

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



ESTIMATED TIME

6 Hours

DATE: September 19, 1995

SUBJECT: Observer Program

**ACTION REQUIRED**

- (a) Receive agency report on options to resolve Research Plan concerns
- (b) Receive report of Observer Oversight Committee (OOC)
- (c) Council direction on Research Plan implementation or alternatives

**BACKGROUND**

The Council took action in April 1995 to delay full implementation of the Research Plan user fee until 1997. It was originally scheduled for implementation in 1996, with fees being assessed and collected during 1995. Those fees are in the Observer Fund, collecting interest, and would be used to pay for observers beginning in 1997. Amendment 1 to the Research Plan will keep in place the existing, pay-as-you-go requirements for 1996. No fee will be charged in 1996, but would resume in 1997. The RFP solicitation process, for selection of observer contractors under the Research Plan, has also been put on hold pending resolution of Research Plan concerns identified by the Council and industry.

The NMFS has indicated to the Council that the current impasse with implementation of the Research Plan threatens to compromise the continued viability of the Observer Program. A commitment by the Council at this time, to either proceed with the Research Plan or develop an alternative program, is being requested. Item C-4 (a) in your notebooks is a letter from NMFS and a discussion paper outlining the steps taken (or options requiring Council guidance) relative to each of the stated concerns of the Research Plan. This information was also presented to the OOC two weeks ago when they met in Seattle; their report to the Council is included as Item C-4(b). Public comments received on this issue since April 1995 are included under Item C-4(c).

Item C-4(d) is a memo summarizing the results of the Insurance Technical Committee (ITC), which also met in Seattle two weeks ago.



**UNITED STATES DEPARTMENT**  
**National Oceanic and Atmospheric**  
*National Marine Fisheries Service*  
 P.O. Box 21668  
 Juneau, Alaska 99802-1668

AGENDA C-4(a)  
 SEPTEMBER 1995

September 19, 1995

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

Dear Rick,

The North Pacific observer program is critical to the management of the fisheries under the jurisdiction of the North Pacific Fishery Management Council (Council). We rely on observer data to provide high quality information necessary for fisheries conservation and management. NMFS is committed to maintaining this program and providing it with the tools necessary to fulfill its mission. In order to be certain that our resources can be focussed such that this commitment can be maintained, the Council must provide clear and unambiguous direction on the future of the Research Plan at its September meeting.

When the domestic groundfish observer program was established, all involved recognized that the infrastructure was flawed but that getting the program implemented quickly was important. Work was soon initiated to develop a program that would truly meet NMFS' and the Council's requirements for high integrity data necessary to manage groundfish stocks. The Council also clarified that the issue of cost equity should be addressed, and that any future infrastructure for the program should be based on a user fee system which distributed costs to all fishery participants on the basis of the value of the catch taken. An amendment to the Magnuson Act was approved by Congress to authorize this system and the Council proceeded to develop the North Pacific Fisheries Research Plan (Research Plan) consistent with section 313 of the Magnuson Act. The process of developing and implementing the Research Plan has taken much longer than expected. During this intervening period, many of the weaknesses in the existing system have become evident.

Under the Research Plan, the basic principles of maintaining data integrity and flexibility would be achieved, measures for cost



containment would be implemented, and the distribution of coverage costs with the fleet would change. The issue of data integrity is of paramount concern and is closely linked to observer working conditions. We cannot expect observers to give their best and stay with the program if they are inadequately paid or insured, and even run the risk of not being paid at all. Observing is a demanding profession, and increased allocation and compliance concerns have only made the work more difficult. Although we ask observers to perform difficult and complex tasks, we offer them no security and pay them modestly. The current system provides a strong incentive for conflicts of interest to develop in the business relationships between contractors and the fishing industry and this situation can undermine the ability of observers to work independently. We expect these pressures to increase when management measures requiring individual vessel accountability are implemented. Observers probably should be hired as agency employees to provide the safeguards necessary to support the need for data integrity, but this is not possible under today's mandates for reducing the size of government.

Flexibility is necessary if we are going to deploy observers in such a way that our management information needs are met in the most cost effective manner. Under the current system, coverage levels are established by regulation and costs are borne only by those vessels and plants required to carry observers. Changing coverage requirements is difficult and time consuming. A user-fee based system allows coverage requirements to be linked directly to information needs without burdening persons required to obtain observer coverage with additional costs. Improvements in the flexibility of the pay-as-you-go system are possible, but certain options, such as placing observers on small boats would be difficult to achieve.

During the last six months, many Research Plan implementation issues have been raised. These concerns are related to overall costs under the Research Plan, mechanisms for addressing supplemental observer coverage needs outside the 2% Research Plan fee cap, perceived inflexibility in the federal government system for procuring Research Plan contractors, and vessel notification requirements for obtaining observer coverage.

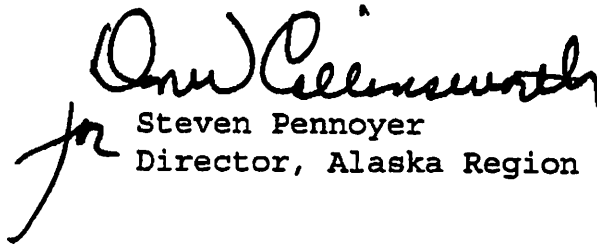
We have prepared a discussion paper that presents a summary of the implementation issues raised by industry and the Council and

options to address them (attached). Staff presented this discussion paper to the September 1995 meeting of the Observer Oversight Committee (OOC). Through discussion and negotiation, the OOC arrived at acceptable solutions to all stated major implementation problems. Although the OOC identified a number of remaining questions, it recognized that implementation of the Research Plan could proceed without full resolution of these questions at this time. Interestingly, even though the government procurement system was demonstrated to be surprisingly flexible, most OOC members felt that the three-contractor Request for Proposals (RFP) option drafted earlier this year best met Research Plan objectives.

In spite of this apparent general consensus on stated Research Plan implementation issues, the OOC was unable to reach any consensus on another, fundamental element of the Research Plan which was not discussed by the Council at the April and June 1995 meetings. Cost equity, defined as distribution of costs throughout the crab, groundfish and halibut fleets on the basis of landed value of catch, and implemented through the Research Plan user fee, has resulted in significantly increased observer costs for some sectors of the fleet. Even though this change in cost distribution was well understood to be integral to the Research Plan, some participants in the groundfish and crab fisheries now assert that they are incumbered with an inequitably high share of the cost of the North Pacific observer programs.

The future of the Research Plan and its dependence on this definition of cost equity are of fundamental concern to NMFS and must be resolved by the Council at the September 1995 meeting. If the Council endorses the user fee concept, we believe that solutions to other concerns can be provided and we can proceed with full implementation of the Research Plan by January 1997.

Sincerely

  
Steven Pennoyer  
Director, Alaska Region

Attachment



## NORTH PACIFIC FISHERIES RESEARCH PLAN IMPLEMENTATION ISSUES

Prepared By  
Staff of the  
National Marine Fisheries Service  
September 8, 1995

Since its April 1995 meeting, the North Pacific Fishery Management Council (Council) has expressed concerns about proceeding to implement the North Pacific Fisheries Research Plan (Research Plan). At its June 1995 meeting, the Council requested the National Marine Fisheries Service (NMFS) to delay full implementation of the Research Plan until 1997 so that the Council has more time to assess and address its concerns.

During the past several months, NMFS staff have met with industry, observer contractors, and Council members to more fully understand the concerns that resulted in the Council's recommendation to delay the Research Plan. These meetings have been informative and have helped to clarify concerns about the Research Plan as well as industry frustrations about the Observer Program in general. However, we believe we need to clearly separate the Research Plan implementation issues from issues that apply to the Observer Program in general. For purposes of this discussion paper, only issues specific to the Research Plan are addressed at this time.

Council action to delay the Research Plan has raised serious concerns about the future of the Observer Program and its responsibilities for providing the information required for management of the North Pacific fisheries. We strongly believe that the collection of unbiased data through the North Pacific observer programs is imperative to our ability to monitor and manage catch and bycatch amounts in the North Pacific fisheries and provide information necessary for resource assessments upon which fishery quotas are based. However, the Council must recognize that some current and possible future management measures cannot be properly implemented unless the Observer Program is changed.

We believe that the Research Plan provides the best means to enact necessary changes and address the concerns which gave rise to its development. These concerns fall into four categories:

### 1. Data Integrity

The integrity of the data provided by observers is of fundamental importance. This integrity is likely to be undermined because certain safeguards are lacking under the current (Observer Plan) system. Safeguards related to observer working conditions are

particularly important and must be provided if we are going to attract and retain observers of the caliber we require. A system which allows observers to be unpaid or underpaid and/or inadequately insured is a system which fails to recognize the linkage between observer working conditions and data quality.

Data integrity is jeopardized in a system which requires fiscal transactions to occur between the contractors who provide observers and the industry required to carry them. Such a system is open to abuse and may place inappropriate pressures on contractors and observers as they struggle to survive in a highly competitive environment.

## 2. Flexibility

The current observer programs (i.e., programs that exist prior to full implementation of the Research Plan) are inherently inflexible because changes in coverage have direct fiscal impacts on industry members required to carry observers. Under the current system, coverage levels are established by regulation and are difficult to change. Flexibility in assignment of observer coverage through the annual Research Plan specification process is essential if we are to meet management information needs in a cost effective manner. This can best be achieved under a user-fee based system with provisions for annual (and in-season) adjustments in coverage requirements.

## 3. Cost Equity

Requiring observer coverage on low-volume harvesters is difficult because the current observer programs may not provide cost equity. Cost equity is consistent with the philosophy that observer data collection is in the best interests of all participants in the fishery. In addition, it establishes the basis for a user-fee system which allows data integrity, flexibility, and cost control concerns to be better addressed.

## 4. Cost Containment

The current system does not provide for cost containment. No limit exists on overall coverage costs to the industry nor can contractor costs be monitored and assessed. Agency costs or efforts to coordinate the NMFS and Alaska Department of Fish and Game (ADF&G) observer programs are not directly reviewed by the industry. The Research Plan places a cap on coverage costs, provides oversight of costs and coverage levels, and requires increased coordination between NMFS and ADF&G.

A summary of industry and Council concerns about the Research Plan follows, as well as our proposed action to address those concerns.

ISSUE 1. THE RESEARCH PLAN COSTS TOO MUCH. Concerns exists that the costs incurred by the industry under the Research Plan will be too high relative to what the industry would pay without the Research Plan. These costs result from the Research Plan fee assessment that is structured as a percentage of exvessel value of catch. The fee percentage is specified annually to pay the costs of industry observer coverage as well as certain agency costs necessary to carry out the North Pacific observer programs. Concern also exists that the Research Plan erodes industry incentives to contain costs for observer services.

The Magnuson Act authority to implement the Research Plan limits the overall cost of the North Pacific observer programs to 2 percent of the exvessel value of catch from the Research Plan fisheries. This limitation serves to constrain overall costs in a manner that otherwise would not exist. Furthermore, true costs of the observer programs are being recognized as a result of the budget and cost information collected to support the annual Research Plan specifications process.

A brief analysis of costs of current observer coverage in the groundfish and crab fisheries with and without the Research Plan is provided in Attachment 1. In summary, total costs are increased under the Research Plan by \$0.3 million as a result of the billing program necessary to collect Research Plan fees. Other additional costs of the Research Plan are possible to the extent that some vessels and shoreside processing facilities may have less incentive to minimize the number of observer deployment days. These and other specific cost concerns expressed by the Council and/or industry are discussed below.

A. Fee structure. When the Council adopted the Research Plan, it recognized that every participant in the Research Plan fisheries would be assessed a fee based on a percentage of the exvessel value of catch retained or processed by each participant. This approach could result in costs to participants in the Research Plan fisheries greater than or less than their annual costs for required observer under the present system. This result is consistent with section 313 of the Magnuson Act and Congressional intent, as well as the expressed intent of the Council to provide for more equitable payment for observer coverage by all participants in the Research Plan fisheries.

OPTION: If the Council believes that a fee structure based on the exvessel value of catch is no longer desirable, then the Council will need to pursue an amendment to the Magnuson Act to authorize an alternative fee structure. For example, the Magnuson Act could be amended to authorize fees based on the cost of an observer day that could be assessed against participants in the Research Plan fisheries that are required to carry observers. This approach, however, would take time to develop and would undermine the flexibility inherent in the current Research Plan to place observers on board any vessel at any time to meet management or information needs in a cost effective and equitable manner.

B. Recoverable costs incurred by management agencies are passed on to the industry. The Magnuson Act authorizes certain agency costs necessary to implement the North Pacific observer programs to be reimbursed from the Research Plan fees collected from the industry. Under the Magnuson Act, these recoverable costs cannot include administrative overhead or other costs not directly incurred in carrying out the Research Plan. NMFS is committed to providing base level funding necessary to maintain the administrative infrastructure supporting the NMFS observer program and has identified such funding as a high priority in the NMFS budget process. Nonetheless, this process does not guarantee that we will receive future funding at levels we have been allocated in the past.

OPTION 1: The Research Plan requires that the Council's Observer Oversight Committee (OOC) annually assess observer coverage in the Research Plan fisheries and observer program costs. The OOC also makes recommendations to the Council on the extent to which agency costs should be recoverable through the collection of funds under the Research Plan. We recommend that the Council and industry make use of this interactive process to control the disbursement of funds to management agencies and to ensure that these funds are used to maintain observer programs that meet management needs of the fisheries under the Council's jurisdiction.

OPTION 2: The Council could recommend changes to the Research Plan to delineate more specifically the type of agency costs that would be eligible for reimbursement from fees collected under the Research Plan.

C. Incentives for cost containment are undermined. Concerns exists that the Research Plan does not provide incentives to hold costs down, particularly for vessel owners required to have less

than 100 percent coverage and who no longer have an incentive to bring observers back to port when their coverage requirements are met. As discussed in Attachment 1, this change in incentives could tend to increase the cost of providing a given level of observer coverage.

OPTION: We believe the potential for increases in cost for a given level of observer coverage is minimal because: 1) observer contractors have an incentive to maximize the number of observer coverage days per deployment day, 2) the frequent opportunity exists to disembark observers from smaller vessels when the vessel comes to port, and 3) the Research Plan provides increased flexibility to distribute observer coverage among vessels in a manner that minimizes the opportunity to exceed coverage requirements. If working cooperatively with observer contractors and the industry to minimize the potential for abuse of observer coverage is judged ineffective, NMFS could pursue a regulatory prohibition against persons using more observer coverage than is required under the annual Research Plan specifications.

ISSUE 2. SUPPLEMENTAL COVERAGE. Concerns exist that the Research Plan does not allow for significant increases in observer coverage nor does it allow for voluntary or supplemental observer coverage that may be required in the future for compliance monitoring of special fishery programs (i.e., IFQs, CDQs, or other special management programs). Conversely, concern exists that if supplemental observer coverage is authorized, the overall costs of the observer program could become open ended for some participants in the Research Plan fisheries.

If full implementation of the Research Plan had occurred in 1996, we project that current levels of observer coverage in the groundfish and crab fisheries could have been accommodated under a 1.42 percent fee and a 40 percent increase in observer coverage could have been accommodated under the 2 percent fee limitation (See Attachment 1). This situation would be expected to continue under full implementation of the Research Plan.

OPTION 1: Accept that all observer coverage in the Research Plan fisheries will be provided under the 2 percent fee assessment cap and use the flexibility inherent under the Research Plan to place observers where they are most needed. Vessels required to have observer coverage to participate in special access fisheries (e.g., CDQ or IFQ fisheries) could be required to pay a higher fee percentage up to the 2 percent cap. Option 2, below, would need to be pursued by the Council if resource allocation programs are implemented in the future that rely on large-scale increases

in observer coverage to monitor compliance.

OPTION 2. If the Council advocates future management programs that require increases in observer coverage which could not be accommodated within the 2 percent fee limitation, then the Council will need to pursue a Magnuson Act amendment to provide for supplemental observer coverage under the contractual arrangements developed for the Research Plan. A supplemental program could be limited to special access fisheries and based on the cost of an observer day.

ISSUE 3. COORDINATION WITH THE ALASKA BOARD OF FISH AND ADF&G. Crab observer coverage levels are recommended by the State of Alaska's Board of Fish. Concerns exist that the cost of the ADF&G observer program could increase. Under the Research Plan, this increase could result in a reduction of observer coverage for the groundfish fisheries.

OPTION: The Council and Alaska Board of Fish could develop mutually acceptable policies that set out the process for implementing changes to crab vessel observer coverage, including an agreement that changes to crab observer coverage under the Research Plan would not occur until the Council and NMFS accept the Board's recommendation. Under these policies, no supplemental program for crab observer coverage would be implemented outside the Research Plan.

ISSUE 4. CONTRACTING CONCERNS. The Research Plan establishes NMFS's responsibility to establish contracts with observer contractors in accordance with Federal Acquisition Regulations. The Council has expressed concern that the Request For Proposals (RFP) issued by NMFS for this purpose was not consistent with Council intent to standardize and minimize observer costs, assure a sufficient supply of observers, and facilitate the ability of small Alaska-based contractors to compete effectively for contracts. Attachment 2 presents a discussion on the events leading up to the current RFP as well as alternative contractual arrangements that could be considered, depending on the criteria used for selecting observer contractors.

A. Standardized observer salaries were not established in the RFP. Standardized salaries were not delineated in the RFP because NMFS has the ability to ensure observers are adequately compensated through the evaluation and negotiation processes. NMFS also recognizes that the contractors are the professionals in this field; stipulating specific aspects actually constrains creativity and responsiveness by contractors to develop unique

approaches to certain problems or aspects of the work.

OPTION: Maintain the status quo approach under which prospective contractors would be expected to continue to prepare bids which indicate salaries and benefits they intend to provide for observers, and the extent to which wages and reimbursement of expenses would be provided during training, debriefing, and between deployments. The Source Evaluation Board would evaluate this aspect of each bidder's cost proposal and determine if proposed salary scales and benefit packages were consistent with the objective of providing high quality information. This approach is consistent with a procurement policy which allows bidders to demonstrate that they understand the work conducted by observers, and the need for appropriate levels of remuneration. If contractors' bids were generally acceptable, but failed to provide adequate salaries and/or benefits, they would be provided an opportunity to change these elements of their cost proposals through negotiation.

B. Standardized insurance coverage levels were not established in the RFP.

OPTION: An Insurance Technical Committee, established as a sub-committee of the OOC, has recommended minimum insurance levels that should be expected of observer contractors. NMFS intends to insert these recommendations into the RFP as a requirement for successful bidders.

C. Number of Contractors. In its original version, the Research Plan did not specify a minimum number of observer contractors. However, the Council debated the wisdom of supporting an approach which might result in fewer than three contractors being hired, and decided that a minimum number should be specified.

Even though NMFS expressed concerns that constraining the procurement process would make it more difficult to procure observer services that were cost-effective and technically acceptable, NMFS agreed to proceed under this guidance from the Council. The RFP as currently drafted is consistent with this direction. Nevertheless, concerns have been expressed that NMFS's plans to retain only three contractors is not consistent with the Council's direction, that it is designed to discriminate against Alaskan contractors, and that it is not cost effective. Because of the stated concerns regarding the number of potential contractors, NMFS has developed four contracting options. Details of each option are provided in the accompanying document (Attachment 2) and summarized below. If quality, cost

effectiveness, and efficiency are the only criteria of concern in selecting observer contractors, Option 1 (the three-contractor RFP, as issued earlier this year, but with minor modifications) should be selected. If providing opportunities for more than three contractors to participate supersedes these criteria, Options 2, 3, and 4, could be considered.

OPTION 1 - (Three Contractors): The existing, three-contractor RFP should be modified to address insurance and other concerns discussed elsewhere in this paper. As is apparent from the details provided in Attachment 2, this approach would provide high quality data in a cost-effective manner that is relatively easy to administer.

OPTION 2 - (Four Contractors): The RFP could be modified to include four contractors. This option would likely increase costs because NMFS would have to manage one additional contractor and because the overhead costs of one additional company would be factored into overall costs. Furthermore, each individual contractor's share of the business would be lowered and NMFS has received comments from prospective bidders that contractors cannot remain viable if they receive small shares of the observer business (less than 20 percent). In addition, one of the five contractors currently providing observer services would be forced out of business and the concerns expressed about participation of Alaskan contractors would probably not be resolved. However, under this scenario the probability that at least one of the selected contracting companies will be Alaskan is very high.

OPTION 3 - (Multiple Delivery Orders): Certify all qualified companies to bid on individual or small groups of observer deployments. A minimum amount of work would be guaranteed to each certified contractor, but this amount would likely be a very small proportion of the overall business. This option would be administratively burdensome and potentially expensive because individual contracting companies would be unable to determine the quantity of business to expect in a given year. However, competitive pressure would be maintained on an ongoing basis which would help to keep costs low. Specifying observer salaries and benefits would be necessary to ensure that they are not adversely impacted under this scenario. Competing and issuing delivery orders for each deployment could probably be largely automated. This approach addresses concerns expressed by Council members and others while retaining flexibility and the benefits of the competitive system.

OPTION 4 - (Modular Contracting): Partition the fishing year into



(12 or more) discrete modules (fishery, area, gear type, etc). Under this option each contractor would be able to bid on each module. All five current contractors could be selected to provide observers. This option would be administratively burdensome and could result in higher overall costs because companies bidding on individual modules would have no knowledge of which (or how many) modules they might be awarded. Contractors awarded a small amount of the overall business would likely have disproportionately high overhead costs. Guaranteeing a minimum number of modules (2 or 3) to any company that bids successfully might be necessary, to ensure that each company has enough work to remain solvent.

D. Point of hire restrictions are unfair to Alaskan interests. In drafting the RFP, NMFS intended to ensure that Alaskan and non-Alaskan based contractors would be treated fairly and equitably in all ways, including reimbursement of costs associated with hiring, training, and deploying observers. Furthermore, NMFS recognizes that all crab training and a substantial proportion of groundfish observer training and briefing is expected to take place in Anchorage for the foreseeable future.

OPTION: NMFS intends to continue working with the director of the Observer Training Center in Anchorage in scheduling training and briefings and not discourage contractors from training observers in Anchorage. Wording to reflect this position will be developed in consultation with OOC members and included in the next RFP draft.

E. Transfer of Observers Among Vessels to reduce costs is not possible under the RFP. While requiring observers to switch companies or requiring contractors to share observers is not possible, NMFS expects to meet this provision in one of the following ways:

OPTION 1: Under the current procurement scheme (with three or four contractors assigned to provide observers to specific vessels and plants) a partnering provision would become effective after contract award. Under this provision contractors and NMFS will work together to address issues of efficiency, logistics, etc. Through this approach, arrangements could be made to transfer temporarily vessels or plants to different contractors. This approach would facilitate transfer of observers among vessels and plants in situations where cost-efficiencies could be obtained.

OPTION 2: Under the "Multiple Delivery Orders" procurement option, contractors who have observers available for deployment in a particular port would be able to offer a lower bid for re-deploying those observers when compared with bids that might be offered by companies who have to transport observers to the port in question.

ISSUE 5. THE REGULATORY REQUIREMENT FOR A 60-DAY ADVANCE NOTICE REQUIREMENT FOR OBSERVER SERVICE IS IMPRACTICABLE. Concerns exist that this requirement is inflexible and too difficult to comply with. However, the Research Plan shifts the responsibility for assuring the availability of an observer from vessel and plant owners to NMFS. This shift creates a reduced incentive to Research Plan participants to work with contractors to ensure that an observer is available when they need one. NMFS believes, therefore, that a requirement for advance notice for observer services is necessary to provide a tool for planning purposes and program administration. NMFS understands that flexibility is essential where observer placement is concerned, and expects contractors would be able to work with vessel and plant owners, even within the 10-day "final notification" period, to assure that difficulties in providing observers at short notice are minimized.

OPTION: Regulations can be changed to require less advance notice to a contractor for observer services, although costs per observer day could increase to the extent that last minute arrangements become necessary to ensure that observers are available when needed. Alternative options will be solicited from the OOC for addressing the logistic problems associated with providing observers to meet changing fishing plans.

ISSUE 6. THE FEE COLLECTION PROGRAM IS TOO COMPLICATED AND TOO BURDENSOME TO PROCESSORS. Due to the complexity of the fee structure, many processors have found the billing system to be complicated. Some of the contributing factors are: multiple data sources for retained fish weight information; groundfish and crab fees are assessed only for harvests in Federal waters; standard exvessel prices vary by species, area, gear, and season; 1995 vessel fee exemptions; and 1995 processor's observer coverage costs credits. Various options are available to reduce this complexity and include Magnuson Act changes, annual Research Plan specification recommendations, regulatory changes, and industry outreach and billing education workshops. Specific concerns about the fee collection program are addressed below.

A. Bills are too complex. As long as the fee structure is based

on exvessel value of fish harvested by all vessels, an inherent amount of complexity will exist. During 1995, vessel fee exemptions and observer coverage cost credits have contributed to the complexity of the bills. Complexity of the bill format also is attributed to satisfying industry request that detailed catch information be provided with the bill that specifically identifies how the fee is calculated. Such identification has been provided in the form of a catch data summary detail along with a complete list of all report sources used to derive round-weight values. Last, the industry requested that 1995 standard exvessel prices be designated by species, area, gear, and season. This price structure has further contributed to the complexity of the 1995 billing program.

OPTION: The complexity of the fee collection program as well as the bill format will be simplified greatly after 1995 when the fee exemptions and credits required during the first of the Research Plan no longer are necessary. The standard exvessel price structure can be simplified during the Council's annual Research Plan specification process (e.g., a single price could be specified for pollock regardless of the gear, area or season), although such recommendations to simplify the price structure would be dependent on industry support.

B. Inseason exvessel prices actually paid to catcher vessels should be used as a basis for fee assessments. Some processors claim that the use of standard exvessel prices specified through the annual Research Plan specification process complicates the fee collection program and that they would rather use the inseason prices paid to catcher vessels and reported on ADF&G fish tickets. This approach also would protect the industry from paying too high a fee if the actual inseason exvessel price paid by a processor for landed catch was lower than the standard prices specified in the annual Research Plan specifications.

NMFS notes that standard exvessel prices were pursued for a number of reasons, including : (1) exvessel prices do not exist for offshore operations; (2) basing Research Plan fees on prices paid might encourage price reductions and non-documented price adjustments; (3) non-monetary compensation often occurs for landed fish that is not documented on fish tickets; (4) standard prices would allow NMFS to better project revenues under the Research Plan and to specify annual observer coverage levels that are consistent with the availability of Research Plan funds; and (5) using 1995 as an example, use of ADF&G fish ticket prices instead of standard exvessel prices would have resulted in a significant increase in assessed fees, because 1995 prices paid

for groundfish, crab, and halibut generally are higher than the standard prices specified for 1995.

OPTION 1: Maintain the current process for establishing standard exvessel prices recognizing that most processors use software or spreadsheet programs that can easily accommodate standard prices to calculate vessel and processor portions of Research Plan fee assessments.

OPTION 2: NMFS could pursue an alternative fee structure based on inseason prices paid to catcher vessels. This approach likely would require: (1) a new requirement that prices paid for fish be reported to NMFS, (2) that projections for annual revenues be more conservative to account for inseason variability in exvessel prices, and (3) post-season fee assessments to reflect post-season price adjustments. NMFS again notes that this approach could result in increased (or decreased) fee assessments to the extent that prices for Research Plan fish increase (or decrease) relative to standard prices specified preseason.

C. Bills have errors and take a long time to reconcile. The errors identified thus far have been processor reporting errors, agency data entry errors, or billing software errors.

OPTION: With the start of any new program, industry awareness and education is essential for successful implementation. Measures to increase industry awareness could be reinforced. Measures employed to date include: industry outreach workshops, informational handouts, and the availability of NMFS staff to answer individual questions. Processors can reduce bill errors by assuring that submitted reports are legible, clear, complete, and accurate. Agencies are addressing errors in the form of improved data entry procedures and debugging of billing software. NMFS anticipates that these sources of errors will be removed in the future.

D. Processors are responsible for collecting fees from vessels. Some processors have claimed that the collection of each catcher vessel's portion of the fee by the processor receiving catch from the vessel increases the administrative work of the processor and unfairly puts the processor in the role of a collection agent for the Research Plan fee assessment program. Nonetheless, this approach was implemented as part of fee assessment program because NMFS does not collect from catcher vessels the information necessary to bill individual vessel owners (i.e., each vessel's landed catch weight of each species harvested in Federal waters). Furthermore, using ADF&G fish tickets or other

existing reporting mechanism to issue bills and collect fees from the thousands of catcher vessels participating in the Research Plan fisheries would increase the cost of billing program significantly and reduce the Research Plan funding available for observer coverage of the Research Plan fisheries.

OPTION: NMFS will continue to work with Research Plan processors to facilitate a better understanding of the Research Plan billing program in a manner that allows for the collection of fees in the most cost effective manner possible for the industry and NMFS.

Attachment 1

RESEARCH PLAN

PRELIMINARY ESTIMATES OF ANNUAL COSTS, EXVESSEL VALUES, AND THE  
FEE PERCENTAGE FOR THE CURRENT LEVEL OF OBSERVER COVERAGE  
AND  
A COMPARISON OF COSTS WITH AND WITHOUT THE RESEARCH PLAN

September 6, 1995

Research Plan Projections

The following preliminary estimates of the costs, exvessel values, and fee percentage for the Research Plan and the comparison of costs with and without the Research Plan were prepared to assist the Observer Oversight Committee and Council in addressing a variety of issues concerning the Research Plan. The exvessel price estimates were taken from the report presented to the Council last April. Some of the cost estimates have been updated since then.

The observer contractor cost is the largest cost and the most difficult to estimate accurately. The estimates presented below are based on 29,200 observer deployment days and a cost of \$212 per day in the groundfish fisheries and on 11,100 days and \$235 per day in the crab fisheries. The number of deployment days are: 1) the current (1994) number of observer deployment days for groundfish and 2) 1996 projections for crab. The cost per day estimates were made using cost data submitted by applicants for observer cost credits under the Research Plan Fee Program.

With the Research Plan, vessels and plants would have less of an incentive both to minimize the number of observer deployment days and to house and feed observers between trips. All else being equal, this change in incentives would tend to increase the cost of providing a given level of observer coverage. However, it is reasonable to expect that such costs increases could be prevented by: 1) the contractors' incentive to maximize the number of observer coverage days per deployment day, 2) increased flexibility in the distribution of coverage of the vessels between 60 and 125 feet, and 3) efforts to eliminate abuses if they do occur. The annual estimates of costs, exvessel values, and the resulting fee percentage are presented in Table 1.

With an exvessel value of \$711 and a nonpayment rate of 5%, a fee of 2% would generate \$13.5 million. Therefore, fees could increase by \$3.9 million (13.5 - 9.6) within the 2% fee limit. The estimated cost of the crab program is \$3.3 million, including \$0.1 million for fee collection costs and \$0.1 million for observer training costs in Alaska. With a fee of 1.42%, a nonpayment rate of 5%, and a crab exvessel value of \$204 million, the fees from the crab fishery would be \$2.8 million. With a fee of 2%, the fees from the crab fisheries would be \$3.9 million. The comparable costs and fees for the groundfish fishery, excluding halibut, are \$8.5 million (total cost), \$6.4 million (total cost net of \$2.1 million from NMFS), \$5.9 million (fee of 1.42%), and \$8.3 million (fee of 2%). When halibut is included with groundfish, program costs remain the same but fee collections increase to \$6.8 million (fee of 1.42%) and

\$9.6 million (fee of 2%). These comparisons between costs and fees for the various fisheries are based on very preliminary estimates of costs and exvessel values. Plausible changes in costs and value for a fishery could change the comparisons substantially.

#### Comparison of Costs with and without the Research Plan

Estimates of the annual cost of maintaining the current levels of observer coverage for the research plan fisheries both with and without the Research Plan are presented in Table 2. Comparable estimates by fishery are presented in Table 3. The potential benefits of the Research Plan resulting from either the increased flexibility in determining observer coverage requirements or increased control of observer contractors and observers are considered only with respect to their ability to offset cost increases that might otherwise result with the Research Plan.

