


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: April 12, 1991

SUBJECT: North Pacific Fisheries Research Plan

ACTION REQUIRED

Approve plan for Secretarial Review.

BACKGROUND

On November 28, 1990, the President signed the Fishery Conservation Amendments of 1990 which reauthorized and amended the Magnuson Fishery Conservation and Management Act (Act). One amendment authorizes the North Pacific Fishery Management Council (Council) and the Secretary of Commerce (Secretary) to establish a North Pacific Fisheries Research Plan (NPFRP or Plan). Such a plan would be for all fisheries under the Council's jurisdiction except salmon fisheries; it would require that observers be stationed on fishing vessels and at fish processing facilities for the purpose of gathering fishery and other scientific data necessary for conservation and management of the resources; and it would establish a system of fees to pay for the cost of implementing the Plan.

A draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) was reviewed by the Council during a March 15 teleconference and approved for public distribution. It was mailed to you on March 19. The document describes and analyzes Plan options under consideration by the Council.

A summary of the Plan and the user-fee alternatives is included in your notebooks as item C-2(a). The Council is scheduled to review public comment and select their preferred alternative at this meeting. Submission of the Plan to the Secretary by May 10 would provide for a possible plan implementation by December 1. A proposed work schedule is provided as item C-2(b).

The 30-day public review period began on March 19 and ended on April 19. Written comments received by the deadline are included in your Supplemental Folder.

Section 313 of the Magnuson Act is provided in item C-2(c). Included there are excerpts from the House and Senate Congressional records conveying legislative intent.

SUMMARY OF USER FEE ALTERNATIVES

Alternative 1: Status Quo - Observers paid for directly by vessels and processors requiring coverage.

Alternative 2: Establish a system of user fees to pay for the costs of implementing the Plan.

Key Elements and Options of Proposed User Fee System

1. A fisheries research plan will be developed for all fisheries under the Council's jurisdiction excluding salmon.
2. The Plan, or the implementing regulations, will identify the covered fisheries by species group and area. These will be referred to as the plan fisheries. Initially, the plan fisheries will be the Alaska groundfish and halibut fisheries and the BSAI king and Tanner crab fisheries.
3. Initially, the plan and user fee fisheries will include both State water and EEZ areas.
 - Option 3a: Initial - Do not include donut hole fisheries in program.
 - Option 3b: Include donut hole fisheries.
4. The Plan, or the implementing regulations, will identify the research plan fisheries from which fees will be collected. These will be referred to as the user fee fisheries.
 - Option 4a: Initial - collect fees from groundfish, halibut and Bering Sea/Aleutian Islands king and Tanner crab fisheries to support groundfish observers. Do not incorporate State crab observer program into Plan.
 - Option 4b: Same as 4a, except exempt crab catcher/processors or floating processors which pay for State observers. Crab catchers not paying for State observers would pay into federal program.
 - Option 4c: Same as 4a, but incorporate State program into Plan.
 - Option 4.d User fees will be collected from all processors that receive BSAI king or Tanner crab; however, each processor would receive a credit up to the full amount of its user fee liability for its direct payments for required observer coverage. The State observer program will not be incorporated into the Plan.
5. The Regional Director, in consultation with the Council, will establish the fee for the fishing year. The fee will be expressed as a percentage of exvessel value. The fee will be set so that the total fees are expected to equal which ever is less: (1) the cost of implementing the fisheries research plan minus any other Federal funds that support the observer program and any existing surplus in the North Pacific Fishery Observer Fund; or (2) 1% of the total exvessel value of all the plan fisheries. The fee will be established prior to the beginning of the fishing year for which it will be used.

