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AGENDA C-3
JUNE 2013

MEMORANDUM

TO: Council and AP Members
FROM: Chris Oliver 
Executive Director
DATE: May 27, 2013
SUBJECT: Observer Program

ESTIMATED TIME 6 HOURS

ACTION REQUIRED

- (a) Review EM strategic plan and first year performance report
- (b) Develop criteria and priorities for consideration of regulatory proposals
- (c) Review 3rd party discussion paper
- (d) Review OAC report and provide direction

BACKGROUND

- (a) Review EM strategic plan and first year performance report

In April the Council reviewed a draft Electronic Monitoring (EM) strategic plan and developed additional requests for NMFS to include in the strategic plan for review at this meeting. The Council's motion from April is included as Item C-3(a). A summary of previous Council requests is included under Item C-3(b). The updated EM strategic plan is included as Item C-3(c). The Council is also scheduled at this meeting to receive a mid-year performance evaluation report on the overall restructured observer program. That report is included as a supplemental attachment. For reference, Item C-3(d) is the recently signed NMFS national Policy Directive on EM.

In April the Council also noticed its intent to appoint an EM working group (likely a subset of the OAC membership) to work with NMFS and the OAC to help design processes to facilitate the implementation of EM with a priority on the small boat fixed gear and Pacific cod fleet. That workgroup will be formed following this meeting and the Council's review of the EM strategic plan.

- (b) Develop criteria and priorities for consideration of regulatory proposals

During the course of the last two OAC meetings, a number of regulatory changes to the restructured program have been suggested by various segments of the fishing industry. Neither the OAC nor the Council have acted upon any of these proposals, pending a more formalized process for consideration of such proposals. Thus far the following specific proposals have been suggested:

- long-term solution for the BSAI pacific cod trawl CV fleet to allow 100% coverage (possibly for GOA trawl fleets on short term basis).

- solutions for full coverage vessels that act as both CVs and CPs during the fishing year (e.g. allow vessels to switch CV/CP designation during the year for observer coverage categories).
- allow vessels to choose to be in either the trip or vessel selection pools, or only have a trip selection pool.
- change the method of fee collection in the IFQ fleet (use same year's data and bill IFQ holder directly)
- develop performance measures to allow EM to be a substitute for human observer (likely a longer term action tied to further EM development)

Additional proposals are likely to be generated, either at this meeting or subsequently. The Council needs to identify a process and/or criteria for considering and prioritizing such proposals. An 'omnibus' regulatory package could then be initiated for formal analysis (recognizing that such an omnibus package will likely represent a significant staff tasking workload for Council and agency staff, recognizing that we have only 6 months of the newly restructured program under our belts and we should be cautious about initiating a 'restructuring' of the restructured program, and recognizing the priority already in place for expedited EM implementation). The OAC will be discussing this issue also and provide its recommendations to the Council.

(c) Review third party discussion paper

In earlier discussions of the restructured program, including discussions of the costs per observer day under the restructured program, the Council requested a discussion paper on the concept of using a 'third party' entity to run the program, primarily in the interests of cost savings and/or other operational efficiencies. Following the repeal of the Research Plan back in 1995 (the previous attempt at a fee-based system for observers, which was ultimately repealed by the Council prior to full implementation) the Council and NMFS explored this concept, specifically using the Pacific States Marine Fisheries Commission (PSMFC) as a third party program administrator, under a Joint Partnership Agreement (JPA) between NMFS and the PSMFC. Under this JPA program, fishing and processing operations required to obtain observers would make payments to the 3rd party (PSMFC in this case), and the 3rd party would enter into contracts with approved observer provider companies and direct vessels and processors to a specified provider for services. Payments received by the 3rd party would be used to pay observer contractors and to cover administrative costs of the program. It was anticipated that this JPA structure under 'pay-as-you-go' would evolve into a new fee-based program. This 3rd party JPA initiative ultimately failed, due to two primary reasons: (1) an inability to ascertain, with any degree of certainty, whether the 3rd party structure would indeed result in significant administrative and operational cost savings, and (2) an inability to indemnify PSMFC against legal liability associated with its role as a 3rd party observer program administrator.

In order to provide a meaningful discussion of the current potential for a 3rd party arrangement, staff would have to explore once again the legal and contractual aspects, staff would need to work with NMFS, observer providers, and a potential 3rd party entity to explore the potential cost (or cost savings) implications of such an arrangement, and the Council would need to more specifically identify what role is envisioned for such a 3rd party entity. For example, at one end of the spectrum of possibility, a 3rd party arrangement could involve running all administrative and operational aspects of the program, including observer training, deployment, and debriefing (i.e., all aspects of the program which NMFS currently administers with a staff of ~30 persons and a \$4-\$5 million annual budget). Alternatively, a 3rd party entity could focus on one particular aspect of the program, such as expediting the EM component, either by itself or through some type of EFP structure with industry. The specific role of a 3rd party will largely define the potential cost savings, operational advantages, and contractual/legal considerations to be addressed. For example, using PSMFC as an example, they are currently engaged in the west coast groundfish observer program at 3 different levels:

1. In the pre-catch share fishery, vessels/processors are assigned a 'science observer' by NMFS, and they have to obtain that observer through an approved observer contracting company. The observer

provider has a contract with PSMFC and invoices PSMFC periodically for payment for services. PSMFC has grant from NMFS which provides the funding to pay the observer provider (industry does not pay anything). PSMFC also has role in debriefing, also supported by grant. Legal liability is retained by observer contracting company.