The Research Plan includes a fee collection program which would not exist in the absence of the Plan. The estimated cost of the fee collection program is \$0.3 million. Although observer contractor costs could increase or decrease with the Research Plan, the expectation is that they would not increase. The basis for this expectation was presented above.

With the Research Plan, the estimated total cost is \$11.8 million, \$9.6 million of the total cost would be paid for by the industry, and \$2.2 million would be paid for by NMFS. In the absence of the Research Plan, the total cost would be reduced by \$0.3 million or 2.5% and the cost to the industry would be reduced by \$0.8 million or 8.3%. The reduction in total cost is accounted for by the elimination of the \$0.3 million in fee collection program costs. The \$0.8 million reduction in the direct cost to the industry is accounted for by the \$0.3 reduction in the total cost and the \$0.5 increase in the cost borne by ADF&G.

Under the Research Plan, the \$2.2 million in groundfish Observer Program cost at the Alaska Fisheries Science Center, which includes about \$0.3 million for groundfish and crab observer training in Alaska, is a recoverable cost; however, as long as the \$2.2 million is provided by NMFS, this cost is not paid for with Research Plan fees. If the \$2.2 million were not available from NMFS, this cost would be paid for with Research Plan fees and the cost to the industry would be increased by that amount. In that case, the net recoverable cost would be \$11.8 million and the fee would be 1.75%. In the absence of the Research Plan, a decrease in the contribution from NMFS would jeopardize the entire Observer Program because there would not be an alternative source of funding for the program. It is not known to what extent the existence of the Research Plan decreases the probability that the \$2.2 million will continue to be provided for in the NMFS budget.

Table 1. Preliminary annual Research Plan projections (\$ millions).

1.	Recoverable Research Plan costs				
1.1	Agency costs				
	Observer Programs				
	Alaska Fisheries Science Center				\$ 2.2
	ADF&G				\$ 0.5
	Total				\$ 2.7
	Fee Collection Programs				\$ 0.3
	(Alaska Regional Office, Alaska Enforcement Office, Alaska General Counsel, Western Administrative Services Center)				
	Total agency costs				\$ 3.0
1.2	Observer contractor costs (12 months of observer coverage)				
		Groundfish	Crab	Halibut	Total
		\$6.2	\$2.6	\$0.0	\$ 8.8
1.3	Total recoverable costs				\$11.8
2.	Recoverable costs net of Observer Fund balance and other funds				
	Total recoverable costs				\$11.8
	- Fund Balance at end of previous year				\$ 0.0
	- Other funding				\$ 2.2
	= Net recoverable costs				\$ 9.6
	The \$2.2 million of other funding is from NMFS. About \$1.5 million of this is MMPA money.				
3.	Exvessel value:	Groundfish	Crab	Halibut	Total
		\$435	\$204	\$ 72	\$711
4.	Nonpayment rate on fee liability:		5 percent		
5.	Fee percentage:	[100 x (\$11.8 - \$0 - \$2.2) / \$711] / (1 - 0.05) = 1.42%			
Note:	The \$2.2 million of AFSC costs includes almost \$0.3 million for groundfish and crab training in Alaska (OTC).				



**Table 2: Preliminary annual cost comparison with and without the Research Plan (\$ millions).**

	With Res Plan	Without Res Plan
<b>Agency costs</b>		
<b>Observer Programs</b>		
Alaska Fisheries Science Center	\$ 2.2	\$ 2.2
ADF&G	\$ 0.5	\$ 0.5
<b>Total</b>	<b>\$ 2.7</b>	<b>\$ 2.7</b>
<b>Fee Collection Programs</b>	<b>\$ 0.3</b>	<b>\$ 0.0</b>
(Alaska Regional Office, Alaska Fisheries Science Center, Alaska Enforcement Office, Alaska General Counsel, Western Administrative Services Center)		
<b>Total agency costs</b>	<b>\$ 3.0</b>	<b>\$ 2.7</b>
<b>Observer contractor costs (12 months of observer coverage)</b>		
Groundfish	\$ 6.2	\$ 6.2
Crab	\$ 2.6	\$ 2.6
Halibut	\$ 0.0	\$ 0.0
<b>Total</b>	<b>\$ 8.8</b>	<b>\$ 8.8</b>
<b>Total costs</b>	<b>\$11.8</b>	<b>\$11.5</b>
<b>Cost Distribution</b>		
NMFS	\$ 2.2	\$ 2.2
ADF&G	\$ 0.0	\$ 0.5
Industry	\$ 9.6	\$ 8.8
<b>Total cost per observer day</b>	<b>\$293</b>	<b>\$285</b>
<b>Industry cost per observer day</b>	<b>\$238</b>	<b>\$218</b>

Notes: The \$2.2 million of AFSC costs includes almost \$0.3 million for groundfish and crab training in Alaska (OTC).

The estimates of cost per day are in dollars and are based on 40,300 observer deployment days per year.

**Table 3: Preliminary annual cost comparison by fishery with and without the Research Plan (\$ millions).**

	With Research Plan		Without Res. Plan	
	Groundfish	Crab	Groundfish	Crab
<b>Agency costs</b>				
Observer Programs	\$ 2.1	\$ 0.6	\$ 2.1	\$ 0.6
Fee Collection Programs	\$ 0.2	\$ 0.1	\$ 0.0	\$ 0.0
<b>Total agency costs</b>	<b>\$ 2.3</b>	<b>\$ 0.7</b>	<b>\$ 2.1</b>	<b>\$ 0.6</b>
<b>Observer contractor costs</b>	<b>\$ 6.2</b>	<b>\$ 2.6</b>	<b>\$ 6.2</b>	<b>\$ 2.6</b>
<b>Total costs</b>	<b>\$ 8.5</b>	<b>\$ 3.3</b>	<b>\$ 8.3</b>	<b>\$ 3.2</b>
<b>Cost distribution</b>				
NMFS	\$ 2.1	\$ 0.1	\$ 2.1	\$ 0.1
ADF&G	\$ 0.0	\$ 0.0	\$ 0.0	\$ 0.5
Industry	\$ 6.4	\$ 3.2	\$ 6.2	\$ 2.6
<b>Total cost per observer day</b>	<b>\$291</b>	<b>\$297</b>	<b>\$284</b>	<b>\$288</b>
<b>Industry cost per observer day</b>	<b>\$219</b>	<b>\$288</b>	<b>\$212</b>	<b>\$234</b>

Notes: The fee collection costs are apportioned based on the number of observer days by fishery. The estimates of cost per day are based on 29,200 and 11,100 observer deployment days per year, respectively, in the groundfish and crab fisheries.

The Observer Program costs include about \$0.2 and \$0.1 million, respectively, for training groundfish and crab observers in Alaska (OTC).

## Attachment 2

### DISCUSSION OF ALTERNATIVE CONTRACTUAL ARRANGEMENTS FOR OBSERVER SERVICES UNDER THE RESEARCH PLAN

September 6, 1995

Originally, the Research Plan did not establish constraints on the number of observer contractors to be hired. Contracting was to be accomplished according to Federal Acquisition Regulations (FAR) which include requirements for cost effectiveness and efficiency. Under this arrangement, NMFS would have been free to select the contractor or contractors which met the standards necessary to perform the work and provided acceptable cost proposals.

Subsequently, the Council expressed concern that fewer than three companies might be hired to provide crab and groundfish observers. This possibility was not considered acceptable because it might prove difficult to survive the impacts of poor performance or lack of performance by one of the contracted companies. It was felt the system would be better protected if at least three companies were retained so that two companies could expand to fill the need if a third company failed. Concern was also expressed that, if only one or two companies were retained, the number of companies qualified to bid on future observer contracts would be reduced to the point where competitive pressure might no longer be enough to constrain contract costs. NMFS was reluctant to accept a requirement for a minimum number of contractors because it constrained its mandate to procure observer services from the best qualified and most efficiently operated providers. However, a compromise was struck and NMFS agreed to proceed the request for proposals (RFP) with a requirement to hire at least three observer contractors provided that this approach was cost effective and that at least three companies tendered successful bids.

Since drafting the three-contractor proposal earlier this year, potential contractors, Council members, and others have argued that three contractors is too small a number to provide assurance that the system will be protected from the aforementioned concerns. Furthermore, five companies currently provide all crab and groundfish observer coverage and two of these companies are based in Anchorage; some participants felt that the procurement process might result (deliberately or inadvertently) in contracts not being offered to one or both Alaskan contractors. NMFS continues to argue that placing constraints on the procurement process constrains their ability to select the appropriate mix of

technical quality and cost effectiveness when procuring Research Plan contractors.

A requirement for four contractors, for example, would likely mean that the fourth contractor is both technically inferior and more expensive than the other three. In this situation, NMFS would be required to award a contract to this fourth contractor instead of increasing the size of the contracts with the three better-qualified companies. Costs can be expected to increase with number of contractors employed. Each contractor has fixed costs, and the government has oversight and administrative costs associated with every contract it enters into. And the demand on bidders to be cost-competitive decreases as more companies are guaranteed a portion of the work.

Each of the existing contractors has a different mix of crab and groundfish business and operates in different market "niches". It has been suggested that a successful procurement system would allow all the current contractors to remain in these niches because they have adapted to provide a particular portion of the observer business in a cost-competitive manner. In fact, each company's business is constantly changing. It is a tribute to each of the current contractors that they can lose contracts, bid successfully on new contracts, and constantly adapt to provide observer coverage in a highly dynamic market place. It is also important to note that, based on dollar costs reported for the first eight months of 1995, three companies provide 81% of the overall observer coverage; the same three companies provide 85% of groundfish and 66% of the crab coverage (the busiest two companies provide 66% of overall, 68% of groundfish, and 65% of crab coverage). It is, therefore, difficult to argue that three companies cannot provide all observer coverage requirements or that two would be unable to adapt and fill the void if one of the three selected companies failed to meet its obligations.

If quality, cost-effectiveness, and efficiency are the only criteria of concern in selecting observer contractors, the three-contractor RFP, as issued earlier this year, should be reissued with minor modifications. If providing opportunities for more than three contractors to participate supersedes these criteria, several options can be considered.

- Four contractors could be included by modifying the current RFP (change the split from 42%, 33%, and 25%, to, perhaps, 30%, 25%, 20%, and 15%). In contrast with the three contractor approach, the four contractor scenario would have the following features:

- Four contractors would remain in business although the smallest portion awarded (15%) is below the solvency threshold defined by some contractors; one of

the five current companies will likely not be able to remain in business.

- Provides a high probability that at least one contracting company would be Alaskan.

- Provides additional security in the event that one of the selected contractors ceases to do business.

- Program incurs increased contractor overhead and internal administrative costs than under three-contractor approach.

- Forces NMFS to select an additional contractor who is less competitive and less technically qualified; this has a potential impact on data quality.

- Overall competitive pressure will be reduced, possibly further increasing costs.

- Multiple Delivery Order contracting would be accomplished by pre-qualifying a number of companies to bid on individual or small groups of observer deployments. This approach would have the following features:

- The five current contractors would probably be pre-qualified but this would not be guaranteed. Pre-qualification might be denied if technical standards are inadequate.

- Vessel and plant operators requiring observers would contact NMFS with a coverage request. NMFS would immediately ask all qualified contractors to bid within a fixed (perhaps 24 hr) period and select the lowest bidder.

- All qualified contractors would have the opportunity to bid on all jobs but would be guaranteed only a small specific portion of the business (this is required by regulation).

- Process of obtaining observers would be fast and flexible; observers could be provided competitively at short notice but cost would increase as notification time decreases (and if short-notice cancellations occur frequently) - an incentive for early notification would be required.

- Contract type would necessitate use of minimum required salaries and would allow NMFS to determine

level of observer experience necessary to meet each coverage request .

~ Administrative costs would be high. Each contractor would need to setup highly reliable e-mail communication with NMFS and be ready to respond to bid requests at all times. NMFS would be required to maintain communications with fishing companies and contractors, issue bid requests and task orders, and deal with changes in response to messages from fishing companies.

~ Competitive pressure would likely reduce overall contracting costs but contractors would have little incentive to provide extras (staff in Dutch Harbor and Kodiak, apartments for observers, etc) which benefit program.

~ This approach would probably require cost reimbursement rather than fixed-fee contracts and this may elevate costs.

~ Other contracting options would incorporate a "partnering" requirement through which NMFS, ADF&G, contractors, and the fishing industry would work together after contract award to resolve problems and issues that arise. Multiple delivery order contracting does not promote a "partnering" approach.

- Modular contracting would be accomplished by breaking the fishing year into (at least 12) discrete modules (fishery, area, gear type, etc). This approach would have the following features:

-Each contractor would have the opportunity to bid on each modular contract. Successful contractors would guaranteed only enough contracts to remain solvent (perhaps two or three modules).

~ Provides existing contractors the opportunity to bid for work in the market niches that they understand.

~ It would be difficult for contractors to develop bid prices for each module. Contractors would be forced to estimate costs under the assumption that they might be awarded contracts for only a minimal number of modules. This would increase costs.

~ Agency administrative costs would also be high because of the need to manage a large number of

contracts.

~ This approach lacks flexibility. Even though contractors could be encouraged to work together to move observers among modules this would be difficult. Furthermore, if a contractor fails to provide enough observers or ceases to remain in business there is no easy way to deal with coverage demands.

**OBSERVER OVERSIGHT COMMITTEE - SEPTEMBER 11-13 MEETING  
REPORT TO THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL**

**EXECUTIVE SUMMARY OF RECOMMENDATIONS**

The following is a summary of the Observer Oversight Recommendations to the North Pacific Fishery Management Council. The summary is followed by the draft minutes of the OOC September 11-13 meeting which expand on the discussions and considerations behind the OOC recommendations.

To avoid confusion the OOC used the term "fee system" to refer to the Research Plan provisions for 1997 under which vessels would pay a percentage of the ex-vessel price to NMFS to fund observer coverage, and "pay as you go" to refer to the 1996 provisions under which vessels each pay the cost of their own required observer coverage directly to their contractors.

**FEE SYSTEM  
GENERAL RECOMMENDATION - FEE SYSTEM**

The Observer Oversight Committee felt there were no overwhelming technical issues impeding the implementation of a fee system. HOWEVER, the redistribution of costs among the fleets and processors was an over-riding consideration which prevented the committee from reaching consensus. Many committee members indicated the fee system would be more acceptable if the Council, in its FMP, capped the potential fee at 1%.

**RECOMMENDED ELEMENTS OF A FEE SYSTEM**

If the Council chooses to proceed with a fee system, the OOC recommends the following elements:

**SUPPLEMENTAL PROGRAMS:** The OOC recommends that under a fee system Supplemental Programs be defined as additional observer coverage, above and beyond normal data collection, required to monitor programs which provide direct individual vessel benefits such as CDQ, IFQ and IBQ (Individual Bycatch Quotas) programs. The OOC recommends that these supplemental programs NOT be covered under a fee system, but funded by supplemental payments.

Moneys collected under a fee system should be used to fund only the observer coverage required to provide statistically reliable data for management and stock assessment.

The OOC further recommends that staff be asked to develop a paper summarizing how the supplemental observers were incorporated into the foreign observer program.

It was the OOC's understanding that a separate "pay as you go" program for supplemental coverage could be folded into Fee Plan umbrella. While a Magnuson Act amendment does not appear to be necessary to establish a supplemental program, it does appear an amendment would be necessary to fold supplemental programs into the Fee Plan umbrella.

It was also noted that non-FMP fisheries (like some State crab fisheries) could also fall under a supplemental program.



**Data Integrity:** Maintaining the integrity of the data is an overriding concern. The OOC feels that the integrity of the data is dependent on the experience, maturity and morale of the observer. To meet this goal any observer program should be designed to encourage a dedicated corps of professional observers.

To reach this goal the OOC considered two alternatives: preset minimum observer salaries or a minimum level of prior observers to be provided by the contractor.

Observer representatives preferred the minimum salary option.

Industry members of the OOC preferred the option of setting a minimum level of prior observers and allowing the RFP process to deal with this issue for at least one year because observer salaries and benefits may be an important variable in evaluating proposals. Allowing contractors the flexibility to determine their own methods of developing a corps of prior observers could provide greater benefit to both observers and the overall program. Industry members felt that relying on the RFP process would be the most effective method of reaching the goal, based on assurances from NMFS that these considerations would be an important part of the evaluation process.

**CONTRACTING:** Among the options presented by NMFS, the OOC recommends the option which specifies that three contractors be selected through the bidding process. Limiting the number to three, the OOC felt after lengthy discussion, may allow successful contractors to have a large enough body of business to effectively and efficiently deploy observers as necessary. It was understood by the committee that the Fee Plan structure in itself presents tradeoffs between the competition/cost effectiveness of the pay-as-you-go system and the desirable aspects of a fee system.

The OOC was very interested in the modular approach and understands that the manner in which the portions of the overall work are subdivided will be re-evaluated prior to the next RFP to include any applicable concepts from the modular approach.

**INSURANCE:** The OOC was informed by NMFS that minimum requirements will go into any future RFP and that the insurance technical committee will have recommendations on minimum requirements. The OOC unanimously feels minimum insurance requirements should be part of the RFP.

**POINT OF HIRE:** The OOC consensus is that there should be no disincentive for Anchorage based activities such as training, briefing or debriefing. The OOC feels this issue is being worked out satisfactorily by NMFS.

**ADVANCE NOTICE FOR OBSERVER SCHEDULING:** The OOC recommends that a vessel be required to give a 30 day notice of anticipated observer needs and a ten day notice of the date the observer will be required. This recommendation assumes that the contractor to which a vessel is assigned will be in regular contact with the vessel as occurs currently.

The OOC feels there should be some allowance for discretionary waivers should a vessel give appropriate notice and the contract fail provide an observer. Language similar to that used by the State of Alaska in regard to issuing waivers is recommended by the OOC.

**VESSELS WITH LESS THAN 100% COVERAGE:** Under the fee system the incentive to relinquish observers promptly and schedule their coverage in a cost efficient manner is diminished. To assure coverage requirements are met in a cost effective manner the onus must be put on the contractor to work with vessels. Suggestions from NMFS and Observer contractors may have addressed this issue adequately. However, a regulatory amendment may be required to assure that vessels with less than 100% coverage take their observer coverage when requested.

**BOARD OF FISHERIES AND ADF&G CRAB OBSERVER PROGRAM:** The OOC does not feel integrating the Board of Fish mandated crab observer program into a fee based system represents any problems. Earl Krygier from ADF&G explained that the State of Alaska and Board of Fisheries do not expect to deal unilaterally with respect to crab fishery observer coverage. Rather, they understand that the Research Plan specifications process is designed to evaluate all coverage needs in the context of available funding.

To clarify this understanding, a memo of understanding, or parallel policies of intent, could be developed between the Council and Board of Fisheries. This approach would make crab fishery observer coverage decisions function effectively as a Category 2 measure under the FMP. Necessary levels of coverage in specific crab fisheries would be evaluated to determine the appropriate levels required. It is understood by the OOC that this issue will be discussed at the joint Council/BOF meeting in January 1996.

**PROGRAM EVALUATION:** The OOC believes that under a fee-based system a continuing review and evaluation of contractor performance are essential and that coverage levels should be set at statistically valid levels arrived at through independent audits. NMFS currently has an RFP out to review coverage levels.

#### PAY-AS-YOU-GO SYSTEM GENERAL RECOMMENDATION - PAY-AS-YOU-GO

A pay-as-you-go system lacks some of the flexibility of a fee based system, but it avoids the redistribution of costs among segments of the industry. If the Council votes to continue to use a pay-as-you-go system, the OOC feels two changes are important to protect the integrity of the data.

1. **ARMS LENGTH RELATIONSHIP:** Both Dave Hansen from Pacific States Marine Fisheries Commission and Barry Fisher on behalf of his foundation have offered to serve as intermediaries between vessel owners and contractors under a pay-as-you-go system. The OOC recommends that under a pay-as-you-go system an option such as those provided by PSMFC and Barry Fisher be considered. It was noted by the OOC that this type of solution to what is perceived by some as an unhealthy relationship between vessel and contractor will probably require pre-payment of observer fees.
2. **INTEGRITY OF THE DATA:** As noted under the fee based system recommendations, the experience, maturity and morale of the individual observer is critical to maintaining a professional observer corps and to the integrity of the data. Under a pay-as-you-go program the OOC feels that minimum observer salary levels should be set to assure that experienced observers are retained.

**DRAFT MINUTES FOR OOC MEETING**  
September 11-13, 1995

This meeting of the OOC took the basic approach of trying to address each of the concerns raised relative to the Research Plan, while at the same time attempting to identify, in comparative fashion, how that issue would be dealt with under the current, pay-as-you-go program (where relevant). To preface the discussions, NMFS Observer Program Task Leader, Bill Karp, provided an overview to the OOC summarizing some general agency perspectives on the current impasse.

In brief, Dr. Karp focused on the importance of the program to fisheries management, and emphasized that the Research Plan is the best way to fine tune the total observer program. He revisited the four primary goals associated with development of the Research Plan: (1) Data integrity is the foremost concern, and relates directly to observer working conditions, (2) Flexibility, built into the Research Plan is also critical, as are (3) cost control, and (4) cost equity.

Dr. Karp stated that the current impasse, and attendant uncertainty, is jeopardizing the ability to address current concerns with the observer program. NMFS has devoted much time and effort to genuinely address the Council/industry concerns identified. Breaking the impasse, one way or another is critical at this time. We must move ahead in some manner, either with the Research Plan or with improvements to the current program.

The OOC was emphatic in its support of the observer program and agrees that something must be done to break the current impasse and assure the continued viability and integrity of the program.

A summary of the OOC's discussions and recommendations on specific issues follows:

**COST CONTAINMENT ISSUES**

**Current overall cost estimates:** Dr. Joe Terry provided the OOC with a summary of projected costs with focus on differences attributable to the Research Plan compared to the current program. (Attachment I to the issue paper.) It is noted that agency costs are not fixed, but will be evaluated annually, though they are not expected to change significantly. However, continuation of the \$1.5 MMPA money is still in question, and in fact, the whole \$2.2 million currently paid for by government may tend to go away with Research Plan, which would likely impact the fee percentage. NMFS has made a commitment to prioritize funding for the Observer Program.

Based on the information given to the OOC, cost to industry under Research Plan is approximately 8% higher than without the Research Plan. This assumes that contractor costs (the actual cost of the observer coverage) are the same under either system which some members felt was a tenuous assumption. The OOC recognized that inherent in Research Plan process is a review of costs annually.

**Fee Structure:** The issue raised here is one of whether we go with a fee based system or not. Some vessels will pay more under the fee plan than they ever paid before. On the other hand, some vessels are paying a disproportionate percentage of their gross revenue under the current system. The Research Plan does effect a redistribution of costs relative to the status quo, more than it effects any significant increases in overall costs. The fee program positively addresses many issues, but may not necessarily be 'equitable,' even though it spreads the fee over a greater number of vessels. In the event the Council wishes to consider alternatives to the fee program, a hybrid system may be possible whereby uncovered vessels pay a fee to defray the costs incurred by vessels who are required to carry observers.

Recoverable administrative costs: This does not seem to be the only, or necessarily the biggest, concern of industry; in fact, the costs of observer placement (contracting and overall costs) may be higher than under the current system. Currently there is a competitive process which tends to drive costs down. Under Fee Plan, the competitive process occurs in the RFP through the bids received. The OOC did not have a concern with the administrative costs currently delineated; the greater concern had to do with the possibility of current government funding going away, and then having to be picked up by industry through the fee.

30% issue: Under the Research Plan, the incentive for the vessel owner to relinquish observer coverage (when requirement is for less than 100% coverage) is diminished. Suggestions from NMFS and Observer contractors may have addressed this issue adequately, with a regulatory requirement as a backup option, is necessary. Putting the onus on the contractor to work with vessels to make it work was the consensus solution of the OOC.

Supplemental Programs The OOC devoted considerable attention to this issue. It was clarified that a Magnuson Act amendment is not required to establish a supplemental program, (i.e., a separate pay-as-you-go program) but is required to establish one consistent with agency policy intent that it be folded into the Fee Plan umbrella (in terms of money going into the observer fund and observer coverage being distributed under the auspices of the fee program). The OOC is unanimous in their belief that the 2% fee is definitely not going to accommodate every program under consideration by the Council. The fee program was developed at a time when today's potential observer needs could not be fully anticipated.

Many in industry feel that the program is already way too centered on compliance, as opposed to data collection and in-season management. A fundamental question is where the data gathering ends and the compliance monitoring begins, in terms of defining what is supplemental coverage and what is covered by the fee? i.e., how much of an observer's time do you charge to the fee and how much to the vessel above and beyond the fee? The OOC recognizes the reality that programs of individual accountability are going to have a compliance aspect.

**Recommendation:** The consensus of the OOC is that programs such as CDQs, IFQs, and IBQs should not be covered by the overall industry fee. Additional, incremental observer coverage required for these programs, above and beyond normal observer duties, should be outside the fee and funded by supplemental payments. This is intended to include only programs that provide direct individual vessel benefit, not VIP for example. The exact mechanism for collecting and administering these supplemental payments will be determined later, though any pay-as-you-go programs should be administered in a way such that the vessel is not the client. Non-FMP fisheries (like some State crab fisheries) could also fall under a supplemental program. This issue was raised, but the OOC did not attempt to resolve it because they are outside the Council's jurisdiction. The OOC suggests that a summary be developed and provided which describes how the foreign program incorporated supplemental observers.

Miscellaneous cost issues: The OOC reiterates that having two separate programs and two administrative entities (NMFS and ADFG) is cost inefficient. The program should continue to strive for consolidation and eliminate duplication of expenses.

Debriefing in Dutch Harbor (or lack thereof) is raised as an issue. During peak periods, observers are often waiting several days, or even weeks, to be debriefed. Dr. Karp notes that a hiring freeze, more than monetary deficiencies, has prevented rectification of this problem so far; however, he believes it will not be a significant problem in the future. This issue relates to the broader issue of having a single program for all observer coverage needs. The OOC wishes to note that this issue was discussed.

## **PROCESSOR ISSUES**

Kim Rivera of NMFS provided an overview of the issues and activities now ongoing to alleviate the problems which have been raised. There was a general consensus of the OOC that these issues were being addressed satisfactorily, and would iron themselves out in the future. A primary discussion ensued regarding the use of

standard vs actual in-season prices. The OOC recommends exploring the possibility of using actual in-season prices, including the establishment of a technical subcommittee to flesh out this issue.

Double observer coverage on shore plants is raised as an issue, though this is not really an issue specific to the Research Plan. It is noted that the Fee Plan contains the annual flexibility to make adjustments as deemed necessary, such as reducing coverage in areas where it is not necessary.

An additional question raised was "why do we need observers at plants relative to IFQ fisheries?" The actual requirement is based not on whether IFQs are involved, but on how much fish is involved.

### INTERACTION WITH ADFG AND BOARD OF FISH

Earl Krygier explains that ADG&G and the BOF do not expect to deal unilaterally with respect to crab fishery observer coverage. Rather, they understand that the Research Plan spec process is designed to evaluate all coverage needs in the context of available funding. A memo of understanding, or parallel policies of intent could be developed between the Council and BOF. This approach would make crab fishery coverage decisions function effectively as a Category 2 measure. Necessary levels of coverage in specific crab fisheries will also be evaluated to determine what is actually necessary (100% vs 50% vs 30%, etc.) necessary in the crab fisheries. It is understood by the OOC that this issue will be discussed at the joint Council/BOF meeting in January 1996.

### CONTRACTING ISSUES

Method of contracting/number of contractors: Under a system which limits the number of contractors to three, it may be that special niches currently covered by some contractors may not be as adequately filled by another contractor. The point is also raised that the 'old system' of allowing competitive contractor services may have more desirable aspects than under a bid process relative to these special niches. This perspective basically retains the concept that the fishing operation is the client, as opposed to the Fee Plan concept which assumes the government is the client (which is designed to eliminate existing conflicts of interest, either real or perceived). It could be that the existing system tends to decrease data integrity for a variety of reasons, an issue discussed separately in this report. However, it is also noted that the Fee Plan system does not necessarily sever the relationship between vessels and contractor, though that may not really be a problem anyway, since it may be that the place for most conflict is at the individual observer level. Several OOC members note that the 'client' issue is a problem, and is certainly widely perceived as a problem, and is therefore an issue.

**RECOMMENDATION:** How we divide up and assign the observer coverage will help determine which structure is most appropriate. For example, it hinges on whether assignments are going to be made by the contractor or by NMFS and whether less than 100% coverage requirements will be based on fishery or on individual vessels. Under the Research Plan, the incentive to cooperate with contractors in placing observers is likely reduced. Currently there is a large financial incentive to cooperate in this regard. It may be that basing coverage percentages on a fishery, as opposed to individual vessels, has substantial benefits, though this alternative has not been fleshed out. For our discussions, we assume that it will be by individual vessel as it is now, with the intent that the vessel takes the observer not at its discretion, but at the discretion of the contractor. (reiterate discussion of 10 day notice here too!)

After discussing the issues contained in the NMFS discussion document, there was some consensus that we should retain the existing structure (as proposed in the RFP earlier this year) which will utilize three observer contractors. In addition to other arguments posed, this may allow successful contractors to have a large enough body of business to effectively and efficiently deploy observers as necessary. It is understood by the committee that the Fee Plan structure in itself presents tradeoffs between the competition/cost effectiveness of the old system and the desirable aspects of the new system. The committee was very interested in the modular approach (described in the NMFS discussion paper), and

understands that the manner in which the portions of the overall work are subdivided will be reevaluated prior to the next RFP, taking this concept into consideration (in terms of how the pie is sliced, not necessarily how many contractors there will be).

Insurance: The OOC was informed by NMFS that minimum requirements will go into any future RFP and that a separate Committee will be dealing with this later in the week.

Standardized salaries: This issue is discussed in detail under Data Integrity.

Point of hire restrictions: The OOC consensus is that there should be no disincentive for Anchorage based activities. OOC feels that this is being worked out satisfactorily.

Transfers of observers among vessels: Resolution of this issue will certainly depend on which procurement/contracting process is ultimately adopted. The Multiple Delivery Order option, for example, would eliminate the problem. Cooperation among contractors is critical to resolving this issue. OOC feels that, between NMFS and the contracting companies, this problem will be satisfactorily resolved.

60 day advance notice issue: This particular issue is one where the current system works very well, and is somewhat problematic under Fee Plan. Having a pool of observers on 'retainer' would be the only failsafe solution, thereby increasing costs considerably. There is some feeling that advance notice, even less than 60 days, is an unreasonable requirement for industry. Dr. Karp noted that we simply don't want people to wait until the last moment to declare their observer needs. Resolution of this issue also depends on which procurement/contracting process we end up with. Government procurement guidelines will require 'deliverables' of the successful contractor (i.e., an observer). 10 days may be a logical reference point for such a standard.

The industry is likely to expect waivers if they cannot get the observer, after they have given notification. The OOC understands that contractors currently respond to requests on very short notice, and that 10 days may be sufficient for them to operate. The volume of short notice needs is the wildcard which prevents a contractor from being able to guarantee observers. Also, if the contractor provides such coverages, and then they turn out to not be needed, how is the Contractor compensated? Allowing for these contingencies has to increase costs. Flexibility in training and briefing schedules will help resolve this issue. Onus to make it work will be largely on the observer contractor.

**Recommendation**: Start with some time period of advance notice, then require an update as we get closer to that date (a 30 day plan initially; then 10 day final notice). Rely on Contractor to make it work with industry through interaction with 'client.' Some allowance for discretionary waivers could still be built in, though it would be difficult for agency to define 'adequate good faith effort.' The OOC recommends developing language similar to the State of Alaska regulations with regard to granting of waivers.