6. Although the fees may be assessed against all fishing vessels and fish processors, the fees will be collected from all (i.e., onshore and at-sea) processors participating in the user fee fisheries. The total fees to be collected from each processor will be the product of the established fee and the estimated exvessel value of fish the processor received from the user fee fisheries. In the case of a catcher/processor, fish retained for processing are considered to be received fish. The estimate of exvessel value will be based on the amount of fish by species group received for processing and a fishery-wide estimate of exvessel price by species group. The estimates of exvessel prices will exclude any value added by processing. For the purposes of the user fee system, a fishing operation that delivers fish to a processor outside of the Council's jurisdiction (e.g., Canada, Washington, or Oregon) will be considered to be a processor.
- Option 6a: Initial - only retained catch will be subject to user fees.
 - Option 6b: Both retained catch and discards will be subject to user fees.
 - Option 6c: Initial Data provided by all processors who purchased unprocessed fish in the user fee fisheries will be used to estimate the average exvessel price by species group for that period. These fishery wide average prices will then be used to calculate the exvessel value of the user fee fish used by each processor.
 - Option 6d: Exvessel price and fish usage data provided by each processor who purchased unprocessed fish in the user fee fisheries will be used to estimate the exvessel value of user fee fishery fish for that processor and period. For integrated harvesting and processing operations that do not purchase unprocessed fish, data provided by all processors who purchased unprocessed fish in the user fee fisheries will be used to estimate the average exvessel price by species group for that period.
7. Each processor that receives fish from a user fee fishery will calculate its own monthly fee payments based on the amount of fish it received, the fee, and the published exvessel prices. The fees will be due within 30 days of the end of the fishing month on which the fees are assessed.
8. After each six-month period, the actual fee liability of each processor will be calculated by the NMFS. If a processor's fee liability is greater than the monthly payments that were received, the processor will be billed for the difference and the bill will be due within 30 days. If the monthly payments exceed the fee liability, the difference will be used as a credit toward future monthly payments. It would be a violation to make late or inadequate payments. Fee collections will be administered by the NOAA Office of the Comptroller.
- Option 8a: Initial -monthly payments with semi-annual reconciliation.
 - Option 8b: Monthly payments with quarterly reconciliation.
 - Option 8c: Quarterly billings.
 - Option 8d: Semi-annual billings.
9. All fish processors participating in plan fisheries will be required to have a federal permit. Processors will apply for a federal permit annually. The permits will be issued semi-annually to any processor that is current with respect to its fee payments.

10. The information necessary to implement the Plan will be made available by improving the fish ticket system or by changing reporting requirements.
11. The best available information will be used to determine: (1) the fee to be used each year; (2) the exvessel prices that will be published and used by processors to calculate their monthly fee payments; and (3) the exvessel prices that will be used to calculate post season fee liabilities. The information and the resulting fee and prices will be subject to public review prior to becoming final.
12. Each operation with an observer requirement will be responsible for obtaining observers from the NMFS. The lead time required to obtain an observer will be specified by the Observer Plan. It is expected to be two months.
13. Funding is required to implement the North Pacific Fisheries Research Plan in early 1992.

Option 13a: Initial - sufficient federal funds are made available through special appropriation to implement plan without a transition period.

Option 13b: No start-up funds are available and observer program is suspended until sufficient fees have been collected.

Option 13c: No start-up funds available; some operations must continue to pay directly for required observers.

Suboptions:

- i. Vessels and plants required to take observers continue to pay directly to contractors and the user fee would be assessed without regard to the direct payments to contractors.
- ii. Vessels and plants required to take observers continue to pay directly to contractors, but these vessels and plants would not be subject to the user fee for catch associated with the observer coverage.
- iii. Vessels and plants required to take observers continue to pay directly to contractors, but these vessels and plants would be subject to only half of the normal fee for catch associated with the observer coverage.
- iv. Full fees for all operations but user fee credits for direct payments for required coverage.

Option 13d: No start-up funds available; require pre-payments by industry.

14. Options to be used if the user fees are not adequate to fund the Plan.

Option 14.a Increase the exvessel value of the Plan fisheries.

Option 14.b Initial Reduce the cost of the plan.

Option 14.c Have Congress and the President increase the limit above 1%.

Option 14.d Have a supplemental observer program.

North Pacific Fisheries Research Plan
PROPOSED WORK SCHEDULE

1991

January 14-16	Council meeting. Approval of basic alternatives.
March 15	Council teleconference. Review system design and analysis. Release to public review.
April 23-26	Council meeting. Final Council action on system.
May 10	Submit package to Secretary.
May 17	Receipt by the Secretary. (Day 1 of a 60-day review.)
July 19	Secretary publishes proposed rule. Public review period begins for 60 days.
August	Public hearings held by the Secretary in Alaska, Washington and Oregon.
September 16	Public Comment period ends.
November 1	Secretary publishes final rule. (Day 45 following end of comment period.)
December 1	Research Plan implemented.

