

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director



ESTIMATED TIME 3 Hours

DATE: June 6, 1995

SUBJECT: Observer Program

ACTION REQUIRED

Review plan amendment to continue current observer requirements through 1996 and delay full implementation of the Research Plan until 1997.

BACKGROUND

At the April meeting the Council recommended delaying full implementation of the Research Plan to accommodate a review of the solicitation process (RFP) for selection of observer contractors, and to allow time to address other general concerns with the Research Plan. This action was reaffirmed during a May 16 teleconference, effectively delaying full implementation of the Research Plan until 1997, and putting the RFP process on hold until later in 1995. This action negates the need for the annual specifications and fee setting process this summer; fees will continue to be charged for 1995 landings, which are expected to prime the Observer Fund for 1997. Processing permit renewals will be contingent upon compliance with fee payments. No fee will be charged in 1996. Existing observer coverage requirements will remain in place for 1996 with those required to carry observers paying directly for that coverage.

Because the direct 'pay-as-you-go' program was originally expected to expire beginning in 1996, a plan amendment is required to ensure that standard coverage requirements remain in place beginning in January 1996. Final action this meeting will ensure that the amendment is processed in time for the 1996 fishing season. Item C-3(a) contains a revised "Elements of the N.P.F.R.P.," with proposed text revisions underlined in bold print. Item C-3(b) is a draft Rulemaking to keep existing observer requirements in place in 1996. Consistent with the Council's actions in April, a regulatory amendment has been forwarded to the Secretary which would exempt crab catcher vessels from 'double payment' in 1995.

A more detailed discussion of the Observer Program and Research Plan will be scheduled for September. Issues of concern identified by the Council in April could be reviewed by the Observer Oversight Committee prior to the September discussions by the Council. Issues identified by the Council in April include insurance requirements for observer contractors, number of contractors to be used in 1996 and beyond, emergency placement of observers, point of hire of observers, transfers of observers among vessels, prioritization of observer deployments, duration of contracts, and possible supplemental observer coverage programs.

Item C-3(c) contains written comments received on the Observer Program/Research Plan.

Proposed text revision is underlined

ELEMENTS OF THE
NORTH PACIFIC FISHERIES RESEARCH PLAN

(as adopted by the North Pacific Fishery Management Council on June 28, 1992, and subsequently revised by the Council during its December 1993 and April 1995 meetings).

The Magnuson Act authorizes the Council and the Secretary to establish a North Pacific Fisheries Research Plan (Plan) which: (1) requires that observers be stationed on fishing vessels and at fish processing facilities and (2) establishes a system of fees to pay for the cost of implementing the Plan. The elements of the Plan are presented below.

A. OBJECTIVES

1. Provide a framework for developing an observer program for the Alaska groundfish fishery, and halibut fisheries, which has the capability to perform in-season management, to accommodate status of stocks assessment and to provide accurate, real-time data of sufficient quality to implement an individual vessel incentive program. In the context of this Plan, the term groundfish is meant to include the halibut fisheries as well.
2. Provide a framework for developing an observer program for Bering Sea/Aleutian Islands king and Tanner crab fisheries which accommodates in-season management needs, ensures management compliance, and provides for the collection of biological and management data necessary to achieve the sustained yield of the crab resource without overfishing.
3. Ensure that the groundfish and crab observer programs are efficient and cost effective, that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revisions to the programs, and that such changes are necessary to meet fishery management needs.
4. Provide for cooperation and coordination between the groundfish observer program administered by the NMFS and the crab observer program administered by the Alaska Department

of Fish and Game (ADF&G).

B. ELEMENTS OF THE NMFS GROUNDFISH (HALIBUT) OBSERVER PROGRAM

1. Observer employment and contracts

- a. Observers will be either employees of NMFS or employees of NMFS observer contractors.
- b. Observer contracts will be subject to a competitive bid process and will comply with federal and/or agency procurement regulations. If cost effective and in accordance with procurement regulations, a minimum of three contractors will be used if three or more bidders are qualified.
- c. Observers must possess the education and specific training necessary to meet the requirements of the groundfish observer program as specified in the contracts issued by the Federal Government to provide groundfish and halibut observers.

2. Duties of observers

The observers' duties are described in detail in the NMFS observer manual, which is updated as necessary and is available from the NMFS Observer Program. Observer duties may include:

- a. collecting data on catch, effort, bycatch, and discards of finfish and shellfish, including PSCs, and transmitting required data to facilitate in-season management;
- b. collecting biological samples which may be used to determine species, length, weight, age and sex composition of catch and predator prey interactions;
- c. collecting data on incidental take of marine mammals, seabirds, and other species as appropriate; and
- d. other duties as described in the NMFS observer manual, available from the Alaska Fisheries Science Center.

3. Data collection, transmission, and input programs shall be implemented according to the following:
 - a. NMFS would be responsible for entering, editing, and maintaining all of the data collected by observers.
 - b. The Regional Director would review fishery monitoring programs and report to the Council on methods to improve data collection and sampling techniques, provide for real-time data transmission from the groundfish and halibut fleet, including daily reporting, and other measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs.
 - c. NMFS could continue to release observer data authorized for disclosure under existing regulations and guidelines.

C. ELEMENTS OF THE ADF&G SHELLFISH ONBOARD OBSERVER PROGRAM

The State of Alaska Shellfish Onboard Observer Program would be incorporated within the provisions of the Research Plan. Subject to the availability of funds and the coverage priorities established for the Research Plan, State costs for observer coverage in the BSAI king and Tanner crab fisheries allowable under the Magnuson Act would be paid for by fees collected from the Research Plan fisheries (Section G).

1. Observer employment and contracts
 - a. Observers will be employees of ADF&G, NMFS, or NMFS observer contractors.
 - b. Observer contracts will be subject to a competitive bid process and will comply with federal and/or agency procurement regulations. If cost effective and in accordance with procurement regulations, a minimum of three contractors will be used if three or more bidders are qualified.
 - c. Observer deployment shall be determined by ADF&G.

- d. Observers will possess the education and specific training necessary to meet the requirements of the crab observer program as specified in the contracts issued by the federal government to provide crab observers.

2. Duties of observers

The observers' duties are described in detail in the ADF&G observer manual, which will be updated as necessary. Crab observer duties include:

- a. collecting data on catch, effort, bycatch and discards of finfish and shellfish, and transmitting required data to facilitate in-season management;
 - b. collecting biological samples which may be used to determine species, length, weight, age and sex composition of catch;
 - c. collecting data on marine mammals, seabirds, and other species as appropriate;
 - d. providing an effective means to ensure management compliance; and
 - e. other duties as described in the ADF&G observer manual.
3. Data collection, transmission, and input programs shall be implemented according to the following:
- a. Initial implementation shall be as specified under existing regulations and guidelines to facilitate in-season management at the Dutch Harbor and Kodiak offices.
 - b. ADF&G shall review its fishery monitoring and data transmission programs in conjunction with NMFS, to help develop coordinated methods to improve data collection and sampling techniques, provide for real time data transmission from the fleet including daily reporting, and other measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs and improve coordination between agencies.

D. ANNUAL DETERMINATION OF THE LEVEL OF OBSERVER COVERAGE FOR THE RESEARCH PLAN FISHERIES

1. Annual determination of the level of coverage

Levels of observer coverage may vary by fishery and vessel size depending upon the objectives to be met for each fishery. This applies to all groundfish and crab fisheries under North Pacific Fishery Management Council (Council) FMP jurisdiction and includes possible coverage for vessels participating in the halibut fisheries. Prior to the full implementation of the Research Plan in 1997, observer coverage levels in the groundfish fishery will be established in regulations implementing the Research Plan and are intended to reflect 1995 observer coverage requirements at the time the Research Plan was approved. Observer coverage requirements for the BSAI area crab fisheries prior to full implementation of the Research Plan would reflect 1995 coverage requirements implemented under Alaska State regulations. Once the Research Plan is fully implemented and Research Plan fees are collected from all participants in the Research Plan fisheries, the level of observer coverage would be determined annually by the Regional Director in consultation with the Council and the State of Alaska. In making that annual determination, the Council, State, and Regional Director will consider: (1) the levels of coverage required to provide reliable information for management purposes and to achieve the objectives of the Research Plan and (2) the amount of available funds.

2. In-season changes to the level of coverage

In-season changes to the levels of observer coverage for the groundfish, halibut, and crab fisheries to improve the accuracy and availability of observer data may be implemented by the Alaska Regional Director based on one or more of the following findings:

- a. A significant change in fishing methods, times, or areas for a specific fishery or fleet component has occurred, or is likely to occur.
- b. A significant change in catch or bycatch composition for a specific fishery or fleet component has occurred,

or is likely to occur.

- c. Any decrease in observer coverage due to unanticipated funding shortfalls must be consistent with the following priorities: 1) Accommodate status of stock assessments (i.e., collection of data on total catch, species composition, size, sex, and age); 2) inseason management; 3) bycatch monitoring; and 4) vessel incentive programs and regulatory compliance.
- d. Such modifications are necessary to ensure or improve data availability or quality in order to meet specific fishery management objectives.
- e. Any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

The Regional Director would consult with the Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab observer program.

E. OBSERVER OVERSIGHT COMMITTEE

An Observer Oversight Committee (Committee) will be established by the Council Chairman to provide advice to the Council, the Board, the Commissioner of ADF&G, and the Regional Director on general provisions of the observer and fee portions of the Research Plan. NMFS, with the assistance of ADF&G, will annually provide Research Plan reports and budget documents to the Committee. The Committee will include industry representatives from the following groups: factory trawler, catcher trawler, shoreside processor, crab catcher vessel, freezer longliner, non-freezer longliner, crab catcher-processor, vessels under 60 feet (18.3 m) in length overall, observers, observer contractors, and independent observer training entities. The Committee will meet with NMFS and ADF&G staff within the annual cycle of the Research Plan to review the reports and budgets and provide input to the Council on fee levels and observer coverage needs. The Committee will not have oversight of the daily operations of the Federal and State observer programs.