#### PSMFC - Potential Involvement

The OOC received a brief report from Dave Hanson which indicated that Commission involvement may be relevant and beneficial under a pay-as-you-go scheme, but not under the Research Plan. Basically, they would act as a broker for observer coverage, much as the private foundation idea. Payment may need to be up front or bonded. This would help create the arms length relationship being sought, under either the Research Plan or current program. They would be able to move quickly and not operate under the various restraints imposed on a true governmental agency. Overhead costs charged by the Commission would be between 2% and 15% (they are not-for-profit). So overall costs may be higher than if NMFS continued to run program as is being done currently.

Flexibility would be enhanced, as far as their role is concerned. They would not be directly involved in data analysis and in-season management relative to the data gathered under this program. Reinventing the program to include PSMFC would depend on the detail of involvement, but could not be immediate, probably a year. There still may be legal hurdles to this idea.

### DATA INTEGRITY

Conflict issue - who is the client? The OOC is concerned that, under any program, we attempt to rectify current problems with pressure on observers (or contractors) which compromise the data. The agency and the OOC feel that the Research Plan deals with it better than old program, even the influence of observers, because they will feel that they can stand up to the pressures better under Fee Plan. The Observer perspective is that there are pressures from vessels, and also pressures from their contractors in some instances. Another concern of observers is low pay/benefits. The basic issue is who the client is, and the OOC is unanimous in that the client should be the government, not the vessel.

An alleged tendency to use new observers instead of priors will exacerbate this problem, in the sense that new observers are likely to be more susceptible to pressures, and there is a higher turnover rate. A question was posed — has anyone quantitatively examined data quality of new versus prior observers? Not directly, but in a qualitative sense, it is obviously better with priors (though at a point they can 'burn out' too).

Contractor performance: Relative to evaluation of contractors, there is currently little recourse for an observer when they feel they have been 'wronged' by either the vessel or contractor. There also appears to be little in the way of re or de certification activity (i.e., review of contractors performance). This is partly due to focusing energy on Research Plan implementation (which is expected to largely alleviate the types of problems for which a review process would be necessary). NMFS informs the OOC that past performance of contractors will factor heavily into the evaluation process.

Observer working conditions/salaries: Summary by Dr. Karp which indicates that they expect bids to recognize importance of this issue, though specific salary scales are not necessarily specified. The OOC recognizes that observer salaries have deteriorated over the past few years, and has negatively impacted the quality and commitment of observers. Though setting salary minimums may alleviate these problems, it is likely that such an action would have a limiting effect; i.e., once a minimum is set, that will likely be the salary paid. The agency also feels that this is an important aspect of the evaluation process (salaries represent 60-65% of overall observer placement costs), and that there is room for a negotiation process after the bids.

It is also understood that the bid evaluation is based not only on total price, but contains information on general experience/education level of observers each contractor will provide. If there are minimums set, then we need to also factor in 'down days' (when they're awaiting debriefing, etc.) perhaps at a reduced rate.

Current cost estimates in front of the OOC (of cost per day) probably assume about \$80 per deployment day. It would be desirable to somehow quantify whether and how much lower salaries have affected data integrity, because industry is wary of a 'federalized,' costly program, and this is just the sort of thing that exacerbates that cost concern.

**Recommendation:** Data integrity is dependent on observer morale, maturity, and experience. As such, any system should encourage a dedicated corps of professional observers. One alternative is to set minimum salary standards for observers. This was the preferred course of action for observer representatives. The impact of incremental salary increases on the overall program costs should be considered when setting these minimums.

An alternative is to not set minimums at this point, but allow the RFP process to deal with this issue for at least one year, because observer salaries/benefits may be an important variable in evaluating proposals, and this alternative may provide greater benefit to both observers and the overall program. Under this scenario, an option is to set a minimum level of prior observers to be provided by a contractor. The industry's preference was to rely on the RFP process, based on assurances from the agency that these considerations would be an important part of the evaluation process.

It is the consensus of the OOC that, under a pay-as-you-go system, something has to be done to maintain the quality and morale of observers; this could be achieved by establishing minimum salaries for observers or through the certification process by establishing minimum levels of prior observers.

Arms length relationship: As stated above, any pay-as-you-go program, including options such as offered by Barry Fisher and PSMFC, should ensure that the vessel is not the client.

Evaluation of program: Need review/evaluation process to look at contractor performance, use of the data by NMFS, and independent audits regarding amounts of coverage required for various fisheries. NMFS currently has an RFP out to deal with data use issues.

Flexibility: Placing observers where the best mix of data is collected is a priority of the industry. The Research Plan offers a better mechanism than the current system to achieve this by (1) implementing an annual process for evaluating and adjusting coverage levels across fisheries based on statistical needs, and (2) allowing greater flexibility in-season for placing observers. The OOC expects that this flexibility would be utilized under the Research Plan.

Another issue is that, under pay-as-you-go, 30% coverage vessels get to chose when they take that coverage, which will be at least partially alleviated under the Research Plan. Flexibility under pay-as-you-go could be enhanced through a frameworking process which allows it function similarly to the Research Plan specifications process administratively. Political, allocative, and economic considerations may constrain this potential flexibility more under a pay-as-you-go system than under the Research Plan.

## CONCLUSION

The OOC feels that we have addressed many of the concerns raised with regard to implementation of the Research Plan. The OOC further feels that there are no overwhelming technical issues which impede progress of the Research Plan, though the overriding issue of cost prevents the committee from being able to reach consensus on a recommendation to move forward at this time with the Research Plan. For example, many on the committee would be more comfortable if the fee were limited to some level below 2%, particularly given the likelihood of some type of supplemental payments for many industry participants. There is consensus that the current pay-as-you-go program is unacceptable; in the absence of the Research Plan, the current program would have to be modified to deal with the 'client' issue, as well as other shortcomings of that system. Below is a summary of the major points of discussion, as they relate to the Research Plan vs pay-as-you-go system:

### Research Plan

- flexibility to adjust coverage levels both in-season and annually
- RFP contractual arrangement in terms of costs of observer coverage (no negotiation between vessel and contractor)
- fleet has less incentive to work with contractors to provide adequate notice and to not carry extra observer days
- flexibility to vary observer coverage among subcomponents of RP fisheries
- some agency costs may be transferred by industry
- some existing contractors may be forced out



- cost is capped at 2% fee (though supplemental payments for special programs may exist)
- alleviates conflict of interest issue
- allows industry/Council oversight of budgets and deployments

**Pay-as-you-go**

- costs of observer coverage determined by market mechanisms
- changes to coverage levels difficult both in-season and annually
- tendency to distribute coverage for political/allocative reasons
- under framework process (to change coverage levels annually), it is difficult to assign changes to fishery subcomponents
- cost incentives to maintain coverage levels and work with contractors to assure coverage at decent costs
- agency costs would continue to be paid by agencies
- about 8.5% less overall cost to industry, based on current coverages
- no cap on overall cost to industry
- conflict of interest relationship needs to be addressed

Present for meeting:

**OOC members:**

Chris Blackburn (Chair)  
 Christian Assay  
 Brian Bigler  
 Paula Cullenberg  
 Michael Lake  
 Paul MacGregor  
 Nancy Munro  
 Jerry Nelson  
 Teresa Turk  
 Arni Thomson  
 Gary Westman  
 John Winther

(Absent - Jack Hill, Bud Samuelson,  
 Mandy Merklein, LeeAnne Tryon,)

**Staff:**

Clarence Pautzke  
 Chris Oliver  
 Bill Karp  
 Bob Maier  
 Sue Salveson  
 Connie Sathre  
 Joe Terry  
 Earl Krygier  
 Ken Griffin  
 Shannon Fitzgerald  
 Kim Rivera  
 Don Wadhams  
 Heidi Sickles  
 Dave Hanson

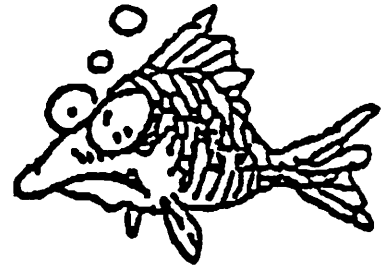
**Public and Industry:**

Roger Woods  
 Deidre Hartford  
 Chuck Jensen  
 Sheri Hanneman  
 Jas Mangat  
 Dave Adams  
 Brent Paine  
 John Gauvin

**PUBLIC COMMENTS ON RESEARCH/OBSERVER PLAN**

**RECEIVED SINCE APRIL 1995**

**North  
Pacific  
Longline  
Association**



August 24, 1995

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

**RE: Observer Program, Research Plan**

Dear Rick:

Yesterday Bill Karp and Rich Marasco of NMFS visited with some of our members regarding the Observer Program and the Research Plan. We fully support the Observer Program, and want as much as anyone else to iron out the problems - we have been talking to them over the last couple of years, particularly with regard to careful release, but also on other topics of mutual concern.

After two hours of palaver yesterday we began to warm to the subject, and the fishermen let their real concerns be known (I suspect they are usually unspoken). Some of these relate primarily to freezer-longliners, but others go to the root conceptions on which the Research Plan is founded. I thought it might be helpful to state the concerns that were expressed by the fishermen.

**Fairness, Reason and Simplicity In Sharing Costs**

There is a strong feeling that basing observer fees on income is wrong. Profit, not income, determines ability to pay. Some of our owners operate both freezer-longliners and factory trawlers, and find that the freezer-longliners are paying more for observers than the trawlers - even though the longliners catch far fewer fish and make less profit. This seems unfair and unreasonable.

There is also concern regarding "pre-season" ex-vessel prices. The fishermen would like to use actual ex-vessel prices, which reflect reality. They are more concerned about this than they are about NMFS' ability to estimate revenues ahead of time.

Finally, it is felt that the system of estimating and collecting fees is unnecessarily complicated. One fisherman suggested that NMFS should calculate the cost of fielding an observer - by the day or by the hour, and bill accordingly.

### Level of Observer Training; Attitude

Concern was expressed about the level of observer training. It was said that some can't tell a turbot from a halibut. Observer attitude was also referenced - it is felt that some observers see fishermen as the enemy, engendering adversarial relationships.

### Communication; Data Collection; Standard Operating Procedures

Different fishing operations may want particular information from observers. Freezer-longliners are particularly interested in having the observer in constant real-time communication with the captain and crew regarding the handling of halibut, and their estimated mortality.

Many would like to see more data collected, less reliance on extrapolation. Standard sampling procedures should be observed and explained fully to the captain before each trip - there is concern that there seems to be considerable variability in observer performance in this regard. Observers should be accountable for their activities.

### Observer Duties

It was stated that observers should concentrate on biological data collection - that is what we are paying for. The fishermen question whether observers should be concerned with MARPOL enforcement, safety, etc.

### Number of Observer Contractors; Freedom of Choice

The fishermen believe that there is an adequate arms-length relationship between contractors and vessels now - that the system is not being abused. They want a significant number of competing observer companies. They want to maintain the right to select the companies they work with, and the ability to discharge observers who are found inadequate. There is considerable concern about a loss of flexibility in scheduling and administration if NMFS plays a greater role in this area.

### Level of Coverage

It was asked whether 100% coverage needs to be as widespread as it is now - with the high costs involved. Coverage should be for biological data collection, and its level should reflect the variability in fishing mortality caused by a particular fishery. If there is little variability - if results are the same over time - there is less need for coverage.

### Insurance

There was a very strong desire and expectation in industry that under the Research Plan, the government would provide insurance for the observers. This did not materialize. The fishermen are displeased. It was also stated in our meeting that observers should be covered by one insurance policy, only.

### Conclusion

As has often been stated, many of the affected fishermen would like to go back to the old Observer Plan, and concentrate on fixing perceived problems rather than proceed with the Research Plan.

It is recognized that there are some excellent observers, and they are greatly appreciated. It is also recognized that some vessel operators may need to offer more assistance to the observers, and a better working environment - this is the responsibility of industry. The fishermen recognize that the Observer Program is an absolute necessity. They would like to fix it, while keeping it simple.

These views do not necessarily represent those of the entire fleet, though we expect that they may be widespread. They are the views expressed in our meeting with NMFS, and are offered in a spirit of constructive cooperation.

Sincerely,



Thorn Smith

cc: Bill Karp  
Rich Marasco

1626 17th St., Apt. A-103  
Lewiston, Idaho 83501  
28 August 1995

Dear NPFMC Member:

There are some problems within the domestic observer program that I believe should be brought to your attention. These policies have the potential for being detrimental to the data which is used for regulating our valuable fish stocks, thereby endangering the quality of the fishery itself.

It has been my experience over the last four years and 12 observer contracts that experienced, prior observers not only collect better data but are also better received and better respected by the vessels they work on than are newly trained observers. It would stand to reason that all parties involved with the observer program would be supportive of keeping as many prior observers employed as possible in order to create not only a stronger database, but to also create a safer work environment. This does not seem to be the case. The following problems stand in the way of maintaining a strong core of prior observers.

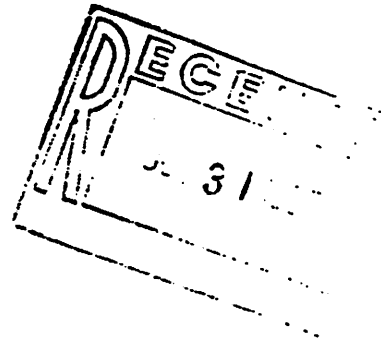
1. Within the last two years I have personally taken a \$1000 per month cut in my pay rate as an observer, while sampling demands continually increase.
2. There are great amounts of confusion in observer contracts which need to be standardized and clarified.
3. Many observers are not being justly compensated and in some cases not compensated at all for their time in training, briefing, debriefing, or for days in the field between vessels.
4. I am still not sure of what kind of insurance coverage I have after making two inquiries with my contractor. Observers work in a vastly hazardous environment. We should have a comprehensive insurance policy which reflects this fact.
5. I have seen two observer contractors go out of business, one of which left several personal friends unpaid for months of strenuous, dangerous work.
6. Most recently there seems to be a trend by contractors to hire, train and deploy new observers with priority over experienced observers. A reason which has been given for this is that the contractors feel they will increase the strength of their standing with regard to the North Pacific Fisheries Research Plan by increasing the number of people they train as observers.

Due to these many problems with the domestic observer program and the fact that I only see them getting worse in the near future unless immediate, decisive action is taken by the NPFMC, the Board of Fisheries, the NMFS, and ADF&G. I believe that my twelfth domestic observer contract was my last. Please take the time to address these issues at the next NPFMC meeting in September as well as under the Research Plan itself before any more valuable prior observers are lost.

Sincerely,



Robert J. Swanson



Dear Council member:

As a professional observer, I will be working during the fishing season which coincides with the September 24 meeting of the North Pacific Fishery Management Council (NPFMC) in Seattle. Were I able to attend, I would provide testimony about my concern for several issues that I feel pose undue hardship on observers.

I am aware that there are still observers who have not been paid for their work with the now bankrupt contractor, Arctic Observers. It is quite unsettling to know the system developed by the NPFMC, which allowed for their non-payment is still in place.

I am also concerned that there is no minimum standard of insurance coverage for observers while we are on assignment. At this time, observers are unable to adequately assess our coverage. This causes an undue amount of confusion and apprehension in evaluating each contract that we sign in order to work.

Also, our work takes place in many environments, some of which are unduly hazardous. I would like to see minimum safety standards developed and enforced for vessels and plants which carry observers.

In addition, the briefing/debriefing process is over burdensome. I would like to see the council research ways by which this process can be streamlined, and to force contractors to pay us a fair wage during that time, before and after deployment.

Lastly, we are significantly under compensated for the work we do. As observers, we provide the fishing industry with accurate data which is indispensable in the management of its stocks. As trained scientists—working away from home and in hazardous conditions—we deserve to be compensated in a manner at least competitive with other skilled industry personnel.

I was counting on seeing some of these issues resolved with the implementation of the Research Plan in 1996. Now that the NPFMC has voted to delay implementation, I am quite concerned that observers will continue to work without the support necessary for a healthy professional environment. I would like to see the Research Plan implemented as soon as possible so that observers can receive the necessary support to continue to provide the data which is the key to successful management of the fisheries of the North Pacific.

Please take the above issues into consideration at the upcoming NPFMC meeting.

Yours Truly,

Cynthia Rogers

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

APO  
P.O. Box 27214  
Seattle, WA 98125-1614 3 /

July 25, 1995

Dear Mr. Lauber,

I am writing to introduce to you the Association for Professional Observers (APO). The APO consists of a consortium of observers dedicated to the sustainable yield of our ocean's biological resources through scientific research. For many years observers have been directly responsible for the lion's share of raw data collected from our fisheries. Without this data the effective management of these valuable resources would be impossible.

In recent years observers have felt their professional integrity threatened by many sources. While the work load for observers has increased substantially, compensation for our efforts has steadily declined. Not only has pay decreased but attention to the hazardous environment in which we work with questionable, complicated, and non-standardized insurance coverage has been virtually ignored. In addition, observers receive no benefits-sick leave, vacation pay, overtime, or retirement plan. Other problems that persist on the horizon is the continued possibility of contractors' declaring bankruptcy leaving observers stranded in the field and unpaid. New, inexperienced observers are constantly being trained to fill the void caused in the observer corps by a high turnover rate due to the many problems briefly outlined above.

The APO has been formed to address these and other problems within the current system which we feel needs creative problem solving with all user groups. Therefore, the APO is requesting a seat on the Observer Oversight Committee to represent the observer-in-the-field interests. Although observers currently have one seat, we feel another seat with greater representation and a broader perspective is needed. The addition of this seat on the OOC would bring observer representation more in line with the current number of positions being held by contractors and fishing interests. Please let us know of your decision or if you need more information.

We hope to accomplish these progressive changes through cooperation within governing agencies, contractors, and the fishing industry. Thank you for your time and we look forward to working with you on these issues in the near future.

Sincerely,



Teresa Turk  
Rob Swanson  
Steve Copps

cc: Chris Blackburn





# 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  
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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.<sup>1</sup> 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,<sup>2</sup> 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

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<sup>1</sup>NMFS 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.

<sup>2</sup> 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.

Mr. Richard Lauber  
June 2, 1995  
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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,



Jeff Hendricks  
General Manager

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

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

DIVISION OF NORTH PACIFIC PROCESSORS, INC.

□ HOME OFFICE: 2300 EASTLAKE AVE. EAST • SEATTLE, WASHINGTON 98102 • (206) 726-9900

P.O. BOX 31179 • SEATTLE, WASHINGTON 98103-1179

□ PROCESSING PLANT: 627 SHELIKOF AVE. • KODIAK, ALASKA 99615 • (907) 486-3234

COMMENTS FROM JOHN SEVIER, ALASKA PACIFIC SEAFOODS

TO THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: 2% FEE PROGRAM - OBSERVER PROGRAM

APRIL 1995

During the start-up period of the Research Plan several problems have arisen with the way the program is structured which I would like to bring before the North Pacific Fishery Management Council..

1. **COMPLICATIONS CAUSED BY LONGLINE IFQ PROGRAM:** When the observer plan coverage requirements were implemented, all fisheries were open access fisheries. Under open access it was relatively easy for our plant to estimate how much product would be delivered each quarter and figure out whether we needed 30% or 100% observer coverage in the plant.

However, under the new sablefish IFQ program we have no way of knowing how much sablefish will be delivered to our plant during a quarter. The cost of observers is too high to make keeping one in the plant 100% of the time "just in case" financially feasible. We suggest that IFQ sablefish deliveries not be included in the tonnage used to decide if a plant needs no, 30% or 100% observer coverage. We have no problem if there is a requirement for observer coverage during the time sablefish is being delivered.

2. **CUSTOM PROCESSING:** The longline IFQ program promises to result in a substantial increase in requests by vessels for custom processing. This means the plant never owns the fish. However, under the 2% fee program payment of the fee requires submission of a processing number. This means the plant becomes responsible for collecting the observer fee. We do not feel the plant should be the fee collector for fish which the plant does not purchase.
3. **BILLINGS:** Our first billing for the 2% fee contained errors due to programming problems within NMFS. We feel billing errors should be corrected prior to payment.

*Processors of Quality Alaska Seafoods*



Secondly, while our bill contained a list of fish ticket numbers and amounts due from each delivery, the poundage delivered on each fish ticket was not included. We understand ADF&G has refused to allow NMFS to release the fish ticket poundage on the grounds of confidentiality. A bill which is not complete costs our company time and money to reconcile. We feel ADF&G should review its policies so that the bills sent out by NMFS include the poundage assessed on each fish ticket as well as the NMFS assessment.

Thank you for the opportunity to raise these issues.

# MIDWATER TRAWLERS COOPERATIVE

1626 N. COAST HIGHWAY-NEWPORT OREGON 97365

**Captain R. Barry Fisher**  
President  
Yankee Fisheries  
1626 N. Coast Highway  
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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  
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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.

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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.

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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 mountainmen of the West must have felt, circa 1850, "She's gone pilgrim, she truly is gone."

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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

APR-23-1995 13:02 FROM

TO 919072585999

P.002

**MEMORANDUM TO THE NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL**

**DATE:** 23 April, 1995

**TO:** Rick Lauber, Chair *40 HILTON HOTEL*  
*fax: 265-7140*

**FROM:** Erich Kusler, Observer

**SUBJECT:** Research Plan for the Observer Program

I am writing because I am concerned that the currently proposed Research Plan does not provide necessary improvements over the current system, and, in many ways, may be worse than the current system. Most, if not all, of the observers I have spoken to over the last several years share these concerns. In addition to the issues which directly affect observers, there is considerable concern that the quality of the Program will be damaged in other ways.

Why is it that the Plan makes no provisions for standardization of observer compensation? For three years I have been told by Program staffers that observers would receive higher pay and more benefits under the Plan. Recently, staffers in Seattle have thrown around actual salary figures, and many observers have believed that these figures would become a reality when the Plan takes effect. For the past several years observer compensation has continued to diminish, and experienced, competent observers have left the Program. Having observed at several plants I can tell you that the quality of the data *is* lower with first-time observers; there is no doubt in my mind about that. Without provisions for the standardization of insurance and the standardization of pay, it is unlikely that observers will fare any better under the Plan.

There are several ways to ensure that observers are fairly compensated. An obvious way is to mandate minimum, standardized compensation directly in the Plan. This would address the issue directly. Currently, with the frequent observer "shortages", contractors run the risk of losing observers (and therefore clients) when compensation gets too low. These market forces have kept compensation at current levels. Increasing compensation levels under the current system would require that higher standards (experience, ability) be set for observers. Unfortunately, the approach in the Plan seems to be one of merely hoping. I am not content to put the Plan into effect on the *hopes* that the program quality will not seriously suffer. If the Plan does indeed assign clients to the selected contractors, then standardization of insurance and pay are absolutely essential.

Those concerns aside, I seriously doubt the ability of NMFS or the Observer Program to take on the responsibilities they seek. The program is barely able to handle its current responsibilities. Program support for observers continues to dwindle (less gear is supplied, faxes are answered more slowly, the Dutch Harbor field office is no longer

APR-23-1995 13:02 FROM

TO 919072585999

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staffed—this despite the industry-wide recognized importance of Dutch Harbor and the management of its fisheries resources). Debriefings of observers often take much more time than is reasonable. The availability of briefings in the field is increasingly limited. Overall, the Program's ability to be effective has been gradually diminishing. So how is the government going to take over so many of the contractors' functions? In an instance where less government might help us regulate more successfully, is it wise to increase government's role? I fear the program itself risks losing, not increasing, the broad support it currently has, and this will directly affect observers' abilities to gather the data which manages our fisheries.

These are just a few of our concerns, and a simple overview at that. Thank you for paying attention to them.

EK



7 September 1995

Rick Lauber  
321 Highland Dr.  
Juneau, AK 99801

Dear Mr. Lauber,

At its September meeting, the North Pacific Fisheries Management Council (Council) will reconsider the Research Plan (Plan). While we recognize that the Plan needs to be modified in some way that satisfies the Council, we think there's a risk that the Plan might be modified right out of existence, leaving it the Plan in name only. This letter suggests an approach that will result in the implementation of a Plan that retains experienced observers and provides fisheries managers with reliable data.

1. What to Leave Unchanged

Before we suggest some changes we think could be considered, we want to address two aspects of the Plan that should be defended rather than tinkered with:

A. The User Fee

The Plan should be funded by a user-fee. The Council might have an easier time understanding a pay-as-you-go scheme, but any pay-as-you-go setup will be inferior to the setup outlined in the current version of the Plan.

The virtues of a user-fee funded Plan are significant and are worth defending. Certainly a user-fee equitably distributes the costs of funding the observer program, something that cannot be said for pay-as-you-go. Under a user-fee, observer coverage could also be more rationally targeted--away from mid-water pollock fisheries and toward longline rockfish fisheries, for instance, if the rockfish situation warranted such attention. Pay-as-you-go could give you that flexibility on paper, but never in practice--if NMFS suddenly told a large number of 55 and 60 foot vessels that they had to carry observers for 100% of a given fishery in which they didn't earn enough to pay for observers, they'd either ignore the requirement or not fish. Under a user-fee funded Plan, you could successfully concentrate coverage on a given fishery in a given area, regardless of the size of the vessels involved.



Opponents to the fee say that 30% vessels carrying observers would have no economic incentive to disembark their observers and would keep them aboard for some sort of "insurance" coverage, making the Plan inefficient. This sort of objection is difficult to credit, at least for those of us who actually put observers in the field. First off, the argument presupposes that 30% vessels under the current, pay-as-you-go scheme take precisely 30% coverage each quarter. This simply isn't true. Vessel operators now have to take coverage based on predicted activity, and such predictions are difficult to make, since their accuracy depends on how long a given fishery lasts, what sort of weather intervenes, and how the vessel behaves mechanically. Add to this the general feeling among fishermen that 29.5% coverage isn't good enough, and you end up with many operators taking extra days.

In fact, the user-fee funded Plan would allow contractors to deploy observers more efficiently than they are now deployed. As stated above, there's no reason under a user-fee funded Plan for NMFS to break out coverage requirements into 30% and 100% categories. Whatever categories exist under the Plan, vessels requiring less than 100% coverage would not be (or, in any case, should not be) telling NMFS or their contractors when they want to take coverage. If the situation were reversed, with observers boarding as directed by contractors, who answer to NMFS as regards their efficiency or lack thereof. This situation in fact benefits the fishermen involved, since it takes the pressure to reach some minimum level of coverage off their shoulders.

For instance, vessel A (with an observer onboard) and vessel B (with no observer) end up in King Cove on the same day and are making trips of 10 days in length. Efficiency may dictate transferring the observer, even if this means leaving vessel A with 25% coverage for the quarter in order to provide vessel B with 35% coverage. After all, the transfer can be accomplished without incurring any airfare costs, lodging costs, or salary costs to an observer sitting in town between vessels. The operator of vessel A would have no reason to worry about the observer disembarking early, since he isn't responsible for the observer transfer.

Under the Plan, since vessel operators would not be determining when they take coverage, contractors will be able to choose targets of opportunity. In this situation, contractors will often be able to spend the Plan's money more efficiently than the industry currently spends its own.

In answering those who envision vessels jealously hoarding observers, some facts need to be considered. First, it's news to us that so many boats are overjoyed to have an observer aboard. Second, many vessels that require less than 100% coverage will be shoreside delivery trawlers. If a contractor directs an observer to disembark one of these vessels over the objections of the skipper, the observer will disembark--these boats are in port often, and there's no way the skipper can avoid touching the dock. Small longline vessels that make five to seven day trips will be in the same situation. Small longliners that make longer trips of two, three, or more weeks, as well as small factory trawlers, will be in much the same situation they are now. Since they can't afford to break off a trip early just to disembark an observer, they will often get more than their required coverage. This results not from their love of observers, but from the incompatibility of the 30% requirement and their fishing routines.

#### B. Number of Contractors

Another fundamental of the Plan that should be left in place is the number of contractors to be involved in 1996 and beyond. If cost is an issue to the Council, then the number of contractors needs to be held at three. The daily rate a contractor will have to charge NMFS for observers goes up markedly as the number of observers that contractor employs goes down, particularly if observer wages are to increase from their current levels. Having four or five contractors would simply raise the administrative costs of the program, inevitably providing ammunition to those who complain that the Government can't do anything efficiently. Limiting the number of contractors is in the best interest of the Plan. Competition between those contractors for the largest share of the business will continue.

## 2. What to Change

Below are some suggested modifications to the Plan that address concerns voiced by opponents to the Plan this past spring:

A. Insurance requirements for contractors. Given that the legal status of observers is still undecided, the Research Plan can't specifically say whether observers should be covered by vessel P&I policies or workers compensation policies with marine attachments. The Plan could set minimum coverage levels and require that contractors obtain general liability coverage and hold vessels harmless, so that observers would know they were covered and vessels would know they were protected. (It is worth noting that, at present,

the majority of observers are covered by their contractor's workers compensation policies with marine attachments. This method of securing coverage may well become universal in the future, even without Council involvement.)

**B. Notification Requirements.** Industry raised objections to the requirement that they notify contractors 60 and 10 days before they needed an observer. This requirement should be dropped. Instead, each contractors should be required to contact all the owners of the vessels assigned to it by November 1 (two months before the start of a calendar year) and to then stay in touch with these owners and vessels throughout the year. Owners and vessels would only be required to respond to contractor queries and to correct their information when plans change. This is in large part the way the program currently operates, and it seems to work well enough.

**C. Emergency Placement of Observers.** Industry expressed concerns about their ability to get observers should their fishing plans change on short notice. To some extent, this concern presupposes that coverage levels will be set up in the same way they are now--that boats 125 feet and over will always need observers, and that boats 124 feet and under will need observers 30% of the time. As mentioned above, under a user-fee system coverage could be more rationally targeted, with the result that some last minute operational changes could take place without concern for the presence or absence of an observer. A pollock C-season that comes together with only several weeks notice, for instance, might require far fewer observers than such a season currently requires, since under the Plan it may not make sense to cover pollock fisheries as extensively as they are now covered.

Nevertheless, the Plan should allow NMFS to reassign a vessel to another contractor if the vessel's first contractor is unable to react to a last minute change in plans. This is in fact what happens now, without NMFS involvement--boats who make last minute schedule changes are sometimes unable to get an observer from their usual contractor and end up securing an observer from another company. The Plan could call for NMFS to direct another contractor to pick up the vessel, or it could simply require the vessel's usual contractor to find an observer by contacting the other contractors.

The Plan should also make clear that the Regional Director has the authority to grant coverage waivers to vessels who are unable, through no fault of their own, to obtain an

observer.

D. Pool of observers. Industry seemed concerned that the Plan would not support a pool of observers. This is ironic, since the repeated delays in the implementation of the Plan, and the uncertainty these delays have created among observers, have helped drain the observer pool over the past year. Many observers--not only those who were directly affected--were shaken by the non-payment episode involving Arctic Observers. Since that time, observer salaries and benefits have dropped industry-wide. Throughout this period, observers were told that the Plan would turn things around for them. This was a reasonable message to send them, since the Council itself had voted to go ahead with the Plan, and the Council itself had long agreed that the pay-as-you-go observer program was flawed. The Council's actions this spring convinced many observers that no one was looking out for, or even concerned with, their situation, despite frequent lip-service to the contrary.

The pool of observers will increase in size and improve in quality when the position they fill warrants their dedication. The Plan provides the best chance to address observer concerns about salaries, working conditions, and insurance. The best way to address concerns about the observer pool is to move forward with the Plan.

E. Loss of control. Much of industry's reluctance to move forward with the Plan seems to stem from a distrust of NMFS's ability to run the program fairly. Given their current direct relationship with contractors, fishing companies know who to call when they are unhappy with an observer. Some companies have abused this relationship, requesting that observers be replaced for reasons that are questionable at best. Nevertheless, industry needs to have a way to deal with unacceptable situations--with incompetent observers or contractors. The following steps should be taken to address industry's concerns:

1. The Plan should establish a simple appeals process that allows industry to turn to NMFS to request replacement of an observer or assignment to another contractor, and that allows contractors to request that a given vessel be assigned to another contractor. NMFS will be responsible for determining if the request is justified, or if the problem can be remedied in some other fashion.