NORTH PACIFIC FISHERIES RESEARCH PLAN

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

(a) IN GENERAL.--The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which--

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) STANDARDS.--

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to--

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall--

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of the law;

(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of Title 31, United States Code.

(c) **ACTION BY THE SECRETARY.--**

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) **FISHERY OBSERVER FUND.**--There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) **SPECIAL PROVISIONS REGARDING OBSERVERS.**--

(1) The Secretary shall review--

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that--

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

101st CONGRESS
2d Session

SENATE

REPORT
101-414

FISHERY CONSERVATION AMENDMENTS OF
1990

Mr. HOLLINGS, from the Committee on Commerce, Science,
and Transportation, submitted the following

R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE
SCIENCE, AND TRANSPORTATION

ON

S. 1025



AUGUST 2 (legislative day, JULY 10), 1990.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1990

SECTION 312 OF THAT ACT

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS.

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

(a) *IN GENERAL.*—The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which—

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) *STANDARDS.*—(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to—

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall—

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observ-

er under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.—(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.—There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.—(1) The Secretary shall review—

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection () of this section, unless the Secretary determines

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

Section 118

This section adds a new provision to the MFCMA which is applicable to the North Pacific Fishery Management Council. Nothing in this section should be construed as affecting the rights and responsibilities of other Regional Fishery Management Councils or as affecting fisheries other than those within the jurisdiction of the North Pacific Fishery Management Council.

This section allows the North Pacific Council to prepare and submit to the Secretary a fisheries research plan for any of the fisheries under that Council's jurisdiction including the northern Pacific halibut fishery. A fisheries research plan could include the stationing of observers onboard vessels of the United States within those fisheries and a system of fees to pay the cost of implementing the plan. Although the Committee recognizes that quotas for the halibut fishery are established pursuant to international agreement, domestic law stipulates that the North Pacific Council will establish regional management measures. The Committee therefore believes that the halibut fishery should be subject to the research and observer plan and payment of fees that is contemplated by this section.

After a plan is prepared by the Council, it must be submitted to the Secretary for review. The Secretary is required to review the plan to ensure that it meets strict standards that are designed to avoid discrimination among fishermen and against residents of various states. The failure of a plan to meet these standards is cause for immediate rejection.

The section also limits the level of fees which can be charged to amounts necessary to cover the direct costs of the research program. It is the Committee's intent that the Secretary and the Council will coordinate any research program under this section with programs being carried out under other provisions of law involving observers on domestic fishing vessels. This will help ensure that observers are used efficiently.

Further, in drafting the research plan, the Committee expects the North Pacific Council to follow procedures similar to those that would be used to develop a fishery management plan. This will ensure that comments can be received from those affected by the research plan including members of the fishing industry and Federal officials whose expertise will be useful in designing the research plan.

While reviewing the plan, the Secretary shall conduct one public hearing in Alaska and one in Washington state. The Committee intends that the review process include an evaluation of the specific goals of the research program, the manner in which the program was developed and will be implemented, and the way that costs will be distributed among those paying the fee. The purpose is to provide a mechanism that will increase the amount of information available for the sound conservation and management of the fisheries in the Pacific Northwest. It is not intended to change government policy or to provide a back door mechanism whereby one group of fishermen acting through the Regional Fishery Management Council can affect the legitimate actions of another group of fishermen. A research plan should be designed to promote research and conservation, not to allocate fishery resources among various fishermen.

Finally, it is the intent of the Committee that any fees collected under a plan shall be used for the purpose of implementing that fishery research plan. The fees are not to be considered another revenue raising measure by any branch of the government; they are to be used only for

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT AUTHORIZATIONS

December 15, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2061]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2061) to authorize appropriations to carry out the Magnuson Fishery Conservation and Management Act through fiscal year 1992, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Fishery Conservation Amendments of 1989".

TITLE I—AMENDMENTS TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SEC. 101. REFERENCES TO MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT.