F. COORDINATION BETWEEN THE NMFS GROUND FISH PROGRAM AND THE ADF&G CRAB OBSERVER PROGRAM

1. Recognizing the differences in the missions between the ADF&G crab observer program and the NMFS groundfish observer program, but wishing to provide for the maximum efficiency in administration and implementation of the groundfish and crab observer programs, NMFS and ADF&G will form a work group to do the following:
 - a. develop consistent, cost effective, and compatible observer training and debriefing procedures;
 - b. develop consistent data collection, transmission, and processing systems including a single data base available to both agencies on a real-time basis;
 - c. identify costs which are appropriate for reimbursement to the State pursuant to the Magnuson Act;
 - d. review costs and identify possible cost savings measures, including the use of public or private contractors to perform some or all of the duties under the Plan; and
 - e. review the costs and benefits of training groundfish observers in Alaska or elsewhere.
 2. The University of Alaska, as an observer training entity, shall be included as an ex-officio member of the agency work group for the purpose of part E.1.a above.
 3. On an annual basis, NMFS and ADF&G will provide to the Council a report detailing steps taken to improve overall coordination between the two observer programs and to improve administrative efficiency.
- G. FEE ASSESSMENT - Research Plan fees would be assessed during 1995 to collect start-up funding for the full implementation of the Research Plan in 1997. Fees would not be assessed from the 1996 Research Plan fisheries.
1. The following fisheries would be subject to fee assessment

(Research Plan fisheries):

- a. Gulf of Alaska groundfish,
 - b. Bering Sea and Aleutian Islands groundfish,
 - c. North Pacific halibut off Alaska, and
 - d. Bering Sea and Aleutian Islands king and Tanner crab.
2. Fees will be assessed at up to 2% of ex-vessel value of fish and crab harvested in the fisheries identified above. Fees will be expressed and assessed on the basis of ex-vessel value. In addition to the 2% limit, the fees are limited by the cost of the Plan after deducting for funds from other sources.
 3. Fees from the program may only be used to pay for: (1) stationing observers including the direct costs of training, placing, maintaining, briefing, and debriefing observers; (2) collecting, verifying, and entering collected data (not manipulating data); (3) supporting an insurance risk-sharing pool; and (4) paying the salaries of personnel to perform these tasks. The fees cannot be used to pay administrative overhead or other costs not directly incurred in carrying out the Plan, or to offset amounts authorized under other provisions of law.
 4. All Research Plan fisheries will contribute to the total value of the fisheries. Annually, NMFS, in consultation with the Council and ADF&G, will use the best information available to project the value of fisheries. The projection will be based on factors that may include, but are not limited to standard ex-vessel prices by species or species group, projections of retained catch by species or species group, product form, and discards. NMFS will annually calculate standard ex-vessel prices of species harvested in Research Plan fisheries. The standard prices will be based both on ex-vessel price information from the most recent 12-month period for which data are available and on factors that are expected to change the average ex-vessel prices in the coming year. These standard ex-vessel prices, projections of retained catch, and the resulting projection

of the total ex-vessel value of the Research Plan fisheries will be subjected to public review.

5. Annually the Regional Director, in consultation with the Council and ADF&G, will establish a fee percentage taking into account the value of the Research Plan fisheries, the percent of fee assessments that are expected to result in nonpayment, the costs of implementing the Plan, other sources of funds, and limitations on the total amount that can be collected. This will be done concurrent with Council approval of observer needs of the fisheries. This annual process will be completed by the time the fisheries commence. The fee will be expressed as a percentage of the ex-vessel value of the fisheries. The reports and budget documents outlined in this Plan shall be provided annually to the Council a month prior to its June meeting. The Observer Oversight Committee established by the Council shall review these budgets and reports and provide a recommendation to the Council at the June meeting. The Council will review the Committee's recommendation and take final action in September.

NMFS's budget for implementing the groundfish (halibut) portion of the observer program shall include:

- a. costs for observer training and certification;
- b. costs for stationing observers on board fishing vessels and United States fish processors, including travel, salaries, benefits, insurance;
- c. costs for data collection, transmission, and input;
- d. contract services and general administrative costs, excluding overhead costs.

ADF&G's budget for implementing the crab observer program shall include:

- a. costs for observer training and certification;
- b. costs for stationing observers on board crab

- vessels or at shoreside processors including travel, salaries, benefits, insurance;
- c. costs for data collection, transmission, and input;
 - d. contract services and general administrative costs, excluding overhead costs.
6. NMFS, with the assistance of ADF&G, will provide an estimate of the costs of providing required observer coverage for the groundfish (halibut) and shellfish programs for the coming year based on anticipated observer coverage and the anticipated costs of the activities listed under Item G.3 above, including any additional costs of utilizing observers.
 7. NMFS will provide an estimate of surplus funds in the North Pacific Observer Fund and estimate the amounts of funds that may be available from other sources.
 8. The fees shall be set such that the total amount of fees collected are not expected to exceed the limitation prescribed by the Magnuson Act.
 9. The user fee percentage for the coming year will be the total amount to be collected divided by the ex-vessel value of the plan fisheries, multiplied by 100. This fee will be established before the fishing year to which it will apply. It will be subject to Council and public review before being finalized.
 10. The State of Alaska will be reimbursed for all of the costs of the crab observer program which are allowable under the Magnuson Act from fees collected under the North Pacific Fisheries Research Plan, consistent with provisions of the Research Plan.
 11. When an accurate, reliable, and equitable method of measuring discards is developed and implemented, they may be assessed the fee under the Research Plan. This would not include required discards or discards that are alive. The value to assign assessed discards will be determined at an

appropriate time in the future.

H. FEE COLLECTION - Research Plan fees would be collected during 1995 to provide start-up funding for the full implementation of the Research Plan in 1997. Fees would not be collected from the 1996 Research Plan fisheries.

1. Although the fee liability for a given amount of retained catch will be divided equally between the processor and harvesting vessel, processors will be responsible for collecting all fee assessments and for paying them bimonthly (i.e., every 2 months).
2. Fish processors are defined in the Magnuson Act; however, for purposes of collecting fees, harvesting vessels are considered processors when they sell directly to any entity other than a federally permitted processor under this plan.
3. A processor's bimonthly fee assessments for each species or species group would be calculated by NMFS by multiplying the fee percentage, times the standard ex-vessel price, times the actual amount of retained catch, expressed as round weight or round-weight equivalent.
4. Values for actual amount of retained catch to be used by NMFS in calculating fee assessments would be obtained through existing data reporting systems. These include Weekly Production Reports, ADF&G fish tickets or processor reports, and Individual Fishing Quota (IFQ) reports, when available.
5. If processors weigh or otherwise directly determine the amount of their retained catch, then those documented amounts may be used to estimate fee liability. Otherwise, product recovery rates published by NMFS and product weights will be used to estimate retained catch.
6. Processors will be billed bimonthly by NMFS for their fee assessments. Payments must be received by NMFS within 30 days of the issuance date of the bill. The NOAA Office of the Comptroller shall assess late charges for underpayment or late payments of fees. All payments will be deposited in the North Pacific Fishery Observer Fund (Fund) within the

U.S. Treasury.

7. A processor would be required to notify the Regional Director, in writing, within 30 days of issuance of the bill, if any amount billed were disputed; the processor would be responsible for paying the undisputed amount of the bill within 30 days of its issuance, and for providing documentation supporting any claim of under- or over-billing. The Regional Director would review any disputed bill and the documentation provided by the processor, and would notify the processor of the finding and refund or credit the processor's account for any overpayment within 60 days of the date of issuance of the disputed bill. If a billing error has not occurred, the balance of the disputed bill would be due within 15 days of issuance of the determination. Interest penalty and administrative charges would be assessed for payments that are not received within 15 days.
8. All processors as defined under Item H(2) above will be required to have a federal permit to receive fish from Plan fisheries. Separate permit applications will be required for each processing vessel or shoreside facility, even if several vessels or facilities are owned by the same company. Permits will be issued for each of the two 6-month periods-- January 1 through June 30, and July 1 through December 31. The permit issued by the Regional Director will continue in full force and effect for the period January 1 through June 30, or July 1 through December 31, of the year for which it was issued, or until it is revoked, suspended, or modified.
9. No permit will be issued until the permit application is complete and all fee assessments paid. Processors that have paid their accounts and submitted complete permit applications will be issued a permit within 30 days. Permits will not be issued to those processors not submitting complete applications and those whose accounts are past due, until their applications are complete and their accounts are paid.
10. Processing fish from Research Plan fisheries without a valid permit, or delivering fish from Research Plan fisheries to a processor not possessing a valid permit is prohibited. NMFS

will make available to the public a list of those processors holding valid permits to process fish from Research Plan fisheries.

I. IMPLEMENTATION PHASES OF THE RESEARCH PLAN

1. First year. In the absence of adequate start-up funds from other sources, the following program will be used during the first, or start-up year, of the Research Plan to obtain the necessary start-up funds for a fully functional Research Plan for the second year.