11. The Plan should require contractors to solicit evaluations of observers from the skippers of the vessels they work on; contractors will also be responsible for providing NMFS with copies of these evaluations. Most of these evaluations will be positive or neutral; some will be negative. Allegations into observer incompetence will sometimes prove well-founded, and retraining or decertification will result. At other times, such allegations may reveal a misunderstanding on the part of a skipper as to what an observer's duties really are, and will therefore provide NMFS the opportunity to better educate industry as to observer's actual duties. For instance, some skippers in the past have alleged that an observer is somehow being remiss in her duties because she samples differently than previous observers. Such an allegation provides NMFS the opportunity to point out to the skipper involved that observers are taught various sampling methods and are instructed to use the one they feel will provide the best data in a given situation. There is no one way to sample on a given boat.

F. Supplemental Programs. Opponents to the Plan have voiced concerns about a shortage of funds, saying that the 2% fee may not raise enough money to pay for as much observer coverage as the Council wants. This is a difficult point to argue without knowing the levels of coverage these people have in mind; obviously, the 2% fee will only raise a finite amount of money, and someone can always imagine coverage levels that will cost more than that amount. The first question that needs to be answered is whether these fears are realistic; for instance, if 1995 were not a startup year complicated by the credit system, how much would a 2% fee have raised this year? Would current coverage levels actually exhaust that amount? Have those who contend that the 2% fee limits the Council's ability to properly manage the fishery produced some analysis to demonstrate the basis of their concern?

If the concern about a shortage of funds is realistic, then the Plan could call for raising a reserve of funds that would be available in the event the Council chose to increase observer coverage in response to some future event--to expand VIP programs, for instance. Another option would have the Council commit itself to living within the funding generated by the 2% fee. In the event of a shortfall, the Council would have to divide up available coverage according to biological data and compliance monitoring needs.

### 3. Conclusion

As the Council considers the fate of the Plan, it needs to face the issue of observer morale and its impact on the quality of data available to managers. The Council may not have intended or foreseen it, but its decision to delay the Plan's implementation and to prolong the life of the industry-funded setup the Council itself has long acknowledged is flawed has wounded the observer program where its going to live or die, which is among observers.

As the September meeting approaches, some in industry are already assembling alternatives to the Plan, as if it is already dead. Since it is only early September as this is written, we hope it is safe to assume the Council hasn't yet voted. When the vote comes, the Council should consider that four years have elapsed since the Plan began to take shape. Should the Council decide to embark down the long road of exploring alternatives, it's very possible we'll still be discussing them when we reach the millennium. Rather than set the observer program adrift for another four years, we feel the responsible course for the Council to take--the course of action that will best serve the management needs of the fishery--is to approve the Plan and then work to improve it over the next several years.

Thanks for taking the time to consider our point of view.

Sincerely,

ALASKAN OBSERVERS, INC.

  
Michael Lake  
President

cc: North Pacific Fisheries Management Council

Bill Karp  
Observer Program Task Leader, NMFS/AKFSC  
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Seattle, WA 98115-0070

Chris Blackburn  
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# MIDWATER TRAWLERS COOPERATIVE

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## MEMBER VESSELS

September 5, 1995

AJ

AI.YESKA

ARGOSY

HAY ISLANDER

BLUFF FOX

CAPE FALCON

CAPE KIWANDA

CARAVELLE

COHO

EXCALIBUR

EXCALIBUR II

HAZEL LORRAINE

LESLIE LEE

LISA MELINDA

MAJESTY

MARATHON

MISS BERTIE

MISS LEONA

MISS SARAH

MISS SUE

NEW LIFE

PACIFIC

PACIFIC FUTURE

PACIFIC RAM

PEGASUS

PERSEVERANCE

PERSISTENCE

PIONEER

RAVEN

ROSELLA

SFADAWN

SEEKER

VANGUARD

VIKING EXPLORER

Observer Oversight Committee  
North Pacific Fishery Management Council  
P.O. Box 103136  
Anchorage AK 99510

Dear Observer Oversight Committee:

I urge you to consider a private, nonprofit Research Foundation as an alternative to the NMFS-run observer program envisioned by the "Research Plan".

I believe that a Research Foundation will provide a better framework with which to accomplish the four original goals of the Research Plan (agency coordination, cost efficiency, and a framework for both the groundfish and crab observer programs). Over the long term I believe it will provide more flexibility to respond to the changing research needs of the fishing industry.

It is clear that reductions to the Federal budget are coming, and that the industry will probably pay the overhead costs within NMFS and ADF&G to run these observer program. I believe the only way we will see any accountability for either the data, cost, or the administration of these two programs is through a private, nonprofit foundation <sup>which</sup> would run them, rather than a government agency which can, and has, refused to discuss performance.

The Research Foundation is not a new idea—the Council staff and industry devoted quite a bit of time to the concept 10 years ago—but I think it is an idea whose time may finally have come. As I see it, such a foundation would be run by an industry board which would oversee accountability for data, costs, and staff.

I encourage you to consider this concept as you address not only our current problems, but the long term. In response to the July 25 memo, here is how I envision a Research Foundation answering some of the current problems facing us.

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### 1-2. Equalizing and/or Spreading Costs

The Research Foundation idea assumes a pot of money will be collected from industry to provide for observer research and data. This pot of money could come from an across the fleet fee as is being done this year. The money could also come from a system with pay-as-you-go for vessels required to carry observers, and a fee for that portion of the fleet which is not required to carry observers. In the second case the Foundation would receive only the fee money.

### 3. Set Coverage According to Science, Data Review

The Foundation would disburse money to accomplish the research priorities set through the OOC and Council process.

Most people agree that a systematic review of data needs and collection and extrapolation methods should be part of any observer program. In the case of a government run program you get NMFS looking at NMFS and only under duress do they get outside review. Obviously a private industry funded foundation would be under constant scrutiny lest it be an example of the fox guarding the hen house. To prevent that I see the foundation committing itself to systematic peer review of its data collection and extrapolation methods.

### 4. Create Arms Length Relationship Between Contractors and Vessels

As you may know I don't consider this a real problem and I certainly don't think the Research Plan solved it, but if others feel it is a significant issue the Foundation can solve it in two ways. If we maintain a system with private contractors the Foundation would have responsibility for certifying those contractors. A private Foundation would not have the same constraints as NMFS in weeding out bad apple contractors through the certification process. Alternately all observers could be employees of the Foundation.

### 5. Observer Security and Professional Status

My understanding is that in the one instance in which observers were not paid by a contractor, NMFS knew about it for almost six months and did nothing about it. In the end the contractor also owed money to the IRS which, of course, got paid first. This is an example of bad management which could occur under any system including the proposed Research Plan. With the Foundation responsible for contractor certification this problem could be minimized. The Foundation could require contractors to carry bonds, and/or it could quickly and rigorously follow up on any reports of nonpayment without the constraints of a bureaucracy like NMFS.

If increasing the professional status of observers is a concern, the Foundation could establish minimum insurance requirements, salaries, and other benefits for observers either through contractor certification or through contracts without the difficulties inherent under the Federal procurement system.

### 6. Cap the Overall Cost of the Program, Cost Containment

The Foundation concept works with either a total fee program, or a pay-as-



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you-go program for those required to carry observers and a fee for those not required to carry observers. The problem with the Research Plan is that no one wants to give NMFS a blank check without having some assurance that the money will be spent wisely.

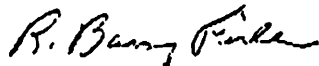
What's the difference with a Foundation? A private Foundation would be subject to both cost and performance audits at any time that the industry felt they were necessary. With the Foundation you have a built in method to require accountability which you will never get with NMFS. In addition, money and/or contracts disbursed by the Foundation would not suffer from the constraints of the Federal procurement process.

#### 7. Deciding When to Take Observers

The Research Plan did not provide an answer to this issue, and it could be a difficult one. I think it is clear, however, that a private Foundation would have far more flexibility to solve this problem than a bureaucracy like NMFS. Let's face it, a private entity can accomplish things a lot easier and faster than the Federal government.

In sum, I think a Research Foundation can provide you more accountability and flexibility than a NMFS run observer program. I urge you to consider it in your thinking. God speed and good luck to you guys.

Cordially,



R. Barry Fisher

c: Richard Lauber, Chairman, PFMC

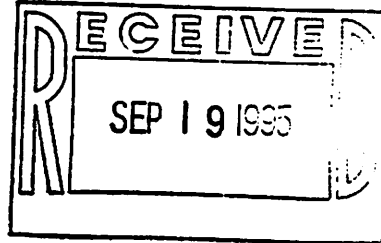


# ALASKA OCEAN SEAFOOD

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-4 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 commend the Council's decision to delay implementation of Phase II of the Observer Program, and to return to a pay-as-you go fee system for 1996. We urge the Council to scrutinize carefully the program that would be implemented under NMFS' 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 when operating in waters within the NPFMC's jurisdiction; when the vessels operate in other waters, we carry observers voluntarily. We believe that the existing observer program has contributed significantly to the health of the groundfish stocks off the Alaskan coast, and that such a program is an essential ingredient of any BSAI pollock ITQ plan. We also 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 were to be fully implemented, NMFS would impose on the ALASKA OCEAN a daily fee in excess of \$ 1,600 for observer coverage.<sup>1</sup> 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,<sup>2</sup> 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

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<sup>1</sup>NMFS 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.

<sup>2</sup> 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

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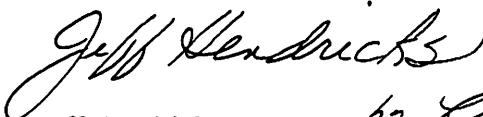
in the industry are bearing the costs of the observer program while presumably all benefit from it. The NMFS program supposedly would correct this by imposing fees on all participants. The discussion at I, above, amply lays to rest any validity to this justification.

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

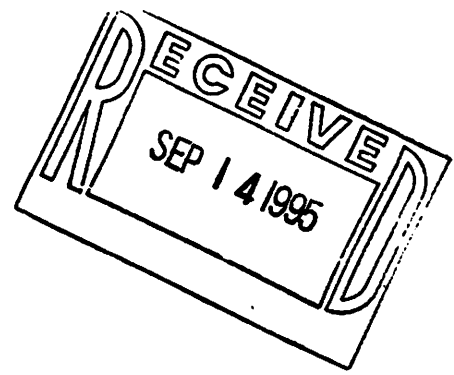
The NMFS program is a classic example of imposition of a cumbersome and expensive bureaucracy in place of an effective and reasonably priced private-sector program. We urge the Council to reconsider the program in its entirety and, at a minimum, to address the issues of exorbitant fees and responsiveness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

Sincerely,

  
Jeff Hendricks  
General Manager

*by [initials]*

NPFMC Member



Dear Council member:

As a professional observer, I will be working during the fishing season which coincides with the September 24 meeting of the North Pacific Fishery Management Council (NPFMC) in Seattle. Were I able to attend, I would provide testimony about my concern for several issues that I feel pose undue hardship on observers.

I am aware that there are still observers who have not been paid for their work with the now bankrupt contractor, Arctic Observers. It is quite unsettling to know the system developed by the NPFMC, which allowed for their non-payment is still in place.

I am also concerned that there is no minimum standard of insurance coverage for observers while we are on assignment. At this time, observers are unable to adequately assess our coverage. This causes an undue amount of confusion and apprehension in evaluating each contract that we sign in order to work.

Also, our work takes place in many environments, some of which are unduly hazardous. I would like to see minimum safety standards developed and enforced for vessels and plants which carry observers.

In addition, the briefing/debriefing process is over burdensome. I would like to see the council research ways by which this process can be streamlined, and to force contractors to pay us a fair wage during that time, before and after deployment.

Lastly, we are significantly under compensated for the work we do. As observers, we provide the fishing industry with accurate data which is indispensable in the management of its stocks. As trained scientists—working away from home and in hazardous conditions—we deserve to be compensated in a manner at least competitive with other skilled industry personnel.

I was counting on seeing some of these issues resolved with the implementation of the Research Plan in 1996. Now that the NPFMC has voted to delay implementation, I am quite concerned that observers will continue to work without the support necessary for a healthy professional environment. I would like to see the Research Plan implemented as soon as possible so that observers can receive the necessary support to continue to provide the data which is the key to successful management of the fisheries of the North Pacific.

Please take the above issues into consideration at the upcoming NPFMC meeting.

Yours Truly,

Colby Rurup  
c/o ADASKAN OBSERVERS  
P.O. Box 1041  
Dutch Harbor, AK 99692

# North Pacific Fishery Management Council

Richard B. Lauber, Chairman  
Clarence G. Pautzke, Executive Director

605 West 4th Avenue  
Anchorage, AK 99501



Mailing Address: P.O. Box 103136  
Anchorage, AK 99510

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## MEMORANDUM

TO: Insurance Technical Committee (ITC)

FROM: Chris Oliver *Chris*  
Deputy Director

DATE: September 19, 1995

SUBJECT: Meeting Summary

First of all, on behalf of the Council and Chairman Jerry Nelson, I would like to thank all of you for your participation in our meeting last week. I know you all have busy schedules and we really appreciate you devoting your time to this issue. This memo is just to recap the gist of our discussions, and to make sure we follow through on that next step.

In essence, the ITC recognized and approved of the NMFS commitment to specify minimum insurance standards in the next RFP process for the Research Plan. Whether we go forward with the Research Plan or not, we also reiterated our firm belief that some type of comprehensive, standardized package is necessary; this is essential to remove the uncertainty for observers as well as to alleviate the current situation whereby contractors are carrying redundant and expensive coverage packages. Our discussions centered primarily on the potential classification of observers, and on trade-offs between packages which give observers (and industry) some type of certainty and those which offer the potential of the 'home-run' benefit.

The USLH alternative was generally found to be the most likely candidate for overall resolution of the issue, though this approach would require legislation making observers eligible for this coverage. The FECA alternative is not likely a possibility since observers are not federal employees. The Workman's Comp package is still a viable alternative, though the ITC, and in particular representatives of observer interests, were still unsure which would provide the best overall solution. It was agreed that more information would be compiled and presented to the new observer association (APO) and the ITC before a final recommendation is made. Craig Nodtvedt and Michael Barcott agreed to provide a more detailed comparison of the costs and benefits of the primary packages under consideration and to forward that to me for distribution to the APO and ITC. A follow-up meeting to formulate final recommendations will be organized later this year.

Again, thank you for your help on this issue.





UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 National Marine Fisheries Service  
 P.O. Box 21668  
 Juneau, Alaska 99802-1668

C-4

AGENDA C-4(a)  
 SEPTEMBER 1995  
 Attachment

September 21, 1995

NORTH PACIFIC FISHERIES RESEARCH PLAN FEE COLLECTION SYSTEM

Status Report on Fee Assessment Billings

Three Research Plan fee assessment bills have been issued. A brief summary of financial activity as of September 19, 1995, follows. Attachments provide more detail for each fishery.

A. FINANCIAL SUMMARY

<u>BILL PERIOD</u>	<u>#BILLS</u>	<u>TOTAL \$ BILLED</u>	<u>TOTAL \$ UNPAID (%)</u>
1	161	4,010,986	115,498 (2.9%)
2	248	2,590,871	96,432 (3.7%)
3	337	1,009,071	215,509 (21.4%)*

\*3rd period bill payments were due August 30, 1995

TOTAL BILLED	7,610,928	
PAYMENTS RECEIVED	4,906,609	(64.5%)
OBSERVER CREDITS	2,099,738	(27.6%)
DISPUTE DECISIONS	177,143	( 2.3%)
UNPAID BALANCE	427,438	( 5.6%)

B. FEDERAL PROCESSOR PERMITS: Semi-annual processor permits are required to receive or process fish from Research Plan fisheries. Permits are issued free of charge but will not be issued unless all outstanding Research Plan fees have been paid. 456 permits were issued for the January-June 1995 period and 343 were issued for the July-December 1995 period. 48 of the July-December permits were delayed because processors hadn't paid their fees.

C. RELATIONSHIP BETWEEN OBSERVER COVERAGE COSTS AND A PROCESSOR'S FEE ASSESSMENT

Observer Costs vs. Exvessel Value The Research Plan fee assessment is calculated by multiplying exvessel value (fish weight x standard exvessel price) by an annually determined fee percentage. Billing data was used to compare a processor's fee assessment (i.e. their "observer costs" under the Research Plan) with their observer costs under a "pay-as-you-go" system (i.e.



their 1995 observer cost credits). This relationship is graphically represented by plotting a processor's observer cost credits as a percent of exvessel value vs. exvessel value (see Figures 1-4). For all processors, the overall trend is an inverse relationship between a processor's exvessel value and their "pay-as-you-go" observer costs; as the exvessel value increases, the relative "pay-as-you-go" observer costs decrease.

The following table illustrates, by processor type, the percent of billed processors whose observer coverage credits exceeded the processor's portion of their billed fee assessment (see Figures 5-8 also). In other words, their "pay-as-you-go" observer costs were greater than their Research Plan fee. The processor's portion for catcher/processors is 2%, for shoreside, mothership and floating processors, 1%.

<u>Type of Processor</u>	<u>% Exceeding Billed Fee Assessment</u>
groundfish/halibut catcher/processors	50%
groundfish/halibut shoreside and mothership	35%
crab catcher/processors	17%
crab floating processors	0%

Impact on Processors without Observer Coverage Requirements

Under the Research Plan, processors not required to have observer coverage will contribute to the fishery's observer costs via their fee assessments. Currently, crab shoreside processors, halibut-only processors, groundfish catcher/processors less than 60 ft., and groundfish shoreside and mothership processors processing less than 500 mt. are not required to have observer coverage.

<u>Type of Processor</u>	<u>Number of Proc.</u>	<u>Average Billed Fee</u>	<u>Average Exvessel Value</u>
gf/hal c/p & catcher/sellers	14	\$ 1879	\$ 93,956
gf/hal ss & ms	41	\$ 8,767	\$ 876,661
crab ss & ms	18	\$36,970	\$3,697,043
halibut only	113	\$ 580	\$ 58,025

Cumulatively, these processors accounted for 15% (\$1,116,775) of the total billed fee amount to date (\$7,610,928).

North Pacific Fisheries Research Plan Fee Assessment  
 Financial Summary Worksheet  
 YTD as of 09/15/95

Dollar Amount Billed	\$ 3,939,120.66
	Groundfish
Payments Received	\$ 1,910,717.88
Applied Observer Credit	\$ 1,757,896.07
Disputes Decided	\$ 71,892.63
Total Unpaid Balance	\$ 198,614.08

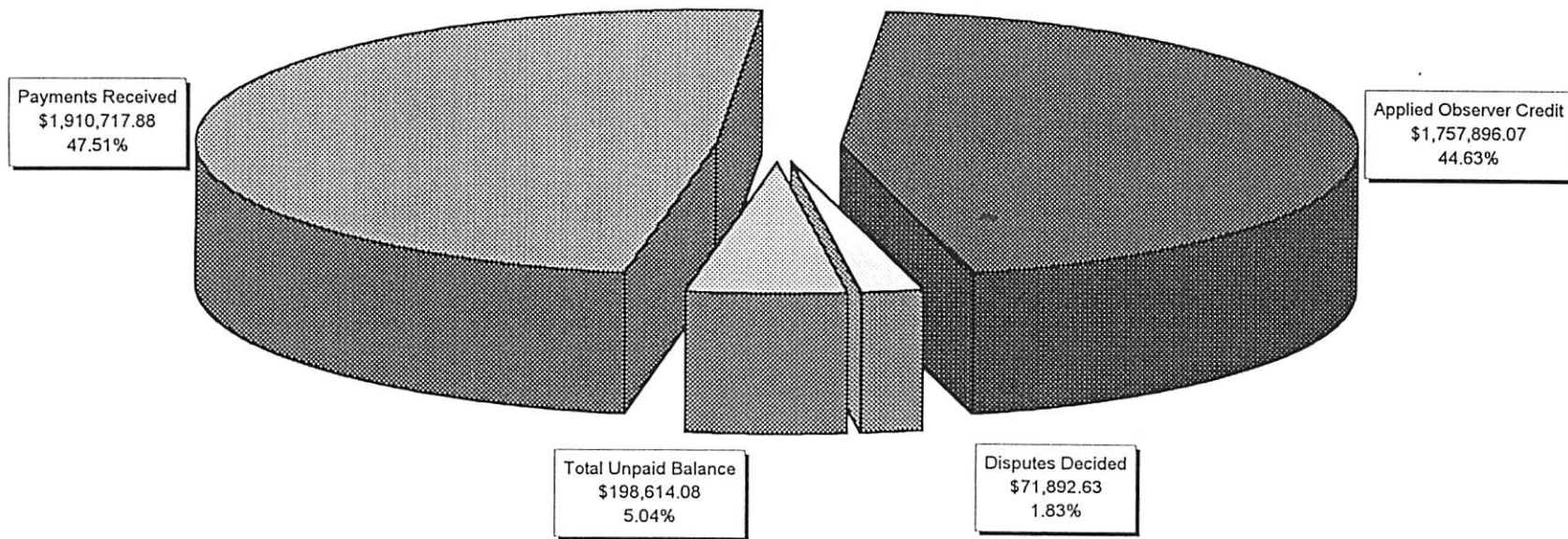
Dollar Amount Billed	\$ 3,154,165.57
	Crab
Payments Received	\$ 2,588,508.38
Applied Observer Credit	\$ 341,842.27
Disputes Decided	\$ 103,965.45
Total Unpaid Balance	\$ 119,849.47

Dollar Amount Billed	\$ 517,642.13
	Halibut
Payments Received	\$ 407,382.69
Applied Observer Credit	\$ -
Disputes Decided	\$ 1,285.11
Total Unpaid Balance	\$ 108,974.33

Dollar Amount Billed	\$ 7,610,928.36
	Totals
Payments Received	\$ 4,906,608.95
Applied Observer Credit	\$ 2,099,738.34
Disputes Decided	\$ 177,143.19
Total Unpaid Balance	\$ 427,437.88

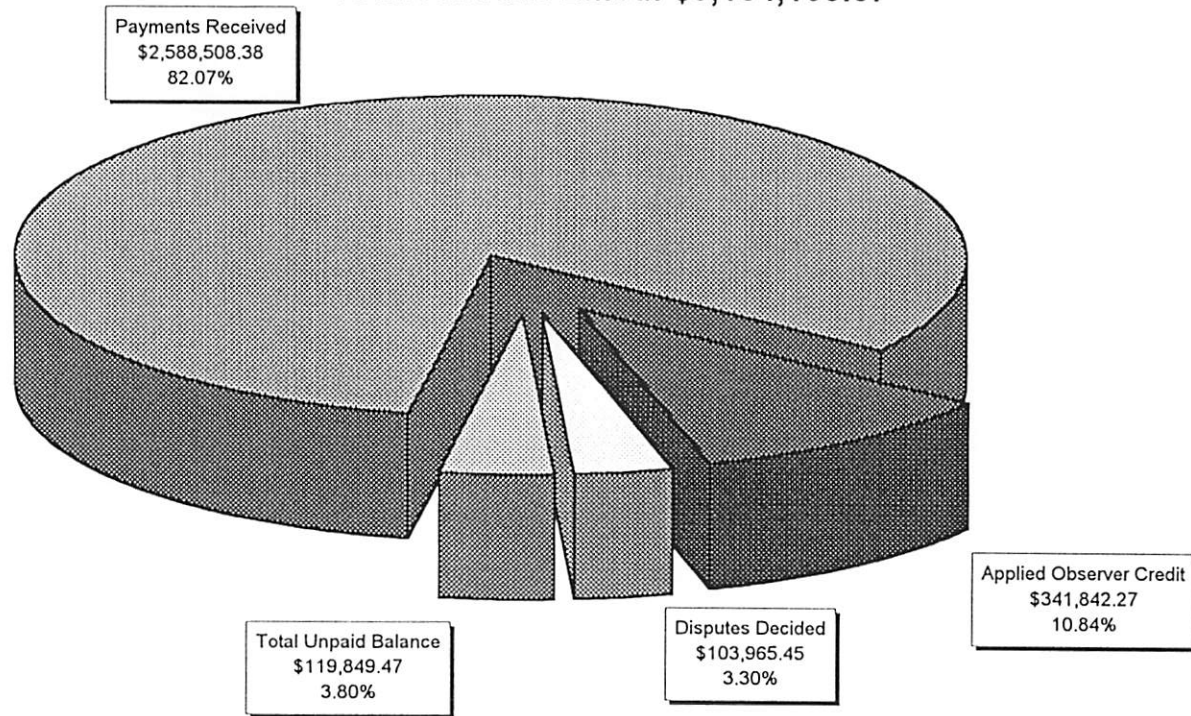
North Pacific Fisheries Research Plan  
YTD  
Groundfish Processors  
09/15/95

Total Billed: \$3,939,120.66



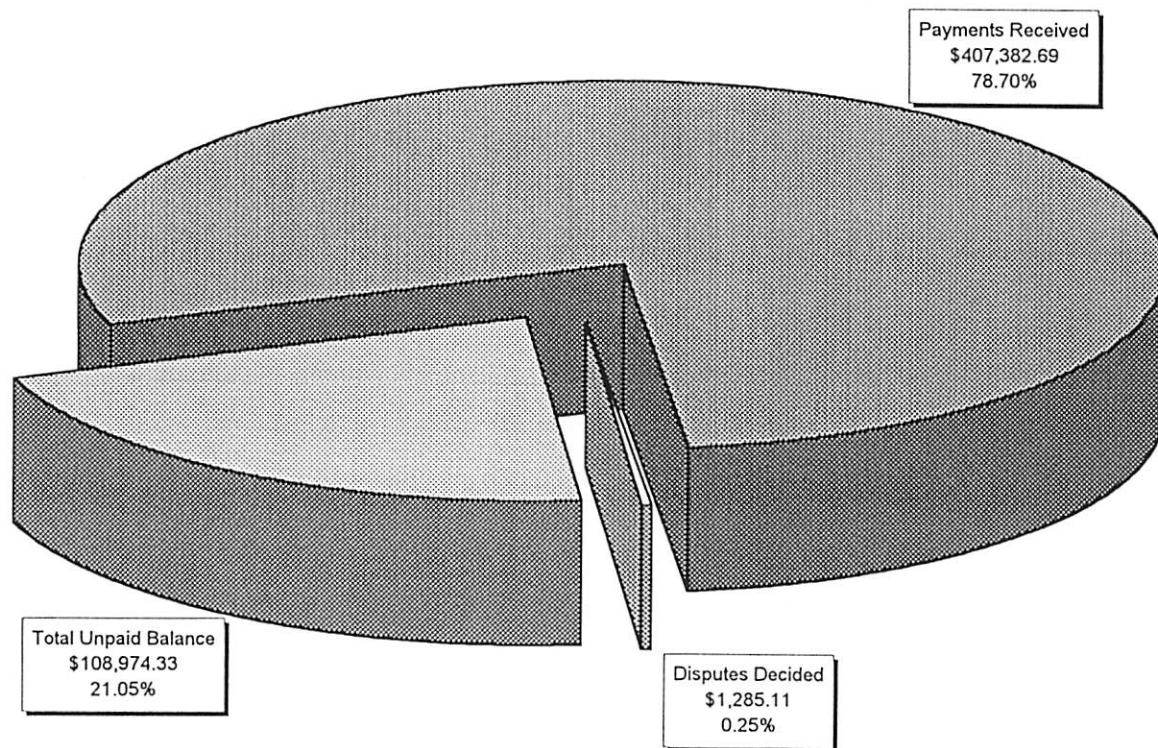
North Pacific Fisheries Research Plan  
YTD  
Crab Processors  
09/15/95

Total Amount Billed: \$3,154,165.57



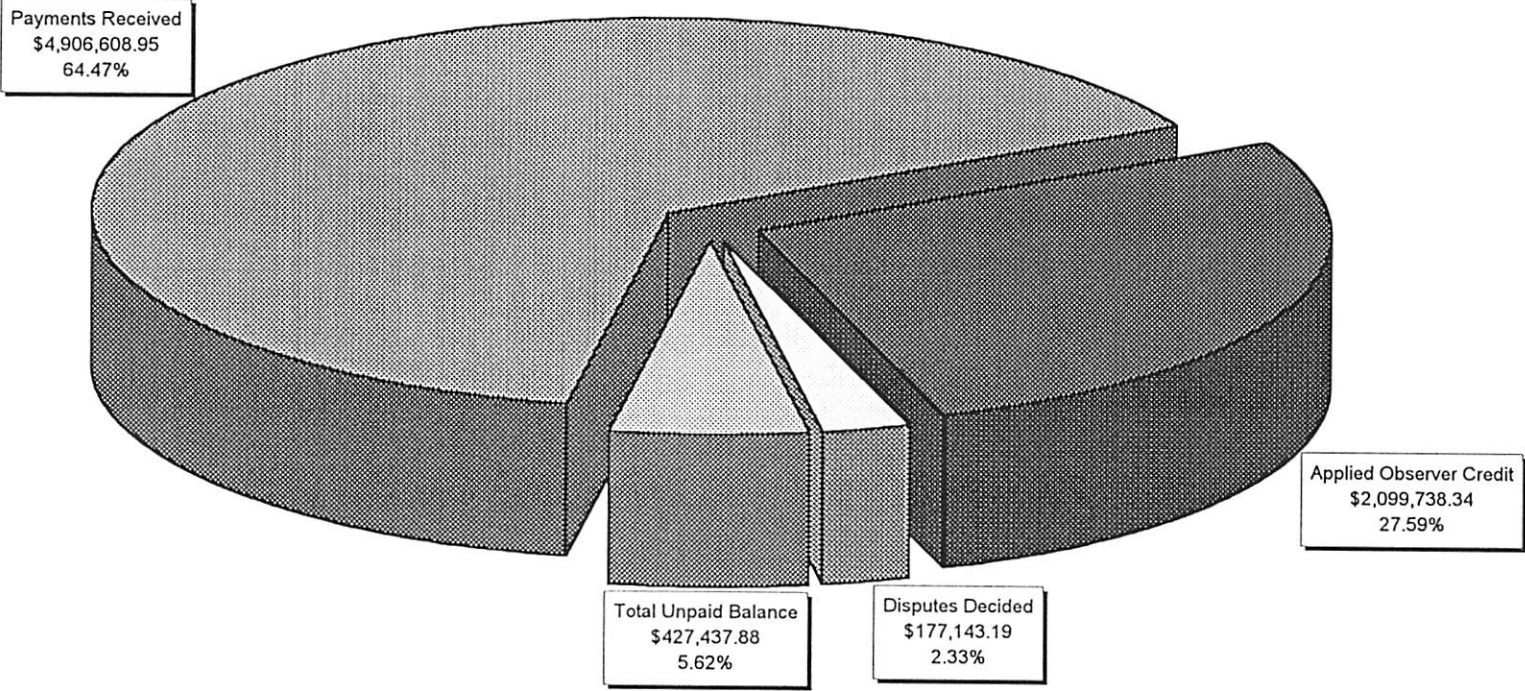
North Pacific Fisheries Research Plan  
YTD  
Halibut Processors  
09/15/95