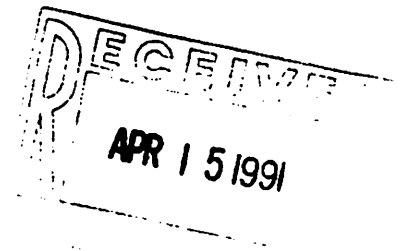
Whenever in this title a section or other provision is amended or repealed, such amendment or repeal is deemed to be made to that section or other provision of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

SEC. 102. FINDINGS AND POLICY.

(a) FINDINGS.—Section 2(a) (16 U.S.C. 1801(a)) is amended by adding at the end the following:

AGENDA C-2
APRIL 1991
SUPPLEMENTAL

**COMMENTS RECEIVED ON EA/RIR/IRFA FOR THE
NORTH PACIFIC FISHERIES RESEARCH PLAN**



April 10, 1991

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Sirs:

We have just completed a review of the North Pacific Fisheries Research Plan, and would like to offer the following comments:

Pacific Observers, Inc. is a strong proponent of the user fee concept in order to bring equity to the funding of the domestic observer program. This proposal however, raises many questions and does not necessarily provide the best solution to accomplishing this equity in an efficient manner. The title of the document does not mention either the "observer program" or "user fees" but instead is called a research plan. This seems to be a very broad definition which could be used to support additional research projects without the interaction and control of the funding parties. The plan's supporting financial information indicates an extremely high cost of the current observer program based on data presented in table 1.1, which is stated as representing average observer costs for 1990. These rates appear overstated in a number of areas, salaries averaged closer to 2600/mo. and airfares were consistently less than 1000 per round trip, not the \$3900 and \$1205 shown in table 1.1. (Note: POI pay scale ranges and sample airfare invoice are attached).

Approximately 6 or 7 times in the proposal there is reference to "potential" for conflict of interest. At this time we are unaware of any contractor or observer conflict of interest involvement with any of the vessels. I honestly don't feel that there will be any, nor should there be any as long as NMFS maintains a real threat of contractor decertification for violation of these ground rules. There is however, a real potential for conflict in the event of the observer program being turned over to one or two contract low bidders arrived at through a sole source bid offered by the National Marine Fisheries Service. The competitors for a contract of this size and, with their livelihoods at stake, are going to cut costs to the bone. The most significant costs of the observer program are the observer salaries themselves, therefore a low bidder will, by necessity, be offering low salaries to the observers. The observers will then be restricted to only the one or two contractors and have no choice, other than to change profession. Lowered salaries, increasing enforcement activities (incentive plans) supported from observer sampling data will certainly escalate the opportunities for conflict of interest to become a reality between the vessel owner/skipper and the observer. Will the National Marine Fisheries Service be in any better position to patrol, monitor, and prevent this potential conflict of interest than it is under the current scheme? Additionally the

potential reduction in the wages paid to observers will cause observers to rechart their careers into other fields leading to a shortage of qualified observers. The results will be to reduce the qualifications below what they are now, or to allow waivers and have vessels go unobserved.

The proposal also indicates that the vessel owners will have to provide two months notice as regards their observer requirements. Whereas this can be practical for the larger 100% category vessels, it is highly impractical for the smaller vessels due to seasonal fluctuations in fishing and changes in strategy. Currently, in private industry we are supporting many instances of 48 hours notice or less. As far as environmental impact goes, the plan as proposed will definitely lead to increased costs for the total program. This plan will put approximately 10 to 11 small businesses out of work. These businesses came to life in 1989-90 responding to the need for independent third party contractors to supply qualified biologists to the domestic observer program. Government sponsored the need and established performance criteria. These firms responded and now must face the prospect of dissolution if this plan becomes reality.

There are alternatives to the plan as proposed. One would include the establishment of the pool of user fees as proposed. Then set up stronger reviews and verification of contractor credentials and operations. Use a portion of the fund to police and manage any alleged potential conflict of interest, placing any violators on probation and with a second offence, decertifying the contractors. Do a thorough cost price assessment for the 1990-1991 years and establish a fair rate window as a monthly fee, an example might be something in the range of \$5,400 - 5,900/month plus travel and then allow the existing contractors and others who wish to join and can qualify compete within this established range. A plan such as this would have everyone benefiting by the efficiency and responsiveness of the private enterprise system and the government will not be in a position of putting out of business those small businesses that came to their need in the late 1989 to provided these observers.