- a. The Research Plan fees would be assessed and collected from all processors participating in Research Plan fisheries.
- b. The observer requirements in the Federal Observer Plan and in the State BSAI king and Tanner crab regulations that are in effect when the Research Plan is approved would remain in effect during the start-up year.
- c. Vessel operators and processors that currently are required to pay directly for observer coverage under the Federal Observer Plan and under State regulations would continue to pay directly for observer coverage.
- d. For those whose direct observer payments are equal to or greater than the billed fee assessment, additional payments beyond direct payments will not be required.

2. Interim time period between the first-year phase and full implementation of the Research Plan. During the interim phase of the Research Plan (1996) no fees will be assessed or collected and groundfish and crab observer coverage requirements will remain unchanged from those established by regulation for 1995. During this interim period, NMFS, in consultation with the Council, will assess the Research Plan and its implementation process to resolve Council concerns expressed at its April 1995 meeting. These concerns are listed as follows: minimum levels of observer insurance coverage; the minimum number of contractors that will provide observer coverage and duration of contracts; notification requirements for obtaining observer coverage; allowances for emergency replacement of observers as well as

transfer of observers among vessels; adequate monitoring and control of industry compliance with intended observer coverage requirements; and accommodation of supplemental or voluntary observer programs to meet increased compliance monitoring requirements of future management programs under consideration by the Council.

3. Full Implementation of the elements of this Research Plan is scheduled for 1997, pending Council concurrence that the Research Plan will meet its evolving management objectives for the Research Plan Fisheries.

J. FUNDING SHORTFALLS

In the event of a funding shortfall after implementation of the Research Plan, the available funds will be utilized according to the prioritized list of Research Plan objectives as follows:

1. Accommodate status of stocks assessment (i.e., collection of data on total catch, species composition, size, sex and age)
2. In-season management
3. Bycatch monitoring
4. Vessel incentive programs and regulatory compliance

DRAFT RULEMAKING TO DELAY FULL IMPLEMENTATION OF THE
RESEARCH PLAN UNTIL 1997

Billing Code: 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 677

[Docket No. ; I.D.]

RIN 0648-

North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 1 to
the North Pacific Fisheries Research Plan (Research Plan).

Regulations implementing this amendment would delay full
implementation of the Research Plan until 1997 and establish 1996
observer coverage requirements for the Research Plan fisheries.
This delay is necessary to provide the North Pacific Fishery
Management Council (Council) additional time to assess whether
its stated concerns about the Research Plan can be adequately
addressed and whether full implementation of the Research Plan

would meeting the Council's evolving objectives for future management programs under Council consideration.

DATES: Comments on this proposed rule must be received by [Insert date 60 days from date of filing with the Office of the Federal Register]. A public hearing on the proposed rule will be held by teleconference on [insert date and time].

ADDRESSES: Comments on this proposed rule may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori J. Gravel. Copies of the Research Plan, the environmental assessment/regulatory impact review prepared for the Research Plan, and the final report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Copies of the Observer Plan may be obtained from NMFS at the address noted above.

Locations where interested persons may participate in the [insert date] public hearing by teleconference are as follows:

1. Anchorage [insert address]
2. Juneau {insert address}
3. Seattle [insert address]

4. Newport [insert address]

FOR FURTHER INFORMATION CONTACT: Susan Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations implementing the Research Plan became effective October 6, 1994 (59 FR 46126, September 6, 1994). A regulatory amendment was published in the Federal Register on January 9, 1995 (60 FR 2344), that clarified 1995 observer coverage requirements and revised the definition of certain terms set out under § 677.2. Two proposed rules have been published in the Federal Register that, if approved by NMFS, would make further changes to the regulations implementing the Research Plan. The first proposed rule was published April 25, 1995 (60 FR 20253), and would require vessels and shoreside processors to facilitate transmission of observer data. The second proposed rule was published June XX, 1995 (60 FR XXXXX) and would revise 1995 observer coverage requirements for crab catcher vessels and exempt crab catcher vessels required to obtain observer coverage from paying 1995 Research Plan fees.

The Research Plan adopted by the Council at its December 1993 meeting established a two-phase implementation strategy for the Research Plan. The first phase is occurring in 1995 and

serves to collect start-up funding for full implementation of the Research Plan in 1996. During 1995, NMFS is assessing and collecting Research Plan fees and participants in the Research Plan fisheries are continuing to obtain required observer coverage independently from NMFS-certified observer contractors. "Double payments" for observer services and the fee liability are avoided in 1995 through either catcher vessel exemptions from the fee liability or processor credits up to each processor's fee liability. Starting in 1996, the Research Plan would be fully implemented and observer coverage would be provided to participants in Research Plan fisheries through contractual arrangements between NMFS and companies awarded contracts to provide observer services for the Research Plan fisheries.

The Council, at its April 1995 meeting, raised some concerns about proceeding with the Research Plan and requested the NMFS to delay the solicitation process to award contracts to provide observers under the Research Plan during 1996. The Council also requested NMFS to initiate an amendment to the Research Plan that would delay full implementation of the Research Plan for at least 6 months.

NMFS informed the Council that the design and implementation of the Research Plan and its specification process are tied to an

annual cycle. Mid-year implementation of the Research Plan would create significant administrative and operational problems. Therefore, NMFS requested a one-year delay of the full implementation of the Research Plan, rather than a 6-month delay being considered by the Council. During a May 16, 1995, teleconference, the Council reaffirmed its intent to delay the Research Plan and agreed that the delay would be extended to a one-year period. The Council's intent for this delay was to provide additional time to reconsider certain elements of the Research Plan that were previously adopted by the Council and to assess whether concerns about the Research Plan and the solicitation process for contracts to provide observers under the Research Plan can be adequately addressed. The Council's concerns are as follows: minimum levels of observer insurance coverage; the minimum number of contractors that will provide observer coverage and duration of contracts; notification requirements for obtaining observer coverage; allowances for emergency replacement of observers as well as transfer of observers among vessels; adequate monitoring and control of industry compliance with intended observer coverage requirements; and accommodation of supplemental or voluntary observer programs to meet increased compliance monitoring requirements of future

management programs under consideration by the Council.

The Council also expressed its intent that the fee collection program implemented for 1995 continue for the remainder of the year so that adequate start-up funding may be collected for full implementation of the Research Plan in 1997. This means that NMFS will continue to assess fees through early 1996 for fish harvested and retained in the Research Plan fisheries during the last few months of 1995. Collected funds would continue to be held in an interest bearing account and would be used to issue awards for contracts to provide observers under the Research Plan starting in 1997.

The current Research Plan only allows a delay in the full implementation of the Plan beyond 1995 if insufficient funds exist to support contract awards for the first half of 1996. NMFS believes that the 1995 fee collection program will provide sufficient funds to support contract awards to initiate full implementation of the Research Plan. Therefore, the Council's request to delay full implementation of the Research Plan until 1997 requires an amendment to the Research Plan.

Through the end of May 1995, NMFS had collected \$2.5 million in Research Plan fees. The final report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" (see ADDRESSES)

estimates that \$4.8 million will be needed in start-up funding to support contractual arrangements for observer coverage during the first 6-months of full implementation of the Research Plan. NMFS anticipates that this amount will be collected in 1995 and that full implementation of the Research Plan can be pursued for 1997 pending Council support for this action.

Given that adequate start-up funding will be collected during 1995, no reason exists to continue the fee collection program during 1996. As a result, 1996 Research Plan fees will not be assessed. The annual Research Plan specification process becomes unnecessary for 1996 because no reason exists to establish a 1996 fee percentage or standard exvessel prices on which to base fee assessments. The Council expressed its intent that 1996 observer coverage levels would remain unchanged from 1995. These observer coverage requirements for the groundfish and crab fisheries are set out in the proposed rule at § 677.10(a). As in 1995, participants in the groundfish and crab Research Plan fisheries would be responsible for making their own arrangements and paying for required observer coverage. As a result, specifications for observer embarkment/disembarkment ports for observers also are unnecessary for 1996.

NMFS further notes its intent that the following sections of

the Observer Plan still would be in effect until full implementation of the Research Plan in 1997: (1) Standards of observer conduct (attachment number 3); and (2) the description, specifications, and work statement for certified domestic observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation (attachment number 4). Copies of the Observer Plan dated May 1994 are available from NMFS (See ADDRESSES).

Public comments on the proposed amendment to the Research Plan and its implementing regulations are invited for 60 days. During this comment period, the Secretary will conduct public hearings, as required by the Magnuson Act, in Alaska, Oregon, and Washington for the purpose of receiving public comments on the proposed regulations (see DATES and ADDRESSES for dates and locations). NMFS will consider the public comments received in preparing the final rule implementing the amendment.

Classification

The Council, NMFS, and the Alaska Department of Fish and Game prepared a final Regulatory Flexibility Analysis as part of the Regulatory Impact Review prepared for the Research Plan. A

copy of this analysis is available from the Council (See ADDRESSES).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 677

Fisheries, Reporting and recordkeeping requirements.

Dated:

For the reasons set out in the preamble, 50 CFR part 677 is proposed to be amended as follows: [NOTE: THE FOLLOWING REVISIONS ASSUME CHANGES TO PART 677 PROPOSED UNDER BSAI FMP AMEND 35 AND THE REG. AMEND. TO EXPAND CRAB CV OBSERVER COVERAGE ARE APPROVED]

PART 677--NORTH PACIFIC FISHERIES RESEARCH PLAN

1. The authority citation for part 677 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 677.6, paragraph (b) (2) is redesignated as paragraph (b) (3), and a new paragraph (b) (2) is added to read as follows:

§ 677.6 Research Plan fee.

- * * * * *
- (b) * * *
- (1) * * *

(2) Fee assessments during 1996. Processors of Research Plan fisheries will not be assessed fees based on catch from Research Plan fisheries that is retained during the 1996 calendar year.