Total Amount Billed: \$517,642.13



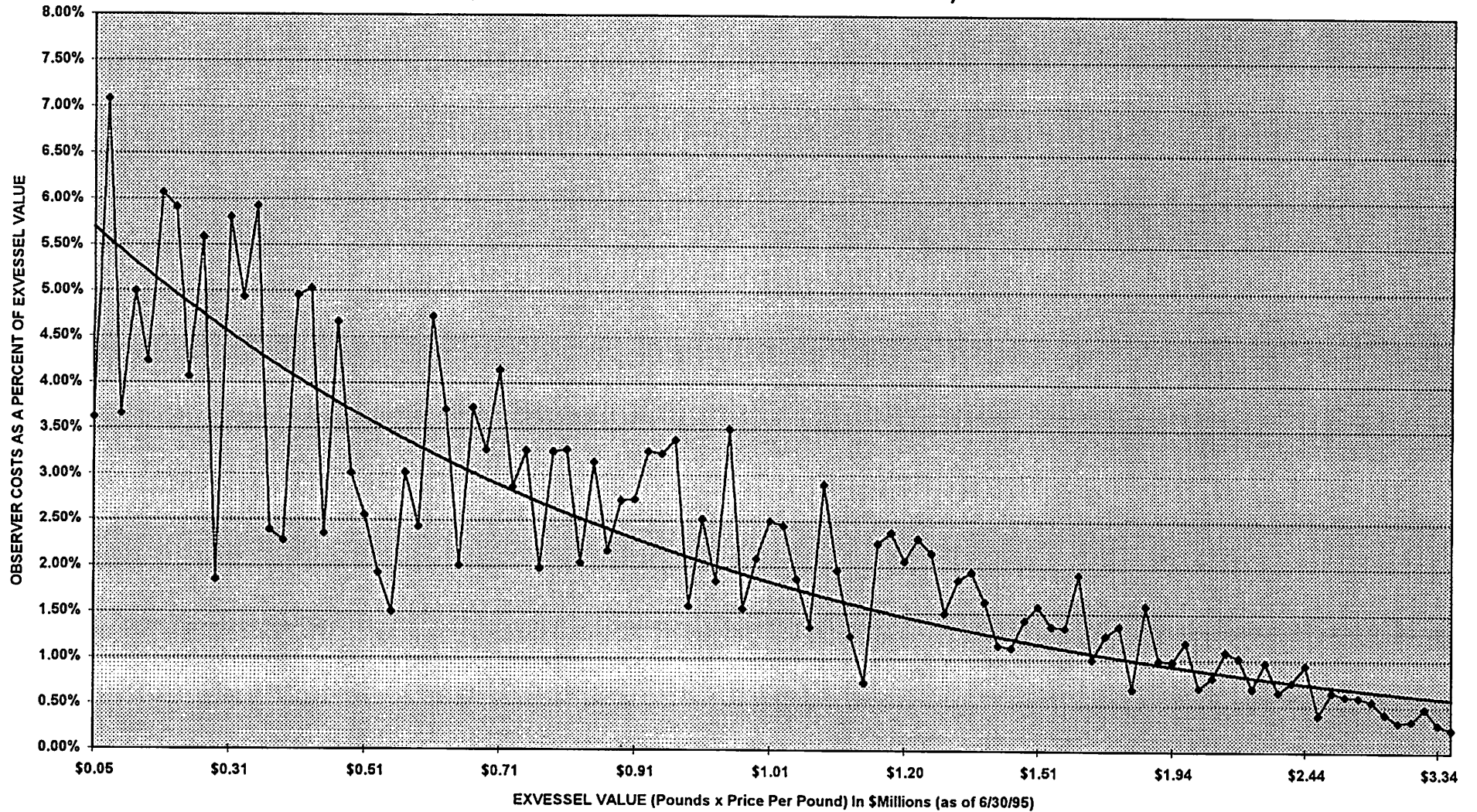
North Pacific Fisheries Research Plan  
YTD  
Combined Totals  
09/15/95

Total Amount Billed: \$7,610,928.36



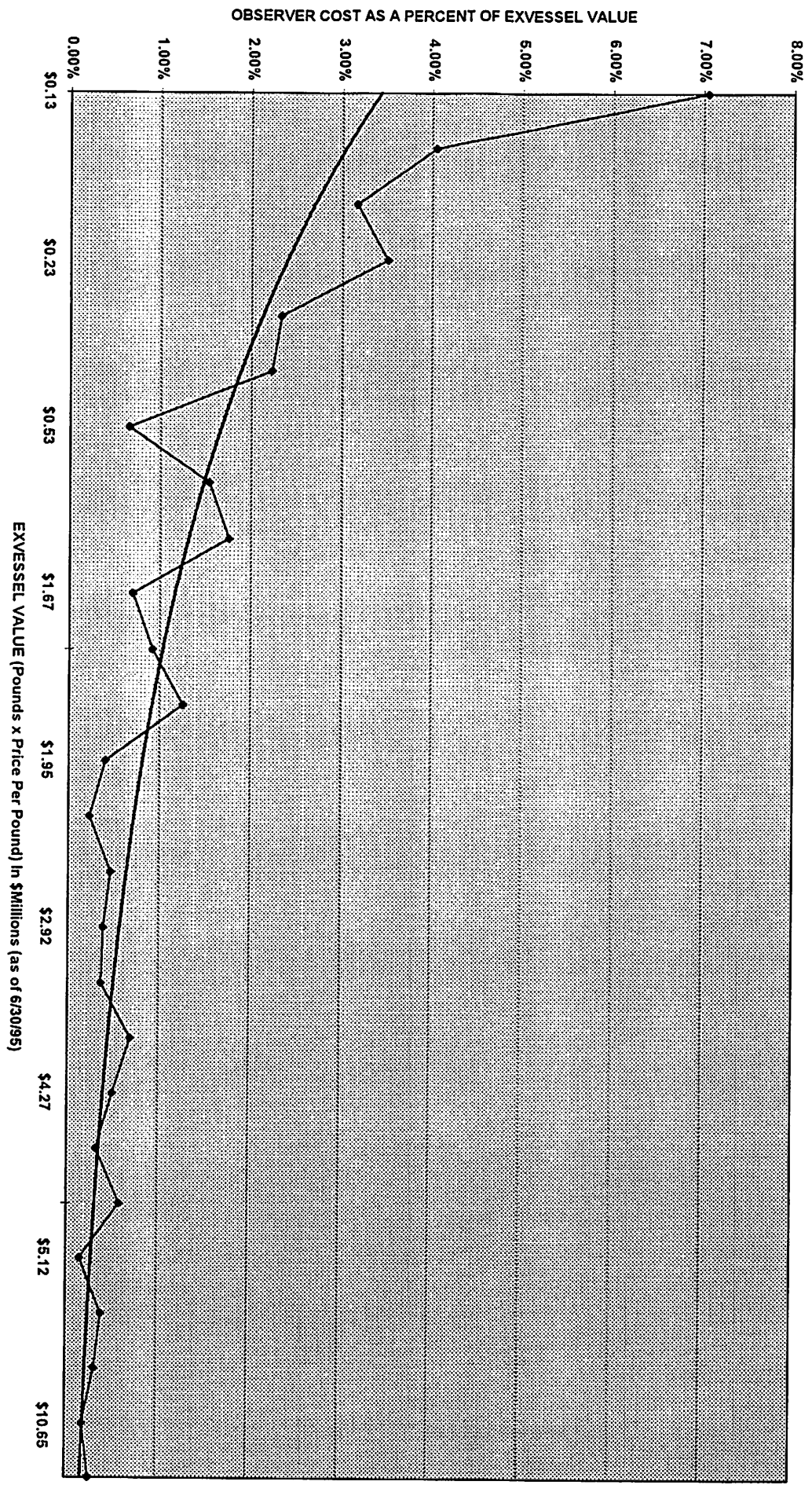


**"PAY-AS-YOU-GO" OBSERVER COSTS  
COMPARED TO PROCESSOR'S EXVESSEL VALUE  
(Groundfish - Halibut Catcher/Processors) 9/15/95**

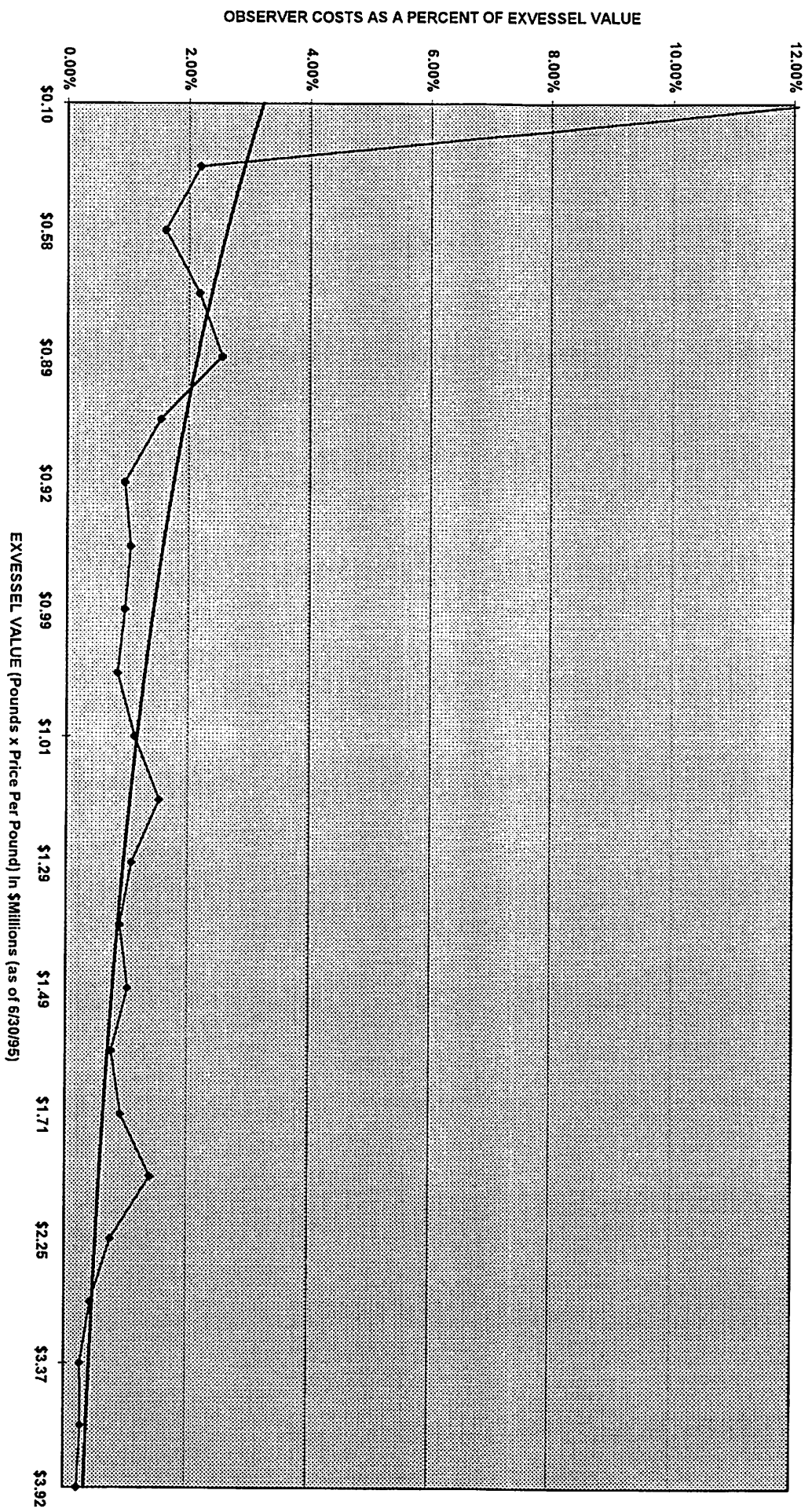




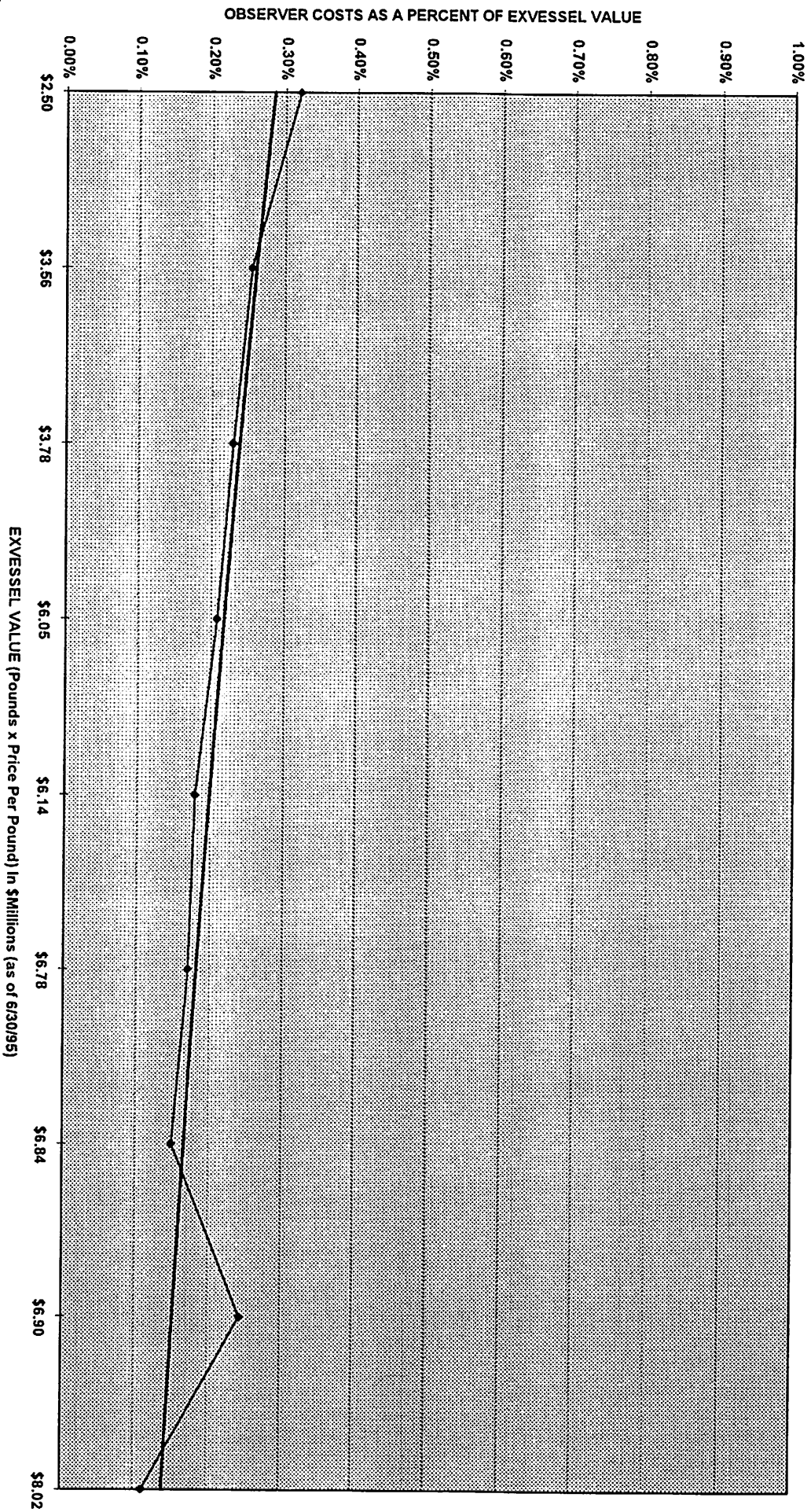
**"PAY-AS-YOU-GO" OBSERVER COSTS  
 COMPARED TO PROCESSOR'S EXVESSEL VALUE  
 (Groundfish - Halibut Shoreside/Mothership Processors) 9/15/95**



**"PAY-AS-YOU-GO" OBSERVER COSTS  
 COMPARED TO PROCESSOR'S EXVESSEL VALUE  
 (Crab Catcher/Processors) 9/15/95**

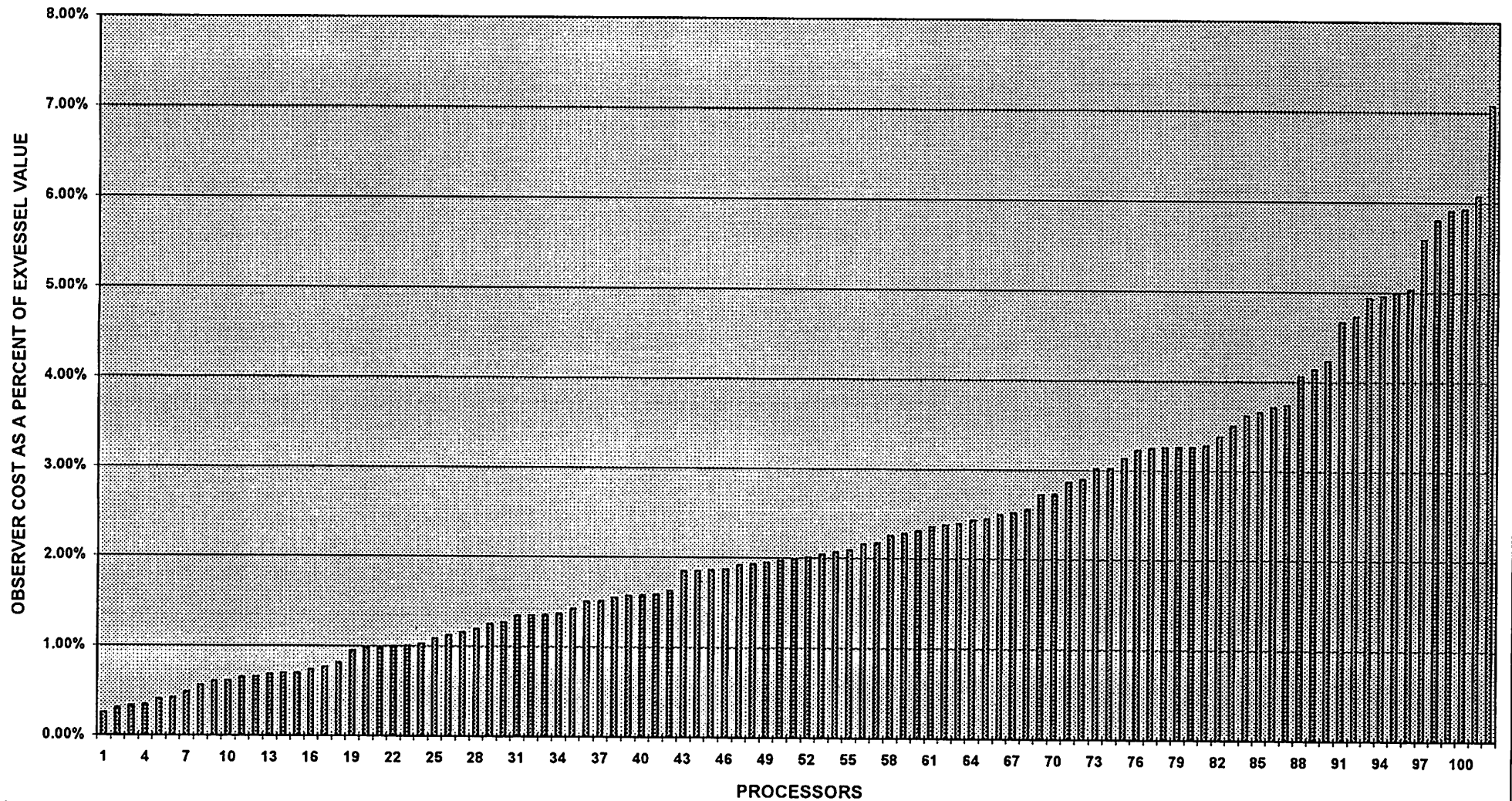


**"PAY-AS-YOU-GO" OBSERVER COSTS  
 COMPARED TO PROCESSOR'S EXVESSEL VALUE  
 (Crab Floating Processors) 9/15/95**

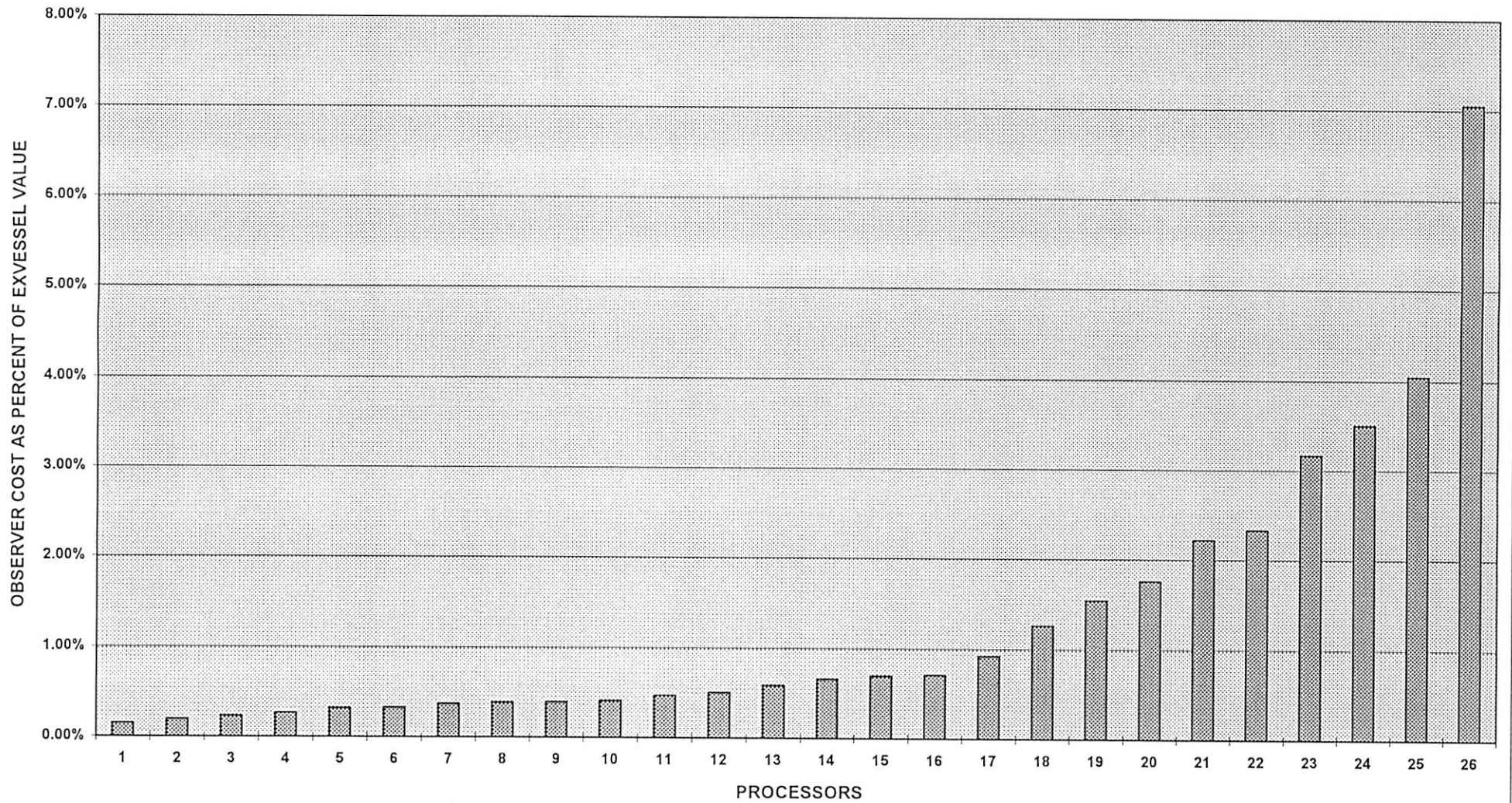




**OBSERVER COST AS A PERCENT OF EXVESSEL VALUE**  
**(Groundfish - Halibut Catcher/Processors) 9/15/95**

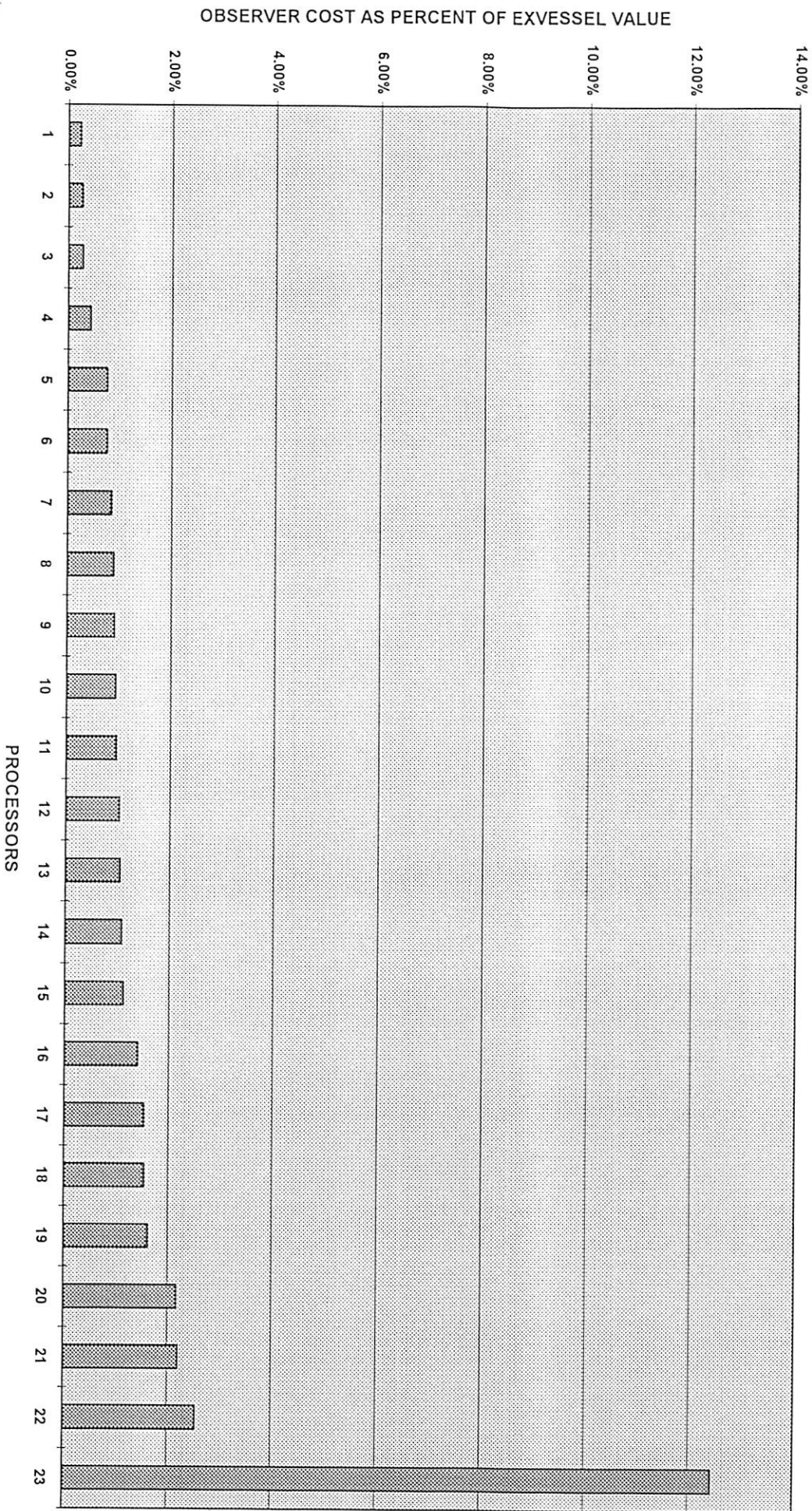


OBSERVER COST AS PERCENT OF EXVESSEL VALUE  
(Groundfish - Halibut Shoreside/Mothership Processors) 9/15/95

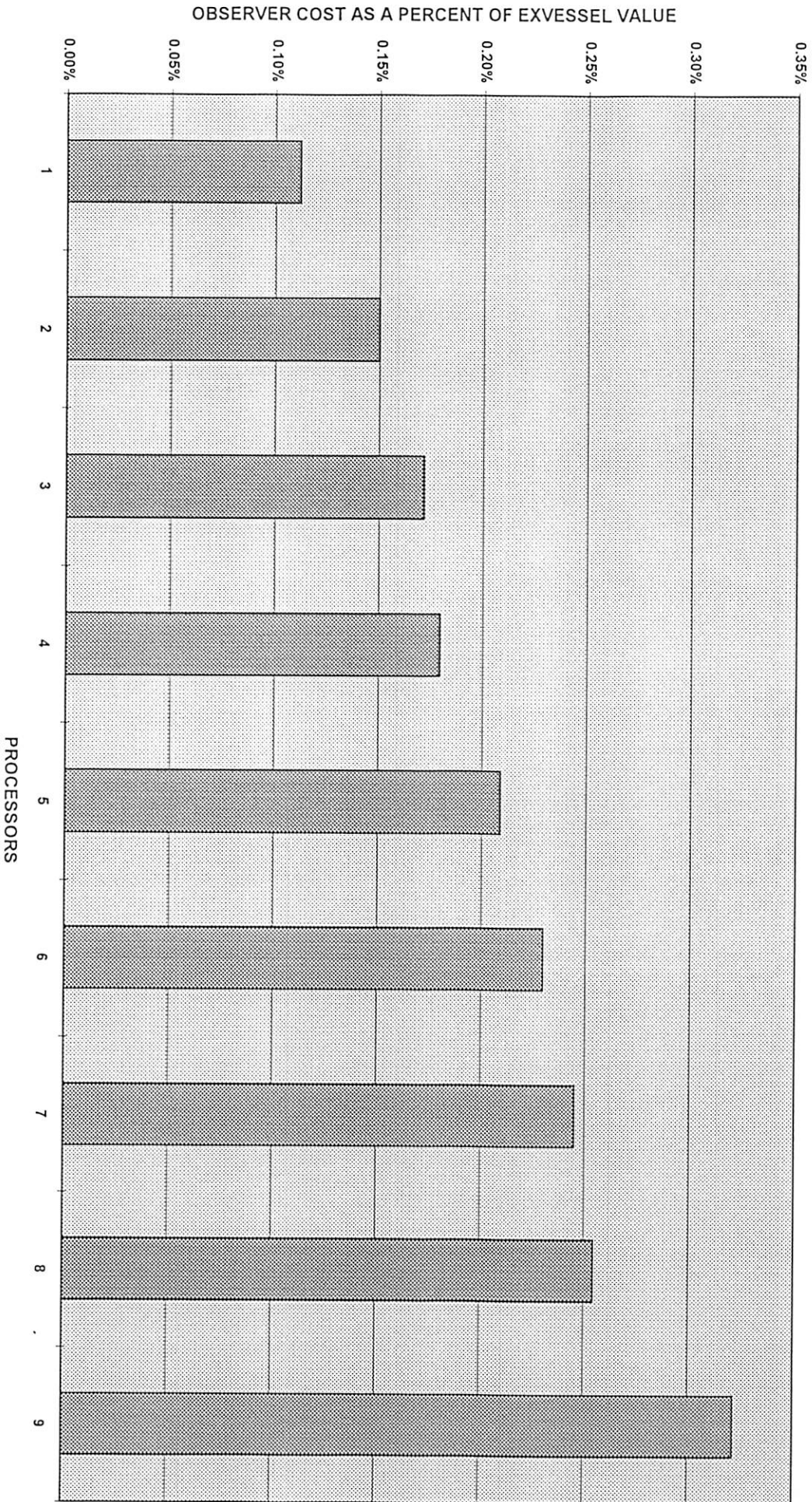




OBSERVER COST AS PERCENT OF EXVESSEL VALUE  
(Crab Catcher/Processors) 9/15/95



OBSERVER COST AS A PERCENT OF EXVESSEL VALUE  
(Crab Floating Processors) 9/15/95



**Data  
Contractors  
Incorporated**

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C-4

September 29, 1995

To: Mr. Richard B. Lauber  
Chairman, North Pacific Fishery  
Management Council  
PO Box 103136  
Anchorage, Alaska 99510

Dear Mr. Chairman and Members of the Council:

I came to the council meetings to voice support for improvements to the current Observer system as well as ask the council to pursue improvements to the proposed Research Plan

There are three issues that need serious consideration and we would like to encourage you to investigate other alternatives to both the Research Plan and the current system.

The first issue is observer insurance. We have always supported a set minimum of observer insurance coverage. Minimums must be set for what types of and how much insurance needs to be provided by the contractor. This way our observers are being properly covered.

The second issue that I would like to raise is that of the three contractor issue under the proposed Research Plan. We have been opposed to this from the beginning. A minimum of three contractors is acceptable, however if more contractors are qualified then they should be allowed. This plan of three observer contractors, seems to me to go against the attitude in Washington DC at the moment. While government is down-sizing and giving America back to small business, this plan wants to create more government. At the present time, there is enough business out there that five companies are able to stay in business and do it cheaper than the Research Plan could do it. For this reason we would like to look at other options and alternatives.