2. In the catch-share fishery, industry contracts directly with observer providers to obtain and pay for 'compliance monitors' (observers). PSMFC has no contractual role, but, through NMFS grant, provides partial reimbursement to vessels/processors applying for such. PSMFC also has training/debriefing function for the shoreside observers in this program.
3. Using funds from the NMFS grant process, PSMFC initiated a volunteer 'pilot program' for EM. Under this program, vessels can volunteer to take a camera, and PSMFC has contract with private company(s) to place video camera on those vessels. Primary purpose is to advance EM, camera does not take the place of any required observer coverage.

Additionally, from 2003-2010 it is my understanding that EM technology was used, through an EFP process, to deploy video cameras in the west coast hake fishery, though as previously explained that was in a zero discard scenario. In summary, I am asking the Council to provide further specificity regarding the objectives and role of a potential 3rd party entity, prior to devoting additional staff time (Council and NMFS resources) to this effort.

(d) Review OAC report and provide direction

The Observer Advisory Committee (OAC) is meeting June 3-4, 2013 in Juneau, AK. The agenda is attached as Item C-3(e). The OAC report will be available by the time this agenda item comes up before the Council.

June 7, 2013
Observer Program
Council motion

The Council makes the following recommendations and requests in development of the 2014 Annual Deployment Plan:

1. The 2014 ADP should continue to reflect a priority for monitoring vessels managed under PSC limits in the trip selection pool. The Council recognizes that this necessarily modifies an equal probability sampling design such that higher observer coverage rates are provided in the trip selection pool, and lower rates in the vessel selection pool, consistent with the 2013 ADP.
2. Maintain the policy that observers should not displace crew members or IFQ holders, nor should vessel modifications be required to accommodate an observer.
3. Request 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.
4. Request NMFS assess whether the 2014 ADP can address the observer effect associated with tender deliveries (disproportionately high numbers of deliveries to tenders when vessels unobserved, or longer trips when unobserved and delivering to tenders), or whether a regulatory change is necessary.
5. Include available information that shows, within the vessel selection pool in 2013: 1) the average number of trips taken within each 2 month deployment period; and 2) the average length of trips within the 2 month period.
6. Include information as to the tradeoffs and considerations that should be taken into account in evaluating whether the 2 month deployment period for those in the vessel selection pool should remain, or be reduced (e.g., one month). Include consideration of a provision that if a vessel is selected for a coverage period and chooses not to fish during that period, the vessel is automatically selected for the next coverage period

The Council also requests NMFS provide additional information for review in October, separate from the ADP:

1. Provide more detailed information on program costs, recommendations for ways to modify deployment to achieve cost savings, and fishery data resulting from the 2013 deployment.
2. Revisions to the heat maps and other descriptive or graphical approaches that provide the ability for the Council and public to better understand coverage changes by fisheries from 2012 to 2013 with the most recent information available to NMFS. One example: include a comparison (in the partial coverage category) of trawl coverage in 2012 vs 2013 and fixed gear coverage in 2012 vs 2013.
3. Assess current observer coverage to provide an evaluation of the reliability of indices of Chinook salmon genetic stock identification information for GOA pollock trawl and rockfish trawl fisheries.

The Council makes the following recommendations for the annual performance review (June 2014):

1. Include information on the volume of catch observed in both vessel and trip selection pools.
2. Include information on achieved coverage rates by gear type.(trawl vs fixed gear)
3. Include information on trip length by observed and unobserved vessels in both the trip and vessel selection pools. Within the vessel selection pool, break out the IFQ fleet.
4. A review of the trip selected and vessel selected pools in consideration of whether vessels should have an option to choose either one, or whether the deployment plan should place every vessel in the partial coverage category in the trip selection pool. (Dec. 2012 request)
5. An evaluation of the difference between observer coverage in the vessel and trip selection pools (a review of the sampling method). (Dec. 2012 request).
6. An evaluation of ways to insert cost effective measures into the deployment plan. (Dec. 2012 request).
7. An evaluation of detailed programmatic costs. (Dec. 2012 request).

The Council makes the following recommendations on the EM strategic plan:

1. The Council adopts the EM strategic plan as a guidance document for incorporating EM into the Observer Program.
2. The Council recommends use of a catch estimation approach to develop EM for the halibut and sablefish fisheries.

The Council adds the following tasks to the EM Workgroup:

1. The Workgroup should identify performance standards, operational procedures, and sampling and deployment plans appropriate for IFQ vessels and also look at implementation vehicles and potential phase-in approaches.
2. The Workgroup should use the following sections of the strategic plan to focus its efforts: page 14 (Goal II, Objective 1, Strategy C) and page 16 (Goal III, Objective 1, Strategy A).
3. The Workgroup should focus on developing a catch estimation based program for the IFQ fisheries rather than a logbook audit approach.
4. The Workgroup should consider additional strategies other than release from observer coverage requirements to increase industry participation in pilot projects for 2014.

Regulatory Amendments

The Council tasks staff to develop a single discussion paper that identifies the main issues associated with the three proposed regulatory amendments forwarded by the OAC, in order for the Council to consider initiating an amendment package or packages for revisions to the Observer Program at a future date. The three proposals are described briefly as follows:

- Evaluate moving the BSAI pacific cod trawl CV fleet into the full coverage category for the purpose of cooperative management or crediting the fleet for the cost of observer coverage that would be provided through trip selection process.
- For vessels that previously operated as CVs and CPs within a year, consider options to allow an annual election; revisions to the control date for making the election; and production tonnage criteria.
- Change the method of observer fee collection for the IFQ fleet to use standardized current year ex-vessel prices.