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3. In § 677.10, paragraphs (a) (1) (i) (C) through (a) (1) (i) (F) are redesignated as paragraphs (a) (1) (i) (D) through

(a) (1) (i) (G), the headings for paragraphs (a) and (b) are revised, and paragraphs (a) (1) (i) (C) and (a) (2) (iii) are added to read as follows:

§ 677.10 General requirements.

(a) Observer requirements applicable through December 31, 1996.

(1) * * *

(i) * * *

(C) Each mothership processor vessel that receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15 under § 675.23(e), is required to have a second NMFS-certified observer aboard, in addition to the observer required under § 677.10(a) (1) (i) of this chapter for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h) (2).

* * * * *

(2) * * *

(iii) Each shoreside processor that offloads fish at more than one location on the same dock and has distinct and separate equipment at each location to process those fish and that

receives pollock harvested by catcher vessels in the catcher vessel operational area, defined at § 675.22(g), during the second pollock season that starts on August 15, under § 675.23(e) is required to have a NMFS-certified observer, in addition to the observer required under § 677.10(a)(1)(i) of this chapter, at each location where fish is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 675.22(h)(2).

* * * * *

(b) Observer requirements applicable after December 31,

1996.

* * * * *

4. In § 677.11, paragraph (a)(4) is revised to read as follows:

§ 677.11 Annual Research Plan specifications.

(a) * * *

(4) Observer coverage. For the period January 1, 1995, through December 31, 1996, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1996, the level of observer coverage will be

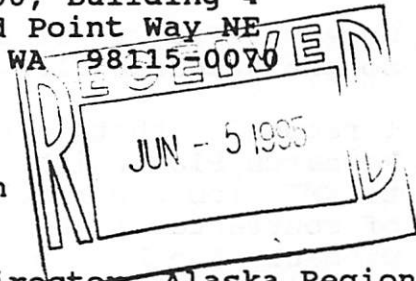
determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

* * * * *



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Alaska Fisheries Science Center
BIN C15700, Building 4
7600 Sand Point Way NE
Seattle, WA 98115-0070

JUN - 1 1995



MEMORANDUM FOR: Steven Pennoyer
Director, Alaska Region

FROM: William Aron *WA*
Science and Research Director, Alaska Region

SUBJECT: The Observer Program

Recent Council actions to delay implementation of the Research Plan have raised serious concerns about the future of the North Pacific Groundfish Observer Program and its responsibilities for meeting information requirements for management, assessment, and compliance.

When the Domestic Observer Program was first established, it was understood by all participants that the pay-as-you-go scheme coupled with a contractual arrangement, which could not be monitored by NMFS, was flawed. This Observer Plan was accepted only as an interim arrangement until a more suitable system could be developed and implemented.

The Research Plan was proposed as a user-fee supported program which would address concerns regarding cost distribution, conflicts of interest, observer employment conditions, and agency flexibility in observer placement. It was recognized by the Council and NMFS that implementation of the Research Plan was essential to the integrity of the Observer Program at a time when observer compliance and economic pressures on fishing companies and observer contractors were increasing. These conditions have caused erosion of observer salaries and benefits and created new incentives and opportunities for manipulation of contractors and observers. Observer morale has decreased noticeably since the nonpayment episode, and we have reassured observers that Research Plan implementation will preclude such events in the future and bring significant improvements in working conditions. I am concerned that the current situation threatens the quality of the program.

Today's observer program is substantially different from the program of five years ago, and we continue to place increasing demands on observers for vessel- and haul-specific fishing performance information. It is not reasonable for us to proceed in this manner without taking care of observer needs. The Council must recognize that some current and possible future management measures cannot be properly implemented unless the



Observer Program is changed to address the issues which gave rise to the Research Plan.

I recognize that it may be possible to design alternatives to the Research Plan which implement the changes of greatest importance to NMFS (observer salaries and working conditions, and oversight of contractors), although I understand that the Research Plan is probably the best mechanism for supporting an Observer Program which meets today's needs. Observer Program staff are committed to working with you and your staff to evaluate possible alternatives and provide information to the Council. I think it is important that the Council be made aware that we cannot provide the observer resources necessary to support many of their actions if they are unwilling to work with us to implement critical observer program changes as quickly as possible.

cc: F - R. Schmitten
Fx3 - M. Sissenwine
C. Pautzke

DAVID HILLSTRAND

Box 1500

Homer AK 99603

(907) 235-8706

Anchorage

Hilton

C-6

OBSERVER PROGRAM

- A. SINCE EXCESSIVE FEES ARE BEING COLLECTED IN THE CRAB OBSERVER PORTION, I WOULD LIKE IT SET ASIDE IN A FUND TO COLLECT INTEREST FOR FUTURE FUNDING.
- B. WE ARE PAYING A TAX TO TOTALLY FUND THE PROGRAM YET STILL HAVE TO PAY FOR P+I INSURANCE FOR OBSERVERS WHILE ON OUR VESSELS.
- C. DELETE OBSERVER COVERAGE FOR POT COD VESSELS 60' AND OVER, OR REQUIRE IT ON THEM ALSO.
- D. REDUCE OBSERVER COVERAGE FOR DUTCH HARBOR AND AODK BROWN CRAB TO 30%.
- A. USE THE DATA COLLECTED; REQUIRE LARGER WEB FOR ESCAPEMENT OF SMALL CRAB $9\frac{1}{4}$ ".
- E. RETURN TO EXISTING OBSERVER PROGRAM
- A. MAKE VESSELS OR FISHERIES THAT HAVE PROBLEMS PAY THEIR OWN WAY.
1. C/P'S FOR CRAB CAN ILLEGALLY TAKE UNDERSIZE CRAB; THEREFORE THEY NEED AN OBSERVER, AND THEY SHOULD PAY.
2. TRAWLER THAT OPERATE OFF OF BYCATCH NEED TO BE OBSERVED OR THEY WILL GO TO EXCESS.
- F. YOU HAVE THE STATISTICS.
1. YOU HAVE DONE SOMETHING; CLOSED AREAS DOWN, NOW YOU NO LONGER WORRY.

DO SOMETHING WITH THE DATA; NOT JUST COLLECT IT. → OVER

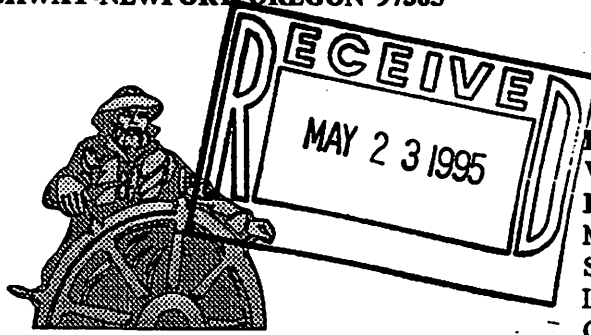
G. Fisheries that are unknown

1. Put an observer on every vessel over the course of a full season. It's your turn now, we want to see "your operation".

MIDWATER TRAWLERS COOPERATIVE

1626 N. COAST HIGHWAY-NEWPORT OREGON 97365

Captain R. Barry Fisher
President
Yankee Fisheries
1626 N. Coast Highway
Newport, OR 97365
Telephone: (503) 265-9317 May 19, 1995
Telefax: (503) 265-4557



Fred Yeck
Vice President
DIRECTOR
Mark Cooper
Steve Drage
Larry Schock
Gary Westman

MTC

MEMBER VESSELS

AJ
ARGOSY
BAY ISLANDER
BLUE FOX
CAPE FALCON
CAPE KIWANDA
CARAVELLE
COHO
EXCALIBUR
EXCALIBUR II
HAZEL LORRAINE
LESLIE LEE
LISA MELINDA
MARATHON
MISS BERDIE
MISS LEONA
MISS SUE
NEW LIFE
PACIFIC
PACIFIC FUTURE
PACIFIC RAM
PEGASUS
PERSEVERANCE
PERSISTENCE
PIONEER
RAVEN
ROSELLA
SEADAWN
SEEKER
VANGUARD

Richard Lauber, Chairman
North Pacific Fishery Management Council
P O Box 103136
Anchorage AK 99510

Dear Rick:

I have been following the unfolding melodrama on the research program (observer program) with some interest. I am becoming very concerned regarding the direction that is being taken; namely that of a program which seems destined for Federal government operation and administration. I think such an ensuing result will provide for a very expensive program with very little of the flexibility which the north Pacific fishing vessels need, and a potential failure to obtain, analyze and use data in a timely and credible fashion.

I would posit some of the following statements as evidence of my conclusion. It seems to me that the current observer program as it has been practiced has been generally successful in providing a very high caliber of observers who are provided a good income while providing valuable services for NPFMC. Competition between the observer companies keeps it this way. I also think the companies could do even a better job if the requirements of analysis of data were put upon them (for which they should be compensated). There have been almost no complaints from my members over the past few years of the conduct of the observer programs. Observers have been where they have been needed as the fleet changed from fishery to fishery on very little or almost no notice. I know of no instances where NMFS can genuinely point to any discrepancies in services from the established companies. The observer companies themselves have to provide good service as in a capitalistic society if they can't provide the services they are soon long gone from the market place.

And remember, a Federally run program could easily withstand external pressure to remain cost effective and would be under no compulsion to be flexible to meet fleet needs. In this instance there would be no natural market place controls and the net result would be the expansion of a bureaucratic empire.

Page 2

I regard the administration and conduct of an observer program by NMFS with more than a degree of concern, horror is the word I would use. In the early days of the joint ventures when universities and NMFS provided the training, and then supervision, observers were of poor quality and at times there was considerable disagreement on what their role was. I think many of them had the feeling that they were sent out to be cops and not only did the foreigners have to be watched but also any of the Americans that worked with these aliens. I think those perceptions by industry using private observers have been changed. By and large the industry's attitude toward both the observers and observer companies is favorable.