The third issue is the payment for observer services. There needs to be a system in place to insure that payment for observer services rendered is received. Currently there are vessels that are out there fishing, with observers aboard who are not current on their bills and haven't been for the last 6 months. Payment of observer services must be secured.

There is some discussion on alternative plans to the Research Plan. One such option that bears further investigation and consideration is a plan which would be operated by a third party Non-



Profit Foundation (NPF) similar to that which the Pacific States Marine Fisheries Commission has suggested. This could be set-up either as a Pay-as-you-go system similar to that which we have now or as a user-fee system similar to that proposed by the Research Plan.

A program set-up under as a NPF would:

- Create the arms-length relationship that is desired and better guarantee payment of observer services.
- Specify insurance minimums and salary standard for observers creating incentives for the retention of qualified observers. This would lead to the increase in data integrity and quality.
- Would allow greater contractual flexibility than the Federal Procurement Process gives. This would allow for the probability of more than three contractors.

Would delete the possible duplication of costs (i.e. observer training, deployment costs, data collection, and contract and administration costs attributed to both ADF&G and NMFS' implementation of the Research Plan.

- Could streamline the observer program by being a "clearing house" of sorts for observers. A vessel needing an observer would only have to call one place to get their observer.

The other point of contention that is out there is who is going to pay for this program and how much. A program set-up under a NPF could be set-up as a combination of the user-fee and the pay-as-you-go system. For example, all vessels that fish would be assessed a .5% ex-vessel tax to pay for the observer program. Those vessels requiring observers would pay-as-you-go up to as 2% ex-vessel cap.

I think this would work for a couple of reason. One, it would allow NMFS to have more flexibility to place observers on-board vessels than they have now-one of the things the Research Plan hopes to do. It would standardize the fee for observer services. There are smaller catcher vessels now that are paying upwards to 5 or 6% of their ex-vessel value per year for observers compared to the less than 1% that some of the larger vessels currently pay. All vessels would pay for observer services as they go until it reached a 2% cap. If the 2% cap was not reached then they only pay as they go. A system similar to the one in place for fee collection now could be used.

Whatever the system used, I would like to reiterate that observer insurance minimums need to be set, observer contractors are not limited to three, and that a system for the guarantee of payment be put into place.

Thank You.

Eric Cox  
Operations Manager



C-4

*North Pacific Fisheries Association. Inc.*

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HEADQUARTERS:  
BOX 796 • HOMER, ALASKA 99603

October 1, 1995

Mr. Richard Lauber, Chairman  
North Pacific Fisheries Management Council  
Post Office Box 103136  
Anchorage, Alaska 99510

Dear Chairman Lauber:

We, the members of the North Pacific Fisheries Association, urge you to support a strong and flexible observer program. The best way to accomplish this is through the Research Program, now before the council.

This program deserves your approval because it assesses fees which will provide a stable financial foundation for an effective and professional observer corps.

As small to mid-size boat operators, we are well aware of the need to deploy observers throughout the various fleets, fishing in Alaskan waters. Small and mid-size boat operators are direct beneficiaries of the observer program and therefore should share the cost.

We, in the Homer fleet, welcome the information that observers could collect from our fisheries and urge you to pass the Research Plan.

Mako Haggerty, U.S.C.G Licensed Capt.

N.P.F.A. President

C-4

# Alaska Fisheries Conservation Group

Bering Sea and Aleutian Islands Crab Vessel Owners  
from Washington, Oregon and Alaska

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P.O. Box 910 Woodinville, WA 98072

(206) 488-7708 Fax (206) 823-3964

**To:** Members of the North Pacific Council  
**From:** Tom Casey and Gary Painter  
**Date:** 29 September 95  
**Re:** CDQ's in the BSAI Crab Fisheries

Yesterday we read to you two excerpts from the Alaska Native Claims Settlement Act (ANCSA) that clearly state that native claims to inshore and offshore fisheries in Alaska have been extinguished by the Alaska native people's acceptance of \$960-million and 44-million acres of land in 1971.

This opinion was also expressed by U. S. Federal District Court Judge Russell Holland in Anchorage last August when he upheld the State of Alaska's claim that there can be no "Indian land" left in Alaska because ANCSA paid all native claims in full twenty years ago.

This makes us think that all of us may have made incorrect assumptions about the legality of CDQ's at the June Council meeting.

Therefore, we request that the Council's Chairman and Executive Director give adequate legal notice to the public that the Council, at its December meeting, may vote to reconsider one of the terms of its License Limitation program by removing the CDQ-allocation from the BSAI crab fisheries because CDQ's are not justifiable under ANCSA.

Who submitted?  
C-4

## How Might An Alternative To The Research Plan Work?

### 1. Observer coverage requirements would be determined by science.

The specification process detailed under the Research Plan would be frameworked into an FMP. In a nutshell, scientists would present recommended observer coverage levels to the Observer Oversight Committee, the Advisory Panel, the Scientific and Statistical Committee, and the public, and the Council would make a final recommendation to the Secretary. The Regional Director would have the authority to make inseason adjustments.

This means that coverage would be required where we need the data most, and that we would not be in the current straight jacket of the 100%, 30%, or 0% system.

### 2. Coverage requirements would be on a vessel or a fleetwide basis, and vessel owners would be responsible for obtaining coverage.

Many would like to see coverage requirements on a fleetwide basis, but so far the legal structure to do that doesn't exist under either the Research Plan or an alternative system. The Umbrella organization envisioned under this alternative will have greater contractual and operational flexibility to accomplish this goal when the legal or regulatory structure makes it possible.

### 3. Vessel owners would pay for their observers. The Umbrella would pay and certify observer contractors, who would pay and employ the observers. This could be done through either a pay-as-you-go or a fee system.

The Umbrella would receive its money from vessel owners under a pay-as-you-go system or from NMFS under the fee system of the Research Plan. This would allow vessel owners to go to one place to get any kind of observer - crab, groundfish, supplemental, or other. It would allow the Umbrella to provide oversight and enforce standards for observer contractors, and it would eliminate the perception of a conflict of interest which exists under the current pay-as-you-go system. In addition, the Umbrella would have more flexibility than the federal procurement system to respond to changes and improvements to the programs. The Umbrella could ensure through its contractual arrangements a professional working environment for observers. This could include standards for insurance, observer pay, and protocols for unsafe vessels, which may not be possible under a federal system.

The Pacific States Marine Fisheries Commission and a private, nonprofit Research Foundation have been discussed as possible Umbrella organizations. Under the Research Plan the Secretary of Commerce could contract with the Umbrella to administer the Research Plan monies.

4. The Umbrella organization could become responsible for observer training, briefing, observer tracking, and debriefing.

One of the Council's original goals for the Research Plan was to ensure coordination between the groundfish and crab observer programs. The Council asked NMFS and ADF&G to develop "consistent, cost effective, and compatible training and debriefing procedures", to develop a single real-time data base available to both agencies, and to consider the use of public or private contractors to perform some or all of these duties.

NMFS and ADF&G would still be in charge of managing the data, but an Umbrella could improve coordination and cost effectiveness between observer programs by carrying out the training and debriefing functions. For example, observers have complained loudly about having to wait to debrief in the current groundfish program. Vessel owners are concerned about advance notice requirements and the flexibility of NMFS to schedule trainings and briefings. Because the Umbrella would not be subject to the constraints of federal hiring freezes, budget cuts, or the federal procurement system it would be able to respond more effectively to the ever changing and start/stop nature of the fisheries.

Why Is This A Good Idea?

1. This is the only system that allows us to get to one observer program.

Under the Research Plan we will have at least four different observer programs: 1) groundfish 2) crab 3) "supplemental" observers, and 4) "others" like hair crab in the Gulf of Alaska, scallops, and any experimental fisheries. Without a change to the Magnuson Act these programs will be administered differently. Crab and groundfish will be under the fee system of the Research Plan, and "supplemental" and "other" observers would be under a pay-as-you-go system where vessel owners would pay individual contractors.

One observer program would streamline administrative and operational costs, create a far better world for observers and industry, and, most importantly, move us toward one data base so we can use all of the information being collected. Having all of the programs administered the same way, by the same

- 1 Training Support
- 2 Fishery Program
- 3 one world



Umbrella will allow an observer to be an observer, and allow vessel owners to go to one place to get their observers.

2. This system frees us of the constraints and inefficiencies of the federal procurement process.

Under the Research Plan NMFS will issue an RFP in 1996 for the program to start in January, 1997. NMFS will sign contracts with three contractors which will include options probably out to the year 2002. The difficulty of standardizing observer insurance is one indication of how flexible this process will be.

The Umbrella organization would be a private, nonprofit organization free to make the contractual arrangements of any private business. This will allow more flexibility and cost effectiveness in the contracting process. It would also allow a more proactive stance in responding to legitimate concerns about the programs like providing a professional environment for observers.

3. The Umbrella could ensure accountability for data, operations, and costs.

The Council would simply require that the Umbrella receive regular audits of its functions. This could include performance audits of contracting costs and procedures, observer training and debriefing, and financial audits of costs. Concerns about handing the government a blank check or the difficulty of requiring accountability of a government agency would be minimized since the Umbrella's role would exist at the blessing of the Council.



**KODIAK  
VESSEL  
OWNERS'  
ASSOCIATION**



326 Center Avenue, Suite 202  
P.O. Box 135  
(907) 486-3781  
Fax (907) 486-2470

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HALIBUT • SABLEFISH • PACIFIC COD • CRAB

AGENDA C-~~2~~  
SEPTEMBER 1995  
SUPPLEMENTAL

**DATE:** September 11, 1995  
**TO:** Observer Oversight Committee  
**FROM:** Lisa Polito, Assistant Director  
**RE:** Research Plan

The delay of implementation of the Research Plan has allowed a more careful review the plan's goals, elements, and ramifications. The members of the KVOA have identified the following as their most immediate concerns regarding implementation of the Research Plan.

#### **Fee Assessment**

The method of calculating 'standard ex-vessel prices' (12-month prior data) could result in a detrimental impact on fishermen as prices can fluctuate radically, particularly from year to year. We strongly feel that any fees collected must be assessed on real ex-vessel prices in order to protect industry participants from excessive assessment. Many vessel owners have noted that fees being collected under the Research Plan are far higher than costs incurred by contracting an observer. In light of this cost differential most do not see the benefit in attempting to spread the costs over the entire industry. Essentially, the attempt to make cost sharing equitable is not perceived as cost effective.

Subsequently, the concern that using current ex-vessel price would not allow NMFS to estimate revenues in advance is not viewed by our members as a problem. Rather it would force the Research Plan to function within budgetary constraints similar to those currently imposed on harvesters, processors and observer contractors alike.

#### **Observer Management and Availability**

We have great concerns about placing observer management and scheduling responsibilities with NMFS for a variety of reasons. Although this is an attempt to both buffer the contractor/ vessel operator relationship as well as prohibit 30% vessels from potentially biasing data, the increased administrative costs associated with the implementation of this type system seem to outweigh the perceived benefits. Additionally we foresee decreased efficiency in coordination of observer deployment and observer availability, no incentives to achieve efficiency in these areas, lack of accountability for inefficiency.

However, under the existing pay-as-you-go Observer Program, there is the ever present incentive of competition to keep each contracting company accountable for efficient business practices. Also, for vessels requiring less than 100% coverage there is the individual and immediate incentive to keep costs contained and use observer days efficiently. We anticipate the removal of these types of incentives to increase cost and decrease the overall effectiveness of the Observer Program

### **RFP Process**

The procurement process will potentially eliminate two of the three existing observer contractors. This will remove the remaining contractors from the existing competitive business environment and any incentive to maintain a professional corps of observers or efficiency in business will be lost. Under the Research Plan, the pool of available contractors can only continue to decrease in the future. We do not believe it will be in the best interest of the resource or the industry to institutionalize a select few observer contractors.

### **Creating an Arms-length Relationship**

The Research Plan will not create an "arms-length" relationship between contractors and vessels, rather the contractor/vessel relationship will be like an arranged marriage with vessels and processors assigned to each contractor. It seems that the need for distancing in relationships lies more in the observer/vessel operator relationship than with the contractor/vessel operator relationship. In order to create the desired arms-length relationship, it would seem more appropriate to monitor individual observers and limit the number of trips and/or the number of days on board a particular vessel. Only by limiting the interaction of a single observer with a particular crew/vessel operator can a distanced, objective relationship be achieved and maintained.

### **Observer Security**

We do not consider the responsibility for observers' financial security to be a burden assumed by industry across the board. The ability to provide a sense financial security to an employed observer should be the obligation of the observer contractor as an employer. The threat that unless observers are paid through the Research Plan, the number and quality of observers could decline in the future is unfounded. As employers the observer contractors need to be liable for attracting high quality long-term employees. This is yet another example of why competition between observer contractors is imperative.

### **Summary**

Perhaps the common problematic theme that overshadows the Research Plan is accountability. Some of the problems the Research Plan was intended to address seem to be issues of accountability. However rather than reviewing instances where the contractor, vessel operator, observer or government agency should be held more



responsible for their actions, the Research Plan seems only to further distance the individual from that responsibility.

It is our belief that perhaps amendments to the Observer Program would be more effective and less problematic than implementation of the Research Plan.

9/12/95

Memo To: Chris Blackburn, Chair, O.D.R.  
From: Jim Thomson, A.C.E.  
Re: Recommendations for Observer Program

I. Issues that need to be resolved and/or incorporated into the existing program or under the research plan:

- Need a mechanism to create an "earn-length" relationship between contractors and owners and pricing companies/west others.
- Standardized owner details with a minimum about pay at some level for travel days and debriefing days. Needed to improve morale and integrity of bids. (See ~~attached~~ attached about data reliability, NURS

states both contractors<sup>2</sup> and observers have reported pressures not to report compliance matters.

- Need to provide for data entry, transmission and analysis functions (administrative) if pay-as-you-go program is continued. This is stated in light of potential declining budgets within ODF & O + NMFS.

- Insurance issues, minimum levels need to be established  
- Develop common data base for crab & groundfish. Timely publication too.

II. Recommendations in the Research Plan to be implemented:

- Option #4 regarding contractors appropriate states goes: (modular contracting). Use of multiple contractors (5 or more).

- 3.
- Go away with 60 day advance notice requirement. The shorter the time period the better.
  - Need to insure cost containment at 30% coverage level.

- "Need for NPFMC to define supplemental programs" if they ~~adopt~~ move to adopt Research Day. ITQ <sup>observer</sup> programs not be classified as supplemental. These observers will be providing TAG + PSC <sup>(I.B.Q. program)</sup> data for management in addition to vessel individual quota info. This data is public information. IBQ programs should also not be classified "supplemental".
- ~~The~~ Assess fees on repl ex-vessel prices not standardized prices.

- Establish common data base

4.  
for crab and groundfish  
data, published in a timely  
manner (weekly reporting)  
on the NMFS Bulletin  
Board.

- Need for strict agency  
and contractor fiscal  
accountability. Industry  
remains concerned about  
potential for escalation  
of administrative and  
contractor costs.

A.A.C. joins with others  
within the industry to  
recommend that the  
NPFMC ~~implement~~ implement  
the observer program (under  
the Research Plan) at ~~a~~ a  
level fee assessment level  
of no more than \$1.25 - 1.40  
for the crab + groundfish programs.

5.  
~~The~~ In conclusion, A.L.C.  
can continue to support  
implementation of the Research  
Plan - under constraints  
of fiscal accountability,  
namely the 1.4% fee level,  
size of reg ex-empt prices,  
and inclusion of I.T.C.  
and V.B.A. member coverage  
under the Research Plan.  
Af

Transcription

NPFMC Discussion on North Pacific Fisheries Research Plan/Observer Plan

October 2, 1995

[NOTE: To save time and space, the formalities of seeking recognition of the Chair and being recognized by the Chair have been omitted.]

Tape 67

Rick Lauber (Chair): O.K., we're back on the observer plan. We've had the staff reports, SSC, public comment, and now, what's the pleasure of the Council?

Bob Mace: I'd like to make a motion. I've done some deep thinking on this, get this thing under way. I move that the Council request the Pacific States Marine Fisheries Commission to submit an alternative research proposal in addition to the status quo and the National Marine Fisheries Service Plan for consideration and final action at the December Council meeting. This proposal will include, among other provisions, an administrative procedures framework, analysis of funding options, bonding requirements, uniform salary schedules, and insurance provisions. To assist the PSMFC in preparing the proposal the Chairman will appoint an advisory workgroup consisting of representatives from NMFS, ADF&G, our SSC, observer contractors, catching and processing industries and such other representatives considered appropriate by the Chairman. And, if I get a second, I'd like to speak to this motion.

Wally Pereyra(?): Second.

Lauber: Speak to your motion, Mr. Mace.

Mace: The last few days we've listened to a good many concerns. Probably my major concern is timing. Early on we visited with NMFS and I got the impression that December would be the last available time to implement this thing or to make a final decision and get it on line for '97. Now, this is a major effort and there's a lot of money going into it, a lot of industry money, and I think that we want to get it right. I want to compliment Bill Karp and the NMFS people. I think they've made giant steps since June and I shudder to think where we would be if we had adopted that plan in June. I think they've come a long ways towards resolving some of the industry's concerns and I also want to say that I think they have some distance to go. There's no doubt in anyone's mind that there's a need for a research plan. If you look back over the years, I think it's fair to say that trawling as we know it today is underway because of the research plan, or the proposal, and our observers. [lots of coughing going on -- some words cannot be heard] . . . pointed out that we were going to observe and tally bycatch, control waste through the observer plan and with that assurance I think the public has gone along with us. Now we've got to get it under way. There's a concern about the professionalism of the observers. We heard a lot of testimony yesterday about the need for minimum salary levels, insurance, safety, and other working conditions, and that necessarily must be a part of this. Data reliability. It's pretty apparent that the skills or expertise of NMFS and ADF&G are necessary and they'll be assigned these functions. There are a lot of administrative issues, cost effectiveness. I think we're all concerned about that. We don't know really what the NMFS plan is going to cost in overhead. We've got some problems with salary caps, or employee caps and FTEs -

are they going to be able to hire, in this day of Congressional cutbacks, additional people to supervise this program; credibility, who's going to run it. I think NMFS has a lot of credibility. I think that PSMFC has credibility, and that's going to be important to us. The arm's length arrangement that we've talked about so much, so there's no finagling between the observer contractor and the vessel operator. I think that needs to be addressed. Timely response. To get an emergency closure you need to move your fishing operation, you can't wait 30 days to get an observer if you're going to stay in business. Assigning observers, debriefing schedules and doing that in a timely manner, are all important. One of the major things we heard yesterday was equitable assessments. The industry has paid up front money and it's banked. They're willing to do that, but they want to be assured that everyone's treated fairly, as fairly as it's possible to do. We had proposals to pay as you go under the existing plan, a pay-as-you-go program plus contributions from those who are not being observed, and a flat fee plan, which the NMFS proposal looks at. Let's take a look at the three options. I think the existing program, which was supported by the final testifiers yesterday, the industry group, pointed out that they favored that. They needed to fix some problems. I would suggest by December they come back and tell us how to fix those problems. We're looking at the insurance, a question they raised; salary scales, pay by non-observed vessels, and other issues which they and the Council have identified. That's something I think we can look for in December. Now, the NMFS program, as I pointed out, I think they have a way to go. Like to have a better feel for the administrative costs, some of the problems that they anticipate with respect to employee caps, they pointed out that some of the debriefing problems were due to the fact they couldn't get employees. And those problems I think are vital if we're going to adopt that program. We need more . . . decentralized control, not necessarily here in Seattle. And we need more rapid response than I've seen indicated so far. Nothing on insurance is spelled out as yet, and certainly in my view, some lack of flexibility and rigidity in rules. We had proposed . . . the umbrella program, and let's take a look at that. My motion speaks to utilizing the Pacific States Marine Fisheries Commission. This outfit, this is what they do, and do very well. Those of you who have had any experience with the PacFIN operation are well satisfied with the credibility and the control that they have under that program. They don't have any caps in so far as hiring employees. I think they have more flexibility, there's a chance to be more responsive. I've visited with Dave Hanson, he says, yes, we can bring you a proposal by December. And I think that we would be well served to take a look at that, and there may be some cost effective savings and some other advantage to that that we may want to really consider. So, with that I'll let her go and the rest of you can have at her.

Robin Samuelsen: It was my understanding that we would have to take action at this meeting instead of final action, I guess in December, and if I vote for Mr. Mace's proposal and it passes, then we're back to square one and the research plan is on hold and, quote, this new concept would be moving forward for analysis. We'll look at it in December, and make the adjustments and ship it out to the public for comment at a future meeting. Is that my understanding here? Is that a correct understanding?

Pennoyer: We're at the juncture now, if the Research Plan as it exists is going to go forward it needs to go forward with your recommendation now. If you're going to do something else, then you need to do it by, let's say, by December, but if you do that then the assumption will be that the current Research Plan is probably, is not going forward. We'll immediately have to decide on how we're going to do fee structures and perhaps return the money that's already in the kitty. It would be a process of having an unknown and substituting something else, and I . . . can I just speak for a minute



then instead of just in response to the question? This is not, I don't know how to structure a motion or an amendment, or what have you, but my view in many of the instances that Mr. Mace brought up is very similar of things that need to be done. The question is how you go about doing them under what framework. All of the things discussed can be done under the Research Plan or modifications to the Research Plan over time, except the fee structure. That is still one of the things we come back to, and that can be modified over time, too. But that would change the basis for the Research Plan and for the funding. I guess one of the things I'm a little unclear of here, is this Council and this agency, and the State and the Board of Fisheries need these observer programs to manage the fisheries. Now, we need them in the same way we need research surveys, we need them in the same way we need enforcement, and the same way we need inseason management. There is no real difference. This is a tool that is a required part of our fisheries management, it's not just a separate thing. It is something that has to be integrally built into our data process, our inseason management process, our enforcement process and our legal process and I hear the Council and everybody agreeing and saying that, but really we can't accomplish this mission without it. Now, I'm not just talking about the add-ons; even the basic monitoring of catch quotas in this fishery, we have to have a viable, functioning, integrated part of our program, whether we contract parts of it or all of it, or whatever, part of our program, Observer Program, and a functioning Observer Program that is free from problems with the accuracy of the data or the ability to put people on boats to get information as it possibly can be. We have probably, I'll tell you, that probably the first thing I would have done, and I understand the concerns about operational details, but there are a lot of reasons would have been to have a permanent NMFS observer cadre. If I had the funding and the people to do it, probably we would have like to have had that. That would blended in beautifully with the enforcement questions, would have guaranteed these people certain salary levels, it would have put them in a much better position relative to the other working condition things that they're talking a bout. But that isn't the way it's happening; it's too large a program. We're talking about several hundred people a year, and the Agency does not have the ability to logistically manage that type of a program so we've gone to a contracting situation. I think we've always anticipated . . . the Research Plan, that we still would be doing a contracting situation. We heard a lot of very eloquent presentations yesterday from, I think, the OOC, from my staff, from the observers, from general members of the public and industry of some of the problems. And, clearly the system we've got now is not working. Part of that may be the expectation that we've given that we're going to change it. And to . . . that expectation back even for a year creates a different set of problems for the people involved in it. We're saying, well, we're getting there, and now they're not sure. What we're talking about doing here adds I think an extra degree of uncertainty. We don't know the legalities of some of the options that are being proposed and those can be investigated. But once you start that track we draw back on the other track and we further delay any possible research plan implementation or maybe even cancel it entirely, as it exists now. I think that's not really acceptable. I think we've got to address this. We know that we're losing priors, we know we're losing people's dedication. There's more to this than just hiring a body. I mean, there's a certain, as you've heard, dedication to task here that I think is inherent in the way the observer corps feels now and the training and debriefing process they go through. That has been emphasized and I think it's important to us. It's not just important now, but we're talking about getting off into IFQs and CDQs and other things that are putting even more pressure on the integrity of that data base, and even closer ties with enforcement. I heard several times here from a lot of people that the VIP program is broke and doesn't work and can't be fixed, and so forth. That is just the start of the process. The other programs that we're considering are more detailed, more strenuous, require further emphasis between the observer and the

enforcement element. That . . . [can't understand, major coughing going on]. . . be there, and I think that we have recognize that this is going to get more rather than less. I think the Observer Plan gives us a lot of flexibility; the observer coverage rates, how it's handled, the ways the fees are charged, all of those things are annually reviewed. The budgets are annually reviewed. There is a contracting process; it doesn't stop us from having another intermediary contracting process if we think that's required, for extra help in logistics or coordination or what have you. So, you can do that. I guess for the longer term I don't know where we're going to end up at; I don't know where the federal government and the state government or going to end up at, or this Council, in managing resources. Mr. Mace has pointed out the vagaries of FTEs, and I would say to you that if you don't have the wherewithal to do . . . you pay money to somebody to contract. You're still going to have to have the wherewithal to come up with the ability to pay, one way or the other. More, different administration, still requires payment of people. And, I guess, I'm not sure if it's an amendment or not, but I guess what I'm going to propose is that we proceed on, as we have with the Research Plan, with the idea that we will be implementing a program in 1997, as we've already lost '96 on it, but we're going forward with it. And as we need to, as things evolve, programs and systems change, we will continue studying how to address those needed changes. But my proposal is we go ahead with it, so I'm going to vote against this motion, and if that's a new motion, if that goes up or down, then I would make the motion at that time.

Lauber: Uh, Mr. Samuelson, wasn't. . . he'd asked a question . . .

Pennoyer: Oh, I'm sorry, did I answer it adequately, Robin?

[Several people talking at once; can't discern one speaker]

Lauber: . . . remember what it was he wanted to say, Mr. Samuelson, you still have the floor.

Samuelson: Was that an amendment, Steve?

Pennoyer: I'm not sure you want to treat it as an amendment, but yes, I'll propose it as an amendment to the motion, it might be a substitute motion, I'm not sure how you'd rule. . .

Lauber: It's a substitute motion. You're moving that we go ahead with the Research Plan,

Pennoyer: Yes, with all the changes. . .

Lauber: Is there a second?

Samuelson: Second. I agree with everything Mr. Mace has said, I agreed with everything Mr. Pennoyer said. However, I felt the Council and industry have been working on a Research Plan for a good number of years. I was pretty dismayed yesterday when industry came up as a group in the eleventh hour to propose a new concept. It seems that that's a tactical maneuver that's occurring time after time at this Council. We talk about taking conservation measures and when it comes to the eleventh hour we veer off in another direction. We've had fisheries closed because of conservation matters that has been on the agenda, pushed back, it looks like those fisheries will be pushed to the December meeting. And, I just feel that this is a delay tactic. Am I happy with the Research Plan as

it's written? No. Is industry happy? No. Are the observers happy? No. Do I think there's inequities in the payment schedule? Yes. I can sit here, I could probably come up with more reasons why we shouldn't adopt the Research Plan than reasons why we should. But the underlying fact is that it's time to put something on the table to build on and I don't look on it as passing the Research Plan as the final, I look at it as a step process, and if we don't do something here. Somebody else is going to do something. It's going to happen back in Washington, DC, and it's going to be mandated upon us. The American public has watched this Council. We probably, besides the East Coast Council, we've probably got more press than any Council because of the waste that's happening in the Bering Sea. Our folks that are out there observing, we've heard from them yesterday. You know, they get the letter-writing campaign award for 1995. Wally, your mailbox didn't get stolen, it just fell over with all their letters. I agree, I think there's a lot of work that needs to be done, but we need to start somewhere. And if we're going to develop any new plan, we ought to develop the ostrich plan, because that's what we're going to be doing I think if we turn down the Research Plan. We're going to be looking at the industry, say we've been working on this proposal, we're going to put our head in the ground and while our head is in the ground we'll come up with innovative ways to do something different. So, I'll be voting for the amendment, and I was going to vote against Mr. Mace. Thank you.

Pereyra: This is a very difficult situation we're in. What I'm saying right now I don't want to be misinterpreted. I've been a very strong proponent of moving forward with a better plan from the very beginning, and I'm very concerned about the integrity of the data. I'm concerned right now from the testimony that's been given, I'm concerned about whether or not the data that we're receiving is really representative of what's happening out there. I'm concerned about what's happening on small vessels. I'm finding out now, from testimony given, that what we have suspected is probably happening, that certain vessels in certain categories are not acting in a manner that's consistent with what's happening in the other observed vessels, and that this may be biasing the data we're getting, that certain classes are not being observed, and so forth. This is becoming somewhat of a mess and we need to correct it. Unfortunately, I think that what we're doing is that we're moving in the direction of locking ourselves into a course which is not going to correct the situation. I feel it's going to make it worse. Let me give some of the reasons why I think it's going to make it worse. First of all, under the Research Plan we have a 2% cap, and I know there's been some analysis done on what the costs are going to be. There are administrative costs, and I'll speak to some of those later, and there are programmatic costs that are associated with the cost of observers and the cost of placing observers on vessels by the contractors. And one of the issues I feel very strongly about it this whole issue of reasonable compensation and support for the observers themselves. I mean, they're being treated like they are people from third world nations, they're probably being treated worse than that, and they are the backbone of the whole Research Plan. If you aren't, if you don't have people out there that feel that their jobs are being respected and they're being compensated in a way that they're going to be excited and enthusiastic about collecting data that is uncompromised and so forth, something's got to be done about their situation. And in doing that, there's no way we can do that without having [change to tape 68] those costs increase and the way in which the analysis was presented to us it showed exactly the same value, 5.6 million dollars, or 6.2, I forget, it depends on which sheet of paper I'm looking at. But, it's the same for the existing program and the program as it's conducted under the Research Plan. Let's not fool ourselves. We are going to be paying a higher cost for observer coverage. The existing observer coverage is going to cost us more. I don't care what kind of a plan we go forward with, whether is some sort of a . . . this new idea, whether it's the Research

Plan, a modified research plan or whatever. That being the case it's my feeling, and I feel very strongly about this, that we are going to come right up against that 2% cap and when we do the only way that we can ensure that we can have the existing observer coverage or additional observer coverage, which I think we need, is we're going to have to go to some sort of supplemental observers. Now, we are limited under the research cap to 2% and the supplemental observers are going to have to be obtained through a pay-as-you-go plan and that means then that we're going to have a very competitive program on one side that's under the Research Plan and a competitive program the other side that's going to be pay-as-you-go. And we're going to have observers being compensated different, we're going to have observers being treated differently. And this is going to create a real schism between observer ranks themselves, there's those that are in and those that are out. And I don't think that's going to speak well to the quality of the data that we're going to be receiving. One of the concerns that I have has to do with federalizing the existing program in an organization that is clearly having to cut back on personnel. Where are the FTEs going to come to manage this program? No one's ever talked to that. These full time employees that are going to be necessary to manage this program are going to have to come from some other area. Now, National Marine Fisheries Service is already out on the street telling us that they're going to go ahead and privatize the inspection service because they don't have the personnel. They don't have the personnel. There's other aspects within the industry support section of NMFS that are going to be losing their jobs because they don't have the personnel. They're going through a reprogramming exercise. So they're going to have to reprogram people from somewhere else, probably within the Region. Washington, DC is probably not going to say we're going to go ahead and take somebody from the Gulf of Mexico and provide some FTEs up here to the Alaska region. That means, then, that we can probably expect that we're going to have less NMFS support for plan amendments, for some of the regulatory things that we are already very upset about. We saw the moratorium sit and languish for two years or more and I think one of the reasons why is there probably wasn't the support to go ahead and take care of that and all the other myriad things that are coming down the pike. This is a six-day meeting; one of the reasons it's a six-day meeting is we have more things on our plate. And this means that downstream they're going to go from our plate to the plate of the Council staff and on into NMFS and I think this is going to slow the whole process down. Why do we want to federalize something which can be done through another mechanism and achieve an objective I feel that's going to be much better. Under a program that is totally under the Pacific Marine Fisheries Commissions, every observer would be compensated for appropriately. They will be compensated for in the manner in which we hope to have them compensated for the Research Plan, but that's not going to happen to the Research Plan. But it will happen under the PSMFC because we will have every observer being handled the same way. The observers are concerned about jobs. Under the Research Plan, with this 2% cap, there are going to be less jobs, less jobs because we're going to have to go ahead and make hard critical decisions about areas of our fisheries which we're not going to be able to put under observers that we want to put under observers. We're not going to be able to do it unless we go through some sort of a supplemental plan and I think that is flawed, for the very reason the existing program is flawed. I have some other things that I probably could say on this but I don't want to carry the debate any further. I cannot support the motion to move forward with the Research Plan. I think that we have to make our decision today and what I've heard coming to me indicates to me that we need to go ahead and take all of the information that we've gained by going through this process with the research plan; it's not going to be lost, and putting it under the Pacific Marine Fisheries Commission and having them go forward with a Research Plan. I think trying to federalize this in the manner in which we've proposed is not going to work. One of the reasons we are where

we are today with the Research Plan is because it had the full support of the industry. The last group of speakers up here yesterday was the industry by and large. It was the industry by and large and they're opposed to it. How are we going to go forward with a program where we have almost the entire industry opposed to it. It's not going to work, and we saw the industry coming forward and willing to go with a compromise plan, Research Plan that would be developed and implemented under the Pacific Marine Fisheries Commission, and that is the way I think we need to go and I think we need to get off our butts and move forward with it. I think going these other routes and doing more studies and so on and so forth is not going to get us there; I think it's just going to delay and delay and delay and the sort of horror stories that the observers are coming forward with, I think, are going to be continued. So, I cannot support any of the motions that are on the table right now, so I'm going to have to vote against Mr. Samuelsen's, or rather, Mr. Pennoyer's motion.