Should NMFS wish to have a smaller more manageable number of observer contractors, we suggest phasing down the number, through restrictive recertification and normal business attrition over the next three years, the final manageable number could be then set at 5-7 contractors. Thank you for your consideration of our concerns and our proposed alternatives.

Sincerely,



Larry E. Tideman
General Manager

LT:lb
plan

GREENWOOD WORLD EXPRESS TRAVEL

1600 W. Emerson, Suite 100
Seattle, WA 98119-1649
(206) 286-4446
FAX (206) 286-1816

AGT: F2
CUST: 1250

DR: 10

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NOV 14 1990
PAGE: 01

PACIFIC OBSERVERS
4032 21ST AVE W
NO. 404
SEATTLE WASHINGTON 98199

SCOTT/JOHN

15 NOV 90 - THURSDAY

ALASKA 81 COACH CLASS
LV: SEATTLE 700A NONSTOP CONFIRMED
AR: ANCHORAGE 935A
BREAKFAST
SEAT 11A

ALASKA CMR 4071 COACH CLASS OPERATED BY-MARKAIR
LV: ANCHORAGE 1030A NONSTOP CONFIRMED
AR: DUTCH HARBOR 1235P
SNACK
SEAT ASSIGNMENT IS AIRPORT CHECK IN ONLY.

ALASKA OPEN COACH CLASS
LV: DUTCH HARBOR
AR: ANCHORAGE

ALASKA OPEN COACH CLASS
LV: ANCHORAGE
AR: SEATTLE

TRAVEL ARRANGEMENTS MADE BY SANDRA
ON ACCOUNT PER RANDY
GROUP FARE OBTAINED.
SPECIFIC SEAT ASSIGNMENTS REQUESTED WITH AIRLINE

COMPARED TO THE FULL FARE THIS REPRESENTS A SAVINGS OF \$ 745.90

TICKET NUMBER/S:
SCOTT/JOHN 1423162406 871.10

AIR TRANSPORTATION 822.18 TAX 48.92 TTL 871.10

THIS INVOICE DOES NOT REPRESENT AN EXTENSION OF CREDIT. ALL TRANSACTIONS ARE ON A CASH BASIS UNLESS PRIOR ACCOUNT ARRANGEMENTS HAVE BEEN ESTABLISHED IN WRITING. INTEREST WILL BE ASSESSED 14 DAYS AFTER INVOICE DATE, RETROACTIVE TO DATE OF THE INVOICE.

AMOUNT DUE 871.10

FORM OF PAYMENT: CC _____ CH _____ CA _____ OTHER _____

BUDGET
15 December 1989 - 14 December 1990

Salaries		
Faculty and Staff:		
A.W. Erickson, Principal Investigator	4.0 mo	\$ 21,976
R.E. Nakatani, Professor Emeritus	1.0 mo	5,880
R. Hanson, Biologist III, temporary	3.0 mo	6,537
D.M. Rubiano, Program Assistant	6.0 mo	11,550
Observers		
Biologist I, 15 @ \$1,822	6.0 mo	163,980
Biologist I, 10 @ \$1,890	6.0 mo	113,400
Biologist II, 7 @ \$2,329	6.0 mo	97,818
Biologist II, 7 @ \$2,429	4.0 mo	68,012
Field Premium @ 25% of Salaries		<u>110,803</u>
TOTAL DIRECT SALARIES		\$ 599,956
Employee Benefits		
Faculty, 21%	\$ 5,850	
Classified Staff, 28%	3,234	
Temporary Professional Staff, 8%	<u>44,844</u>	
		53,928
Services		
Communications, phone, Fax, postage	\$ 3,500	
Copying and duplicating	1,500	
Computer Services	1,500	
Miscellaneous	<u>2,000</u>	
		8,500
Travel		
Local travel @ \$0.24/mile	\$ 2,000	
Observer travel provided by client	0	
		2,000
Supplies and Services		
Office supplies, equipment maintenance		<u>5,000</u>
TOTAL DIRECT COSTS		\$ 669,384
Indirect Cost (29% of Direct Costs)		<u>194,121</u>
TOTAL PROPOSED BUDGET¹		\$ 863,505

¹The total budget figure of \$863,505 is a maximum operational amount against which up to 220 months of observer services will be billed at a fixed cost price of \$3,925 per observer month.