Another determinant concerning the ability of NMFS to meet program and fishery needs can be assessed by examining a program they currently run; the VIP program to control bycatch. The VIP program does not work. There are instances of incredible bycatches, such as in the rock sole fishery, that are condoned by NMFS. The spring cod fishery is soon shut off every year when certain vessels show up to catch cod after having completed the pollock A season. The point is that many fisheries are still being shut down because the incidental catch of prohibited species has been reached well before the target OYs have been taken. All of this represents net losses to the nation. NMFS took over a program of bycatch control successfully practiced by some industry fleets which had compliance as its primary goal. NMFS has replaced it with a program of enforcement as a primary objective in bycatch cases and they have not been too successful in even bringing malefactors to terms; only a very few have gone to court and most of the cases have been settled out of court. And again, we are not doing any better at containing bycatch in the VIP program. Give NMFS control of an observer program? I think not.

It seems to me that the industry should be given one last good opportunity to design an observer program which will provide needed management information in a cost effective and flexible plan that will meet the demands of the Council for information data and will not result in losses of fishing time all of which can be counted as net economic losses to the nation (as well to the vessel and crew involved).

Now for a spot of "deja vu". I am sending you a copy of a letter that I wrote in April 1988 to John Peterson who was then Chairman of the NPFMC. I am also enclosing copies of other memos from Ron Miller and me to the Fishery Foundation Steering Committee which includes the Articles of Incorporation of the North Pacific Fishery Foundation, Inc. The NPFMC files for the spring and early summer of 1987 contain a descriptive report of what the objectives and operations of the fishery research foundation would be. I believe these documents should be read at the current time by Council members and industry people. I urge you to unearth the descriptive articles from the Council files and with this letter and its attachments disseminate this information to all interested parties.

I would then urge the Council to provide a forum for written ideas to complete the design of an effective observer program. Perhaps your Observer Committee would be the proper locus. I do know that we should not allow an apparently successful observer program to go by the board.

Back in 1987 and 1988 I tried to warn people that the industry would have to begin to shoulder some of the necessary costs for research. I had suggested an observer program should be the first target. We almost succeeded but many industry people in those days thought that fee payments or assessments, no matter how small, were not necessary or appropriate.

I think you also have some other problems to solve in the ongoing observer program; are the observers going to be cops or are they going to be biologists? Will emergent data be analyzed and utilized in a timely, professional and efficient manner? Will the Councils' needs be met by an efficient observer program? I really decry a system that is administered by anybody who thinks that its needs and its sense of how things should be done are separate from that of the Council. The observer program is part of fishery management which under the current version of the Management Act is to be conducted by the Council, not by a government bureau.

I could wax more eloquent (and/or rhetorical) but you don't need that from me. I would ask you all to read the memos, thumb through the articles of incorporation and read the report in the Council file by Ron Miller which describes the Fishery Research Foundation. Again, ask interested industry people to do the same and respond with written ideas regarding an effective observer program. There would be no harm in telling them that this would constitute the "Last hurrah". A failure to produce an observer program would then inevitably lead to a Federal observer program and a situation that MTC hopes will never come to pass. It may be an idea whose time has come.

The next statement I make is one of sadness. It is very difficult for me to see the Council continuing to spend almost all of its time on divisive issues, like ITQs, license limitations, numbers games, etc. all of which are squabbles over property rights, and unable to take up and deal with primary fishery management concerns like full utilization, the control of bycatch, ecosystem management, added stock survey and analyses, discards and waste, grid sorting of halibut, institution of mesh size regulations, etc. etc. It just seems to me that too many of these crucially needed management needs and issues are continually being put on hold from meeting to meeting.

I do wish you and the industry would give the idea of an industry maintained and run observer program perhaps under the auspices of something like a fishery research foundation which would be answerable only to the Council, its standards and guidelines and control, a review and perhaps a chance.

In many respects when I remember back over the period 1980 to 1987 or so, I remember a sense of comity evident that I don't think we have any longer; maybe we all got too greedy by the "big money" and perhaps we are now engaged in too many power trips; particularly by government agencies. Those were good years, it was exciting and fun to fish in Alaska and work for the Council then. But I can now state that I understand how the mountanmen of the West must have felt, circa 1850, "She's gone pilgrim, she truly is gone."

Page 4

Good luck to you guys.

Cordially,



R. Barry Fisher

Attachments

Memo April 28, 1988 to John Peterson

Memo July 16, 1987 from Ron Miller

Articles of Incorporation of the North Pacific Fishery Foundation, Inc

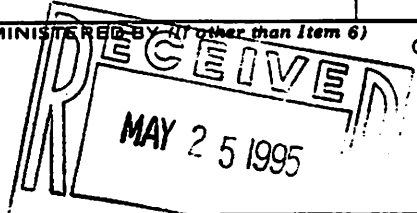
Fishery Foundation General Work Plan

Memo April 28, 1987, Fishery Foundation Steering Committee to the
fishing industry

2. AMENDMENT/NO. OF MODIFICATION NO. 04 3. EFFECTIVE DATE 5/22/95 4. REQUISITION/PURCHASE REQ. NO. 5. PROJECT NO. (If applicable)

ISSUED BY CODE WC33 7. ADMINISTERED BY (If other than Item 6) CODE

NOAA, WASC, Procurement Division
 7600 Sand Point Way N.E.
 Seattle, WA 98115-0070



8. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code) 9A. AMENDMENT OF SOLICITATION NO.

XXI 52ABNF500051

9B. DATED (SEE ITEM 11)

03/22/95

10A. MODIFICATION OF CONTRACT/ORDER NO.

10B. DATED (SEE ITEM 13)

CODE FACILITY CODE

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:
 (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

- (v) A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
- B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
- C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:
- D. OTHER (Specify type of modification and authority)

E. IMPORTANT: Contractor is not, is required to sign this document and return _____ copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)

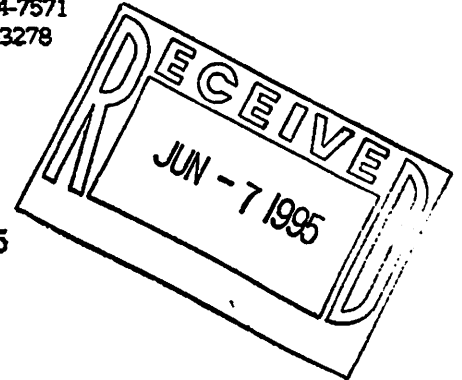
The above referenced solicitation for the User Fee Funded North Pacific Fisheries Observer Program is hereby canceled in its entirety. This cancellation results from the North Pacific Fisheries Management Council's decision to delay implementation of the North Pacific Fisheries Research Plan until the 1997 fishing season.

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

A. NAME AND TITLE OF SIGNER (Type or print)		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)	
		Donald G. Wadhams (206) 526-6036 Contract Specialist	
15B. CONTRACTOR/OFFEROR	15C. DATE SIGNED	16B. UNITED STATES OF AMERICA	16C. DATE SIGNED
(Signature of person authorized to sign)		BY (Signature of Contracting Officer)	

**Q** **QUEEN FISHERIES, INC.**

4005 20TH AVENUE WEST, SUITE 116
SEATTLE, WA 98199-1295
TELEPHONE: (206) 284-7571
FACSIMILE: (206) 285-3278



June 4, 1995

Mr. Rick Lauber, Chairman
North Pacific Fisheries Management Council
605 West 4th Ave.
P.O.Box 103136
Anchorage, Alaska 99510

Re: RESEARCH PLAN

Dear Rick,

Imagine my delight upon reading that the council had finally taken positive action on the existing research plan. My only regret is that it didn't go far enough.

Please let me remind you, again, that this concept was developed and proposed by the industry folks directly involved. The **ONLY** reason for the proposal was to be able to reduce costs and continue to provide the agency with the information needed to make informed and intelligent decisions on the in-season management of the fisheries. Unfortunately the guy in the back room didn't take cost into his thinking and apparently said to himself, "well there are always supplemental fees", which as you remember is already being proposed.

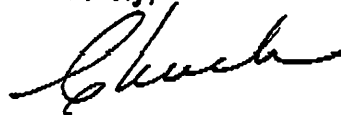
I think that now is the perfect time for the council to either start the amendment proceedings or pull back and allow industry to start working on a plan that would be acceptable to both the public and private sector.

I am astounded that the agency is planning on collecting fees for the rest of the year, reverting to 1994 methods for 1996 and then resuming the current plan in 1997. Under the current situation the moneys that have been collected belong to the industry folks who have paid their fees, it does not belong to the agency. With this in mind I would suggest that the agency immediately begin cutting checks for the full amount of moneys deposited by industry to industry. Many, if not all, of the industry could certainly put those funds to better use than to have them in an untouchable account without their name it.

Packers of East Point canned Pacific shrimp, fresh Pacific oysters,
Alaskan salmon, halibut and frozen king, snow, and dungeness crab.

One other matter comes to mind and that is the method of collection and billing. Fishing vessel owners are business people and as such should be responsible for taking care of their own debts. The buyers and processors should not be responsible for any debts other than their own. The one per-cent fee is excessive for both the plants and the vessels. The fees being based on last years average prices is, to say the least, ridiculous, cumbersome and confusing. Fish ticket prices for the shore plants and the average port prices should be used for floaters and catcher-processors.