Lauber: There are others in front, but Lisa Lindeman wanted to . . .

Lindeman: I just want to let the Council know that this idea about Pacific States Marine Fisheries Commission, their role in the observer program or an observer program, whatever, came up, as far as we know, at the OOC meeting and we've looked at some of the issues but we still don't know what the authority of Pacific States Marine Fisheries Commission is with respect to, like federal fisheries management and if they've got the authority to do this and we haven't gotten a legal opinion from anybody on that. One thing is, from the stuff we've looked at so far, it looks like the Pacific States Marine Fisheries Commission's authority extends to advising states, parties to the compact or whatever, for fisheries issues within the jurisdiction of the states and so we'll do more research and I guess talk with Dave Hanson or whoever does the legal work for the Commission to figure out what their exact authority would be in this area. So, we could come back I guess at some point and advise the Council about that or advise anyone who would be working on any alternatives, if that's what the Council votes to do. But again, we just don't know what the authorities are for the Commission in this area.

Tillion: I'm faced here with having these overall motions that actually stop you from getting into the details that we've heard about ad nauseam. I don't know how the vote is; I'm in favor of a 2% assessment on all people fishing groundfish and you must live within it. I'm in favor of you, that's NMFS, choosing how much observers are required over every fishery instead of having this lock-step requirement of 100% for this group, 30% for that group. When do I get to vote on details. I've heard so much testimony and so much building a nauseous record, it's time for us to start producing something. I don't feel comfortable with either of these motions. I have a deep abiding distrust of my federal government and it seems to have been proven true every time they do something, as far as their ability to do it. I look at the Davis-Bacon Act which makes it almost impossible to do a contract somewhere because you've got minimum wages, minimum hours, . . . that the private industry isn't bound by, so I am looking for a way and the Research Plan does at least, or at least NMFS is facing up the fact they're going to have to contract with somebody to do it that gets them out from under these federal requirements that literally make sure you only get 5% or 2% work for each dollar. But when do we vote. . . you know I would like to vote on a 2% assessment on all groundfish at this meeting so we knew what the funding mechanism would be. All these other motions don't go anywhere. They're that much more hearings and it costs, from my years in the legislature, when you wanted to bamboozle the people you had a study; studies are a method of

saying, 'we don't want to do it but we don't want to be blamed for not doing it.' Let's vote on something that's detailed.

O'Leary: I'd like a point of clarification for my own mind. My sense yesterday, and Mr. Pennoyer's comments about what would allow us to implement in a timely fashion or not, came down to making determination about a fee structure or a pay-as-you-go situation. Would someone please tell me, if we decide that issue today, is it possible for us then to look at the administrative issues and still be able to get the program underway by January 1, 1997?

Pennoyer: I think that if you decided negatively on the fee structure question, in other words you decided you were going to do something different than what we've got, then you'd have to assume that that is going to go away and you're going to have to assume that whatever you put in its place is going to work, which we at this point don't know. That was my point in saying that we needed to adopt something that could go forward. I can't promise you if you adopt something else it's going to work by January 1, 1997 because I don't know what it is, I don't know what the legalities are of different proposals that may come up. I can promise you that if you adopt the research plan it would go forward January 1, 1997.

O'Leary: But, it doesn't preclude, if we make a determination of the funding mechanism today and that determination doesn't preclude moving forward, we'd still have a reasonable possibility of deciding some of these other issues and being underway by January 1, 1997?

Pennoyer: Nearly all the things Mr. Tillion mentioned, including deciding how much gets contracted out, which is a decision the agency's going to have to make about a lot of things over time, is possible under the Research Plan. And, working with the OOC, they were trying to address the insurance needs, they were trying to address the minimum salary, the observer guaranteed payment, all the other things you've heard, can be addressed, including the setting of fees and coverage by fishery. That's all up for annual review.

Behnken: I'll be brief because I think Robin stated most of the things I would have said, probably a lot more eloquently. I do have a couple of questions, though, of Mr. Pennoyer. And, those are, you made the comment earlier that the ideas that had come forward, that was part of Mr. Mace's motion which to me have a lot of appeal, most of those, or I think you said all those things could be incorporated into the framework of the Research Plan. And, the question I would have is if we were to go forward with the Research Plan as your motion includes, could we still take a look at the Pacific States as being the umbrella? Could that, or even looking at different fee structures in the future, if we chose. If we were to move the Research Plan forward, showing our commitment to resolving these issues which to me are so compelling I feel we need to move forward, and have a Research Plan in '97, could we also then ask Pacific States to put together their proposal so we could take a look at it, run it through the Observer Oversight Committee and see where to go from there?

Pennoyer: Over a, not a lot of years, but about six years in this process directly and prior to that, other parts of the process, I'd say nothing's immutable, so I think anything can be changed and often is. Within the bounds of having to do the federal procurement processes and so forth, I can't say you can change something tomorrow and it automatically changes. But over time, yes, and how the program is administered can certainly change. There's nothing in the research plan that adamantly

says it's got to be done in specifically that way. But I guess the problem is there are things you have to do. For example, if we're going to start January 1st, 1997, we would have to put out the RFPs for the contractors, so for that you probably, past a certain time, no you couldn't change how that worked; it would have to be in a subsequent year, but within that boundary, yes.

Behnken: I understand that. Could I ask one more question? My other question would be a little bit along the lines; I understand that the issues Mr. Tillion was bringing up are already incorporated in the Research Plan, but I don't believe we have resolved under the Research Plan how supplemental programs will be paid for or operated, and the Observer Oversight Committee had some recommendations. Is it your intent that after your motion we would take up some of those issues?

Pennoyer: For 1997 it appears that there is more than enough in the 2% or maybe even in a 1-1/2% to cover what the program is at currently. We'll have to decide as we take up supplemental programs whether you change other observer coverage or you really require some different type of funding. I had not intended to re-vote on it here; that wasn't part of my motion, any way, it is something that has to be considered. Dr. Pereyra brought up the salary increases. I think those are coverable if they were to occur, they were coverable under the 2%, and so the whole question of 2% as a cap, supplemental or not, I heard a lot of testimony that people didn't want to pay more than 2% period; I don't know if we've crossed that bridge yet.

Barker: Now, after listening to all the testimony yesterday I came to the realization that we're part of the group with one of the largest sweatshops in the Western world. I'm glad we're moving away from that. I still don't see how the research plan is going to cover the existing conditions with businesses that go bankrupt, whether they're fishery platforms or whether they're observer programs and I see that the use of the Pacific States Marine Fisheries Commission as an integral part of that solution, so that a surety bond can occur so that not only are wages structured but they're also guaranteed to get wages.

Benton: I have a couple of questions for Mr. Pennoyer, I guess. Steve, I think Mr. O'Leary was sort of hitting on it, really. It almost seems to be like there's two issues here, two kinds of issues. One is whether or not we implement the fee program and the other one what are the problems with the Observer Program, irrespective of the fee structure, that need to be addressed. And, I guess I'm still puzzled. I don't have a clear sense how those two interact with each other with regards to a decision today. If I understood you correctly, what you're saying is that the Council really needs to act to today with regard to the fee structure issue and perhaps provide guidance on how to deal with some of the problems with the observer program as well. But that the decision point really is now what we're going to do with the fee structure, whether we're going to go with the fee structure that is presently envisioned under the Research Plan, or a pay-as-you-go structure or some other version of a different structure that would be developed at a subsequent time and brought back to the Council. Have I got this straight?

Pennoyer: The Research Plan allows addressing most of the other things we've talked about except the fee structure. So, when I say go forward with the Research Plan I'm talking about going forward with what we have been doing in terms of collecting funding and then implementing the program in 1997 using that funding plus picking up that process again and collecting more money in '97 to

continue with that. Yes, that's probably the basic question because the others can all be answered over time, even under the Research Plan.

Benton: O.K., so if I've got this straight, with regards to frameworking for observer coverage as a specifications process in the Research Plan that annually can be dealt with at the Council level, or by the agency; there is a annual review of the fee structure itself, so you could set those, correct? There were a number of issues that were brought up with the OOC that I would, like Mr. Tillion, have some interest in seeing some resolution to those today no matter which way we move. And some issues that were brought up by the observers which I'm not sure we can do a whole heck of a lot about but I'd like to take some actions to help resolve some of those as well. Those are separate decisions from the fee structure issue, I think, are they not?

Pennoyer: Yes, they are.

Benton: And so what we'd be doing is, if we adopt, and this gets to your motion, I'm trying to get to your motion, if we get to your motion and let's say we adopt your motion, we've adopted the Research Plan in its entirety; then what we would do if we're going to address some of these other issues we'd also have to adopt as part of this those recommendations for modifications to the Research Plan that we think are germane and that would all have to go forward as a package.

Pennoyer: Once you adopt the fee structure basis for the Research Plan, all the other things are part of the annual process. You could either put them in a package or do them separately, I don't suppose it makes any difference. If you're going forward with the plan then all of the other considerations are what the OOC and the program are already working on. I mean that is stuff that they've already come up with and agreed to, all those different pieces. Some were studies, some were more specific than that, but those were all recommendations to the Council that would be done under the Research Plan. So, I don't know if it has to be done as a package. . .the key element of decision is are you going forward with the fee structure; after that all those other decisions can be made.

Benton: The regulations as I recall them, and the Research Plan as I recall it, they were drafted specifically to preclude supplemental programs at the time and this is from a discussion I believe we had some time back, or it's at least an impression I have. How would we address supplemental programs if we were to take and adopt your motion, Mr. Pennoyer?

Pennoyer: Regulations don't preclude supplemental programs. By policy we have precluded setting up two separate structures under the Research Plan. That can be changed, but I mean you're going to have discuss it and decide if you want to do it.

Benton: It was my impression the regulations terminated the existing pay-as-you-go program which is the vehicle that at least is available to us right now. It operates other observer programs under. .

Pennoyer: There's nothing in the Magnuson Act or any other part of the law that says we can't do that. . .yes, you're right, we'd have to make an amendment to plan.



Pereyra: This whole discussion on supplemental observers is an area that concerns me somewhat because I'm afraid that we're, depending if it's resolvable or not resolvable, we're going to continue some portion of our data collection in an existing program that you've already said is flawed and is providing us bad data and this is in all the preambles. We can't continue with that any more, and that concerns me a great deal. First, I would like to address the statement by NOAA General Counsel and Ms. Lindeman regarding the authority of the Pacific Marine Fisheries Commission to handle observers. It's my understanding, and again this is what I got from the Executive Director of the Pacific Marine Fisheries Commission, that they are already handling an observer program. I think it's down in the southern . . . handling one that has to do, I believe, with marine mammals. So, somehow they have some authority to do that. They have experience doing that, so I think you'll probably find when you investigate this further that they are certainly fully qualified and are already in the observer business. One of the issues which has not been discussed and I think has to be looked at very closely is this whole area of administrative costs. Under the analysis that's been provided to us so far, we show that the total agency cost without the Research Plan is \$3 million, excuse me, without the Plan is \$2.7 million; with the Research Plan it's \$3 million. It shows down below here, it shows a \$300,000 increase in costs and that's just associated with fee collection. I've got some questions about whether in fact you can continue. . . whether that number's a correct one, but we don't know because we really haven't gotten into the plan; it's an estimate. But, the cost distribution shows that the National Marine Fisheries Service still would be funding 2.2 million dollars. It shows that the Alaska Department of Fish and Game would recover \$500,000. Now, the concern I have here is, this goes back to my former life as an NMFS biologist. I recall that Washington, DC always retained the authority to reprogram in certain broad areas and unless it was specifically earmarked within the budget for a line item, they did all sorts of shenanigans back in DC depending upon what the national perspectives were. Now as I understand it, 1.5 million dollars of that 2.2 million are observer funds which have come out of the marine mammal appropriation, associated with it. Right now, with our benevolent republican-dominated Congress, they're doing all sorts of neat things in terms of funding for programs that are related to endangered species, marine mammals and so forth, and I have some concern down the road here that we might all of a sudden find that 1.5 million dollar line item either zeroed out or modified in some way, which could reduce the amount of funds which would be available [change to tape 69] to yourselves to dedicate, I know you want to continue dedicating and I'm not questioning your desire to do that, and I know it's genuine and you want to do it, but in fact Washington, DC, for whatever reason, may see differently. So if that \$2.2 million becomes reduced, let's assume that it stays the same; if it comes reduced, those funds have to be obtained from somewhere and the only place that they can be obtained from easily is the pool money that we have from the 2% cap. That's sort of a recovery program; it's going to reduce funds that are available for observers, which is going to push us up a lot closer to that 2% cap and I think with the supplemental observer problem we have and this, that we're going to go over that 2% cap. And those concerns that I had, I think are real concerns. Observer coverage is going to go down and the number observer jobs are going to go down also, and I'm sure you'll have some response to me on that. In response to a comment that was made earlier about why can't we have Pacific Marine Fisheries Commission become involved as the umbrella under the Research Plan. I think that would be the worst of all worlds. I think all we'd be doing there is increasing the bureaucracy, increasing the costs. That \$2.2 million is going to go up because they're not going to do it for nothing and certainly there will be some shifting of expenses from National Marine Fisheries Services to PMFC, but I doubt very much that there's going to be a lot of enthusiasm with the cutbacks in federal budgets to take monies and go ahead and earmark them for PMFC. It'll be very easy to say let's go ahead and recover some

additional administrative costs out of the observer program which again is going to reduce the amount that's going to be available. Regarding changes that are going to be required, in the papers that we have before us there's some reference to, 'we can do this but it's going to require that there be some changes to the Research Plan which will require a Magnuson Act amendment. I don't know how the forces that influence Magnuson Act amendments are going to come to play on this, but I dare say that with the very strong opposition I've seen to moving forward with the Research Plan, that there's not going to be a lot of enthusiasm for Magnuson Act amendments. Right now, I heard last night from someone that Senate bill 39 isn't going anywhere this year because of the problems associated with the funding bills in Congress they've decided they're going to put it off 'til next year. So that means that we're not going to have any Magnuson Act reauthorization bill going through this year, at least if this source which is a fairly good source from Washington, DC, is correct. That being the case, these kinds of things are off in the distance and they can never count on them and if we can't get the kinds of amendments which are necessary, then those things that are limited by statute right now within the Research plan are going to stay there and we're going to have to live with them, and that concerns me. We don't have the flexibility under the Research Plan that we had been led to believe, so, with that I will rest my case.

Tillion: At the present time I have no choice but to support Mr. Pennoyer's motion while being terrified of it. I believe I hear talk around here of people saying let's only collect 1-1/2%, I think that's basically wrong. I happen to be one of those that hope the federal government cut the guts out of every appropriation. We are paying 50% of our gross national product for government. That's too much. You can't take that much out of the private sector. I think that the industry should pay 2%, but I think that should be the ceiling, no more, you have to live within it. And that means you have to streamline, you have to be able to choose not to cover this area at this time, but to cover some other area with that amount, you have to leave them flexibility. I get very upset when you talk about observers minimum pay. I don't like anything to do with government setting minimum pay, but on the other hand I do think we should set that if the day worked the day gets paid and anybody hiring one has to be able to post the bond necessary to assure that those that work for them are paid. But I don't want us setting the pay schedule. The reason that the employees of this Council are covered under the state retirement it was the only way we could reach non-civil service employees. There hasn't been any mass firings but I like the idea that the man sitting there can fire anybody without cause. I don't want to build a system that's different from that and so I don't want a bunch of federal guidelines on what the employees for private companies are. On the other hand, I have to vote for this amendment by Mr. Pennoyer because it's the only way I can get the fee schedule that I happen to believe in. I don't think we should collect 1-1/2 now and postpone. . .you're not going to buy their support. The don't want to pay anything, so you might just as well collect it, you know you're going to need it. If you don't need it right now, you're going to need it damn shortly. I'd like to go forward with something that had finite and fixed things. This is your budget, when you run out of the budget, you shut her down. You stay within your budget, just like I have to, that's all the money I have, there isn't any way that I can continue a lifestyle if my checkbook doesn't support it, and I don't think yours should either. So, I've been boxed into supporting something that I have great trepidation about due to the other little things in it, because it's the only way I can reach the fee schedule.

Lauber: I have a question, of Mr. Pennoyer I guess, but first I'd make the comment on. It's interesting, Clem: you condemn the federal government and want to cut the budget, talking about

maybe taking about 50%, and if you were someone doing business making 4% net and somebody came along and imposed a 2% tax on you, they've immediately cut your profits by. . .and I think a lot of people out there look at us, since this is a federal act. . .as those feds. The other thing is, in your earlier comments you referred to the Davis-Bacon Act where they set minimum salaries by government and that, of course, is the exact thing that would be done, maybe in anything, but in the Research Plan where they have testified they're going to do it. There's two inconsistencies. I realize you say you're forced into it, but what you're doing is you're part of government that is in effect increasing somebody's cost of doing business. But the question I have to Mr. Pennoyer is on the requirement that we vote now on the fee system in order to get it in place. We have been collecting fees that we authorized within anticipation of starting this program in 1996 and that's ongoing, isn't it? [Pennoyer: Yes] And, so if, I don't quite understand why we would have to vote on the fees at this time because we can't start the Research Plan; we might be able to start an umbrella plan sooner, but we can't start the Research Plan until January of 1997. Was it the intention that we would have another year of dual collecting of fees as well, or why couldn't we just hold those fees if we cared to look at this other program and then decided that it didn't work and we wanted to go to the Research Plan. Why couldn't we just use those fees for 1997 if we're not going to collect dual fees anyway. Why do we have to make a decision to continue fees. Seems like you're going to. . .unless you're going to continue to collect fees and we have this double system that we've had. . .what. . .

Pennoyer: That's a good question. We could have. . .actually you can take no action here and what happens is the end of '97 (sic) the prohibition on collection of fees expires and you start the Research Plan in '97. I felt that what we really need, though, before we proceed with work and setting it up and deciding what we're going to do, is an affirmation that you need to go that way because we need to get our fees out, during '97, or '96, we have set up the whole process for '97, and . . .

Lauber: But, . . . I realize what would be nice and what maybe we would like and you would like, but I think the bottom line and maybe what Mr. O'Leary, if I understood his question, was, what is the bottom line? Do we have to make that decision at this meeting, or in effect the Research Plan is out? It just seems to me that . . .

Pennoyer: The simple answer is no, you don't, but we've got to collect the fees for the balance of this year; we've got to go through the process and expend the funds and the sense of this Council . . .

Lauber: I understand that. We've already put that in place. We're allowing you to collect the fees for the balance of this year. You're doing that right now.

[Break]

Mace: . . .I've got a lot of respect for the NMFS people. I think they've done a great job and anything that I say is no reflection on them. I do have some problems with the bureaucracy and I look at this Council and speak for myself specifically, but I'm an independent son-of-a-gun, and I look at the Magnuson Act and it tells me that I've got the authority to make decisions and I hate to be encompassed and become a captive of the NMFS bureaucracy in this. I think that we should be telling them what we want. I'm concerned about the timing thing. On Wednesday I asked a question; I thought it was clear in my mind that we could wait until December as a final cut-off date on this and

when we get to timing, I'm still burning over the moratorium issue. You know, this Council thought it was very important and it went on three and four years and it never got off the table, so it's nothing new, delaying things, I can assure you of that. There's been a lot of comments about the existing Observer Program and you get the impression it's trash; it's not trash. It's been effective, there are some problems with it, but it certainly not a loss and we use that information and NMFS has used that information and it's certainly not as has been portrayed here. I'd like to see us take a look at another option in December and I think it'd be very cost effective and there are a lot of unanswered questions with regard to this existing Research Plan and I hate to be buying a pig in a poke. I've worked in this business for 50 years and made in effect thousands of decisions, or been involved in thousands of decisions that had an effect on a user public and I can't recall one instance where we imposed a regulation that was not acceptable to the public that ever worked. Now, it might work partially, but eventually it fails. And we've been told by industry that they've got some concerns. Now, we've heard some comments here that they don't want to pay anything, and that's not true. They've been willing to pay, maybe reluctantly in some cases, but they want to see equity, that everyone pays their fair share. They want to see some results and they want to have a little input into how that money is spent and what those results are going to be. And simply on those bases, I think that it would behoove us not to buy a pig in a poke and be forced into this instant decision that they say has to be done today; wait 'til December, take a look at this umbrella thing, and I think it has a lot of potential, and I think that we'd be better served, recognizing that I hate to delay myself. But I think we would be better served to take that time.

Pereyra: I sort of feel like the situation in King County with the Mariners, you know: either you build me a stadium or I'm leaving town. And I don't like that, and I voted against the stadium for that very reason. Not that I don't like the Mariners, I do, but I don't like people putting a gun up to my head, and that's what I feel like right now. I don't think we are delaying. I think we are moving forward very rapidly and I think that by supporting Mr. Mace's motion, which we first would have to turn down Mr. Pennoyer's motion, in all respect for what NMFS has done and so forth, I think that that's moving us forward faster because to move forward, or to accept, embrace something which has not been fleshed out at this point in time which has this lack of industry support, I think is moving us backwards because this whole situation is going to melt down and we're going to be right back to square one again. So, I think the prudent thing to do, I think the real prudent thing to do would be for Mr. Pennoyer to withdraw his motion, but I don't think that's going to happen. But, I think the prudent thing to do is to reflect on this for another couple months and make our final decision in December and then get on with it and I think that's the fastest thing to get us to where we want to go.

Pautzke: I was just going to try and lay things out how I see them here. I sat in the Observer Oversight Committee for three days which I thought was an extremely useful meeting that we had and we went through every one of the issues that have been raised over the last six months or so concerning the research plan and its implementation and their conclusion, as they've written very clearly in here, was that there was no overwhelming technical issues impeding implementation of the fee system. In other words, all those highlights that you had in your presentation yesterday they felt there were fixes for and something could be done about it. And, they said that the redistribution of costs among the fleets and the processors was an overriding consideration which prevented the Committee from reaching consensus. And I think it's that second portion that you're actually sending a signal to the industry on in your motion right now. It seems to me that if you vote to go ahead with

the research plan you're sending the signal that you believe that the fee system, a fee across everybody, is the most fair and equitable way to support this kind of a government program here. And if you give that signal now it seems to me what that does is allows Mr. Pennoyer to keep the fees that you've collected intact and to continue collecting those fees for the start-up program for the rest of 1995. In other words, it doesn't cloud that whole issue and whether you can keep them or not. And various parts of Mr. Mace's motion are not precluded by that action. It seems to me that if you do go ahead with that particular decision, which is a big decision, on whether you're going to collect fees or do a pay-as-you-go program, that between now and December we still should have the OOC meet. I know that Mr. Mace had a recommended committee, I don't know if you wanted to use the OOC, it has many of those same types of people on it. Have them meet, take another look at the technical issues, but also still have the PSMFC submit their proposal and have this OOC look at it in context of if we do have a fee program, which will be decided in a minute when you take your vote, if you do have a fee program, is there any advantage in having, or a role, for PSMFC in the process. Do they bring economies of some sort and efficiencies or the ability to move personnel around that we can't get through the federal government. Do they ease the burdens of implementing this program. Then, come and report to you in December or January. As I understand, the final RFP that's going out on the streets does not have to be finalized until after the December meeting. And, so with this vote here you're essentially saying, yes, we believe a fee approach is fair and equitable and that's the way we're going to go in 1997, and then in December you're going to say, these are the ways we're going to improve the implementation of the program and find out whether the Commission has a role in it or not, and then send out the RFP in January.

Fluharty: It seems to me that from the OOC we got a very good report and as Clarence has characterized, have no technical difficulties on either side and that there are fixes under either program for all the problems that were raised. The thing that I lack in making my determination is really what are the disadvantages and advantages of either. If there are none, then we could simply flip a coin and there's obviously within the OOC and within the Council clear division about whether or not there are disadvantages. One key element is cost. There's an assumption that the pay-as-you-go program as proposed is going to be much cheaper, or it's going to be cheaper relative to incidence of cost on various parties and I think that these are things that the Council needs to know before it can make a decision. And so in that sense I'm very much leaning toward supporting Mr. Mace's motion even though in the past two, three times now I've voted to move the Research Plan ahead. My problem with moving the Research Plan ahead is I don't feel like we've gotten the real attention. This is a scientific program and it seems to me that there could be a scientific prioritization of the needs, what NMFS has looked at, to its credit, is everything that the Council, and Alaska, and I don't know who else, has said we ought to be looking at and they've tried to include all of those things and if I understand it correctly, have come in under budget. On the other hand, it's not clear that with supplemental things and things like this we're not going above 2% or that the incidence of cost is going to be very large. Therefore, I really feel that we need to take the two proposals that the OOC has given to us and really make this a competitive process to see which of these programs the Council is going to be able to move ahead satisfying all of the different needs. And I think that Council staff has the ability to give us an unbiased analysis of that which I would feel more comfortable with in making a decision in December.

Pennoyer: I guess, Dr. Fluharty, I don't understand the comment, because in terms of scientific coverage and program needs, that is exactly what the Research Plan is set up to do in consultation

with the Council and the OOC and the agencies. That's what we're supposed to do. That hasn't been accomplished yet because a lot of the discussion's gone into just the base program and how to modify it. That is on the agenda. The Research Plan is supposed to allow you the flexibility to shift coverage between fisheries, not be concerned about whether somebody's paying or not paying, because everybody's paying, and therefore you can shift the coverage according to the scientific need. Mr. Tillion, has pointed out the total percentage charge, the program you desire costs that much, then that's what you do, and the percentage and how you assess the fees, all those are amenable to discussion under the Research Plan. So, the basic structure is still right now whether you think the fee approach based on exvessel value, goes across all elements of the fleet, to pay for this program is fair and equitable. Beyond that you can suggest and in consultation change the way that's structured in terms of coverage, or even fee structures themselves through an iterative process. And, for '97, if we're going to get in place for '97, I know Clarence talked about the final RFP being available in early January or after the December meeting, that's true. But there's a lot of work between now and then with OOC that has to go forward to make this thing work, RFPs all got to be structured, and at the same time you've got to decide if you're going to collect the fees for the balance of the year, and the Council instruction has been to do that. Our assumption is we would but I'm not really that anxious to collect a lot more money if it's in real doubt whether we're going to get to keep it or not. So, I think there still is a reason to make the decision here. There's a definite factor getting the workload done before we get into 1997. And so I guess Chairman Lauber and I are in disagreement on that, but I think there is a need to do it here and I think staff. . .you had a number of years of looking at this thing, we've had the OOC in place now for a year working on it; staff has been working on setting up a system to collect the fees and has been doing it and there's been a lot of time put into this. So, I'm sorry if the Council thinks they need more information at this point, but I think that's going to be an iterative, endless process, much like the IFQs. We passed them, we have program, and we're omnibusing every three or four months, I mean there are details and pieces and implementation we changing. So, the real key now is do you think the fee structure system should go forward. Now, that doesn't say that if you decided no you couldn't in three years decide to do it again. I mean, amendments are possible, but I think that would be a very destructive process, too. So, my assumption is we could do that, we can handle all the things that are being discussed, have been brought up by Mr. Benton, most of those by Dr. Fluharty, many of those by Bob Mace, . . . [some words unintelligible] . . . I'm sorry, Bob, 'cause I didn't go down the list exhaustibly, and deal with those in December based on work between the OOC and the staff getting this prepared for your December meeting. But the fee structure thing, the basis of whether you want to go forward with the Research Plan, which is the fee structure, and also allows you to do all these other things, I think we need to decide now. And, I might be imprudent, Wally, but I think I'd still propose we go forward with it.

Lauber: O.K., let's wind this up. O.K., finish it up, Wally.

Pereyra: First, some things I wanted to say I'm not going to say because they might be taken the wrong way so I will keep them to myself. But, regarding what is on the books right now, the Research Plan is the law of the land. It is the law of the land; there have been. . .you know, Congress has passed a law, there have been regulations that have been put forward, there's been a whole process that's been initiated, but we saw fit to delay a couple of meetings ago until '97, in fact it was the meeting up in Dutch Harbor, until '97 because we saw some real flaws in the existing Research Plan. Now, the OOC looked at this, but the OOC didn't come out and endorse moving forward and

that's what concerns me, because they went ahead and said these are technical issues which can be taken care of, but there were some caveats associated with that. To take care of those would require certain actions. And so, we don't have assurances that these certain actions are in fact going to be taken care of. Or, there's mention, or I mentioned before, possible Magnuson Act changes. I have real concerns about that. To go ahead and turn down Mr. Pennoyer's substitute motion, go with Mr. Mace's motion, maybe with some additional amendments, does not say that we're not going to have a fee structure. This again is not fees versus no fees. Fees are the law of the land right now, with a one-year hiatus when we're going with the existing program. So, this to me, just like I said earlier, it's the Mariner issue; you know, either you give me a stadium or I'm going to leave town. Either you vote this thing or you're not going to have fees, that's not true. We're not voting fees up or down, all we're doing is we want to delay until December and have this other alternative fleshed out, maybe with some modifications that Mr. Tillion might offer, and then we'll make our final decision in December. You know, this is a monumental decision we're making. It's really a very, very important decision and I don't think we want to take it lightly. I don't think we want to have a 6 to 5 [change to tape 70] cliffhanger on this thing. One way or the other I think we want to move forward where we have the majority of the Council, the majority of the industry, and the observers and everybody else behind it and we're moving forward with something we can always be proud of, so I rest. . .

Lauber: Call the roll. We're voting on Mr. Pennoyer's motion, which is a substitute for Mr. Mace's motion, which is to go ahead with the Research Plan and the fee system.

Benton: Could I ask one question? [affirmative] After we vote on this, what happens to the main motion?

Lauber: If this motion passes, the main motion is dead. If this fails, the main motion is on the floor and subject to a vote or amendment, or the normal process of a main motion. All right, call the roll.

Roll Call:	Fluharty	No
	Mace	No
	O'Leary	No
	Pennoyer	Yes
	Pereyra	No
	Samuelsen	Yes
	Tillion	Yes
	Barker	No
	Behnken	Yes
	Benton	Yes
	Lauber	No

Failed.

Lauber: We have before us the main motion, Mr. Mace's motion.