SE
APR 15 1991

CRYSTAL OBSERVERS, INC.
282 Crest Dr.
Soldotna, AK 99669
262-6557

April 12, 1991

North Pacific Fishery Management Council
Box 103136
Anchorage, AK 99510

RE: North Pacific Fisheries Research Plan

Dear Council:

I support the Alternative 1, Status Quo

My first impression was a change would benefit the North Pacific fishery but after reviewing the options, I fear too much government control, greater numbers of government administrators, major expense and little gained for the fishery resource.

The fee system places considerable administrative burden on the groundfish processors. Many have already had to hire additional staff to keep current on new reporting requirements. All new proposals increase the need for greater government staffing to administer program rather than targeting resource management and fisheries knowledge.

The fee system, even though spread over a greater number of fisheries resource users, still will be born by the larger vessels and 100% processing plants. One haul from an efficient vessel can exceed the total harvest of many small vessels.

Government presently has control over observer data collection, conduct standards and debriefing. Every synario proposed in the EA results in higher costs to industry for observer coverage. Increased government involvement invariably leads to more employee benefits, extended salaries between cruises, vacation, sick leave and greater administrative staffing. How will the government deal with the 7 day week, holidays, overtime issues? I think the answers are obvious, continual increases of fleet taxation.

Government would best serve the resource by increasing their ability to process existing data, apply current findings to resource management and improving the existing observer format. I fail to see how greater government involvement in the observer contractor business does anything but increase government administrative expenses. I envision this expense better utilized in research, survey, and management of the groundfish resources. Government should however direct immediate energy and resources to establishing a comprehensive insurance plan covering each observer equally and without question.

In summary the present domestic observer program, though less than perfect, provides a private competitive system giving industry a choice of observer contractors.

I believe NMFS would best serve the groundfish resource by:

1. Upgrading observer requirements, eliminate poor observer performers, provide enhancement to encourage repeat observers.
2. Provide special function observers for specific objectives, ie. marine mammals, enforcement, mortality evaluations, special biological studies. Distribute the recruitment of these specialists among contractors rather than expending funds for procurement and bias toward large contractor companies.
3. Avoid diluting observer functions to satisfy council, staff and industries demands and requests.
4. Increase ability to analyze and use existing observer and vessel log data.
5. Provide consistent observer and vessel insurance.
6. Require a specific format for observer data, standardize techniques for repeat vessels.
7. Simplify vessel logs and make data collected usable.
8. Make NMFS available 24 hours daily to receive vessel and observer weekly reports. Have knowledgeable people available who understand the messages.
9. Modify 30% vessel coverage to optimize use of trained observers ie. require observer coverage to begin prior to but not exceeding 30 days of fishing per quarter. This will help eliminate the large observer demand at the end of each quarter and better utilize observer trainers time and provide a longer employment period for trained observers.
10. Focus NOAA staff on timely resource management not administrative functions of collecting fees, acting as observer contractors or administering people. The money spent on managing the observer program would best be spent collecting valuable biological data.

Sincerely,



Pat Marcuson
President CRYSTAL OBSERVERS

Data Contractors Incorporated

600 WEST 41ST AVENUE, SUITE 203
ANCHORAGE, ALASKA 99503



TELEPHONE: (907) 581-2210
FACSIMILE: (907) 563-7817

TELEX: 5106008217
WORLDTRADE UQ

April 15, 1991

Council Members
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Comments on User Fee Plan and Options.

Dear Council Members:

WE SUPPORT Alternative 2 of the NPFR Plan, which will more equitably distribute the cost burden among fisheries served.

We believe the user fee, at 1% of ex-vessel value, fairly spreads the burden of cost throughout the fishery. We have no specific recommendations as to which segments should be included in the User Fee Fishery.

THE PURPOSE AND GREATEST COST involved with this Plan concern the placement of Observers. Very little detail is presented regarding the mechanics of Observer recruitment and logistics if changes are implemented to reduce the number of private contractors.

THE PLAN ALLOWS for future increases in User Fee funds to support "Research", which may include much more than the placement of Observers.