Sincerely,



Charles L. Jensen
Manager
Gov't. Relations/Quality Assurance



ALASKA OCEAN SEAFOOD

LIMITED PARTNERSHIP

June 2, 1995

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Re: Agenda Item C-3 Observer Program

Dear Mr. Lauber:

These comments are filed on behalf of Alaska Ocean Seafood Limited Partnership as well as the Auriga and Aurora General Partnership. These companies own and operate the ALASKA OCEAN, a modern surimi factory trawler; and the AURIGA and AURORA, two modern refrigerated sea water trawlers that deliver catches to shoreside processing facilities.

We are writing to encourage the Council to approve a plan amendment that would continue current observer coverage into 1996, but would delay implementation of the fee program. We also encourage the Council to scrutinize carefully the program that would be implemented under the existing Final Rule, with emphasis on the following issues:

- (1) Are the fees proposed by NMFS reasonable and justifiable?
- (2) Will the program proposed by NMFS adequately serve industry's needs and ability to comply with regulatory requirements?
- (3) Is the complicated program proposed by NMFS really necessary?

At the outset, we wish to emphasize that we are strong supporters of the observer program and have no objection to paying for our observer coverage. All three of our vessels are required to have 100% coverage. We believe that the existing observer program has contributed significantly to the health of the groundfish stocks off the Alaskan coast, and we believe that observer requirements should be extended over a larger segment of the industry. Nonetheless, we do not believe that the program established in the Final Rule is necessary, desirable, or justifiable.

Mr. Richard Lauber
June 2, 1995
Page 2

I. THE FEES THAT NMFS IS IMPOSING ARE EXORBITANT.

If the fee program set out in the initial Final Rule is fully implemented, NMFS will impose on the ALASKA OCEAN a daily fee in excess of \$ 1,600 for observer coverage.¹ This is, to say the least, startling, as our daily costs under the "pay-as-you-go" system averaged only \$ 233. Thus, we will experience an eightfold increase in our observer costs. We are at a loss as to any possible justification for this. Consider the following:

1. Our observer coverage under the new program will be absolutely identical to our coverage under the pay-as-you-go system.
2. There will be no changes in the duties of our observers. See Final Rule, 59 Fed. Reg. 46132 (Sep. 6, 1994) - "Existing observer duties will be unchanged under the Research Plan."
3. In June of 1994, NMFS estimated the total monthly costs of an observer at approximately \$ 7,000,² a figure that comports with our experience. Using NMFS' own figures, ALASKA OCEAN will now effectively pay the costs of our one observer, and the costs of seven others.

One of the stated objections of the observer program is to

Ensure that the groundfish and crab observer programs are efficient and cost effective, that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revisions to the programs, and that such changes are necessary to meet fishery management needs

Notice of Proposed Rulemaking, 59 Fed. Reg. 23665 (May 6, 1994). Because there will be no change in our coverage and no change in the observers' duties, the only data enhancement that can come from the program must come from the fact that the program will cover more vessels. But if more

¹NMFS has divided the 2% fee into a 1% catcher fee and a 1% processor fee, and for 1995 has effectively waived the catcher portion. Therefore, during the 1995 A season, the ALASKA OCEAN paid only the processor portion of the fee, which exceeded \$800 a day.

² See, "Establishing the Fee Percentage and Standard Ex-Vessel Prices for 1995" at 15 (Jun, 6, 1994). Interestingly, NMFS later lowered its cost estimates to a maximum of \$ 5640 per month, making the potential assessment against the ALASKA OCEAN even more outrageous. See Minutes of Observer Oversight Committee at 3-4 (Sep. 15, 1994).

Mr. Richard Lauber

June 2, 1995

Page 3

vessels are covered, and more vessels are paying, the ALASKA OCEAN's costs should remain constant or even decrease, not increase eightfold.

These very issues were raised in comments to the Notice of Proposed Rulemaking. In response, NMFS made no attempt to justify the increased costs in terms of data quality or management needs. Instead, NMFS merely stated that their objective is to "distribute the costs of observer coverage more equitably." Final Rule, 59 Fed. Reg. 46127. This is a laudatory goal, but the inequity identified in the Proposed Rule was the fact that vessels such as the ALASKA OCEAN were paying for 100% observer coverage, while others were paying for 30% coverage and some were not paying at all. Notice of Proposed Rule, 59 Fed. Reg. 23665. It is nonsensical to suggest that this inequity is corrected by an astronomical increase in our costs.

In short, something is very wrong here. We urge the Council to demand far more accountability from NMFS as to its fee determinations, and to demand that the fees be lowered to an amount more commensurate with costs incurred under the "pay-as-you-go" system.

II. NMFS' PLANNED IMPLEMENTATION OF THE PROGRAM IS NOT RESPONSIVE TO INDUSTRY NEEDS.

- A. Observer Availability. The Final Rule will impose on us an obligation to give 60-days' advance notice of a need for an observer, with a supplemental 10-day advance notice. While these requirements pose no problem with respect to fishing seasons that are scheduled regularly and well in advance, they will be impossible to meet when there are changes in opening dates or where decisions are made to release reserve. These latter types of announcements are frequently made with notice of a week or less, obviously precluding any ability to arrange for an observer 60 - or even 10 - days in advance.

This issue was also raised in comments on the Proposed Rule. NMFS' response was that the advanced notice is necessary to insure the availability of observers. Final Rule, 59 Fed. Reg. 46128. We find little comfort in this response.

First we have had occasion under the "pay-as-you-go" system to engage the services of an observer on short notice and have encountered no problems with availability. Second, and most important, the response suggests that, in cases of short-notice openings, there may well be a shortage of observers. The net result of such a circumstance will be that vessels required to have observer coverage will be unable to fish and those not required to have observer coverage will be able to fish, obviously undermining completely the purposes of the observer program.

The fact that observers are readily available under the pay-as-you-go system but may not be available under the new system leads to the rather obvious conclusion that we are better off with a system in which the private sector, not the government, furnishes observers. If the government is going to furnish the observers, than, in lieu of the burdensome and unworkable notification requirement, the Council must insist upon a system where the Regional Director is prohibited from imposing observer coverage requirements that exceed the available pool of observers.

- B. Points of Embarkation. The Proposed Rule contained a list of proposed points of embarkation, all located in the State of Alaska. Comments on the Proposed Rule noted that this would impose unfair costs and inconvenience on the owners of vessels that sail to the fishing grounds directly from Washington State. The comments requested designation of at least one port in Washington as an embarkation point.

In the Final Rule, NMFS noted its current reluctance to do this because of high transportation costs. Once again, this problem does not exist if the private-sector, not the government, furnishes the observers. If the government does furnish observers, the problem can be overcome by the simple expedient of including Washington State firms in the companies with which NMFS contracts.

We ask the Council, at a minimum, to direct NMFS to actively solicit Proposals from Washington firms.

III. THE NMFS PROGRAM IS UNNECESSARY.

The comments above essentially have a recurring theme; The NMFS program is simply not as good as the "pay-as-you-go" system:

<u>PAY-AS-YOU-GO</u>	<u>NMFS</u>
1. \$233 per day	1. \$1600 per day
2. full observer availability	2. limited observer availability
3. observers available at point of embarkation	3. observers available only in Alaska

We frankly are puzzled as to why the NMFS program is being pursued at all. NMFS has offered two supposed justifications for it. The first is that, under the old system, not all participants

Mr. Richard Lauber
June 2, 1995
Page 5

in the industry are bearing the costs of the observer program while presumably all benefit from it. The NMFS program supposedly would correct this by imposing fees on all participants. The discussion at I, above, amply lays to rest any validity to this justification.

The other justification is that under the old system observers are not fully accountable to NMFS, making it difficult to insure the integrity of the program. We have always maintained, and continue to believe, that an observer's integrity really is not dependent on whether he is an employee of a contractor who contracts with a vessel owner or an employee of a contractor who contracts with NMFS. Surely, concerns about integrity can be far better addressed by oaths and penalties than by a system that increases costs exponentially without commensurate benefit to the resource or the industry.

CONCLUSION

The NMFS program is a classic example of imposition of a cumbersome and expensive bureaucracy in place of an effective and reasonably priced private-sector program. We urge the Council to reconsider the program in its entirety and, at a minimum, to address the issues of exorbitant fees and responsiveness to industry needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Hendricks", written in a cursive style.

Jeff Hendricks
General Manager



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-3

Attachment

JUNE 1995

June 9, 1995

NORTH PACIFIC FISHERIES RESEARCH PLAN FEE COLLECTION SYSTEM

Agenda Item C-3: Status report on Research Plan fee assessment billings.

A. BILLING PERIOD 1 (January-February 1995)

The first Research Plan fee assessment bills were issued March 10, 1995 to 161 processors. As of June 9, 1995, the financial activity is as follows:

Total Amount Billed	\$4,010,985.77
Payments Received (60.8%)	2,439,817.63
Late Payments Received (4.3%)	170,830.32
Applied Observer Coverage Credit (14.3%)	574,577.00
To Be Applied Observer Coverage Credit (6.0%)	239,444.44
Applied Dispute Credit (2.2%)	89,868.24
Unpaid Balance (12.4%)	496,448.14

Unpaid Balance NOAA is pursuing collection of the Research Plan fee assessment unpaid balance. Interest charges are being assessed at an annual rate of 3.0%, administrative charges are assessed, and an additional penalty charge will be assessed (3.0% per annum) on any portion of a debt that is delinquent for more than 90 days.

Issuance of Processor Permits for July-December 1995 Outstanding balances and any accrued late fees from the first billing period must be paid in full before processor permits for the July-December 1995 period will be issued. Research Plan regulations prohibit the processing of fish from a Research Plan fishery without a valid federal processor permit and the delivery of fish from a Research Plan fishery to a processor not possessing a valid federal processor permit.