Benton: I don't know if this is by way of a substitute but I do have some concerns that have been raised that I want to see explicitly dealt with if Mr. Mace's motion passes. So, first I'd like to discuss

those just a little bit and then maybe ask a question of the maker of the motion. The first issue that I have involves the status of the Research Plan regulations and how they're going to deal with, or might deal with, supplemental programs and in particular I feel that the recommendations and observations of the OOC are very germane and that is that supplemental programs should apply to management systems that benefit individual vessels directly and I thought that what the OOC was recommending was that programs like IFQs, CDQs, vessel incentive programs for bycatch and that kind of thing should be covered under the supplemental aspect of whatever program we develop. I guess if it's a pay-as-you-go program it's automatically covered. I don't know if I need to make a motion regarding this, I was going to propose that if Mr. Pennoyer's motion carried that we amend the Research Plan regulations such that a pay-as-you-go system would apply to these other management systems. Looking at Mr. Mace, would it be your sense, Mr. Mace, that this would be something that would be explicitly looked at and developed by this committee that you've called for?

Mace: Yes, the motion includes looking at funding options and my intent was to look at pay-as-you-go as well as a fee system and come back and say whether or not and how they would handle it.

Benton: O.K., I would like at least for it to be, and maybe Mr. Mace is confirming it, but it be the sense of the Council that under a fee system that supplemental programs be explicitly defined and a system for handling supplemental programs be explicitly developed, and if that's acceptable. . .

Mace: I think that this is an appropriate time to establish for the record our Council thoughts for consideration by the committee and by PMFC.

Benton: Then you agree with me that that's one of our senses, that's. . .

Mace: Should be taken a look at.

Tillion: How does this take care of the fee system that we're now collecting under? In other words, it was the one bright shining star of this thing, that we had a fixed fee. Mr. Pennoyer, how does the defeat of your motion and the passage of Mr. Mace's motion, if it passes, affect the fee system and those that we've collected. I do not want NMFS to even consider returning the money or changing the system of fee collection. Does that require a second vote here, or do we consider you're doing that until we have taken a vote to not do it?

Pennoyer: Well, I'm a little confused between Mr. Benton's amendment and Mr. Mace's motion. First of all, you can't get at where you want to go under the Research Plan; that has to be a separate FMP amendment. But you could vote to do that and it would be something you would have a handle on, . . . so there's a little conflict there. In terms of what you said, Mr. Tillion, I haven't decided yet what we need to do if Mr. Mace's motion passes. First of all, you're asking us to do an impossible task to put this thing in place by '97 and do all these other activities. Working to bring you a package back in December that has a corrected RFP, work with the OOC, I don't think there's even staff time to do that. Of course, when we get to priorities we can talk about what else we drop. So, Mr. Tillion, I guess I would like a sense of the Council as to whether we're going to continue collecting money even though I think you're not going to know that much more about the fee structure than you do now and I don't think you're going to get anything other than a close vote at that time, either, the way it's going. And I think, therefore, collecting the money which can't be spent except under



the Research Plan concept is probably not viable. But, you can give us your directions if you want to.

Benton: . . .first, I wanted to get some clarification from Mr. Mace regarding some issues, then I was actually going to get to the question with Mr. Pennoyer that Mr. Tillion raised. Going back to my first question of Mr. Mace, then, I assume then the issue I raised regarding supplemental programs can and will be addressed by this workgroup and that that would be recorded as the sense of the Council in that regard. The second issue that I have, I believe that as they look at a fee structure I think it's important, and this was an issue that was discussed a bit around I think the OOC but was not explicitly in their report, and that is there are differences between the observer companies that are specializing in crab and groundfish and I think that they. . .it's my sense it would be useful to us to look at whether or not there should be a bidding process that differentiates between the groundfish and the crab fisheries and the observer programs. There are obviously cost benefits to having one set of companies and there may be benefits to having a separate bidding process. I'm just asking the maker of the motion if that is acceptable and if that would be recorded also as the sense of the Council.

Mace: One of the specific reasons that a representative of ADF&G was included in that advisory group was for those specific considerations and I thought it was an open-ended approach; let them come back to us with as much advice and support and help as they can get and cover some of these questions that we have raised at the table this morning.

Benton: I agree with that and I think that's appropriate. Two other issues that were specifically on my mind is that I would like for this group to look at setting and developing minimum insurance standards that have to be applied across the board for the safety of the observers and what those standards might be, and also the options for how to ensure that the companies cover their up front costs, including observer salaries. And one option that occurs to me that I am explicitly interested in, is bonding of the companies sufficient to cover all of those up front costs and the observer fees and I think that they ought to look at observer fees for like about a year, or some period of time, six months or whatever, not fees but salaries, because I was very disturbed about the treatment that these observers are getting by these companies. Frankly, disturbed is a very mild word for the treatment that the observers are receiving at the hands of the observer companies, and I for one don't want to be running the largest sweatshop in the North Pacific as Mr. Barker called it. I think it is absolutely unconscionable what has happened and what is going on out there. I was particularly disturbed also with the associations that came up here and testified at the last minute yesterday because I feel that part of the responsibility in that regard rests with them. They should know what's going on out there, they represent the industry and they should have taken steps by now to solve that problem. It's not new, we've heard it; frankly I'm pretty darn mad about it. Anyway, I hope that the committee can come up with some solutions that are going to be real and meaningful because those people don't deserve to be abused.

Mace: I don't know if you've got a copy of the motion before you, Dave, but we specifically mentioned bonding requirements, salary schedules, insurance provisions, and there may be others. I'm not smart enough to think of all the potentials, but those were specifically included for the very reasons that you mentioned.

Benton: I appreciate that, Mr. Mace.

Pennoyer: I guess I'm becoming more confused as we go along, then. So, those are all things the OOC was going to address in terms of the RFP for the maybe defunct Research Plan fee collection system. Are we running two parallel courses, are we going to have staff going both of them, are we still going to pursue the OOC route under the Research Plan that may or may not exist? I'm not. . .I guess we can sort it all out, but I don't know. Maybe on priorities at 3:00 o'clock we'll sort it all out, but right now I'm getting lost here.

Fluharty: Just a clarification from Mr. Benton, perhaps. It seems to me like you're motion, relative to the supplemental would create two classes, one, supplemental could only be used where there's a direct vessel benefit, whether it's under a CDQ, VBA or ITQ involved. And this would be in addition to what would be termed the basic scientific information that we need for management, bycatch and setting stock quotas, is that the right sense?

Benton: First off, Dr. Fluharty, I specifically did not make a motion because I was trying to develop a sort of sense of the Council. And, yes, that is my sort of intention of bringing that up and having a discussion about it. I specifically am hoping that this committee will look at that, develop for us some definitions and hopefully some recommendations for how to resolve that issue if we go forward with a fee structure.

Fluharty: I'm also interested in the idea of separate crab versus groundfish training and observer-type programs. My understanding, and I wasn't here at the start, was that we were trying to get uniformity across this and that we had cross training and a lot more flexibility built into the system that way. So, I think it's fair to analyze the advantages and disadvantages of both systems, but I'd sure like to see the original intent as one program and cross training in there.

Benton: I agree with you entirely. That wasn't necessarily what I was getting at. There are some observer companies, however, that specialize in one or the other. There may be advantages, cost advantages, either way, of looking at whether or not to have a separate bidding process for crab versus groundfish and I just wanted to ensure that that was explored in either direction so we had a good sense of the matter.

Fluharty: O.K., and the final point that I have is, I think that we really want to try to have a good analysis of costs, cost of the total program split out by what Wally was asking about, was salaries, administrative costs of the program, things like this so that in a fairly, not a huge budget way, but we can at least see the differences and see where these end up. Also would like to see the incidence of the costs be identified. Because I think under the fee system, which every one talks about as being equitable because it's a cross-the-board tax, results in inequities from an different perspective. And so I think that we at least need to know where the equities or different equities and inequities sit.

Barker: I'll defer to Mr. Tillion, I think he's probably ask the same thing.

Tillion: I don't know whether I am or not, but I do not want to lose the fee schedule or the collection we're having now. The decisions have not been made on which way we're going to go. They've certainly been made in my mind. I don't like pay-as-you-go; I can see it in limited cases like CDQ

fisheries where they request an additional observer, but basically I want a standard fee system and I don't want to see NMFS in effect hold our feet to the fire by turning this money back. I don't know whether that was supposed to be covered under Mr. Benton's questions to Mr. Mace, but somewhere today I want that vote taken, that no, we don't want them turned back, yes, we want you to collect them. We are going to have to look, you know I'm not opposed to looking at PSMFC if that has a smaller bureaucratic cost, I like being able to dispose of those which you don't want any more without going through a long, lengthy hearing position. And that's just a question I wanted know; do you need a vote to keep collecting, Mr. Pennoyer, or will you keep collecting if orders to the contrary do not arrive?

Lauber: I thought that had something to do with what I'd asked, but go ahead, try it again. Oh, you have a lawyer behind you there that's. . .go ahead counselor.

Lindeman: You know, Mr. Tillion's question's been raised by NMFS and we had checked on whether or not the fees that have been collected so far would have to be returned and then also whether or not fees could continue to be collected and Section 313 of the Magnuson Act and the regulations, as Mr. Pennoyer has said before, they don't have any time restrictions on the use of the user fees; it simply requires that the fees be used to pay for observers in accordance with the conditions listed in the statutes. But the longer the fees are held and not used to implement the Research Plan under Section 313, the more difficult becomes the rationale for holding on to those fees.

Benton: This is to the maker of the motion and to Mr. Pennoyer. Mr. Mace, the intent of your motion as I understand it is to have these issues looked at by this workgroup and bring back to us in December their recommendations and that in December we would take final action on whether or not to implement the Research Plan with the fee structure or some other program, perhaps a pay-as-you-go program, or some other variation. But it would be in December that we would take final action and that final action could include just adoption and recommendations to go forward with the existing Research Plan or a modified Research Plan or else some other plan, correct?

Mace: My concern is that I think that we've had a valid proposal, this umbrella thing, and you drop that off the end of the conveyor now without industry having a good look at it and it has some potential to save money and reduce bureaucracy and place the Council in the position of being direct overseers, that it would be a fatal error not to do that, not to take that . . .

Pereyra: I support Mr. Tillion's concerns about collection of fees. I think we have to continue it, there's been nothing that's derailed the Research Plan, or so forth, at this point in time and I think we have all the justification in the world just to continue. This isn't 1997, this is 1995 and we're still moving down the path. As far as the analysis that's going to be done and the presentations going to come to us, I would like to see also some focus on one of the main tenets of the Research Plan from the very beginning which was that whatever came forward would be to stay under the 2% cap; that was a very important aspect of that. The industry reluctantly went from 1% to 2% with the proviso that whatever research, whatever observer activity, was going to come forward, including administrative costs, would be under the 2% cap, so I would like to have that looked at, too; I think it's very important, no matter which way we go. The other area, we're talking about minimum insurance standards; I think we need to look at minimum safety standards, across the board, for all

the fisheries that we will be having observers on; I think that's a very important aspect of it. And, I would hope, and I say this, I guess, tongue in cheek a little bit, I would hope that the lobbying would continue, this intense lobbying by the National Marine Fisheries Service, that's been going on the last couple, three months, would continue in terms of looking at workable solutions as we move down this path. And, lastly, I'm glad I was delayed in saying a few things because I was a little bit concerned and I guess upset about the comments earlier regarding concern and being upset about industry all of a sudden come forward. I am as concerned with the agencies and the agencies' failure to correct these problems that the observers are coming forward with; they are the organizations that certify the observer companies, whether it's the Alaska Department of Fish and Game or the National Marine Fisheries Service. As far as looking at returning observers, they could have established some sort of criteria in certifying companies that they would have to have had a certain percentage of returning observers and they didn't do it, they just left it go the way it was. They certainly knew the problem existed; they were much closer to it. We get into this. . .we've had this food fight going on between ADF&G and NMFS over whose observer program's going to have preeminence; that doesn't involve the industry, so to go ahead and throw this whole mess on the backs of the industry I think is inappropriate. I think we're all in this together and I would hope that we would all collectively, all the way through, be able to come up with some kind of a constructive solution to it, and I don't think it helps to be impugning one sector. Thank you.

Lauber: O.K., we've had that out, now let's . . .

Benton: Those points are well taken, Dr. Pereyra, I'll just say that.

Lauber: O.K., you slipped that one in, Benton, but that's . . . Mr. Pennoyer, you're next.

Pennoyer: Well, I'm not going to impugn anybody after that, but I need to cover a couple of things that were raised. One, Dr. Fluharty, information was passed out to you on the distribution of costs and there were graphics passed out that showed that. The vessels aren't identified or the companies, obviously, but there are graphics available to you that were available at this meeting. In responding to the question, again, I hope I'm consistent, Mr. Lauber, with the original question, but what we can and can't do. I understand you're feelings, Mr. Tillion, and I think that obviously any recommendation by the Council will be taken to heart on whatever you think ought to happen on the collection of fees and continuing the process. Right now, I think that probably what you've done by delaying a final decision to December means if you do decide to go back to the Research Plan it wouldn't happen until '98 and I'm not clear that we'll be able to under federal regulations hold the money that long. So, that is, and I'm sorry it sounds like the gun to the head although it's the slowest gun I've ever seen in my life, it's been going off now for a couple of years, but I'd like to do what you say; I understand what your position is, I think you can make your recommendation; I can't promise you that because I think with the delay in the RFP process and the OOC process that I think is going to occur, and any possible changes you're going to make in December, it may be too late to do anything for '97, so I can't give you all those timelines here for sure; I can't tell you what the government final decision on money sitting around in the pot for a year is going to be, but it's tentative, so I think you can indicate your desires and I'll have to look at it.

Lauber: Let me ask a question, first, so I understand it correctly. Let's assume that in December the Council is presented with two situations: one, a umbrella plan that says that can be implemented

under either a fee or a pay-as-you-go system in January 1, 1997, and the Council is also told, but the Council feels that they would like to go ahead with the Research Plan and a fee system, that you are reasonably sure that you would tell us in December that that is fine but you would not be able to implement it until January 1, 1998 and therefore if we wanted an earlier plan, that it would be best for us to go with the pay-as-you-go giving it to the Pacific Marine Fisheries or some other umbrella, that's the way you think it will play out.

Pennoyer: The reason we brought it to this meeting is we were afraid that would be the way it would play out, but if in fact you made the decision now to continue with the Research Plan we'd continue to collect the fees, there was a good argument for holding them over 1996 until 1997; there's a good chance that any significant changes to what might be in an RFP in December are going to derail that process.

Pautzke: I fail to understand why you're being so firm, Steve, on that if we don't make a decision now we miss '97. I don't understand why, or maybe you could explain it to me, why you cannot start the fee program on the first of March 1997; why do you have to have a full year. If the money's sitting in the bank and you have for the first part of, and I'm not saying March 1st, I'm saying it could be any convenient time at the end of major fisheries, for instance, maybe at the closure of the A season, or something, and the Pacific cod season is normally over pretty early, why isn't there a point there where you could transfer from one system to the other; why do you have to jump from January 1st, 1997 to January 1998 if we decide to make a decision in December of 1995? I don't see why you're using that as an assumption.

Pennoyer: I did not say that it was an absolute, I said we'd have to look at it; I'm afraid that's what would happen. Your point is well taken. When we looked at it before we decided that mid-year implementation of the Research Plan was not something that was appropriate. Can you do it if you already have the start-up money in place? That's possible, I guess.

Behnken: Listening to all this, I guess that I would like to say, formally, and I guess it would be an amendment, but it is the intent of this Council that if possible we hold on to the money that's been collected through the fee system so that if in December we find out that we can't go this other route, or we don't want to go this other route, we do still have the option of going forward with the Research Plan as it was presented today. And, I am really concerned after listening to the testimony we had that if the observers out there feel that we've lost that opportunity, it will really compromise the data. And I think they made that statement loud and clear to us because you're going to start losing your professional observers, we going to have new people out there that aren't as good at doing their job, so I would like to state that as part of Mr. Mace's motion, an amendment to that, that that's our intent. And I recognize the problems you have with staffing, you know, there may be legal questions about when we have to return that money, but that that be our intent. That in December we still have this option of getting the Research Plan with the fee assessment program up and running by '97. That's an amendment.

Lauber: You want to try that for a friendly amendment before I ask for a second?

Behnken: Is that acceptable as a friendly amendment?

Mace: Well, it seems to make sense. I'm not sure it really has much bearing on the original motion, but, yes . . . [change to tape 71 -- rest of Mace's comments and possibly others lost in tape transfer]

Lauber: . . .if it passes. . .the main motion is. . .

Tillion: Steve, any threat to return the money, I'd feel a lot better of course if this money was in the National Bank of Alaska so it was our money and we had control of it and it will go out on the next research thing instead of in Department of Commerce where I always fear once they get their hands on a dollar it's very hard to get back. But we would consider it very unfriendly if NMFS was to threaten us with returning those funds, because the only way we have to get a program in place is those funds and we have our eye on them for the program and I think the majority here wants you to continue collecting them.

Pereyra: This is to the maker of the friendly amendment, or friendly motion, and that was that these fees would not necessarily only possibly be earmarked for the Research Plan, that in fact we might come up with some kind of a hybrid. . .plan that we would want to have a fee structure as part of it.

Lauber: I think the amendment was only that they not be turned back or so forth, it wasn't how they would necessarily be used.

[both talking at once -- not sure I got it all]

Pereyra: O.K., 'cause I want us to look at all the options that are possible here.

Lindeman: Just a clarification for Mr. Pereyra. The user fees that have been collected can be only used to implement a Research Plan under Section 313; you might modify the Research Plan, O.K.?, and if those modifications aren't significant you could use the user fees already collected to implement that. But there are questions, a supplemental program like you've been discussing -- that could not be paid for by the funds you've collected under the Research Plan section. Those are separate and I just wanted to make that clear.

Pereyra: Well, just as the Magnuson Act could be amended to handle some of these other problems, it could be amended to address this problem, too, so I just don't want us to not . . . I don't want us to be bound by Section 313, whatever it is, although I agree, I understand that that's the basis on which we hold the Research Plan.

[Several people talking at once; difficult to hear any one particular comment]

Lindeman: I'm just talking about the current authority. . .

Lauber: Counselor is calling to your attention what the existing law is; she's only trying to tell you what it is. Now, was my understanding of your amendment correct in that you were talking about, the sense of the Council or whatever, that we strongly didn't want these fees to be turned back, not necessarily any comments about how they would be used in a . . . created this legal problem, or anything of that nature.

Behnken: My friendly amendment was that which you said, that they not be turned back, and also that NMFS do whatever they can and NOAA legal counsel do whatever they can to ensure that if in December we can't move forward this umbrella idea, the hybrid, any of these other ideas, that we do still have the opportunity to use those fees for the program for which they were collected and to have that program in place in '97.

Lauber: I think Counselor has addressed that and I think at the time all she said was, or was able to say, that the longer you extend the time, the less likelihood that you would be able to hold on to the fees and I assume cannot give you a specific date, it's just that a good logical assumption. I don't even know that that's a legal opinion, I mean that's just common sense.

Behnken: If I could, my understanding, too, from what legal counsel just told us is that we can only use those in a way as defined by Section 313, but knowing that we are going to be looking at some hybrids, some changes, I think it'll be extremely important for us to have, at that meeting in December, some pretty clear cut answers as to how far we can change this program and still use that money that's been collected. So if we can have you working very closely with the observer oversight committee so that in December we have some clear answers I think that's extremely important to our decision in December.

Fluharty: This is just to add a little bit on this question on why we're doing it. I agree with Ms. Behnken that we really want to let the observers know where we're headed on this and working on this. On the other hand, they had two concerns. One of them was the relationship that they have with industry directly on the vessels, and I think that people need to be reminded that the Research Plan doesn't solve that and if we push a research plan that does not have the support of industry, I'm not saying it will, but I say it could be reflected in a more tenuous relationship between observers and the industry for which they are working, so I think we need to keep that in mind as we move forward on this and that's why I think we should call the question and vote on Mr. Mace's motion.

Pennoyer: I'll make it real short and then I agree with calling the question. I'm going to vote for the motion because paramount to whatever happens here we've got have an observer program. I don't know if it's possible to go down two tracks, still in December in time for '97; I'm going to have to look at that very closely. My opinion has been that it's not. But I like having the option open; we've got to come to a decision on this and if the decision needs to be made in December, then I'm going to certainly vote for the motion to move down the track. We have problems that have to be taken care of.

Lauber: Call the roll on Mr. Mace's motion with a couple of friendly amendments. Counselor?

Lindeman: Just a question for the Council. Will the Council . . . , well I'm just going to ask this and then you can tell me if it's not procedurally correct. In Mr. Mace's motion my understanding is that he'd be asking for the Council to look at Pacific States Marine Fisheries Commission as this umbrella organization. Would the Council want NMFS, or NOAA General Counsel, whatever, OOC, to be looking at other entities in addition to the Commission just in case, maybe the Commission's authorities don't allow them to do this?

Benton: That is an interesting question because I think that if we specifically just identify one organization right now we might be running into some problems under procurement laws, is that part of what's going on?

Lindeman: Possibly, sole source, . . . you know, I don't know what all the issues are.

Benton: If I could, maybe as a friendly amendment to . . . well, I'll see if this is a friendly amendment, I would include after Pacific State Marine Fisheries Commission, the words, 'or other appropriate institutions to be considered.'

Mace: I can understand and appreciate that there may be some problems with limiting it to one potential source. At the same time, other entities raises some questions. How do you get a hold of them, how do you fairly give them time to look at something they know nothing about, and if it's necessary technically, fair enough, but what are the plans? Who are we looking at? We should spell that out.

Pereyra: Before we would be able to accept that motion I think that NOAA General Counsel would have to give us the criteria that we would need to follow. I certainly . . . I mean, I don't know what we're talking about here. Other organizations . . . Pacific States Marine Fisheries Commission has observer programs in place that they are operating on behalf of the federal government. That clearly indicates to me that they've got unbiased . . . whatever, and if we've got to have these criteria then I think we have to put the decision off 'til December, if that's going to be the necessity, so I don't think that's within the character of Mr. Mace's motion.

Benton: I just have a question of Counselor, whether or not we really need to deal with this. My intention, I can say, was simply that this committee, whoever they are, sit down and consider whether or not other institutions are around that might fit our need and if they conclude, after making that consideration, that there are not, then that's the end of it, and that would be all that I was suggesting, is that they would sit down and they's say, O.K., how about the University of Washington, what about the University of Alaska, and if they say, well they don't really do it for a variety of reasons, they can articulate to us why those reasons are there and then give us a recommendation with regard to some organization like Pacific States Marine Fisheries Commission.

Lauber: The language as I understand it was that we specifically mention Pacific States Marine Fisheries Commission and then add 'or other organizations who may be wish to submit proposals,' ideas, whatever . . . I don't see why that's a . . . we happen to know of that one, there may be others out there that once they become aware of it that may wish to submit some other ideas; I think we're open to ideas, but I don't see what the hang up with that is . . .

Benton: Are you suggesting that the language in Mr. Mace's motion is not exclusive, it is just Pacific States . . . [interrupted]

Lauber: I think the original motion was exclusive, it included only Pacific States Marine. . . as I recall the motion, I don't have it in front of me, and you or whoever made the suggestion, it'd be add 'or other interested groups.' I think we should still specifically mention them, but not close the door on anybody else. I don't see any reason for doing that, what does it accomplish, and it could be legal



barrier. We end up in December and find out that because of that mistake that our attorneys advise us that we can't move ahead because it hasn't been explored by others.

Mace: In our charge to the group, including our advisors, we say, take a look at, including among other provisions, administrative procedures, analysis of funding, and so forth, and then you might also include there as a general charge, and other potential contractors or whatever, and I don't think that would do any serious damage, although I'm not an attorney unfortunately.

Benton: That was the sense of my proposal.

Pennoyer: It's probably better to leave it a little bit open. I don't know . . . the Council can't all of a sudden become a contracting body anyhow, so you're going to have some problems with people submitting proposals and then proprietary questions and other things that are going to come up here and I'm not sure how to handle them all, but we'll let the lawyers and staff wrestle with that between now and December and if you leave it a little bit open maybe we can figure out what to do with it.

Lauber: As a practical matter, what we're doing . . . we could write a letter to Pacific States Marine and do this and they could submit a proposal and with the Council process that would not stop anyone else from, one, appearing before the OOC and coming up with something, and certainly we are not going to prohibit anybody from coming up here and testifying and giving us another proposal, so we're not doing anything, why close the door, and just say that there's someone else out there that want's to submit something, let 'em do it. What's the fuss about that, I just . . .

Mace: I suggest that we change the first word and I'll give you this. . . I move that the Council request the PSMFC or other appropriate agencies to submit . . ."

Benton: That was my proposed amendment, Mr. Mace.

Lauber: O.K., then that is accepted in the amendment, in the motion, as the understanding of the Council? With that, let's . . . I'll try it one time, is there any objection to Mr. Mace's motion as amendment? [Robin Samuelsen objected] Mr. Samuelsen objects.

Pautzke: Could I ask for a clarification with this last little thing that Bob put in? There's a difference between, between now and December the OOC sitting down with a proposal, a kind of a sketch from the Pacific States Marine Fisheries Commission and determining whether that seems to be a good way to go and looking at the pros and cons and also looking at other, . . . maybe there's other people like the University of Washington, or Oregon, or Sea Grant or someone else could do it, and the pros and cons, and what you're doing here which is, it seems to me, you're saying you want us to actually go out and solicit proposals from an array. . .

Benton: No, no, . . .

Pautzke: I think that's what your thing says, it says 'request PSMFC and other potential contractors. . ."

Mace: I didn't say 'and', I said 'or'.

Pautzke: Well, so, are we . . .

Benton: I think I can get us out of this thicket quite handily. I think that what we're saying is that we want the OOC or, and I guess that that's the group that we're using, or whatever group that is appointed to look at proposals for how to make this operable; we're specifically saying that we want to have the Pacific States Marine Fisheries Commission submit a proposal. We are also saying that if the committee feels there are other institutions that might be interested or appropriate, they can ask them for their comments or at least discuss those institutions and what the pros and cons are. I think that is really the sense of the matter.

?: Thank you.

Lauber: There's one other thing I want to clarify before we go on. The motion calls for the appointment of a committee which I think I interpret this as meaning a new committee. Do you really think that that is necessary, or would you like the Chairman, after consultation with Council members and particularly people on the OOC to see if we need additional members on the OOC that would be supplemental to what's required.

Mace: My original thought was a small group can accomplish something a mob cannot. And so, I think that when you get to SSC, for example, and I don't know whether they're on the Observer Committee or not, or key people from ADF&G or key people from NMF, or National Marine Fisheries Service, you might want to pick individuals with different skills or abilities or time constraints than you have on the observer panel, so there may be . . . the motion says that you have the flexibility to choose, but I simply have suggested some obvious areas that ought to be looked at, not necessarily the observer committee.

Lauber: O.K., I understand that.

Pereyra: I just want to follow one thought to Mr. Benton's comments and that is that whatever organization comes forward and that we select, I'm going to be looking very closely at two things: overhead costs and neutrality. Neutrality in terms of the three states that are represented here on the Council. I think it's very important, this is a national program and it needs to have neutrality from that standpoint, so it's very important.

Pennoyer: As a general idea, I think this is fine, but you're making it sound like the Council's going to select a contractor to run the program and we are going to get into the problem of submitted proposals and submitted bids if it really comes down to that, then going into a federal contracting program later on, so I think you're just soliciting ideas, and . . . then you're going to have to make it into another process which may or may not be possible in the time frame you've allowed, and all we're doing is leaving the door open so if it is possible you would do it, given other priorities and other workloads. But, I don't think you want to get into soliciting bids and that type of stuff, that's not what you're after.

Lauber: All right, try it again. Is there any objection, and Mr. Samuelson had objected; any other objections? Hearing none, the motion carries.

Public Comment by Denby Lloyd  
License Limitation  
NPFMC Meeting  
September 29, 1995

Denby Lloyd: For the record, I'm a resource analyst with the Aleutians East Borough and fishermen in our area, around Sand Point, King Cove, False Pass, Akutan, Nelson Lagoon, have some real concerns about one portion of the preferred alternative for license limitation that came out of the June meeting, and that is a difference in qualifications for area endorsement in the Western Gulf versus other places in the Gulf of Alaska. Specifically, the Western Gulf qualifications were reduced to one landing during the endorsement qualifying period whereas the other areas in the Gulf require landings in two of the qualifying years and the fishermen in my area are concerned that that basically is an unexplained difference between their area and the Gulf and they're also concerned then about the impacts of that in bringing more vessels into that area and increasing competition for the maybe more historic fleet or ones that can show higher degree of landings and more dependency on the fishery. I'm not sure what the opportunities are at this point of reconciling that difference if the Council has a desire to look at that and reconcile it, but it's the request of fishermen in the Borough area that that be reconciled, that the qualifications for the Western Gulf be made the same with the two-landing requirement as other areas in the Gulf of Alaska. It's a little difficult to put the numbers together. You've seen quite a few questions by Council staff and by NMFS on how the program actually functions and so it's difficult to bring to you what the exact impacts are between the one- and two-landing requirements, but it's certainly the feeling of fishermen in the area that it does bring in extra boats and they're concerned about that given their historic participation versus other vessels that may not have shown continued dependency on the area.

Dave Benton: Denby, you said that the difference is a difference between one and two landings for the Western Gulf; is that for all the vessels?

Lloyd: No, that's primarily, and it may be solely, for vessels 60 ft to 124 ft.

Rick Lauber: What was that? I didn't hear.

Lloyd: The middle size class vessels, 60 to 124.

Lauber: O.K.

Benton: And have you gone through the analysis and the tables that were available to the Council through the debate that led up to the June. . .and including the June meeting to look at the numbers and do you have any numbers related to that?

Lloyd: Yeah, I do, and I'll go into those if you'd like, but first of all I think the fishermen are just looking at the conceptual problem of not understanding any justification for the difference. But, in terms of numbers, it's a little difficult to sort through, as I mentioned, because even right now you're not certain how many vessels are going to qualify because of the various questions that are on the table, but I'll try to go through some of the numbers. First of all, there's still a remaining question, I suppose, on the actual motion passed in June by this Council versus what was reported in the newsletter. It's something I can't make a determination on, but, for that middle size class it's still questionable in my mind whether it refers to all vessels or only catcher vessels. And, the numbers that we could look at from what I think was in front of the Council versus what may have been calculated later, that interpretation difference on 60 to 124 ft vessels, the difference between a one- and two-landing requirement, would be 9 catcher processors. Maybe 9 catcher processors doesn't sound a lot, but that's in the context of going from 19 to 28, so those 9 additional boats in that size class is an increase of about 50% of what it would be under a two-landing requirement. Another interesting aspect of this is, given that the qualifying

period goes through half of 1995, yet you had no information before you in June on 1995 participation by catcher vessels; you had it for, apparently for catcher processors, but not catcher vessels. Certainly, anecdotal information in our area is that there were a number of this size class vessel, basically crab vessels, that transited from the Bering Sea after the opilio season in 1995, came through the Western Gulf and made a single landing, perhaps for the sole purpose of qualifying under something that may come forward. If that's the case, you didn't have those data in front of you to analyze, we don't have it in front of us now. But talking to the Peter Pan and Trident plants out there it appears that there may be in the order of an additional 40 to 50 vessels that would qualify by virtue of just having this difference of one landing versus two for the Western Gulf. Now, the anecdotal information may not be too compelling, however it's also verified I guess a little bit by a discussion I've had with Council staff that suggests that rather than the numbers you had before you for total vessels of on the order of 446 that would get endorsements for the Western Gulf, it looks like it may well be 490 vessels that will qualify when you consider the catcher vessel data for 1995. So, that's on the order of 50 additional vessels as well. If indeed those vessels are in the size class of 60 to 124 feet, which the Council staff wasn't able to indicate to me, that would be a comparable number that the fishermen in my area believe transited from the Bering Sea after the opilio season this year to make that single landing. If 40 to 50 vessels in that size class are in addition to what you had before you at the June meeting, that's an increase of at least 33% in that size class, from one-landing to two-landing requirement. And, those are all vessels that are larger than the resident vessels in that area which are mostly limit seiner and below, so again, that's a fairly large component of additional competition by virtue of just changing that landing requirement from two to one. And, that's the best I can do with the numbers right now, Commissioner Benton, given the uncertainties in some of the materials presented and the data runs that have been made.

Lauber: Any other questions? O.K., thank you, Denby.