WE OBJECT TO THE REFERENCES in the Plan document to the potential for conflict of interest between contractors and vessels. There are at least 10 such references, with one or two more inferences of collusion. To our knowledge, there is not now, nor has there been, any proven, documented conflict of interest between contractors and the fishing industry. The innuendo is slanderous. It is less than professional to address the issue in this manner. If it is truly perceived to be a problem, it should be treated openly and objectively.

We believe there is little likelihood that contractors will put their entire business in jeopardy by placing themselves in a position of conflict of interest with the industry.

Further, the question of conflict of interest between contractors and industry does not appear to be resolved by any of the options, but potential for conflict of interest may be shifted to Observer/vessel possibilities.

WE ARE CONCERNED about the proposed reduction in the number of Observer contractors, for several reasons.

First, at this time, we find that the majority of the dozen contractors are experiencing temporary lacks of available Observers. This is at a time when the pollock fishery is closed, and before the sablefish opening, when much greater numbers of Observers will be needed. Fewer contractors will result in more frequent shortages due to reduced recruiting effort, perhaps of longer duration, to the detriment of the Observer Program's objectives.

Second, we believe that changing to a lesser number of Federal contractors will create a "fixed" rate of Observer pay at a scale below that which is now obtained by the current free market competition. If this becomes the case, an extra burden will be placed on an Observer's integrity. This could be a very serious problem if Option B is initiated and both retained catch and discards are subject to the user fee.

Third, in almost every case where State or Federal government steps in to take over a program, costs go up. To keep costs down and to retain some flexibility to meet changing needs of the fishery, private industry should be retained in the Observer program, to the greatest extent possible.

Fourth, Executive Order 12291 requires consideration of adverse effects this proposed program will have on competition, employment, innovation, etc. In a small part of the larger picture, but very real to those affected, a reduction in the number of contractors will most certainly affect competition and costs, employment of dozens of staff people, and innovation in private enterprise.

LIMITED-SOURCE, or sole-source, contracting by Federal procurement guidelines, as apparently proposed in this Plan, allows NMFS almost dictatorial control over the industry (no checks and balances), with initial higher costs, and with expectations of continual escalation of User Fee assessments year after year.

Competitive contracting assures responsible costing to the fishing industry, but may burden NMFS with unwanted administrative functions. The trade-off seems worthy of serious consideration.

WE SUGGEST THAT the User Fee proposals can be modified in order to retain private contractors, and still allow NMFS adequate managerial control.

Change to User Fee funding. Allow private contractors to provide Observers to the fishing industry. See how this initial change works. Additional restructuring can be addressed later.

FOR YOUR INFORMATION, here is our current fee schedule for groundfish Observer services.

7 to 14 days	\$235/day
15 to 19 days	225/day
20 to 24 days	210/day
25 to 29 days	200/day
Monthly rate	185/day
Prepayment toward account	\$2000.00

Additional costs to vessel will be:

1). Airfare from Seattle to port of embarkation and return from port of debarkation, and any other travel for vessel convenience.

2). P & I insurance (or Workers Comp.) for Observer while on vessel.

3.) Board and lodging for Observer while on vessel.

Vessel does not pay additional for training or debriefing time. Unexpected incidental costs will be absorbed by DCI.

Our rates include:

•Recruiting, selection, and NMFS training of Observer.

•Observer salary and burden.

•Workers Compensation insurance while on travel status and on shore.

•Observer drug test.

•Operations control and supervision.

•Administrative expenses.

PLEASE COMPARE these costs with the proposed Plan costs.

Respectfully submitted,



Roger I. Woods
President



LEE MORGAN & ASSOCIATES, INC.

April 15, 1991

Mr. Richard B. Lauber
Chairman, NPFMC
605 West 4th Avenue
Anchorage, Alaska 99501

Re: North Pacific Fisheries Research Plan (NPFRP)- Public Comments

Dear Mr. Lauber:

Please accept, distribute, and consider the following comments before a decision by the Council is made with regard to the NPFRP.