Processors with Unpaid Balances The unpaid balance (\$496,448.14) reflects amounts owed by 47 of the 161 billed processors. Seventy-three percent (\$361,094.22) of the unpaid balance is accounted for by 14 processors that have taken no action on their Research Plan fee assessment bills. The range of amounts due was \$755 to \$89,095. The remaining unpaid balance (\$135,353.92)



reflects claimed dispute amounts that were denied, claimed observer coverage credit amounts that exceeded the verified observer credit or have not been verified to date, and unpaid 'vessel' portions of fees (observer coverage credit only applies to the processor portion).

Relationship between a Processor's Fee Assessment and Observer Coverage Costs

Forty-three of the 161 billed processors had payment amounts exceeding their observer coverage costs applied as credit to the fee assessment. Their payments plus applied observer coverage credits accounts for 44.7% of the total \$ amount billed.

Seventy-seven of the 161 billed processors had applied observer coverage cost credits that exceeded their payment amounts. Their payments plus applied observer coverage credits accounts for 21.7% of the total \$ amount billed. Over half of these processors (40) made no payments at all, their observer coverage costs were equal to or exceeded their billed fee assessment.

<u># of Processors</u>	<u>Payment Amount</u>		<u>Applied Observer Credit</u>
43	\$1,441,111	>	\$352,590
77	\$ 131,612	<	\$740,607

B. BILLING PERIOD 2 (March-April 1995)

The second Research Plan fee assessment bills were issued May 25, 1995 to 248 processors. The total amount billed was \$2,588,559.99.

<u>Fishery</u>	<u>Round-weight Pounds</u>	<u>\$ Amount Billed</u>
Groundfish	802,359,553	1,647,670.42
Crab	37,022,881	840,448.69
Halibut	6,357,013	100,440.88

Payments are due no later than June 25, 1995.

NORTH PACIFIC FISHERIES RESEARCH PLAN FEE ASSESSMENT BILL
For Period 1-95 as of 06/08/95

Financial Summary				
	Ground Fish	Crab	Halibut	Totals
Number of Processors	125	44	0	169
Dollar Amount Billed	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77
Average	\$ 13,787.10	\$ 51,990.87	0.00	\$ 23,733.64
Total Count	0	0	0	-
Adjustments	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total NMFS Charges	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77
Total Count	0	0	0	-
Late Fees	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total Current Charges	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77
Total Balance Due	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77

See
Below

Count Summary			
Total Billings	Total Single FC	Total Multi FC	Total Permitted:
161	153	8	420

Real Average \$ 24,912.96

NORTH PACIFIC FISHERIES RESEARCH PLAN FEE ASSESSMENT BILL
For Period 2-95 as of 06/08/95

Financial Summary				
	Ground Fish	Crab	Halibut	Totals
Previous Balance	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77
Total Count	68	25	0	93
Payments Received	\$ (696,345.63)	\$ (1,743,472.00)	0.00	\$ (2,439,817.63)
Average	\$ (10,240.38)	\$ (69,738.88)	0.00	\$ (26,234.60)
Total Count	64	14	0	78
Applied Observer Credit	\$ (452,736.15)	\$ (121,840.85)	0.00	\$ (574,577.00)
Average	\$ (7,074.00)	\$ (8,702.92)	0.00	\$ (7,366.37)
Total Count	7	3	0	10
Disputes Decided	0.00	\$ (2,066.76)	0.00	\$ (2,066.76)
Average	0.00	\$ (688.92)	0.00	\$ (206.68)
Total Count	12	7	0	19
Dispute (Error) Records	\$ (6,371.11)	\$ (81,430.37)	0.00	\$ (87,801.48)
Average	\$ (530.93)	\$ (11,632.91)	0.00	\$ (12,163.84)
Total Credit Received	\$ (1,155,452.89)	\$ (1,948,809.98)	0.00	\$ (3,104,262.87)
Total Unpaid Balance	\$ 567,934.80	\$ 338,788.10	0.00	\$ 906,722.90

Number of Processors	169	35	75	279
Dollar Amount Billed	\$ 1,450,378.11	\$ 759,018.32	\$ 100,440.88	\$ 2,309,837.31
Average	\$ 8,582.12	\$ 21,686.24	\$ 1,339.21	\$ 8,278.99
Total Count	62	6	0	68
Adjustments	\$ 197,292.31	\$ 81,430.37	0.00	\$ 278,722.68
Average	\$ 3,182.13	\$ 13,571.73	0.00	\$ 16,753.86
Total NMFS Charges	\$ 1,647,670.42	\$ 840,448.69	\$ 100,440.88	\$ 2,588,559.99
Total Count	57	17	0	74
Late Fees	\$ 1,604.49	\$ 706.70	0.00	\$ 2,311.19
Average	\$ 28.15	\$ 41.57	0.00	\$ 69.72
Total Current Charges	\$ 1,649,274.91	\$ 841,155.39	\$ 100,440.88	\$ 2,590,871.18
Total Balance Due	\$ 2,217,209.71	\$ 1,179,943.49	100440.88	\$ 3,497,594.08

See Below

Count Summary			
Total Billings	Total Single FC	Total Multi FC	Total Permitted:
248	217	31	899

Real Average \$ 6

NORTH PACIFIC FISHERIES RESEARCH PLAN FEE ASSESSMENT BILL
For Period 3-95 as of 06/08/95

Financial Summary				
	Ground Fish	Crab	Halibut	Totals
Previous Balance	\$ 2,217,209.71	\$ 1,179,943.49	\$ 100,440.88	\$ 3,497,594.08
Total Count	13	8	0	21
Payments Received	\$ (81,957.44)	\$ (88,872.88)	0.00	\$ (170,830.32)
Average	\$ (6,304.42)	\$ (11,109.11)	0.00	\$ (8,134.78)
Total Count	32	7	0	39
To Be Applied Observer Credit	\$ (198,361.44)	\$ (41,083.00)	0.00	\$ (239,444.44)
Average	\$ (6,198.80)	\$ (5,869.00)	0.00	\$ (6,139.60)
Total Count	0	0	0	0
Disputes Decided	0.00	\$ -	0.00	\$ -
Average	0.00	\$ -	0.00	\$ -
Total Count	0	0	0	-
Dispute (Error) Records	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total Credit Received	\$ (280,318.88)	\$ (129,955.88)	\$ -	\$ (410,274.76)
Total Unpaid Balance	\$ 1,936,890.83	\$ 1,049,987.61	\$ 100,440.88	\$ 3,087,319.32

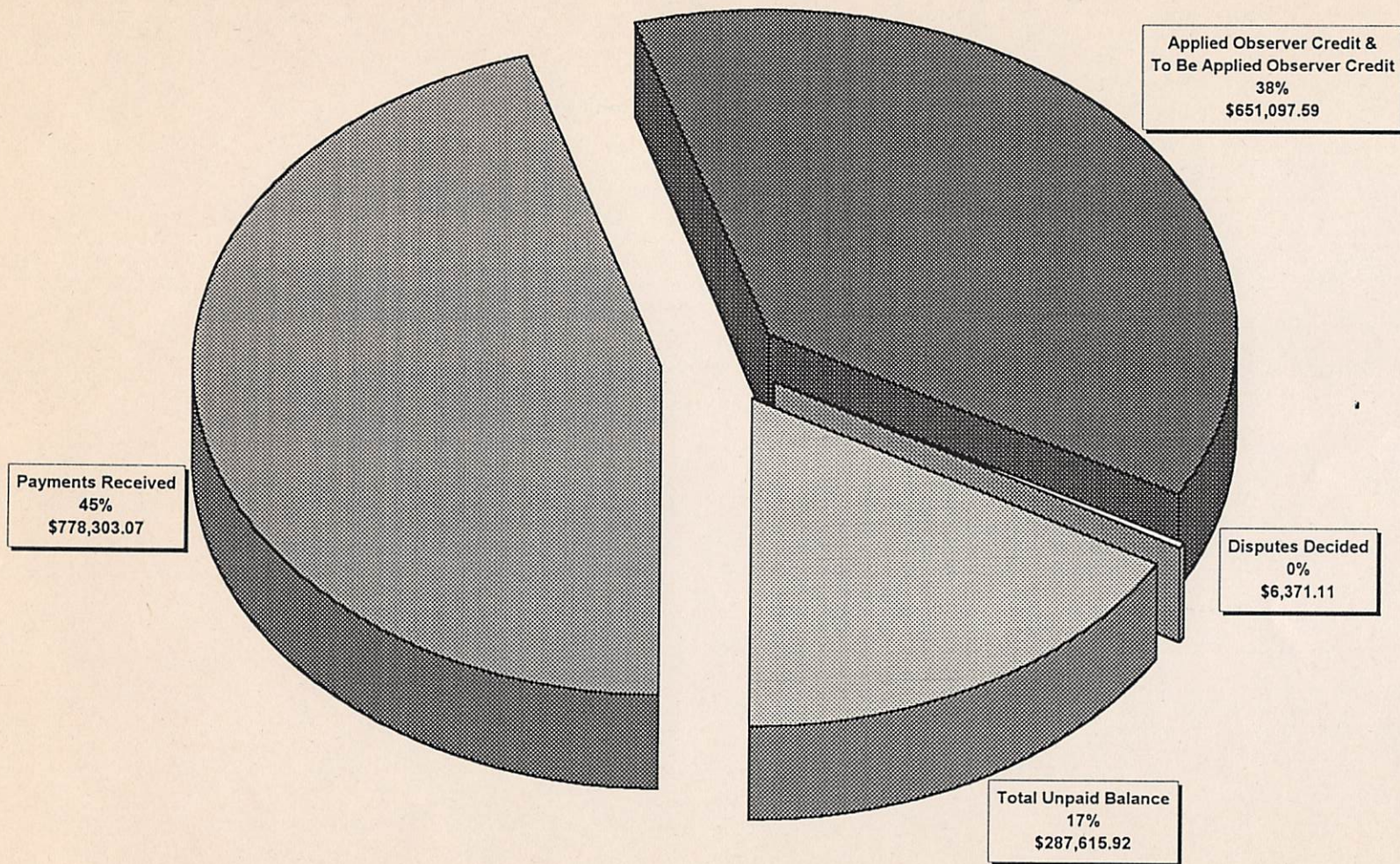
Number of Processors	0	0	0	0
Dollar Amount Billed	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total Count	0	0	0	-
Adjustments	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total NMFS Charges	\$ -	\$ -	0.00	\$ -
Total Count	0	0	0	-
Late Fees	\$ -	\$ -	0.00	\$ -
Average	\$ -	\$ -	0.00	\$ -
Total Current Charges	\$ -	\$ -	0.00	\$ -
Total Balance Due	\$ 1,936,890.83	\$ 1,049,987.61	100440.88	\$ 3,087,319.32

