowances for small catcher/processors to choose partial coverage.	Possibly, depending on the extent of the need to use industry reported data and extrapolation of discard and PSC rates from observed vessels.	The ability to choose to be in partial coverage likely would reduce costs to industry. Potential increase in costs to NMFS to manage annual selections.	Current allowances may have inadvertently excluded similarly situated participants.	No significant issues have been identified.
Allow catcher vessels in the BSAI Pacific cod fishery to be in full coverage	No data quality concerns unless options get complicated.	Current participants are voluntarily paying for observer coverage under both systems. Potential increase in costs to NMFS to manage annual selection.	Current participants are paying for observer coverage under both systems. Payment for full coverage is reluctantly voluntary.	None identified unless options get complicated.

Table 1 (continued). Initial summary of the Observer Program regulatory amendment proposals based on four evaluation criteria.

Proposal	Data quality	Cost savings	Cost equity	Monitoring and Enforcement
Exempt/release from observer coverage vessels or trips with small amounts of IFQ	Possible data quality concerns with removing selected vessels or trips from the observer coverage selection pools.	Would reduce costs of carrying an observer to those released from coverage. Could increase NMFS costs to administer release policy or regulations.	Uncertain if any issues in this category.	Will depend on the specific proposal.
Use standardized annual prices for fee assessment for IFQ	Not likely unless observer fee proceeds are used in the future to pay for increased administrative costs.	Uncertain how this would affect industry. Would increase NMFS administrative costs.	The closer we can get to using actual ex-vessel value, the more the system is viewed as fair and equitable.	No significant issues identified with the proposal.

Table 2. Status of staffing for various analytical projects supporting the Observer Program and Electronic Monitoring.

	Annual report	2015 ADP	EM	Proposed Regulatory Amendment Projects						
				Tenders	CDQ	IFQ Multiple Areas	Small c/ps	BSAI Pcod cvs	Small IFQ trips	Standard price for IFQ
Analyst – statistical, assessing data quality	assigned	assigned	assigned	assigned	assigned	not needed	not critical initially	not needed	not critical initially, depends on alts.	not critical initially
Analyst – scope alts, analysis of historical data, policy and economic impacts	assigned	assigned	needed eventually	assigned	assigned	needed	needed	needed	needed	needed
Input on Regulations	n/a	n/a	needed eventually	assigned	assigned	needed	needed	needed	needed eventually	needed eventually