See
Below

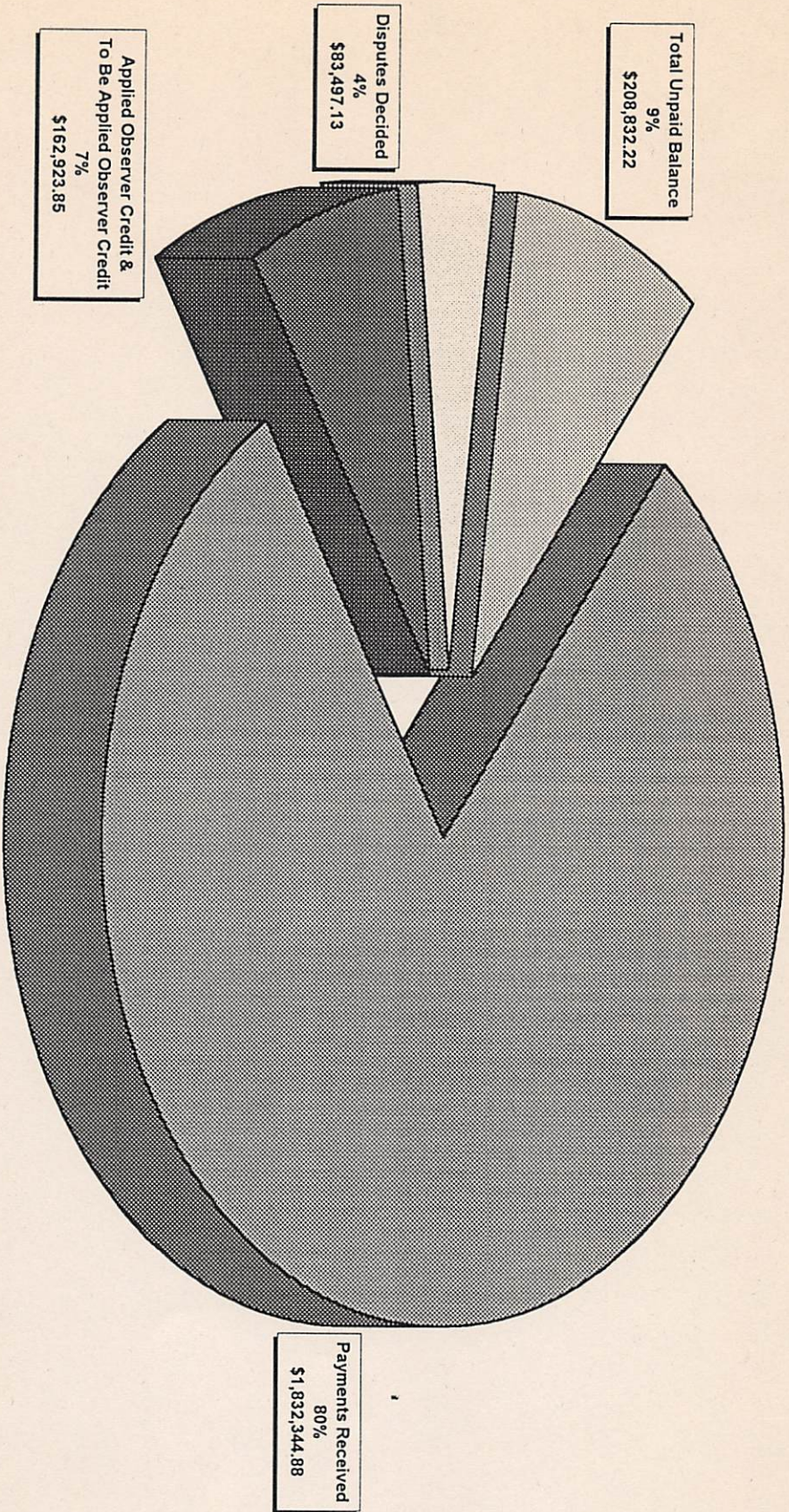
Count Summary			
Total Billings	Total Single FC	Total Multi FC	Total Permitted
0	0	0	0

Real Average \$

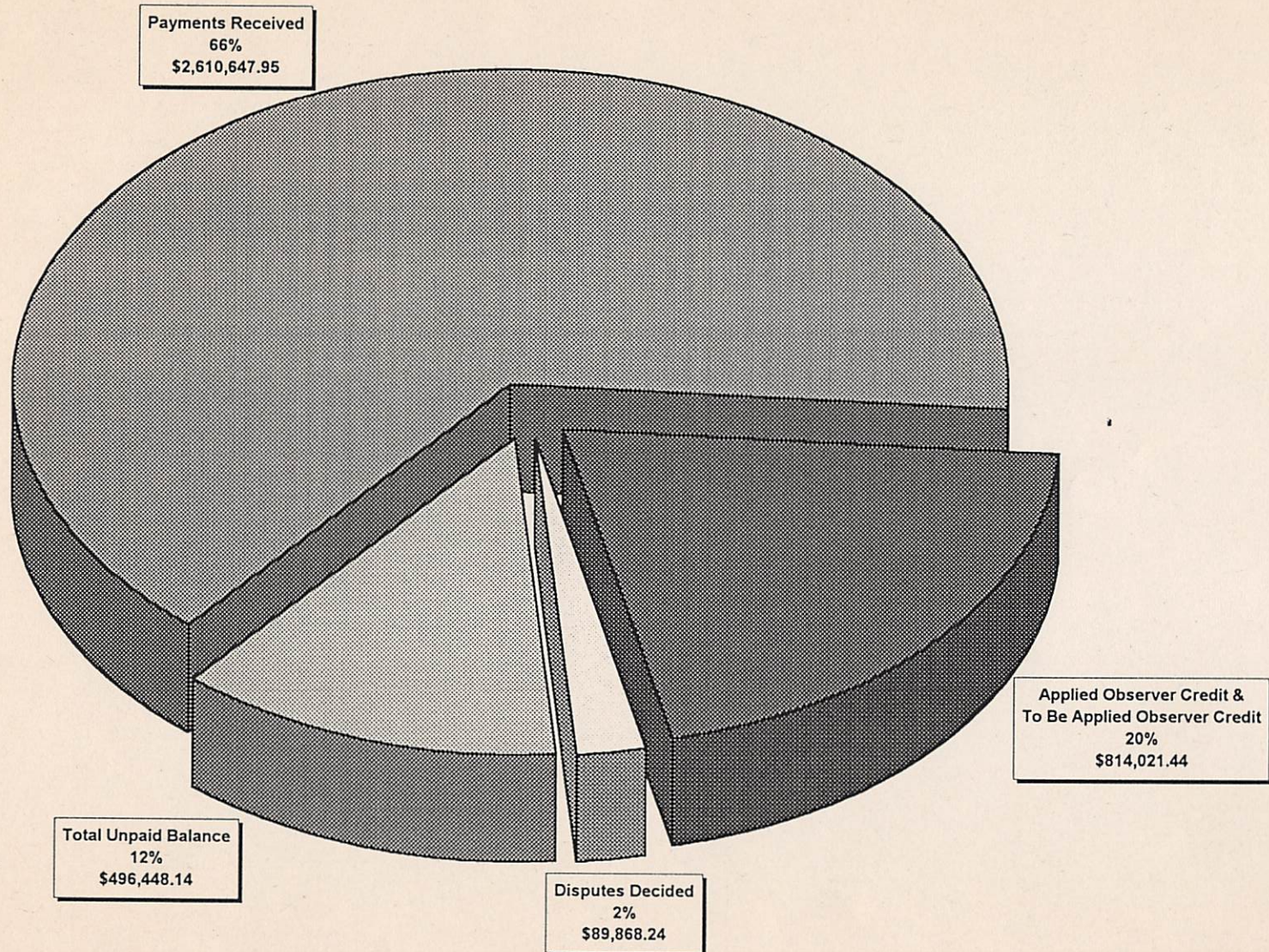
North Pacific Fisheries Research Plan
Billing Period: 1-95 (Jan-Feb)
Groundfish Processors
06/08/95



North Pacific Fisheries Research Plan
Billing Period: 1-95 (Jan-Feb)
Crab Processors
06/08/95



North Pacific Fisheries Research Plan
Billing Period: 1-95 (Jan-Feb)
Combined Totals
06/08/95



North Pacific Fisheries Research Plan
Billing Period 2-95 (Mar-Apr)
Total Fee Assessment by Fishery