GENERAL COMMENTS:

1. There is no discussion or analysis in the environmental assessment about the impacts of the preferred alternative on the certified observer contractors who may be put out of business if and when the alternative is promulgated. This omission is a serious flaw in the environmental assessment.
2. The proposed alternative amounts to a limited entry system for observer contractors, at the discretion of the NMFS, and should not be accepted by the Council, especially without a more specific rationale for this proposal.
3. The list of preparers includes two employees of the NMFS who are certainly not impartial with respect to a proposal that will give the NMFS more direct funding from the user fee system, and more direct control of the observer program. In fact, the inclusion of these two individuals as preparers represents a conflict of interest of the kind the NMFS has gone on record as opposing. Why wasn't an independent contractor asked to analyze this proposal? Surely Russ Nelson and Joseph Terry are not the only knowledgeable people available to review or present a proposal about observer programs.
4. The NMFS has certified the University of Washington and Oregon State University as observer contractors; two public institutions that rely heavily on direct funding of grants and contracts from the NMFS.

**LMA to NPFMC
NPFRC Public Comments
April 15, 1991
Page 2**

Many NMFS employees retain Affiliate Faculty status at these two universities. Is there not a potential for a serious conflict of interest when these two universities receive contracts from the NMFS to supply observers for foreign or domestic groundfish fisheries?

5. The preparers suggest that the proposal can be "fine-tuned" after it is adopted by the Council and promulgated by the Secretary. Why should the Council be pressured to approve a proposal that has not been fine-tuned before the action is voted on? Is this action really that critical that it must be acted upon in haste? Or is it most critical to the NMFS so that it obtains tighter control over the funding of the observer program and excludes public participation and review in the future.

SPECIFIC COMMENTS:

1. What specific benefits accrue to the industry or consumers from reducing the number of certified contractors and by issuing observer contracts through the Federal procurement process? Small, cost efficient observer contractors will be eliminated in favor of larger, less efficient contractors and industry costs will rise, along with NMFS "management costs".

2. What are the specific NMFS costs of "managing the observer program"?

3. Why is the NMFS involved in outfitting observers?

4. Why is the raw data obtained by observers not available to the industry or the public before it is massaged and interpreted by the NMFS? Surely the aggregate data could be made available without divulging the names of vessels or companies involved in the industry.

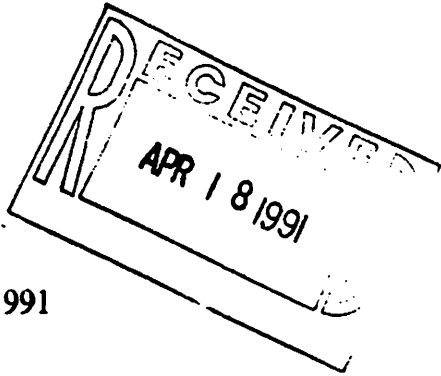
LMA to NPFMC
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Page 3

5. The Regional Director of the NMFS should not be delegated the authority to establish the rate of the user fee. The fee should be established by the non-governmental members of the Council without any participation from the government members, thus reducing the potential for a conflict of interest.
6. In one part of the proposal it states that each processor will calculate its own monthly fee based on the amount of fish received but in another section it states that the NMFS will establish the actual fee. Which is correct, as if we didn't really know?
7. How will the NMFS calculate the actual fee liability of each processor?
8. How (specifically) will the fish ticket system be improved? How (specifically) will reporting requirements be changed? What information is necessary to make the changes and improvements.
9. Why is there no accounting for the additional \$0.3 million for NMFS program management? Isn't this amount already included in the NMFS annual budget?
10. How does "substantially more control of the observer program by the NMFS" equal more effective management of the program?

Thank you for allowing me the opportunity to submit these comments.

Yours truly,


Lee Morgan



Randy Kilmer
2522 1st Av W
Seattle, WA 98119

April 18 1991

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

RE: EA/RIR/IRFA, N.P. Fisheries Research Plan

Dear Sirs:

I am submitting the following comments pertaining to the aforementioned plan:

As a certified domestic fisheries observer currently employed in the field I take insult to NMFS repeatedly questioning the credibility of observers as now employed. I have seen no effort of the contractors to influence data reported by observers. The way the program is set up observers are short term employees with little incentive for a long term career in observing. Observers are mostly out of college recently and looking for references toward graduate schools and future employment. They are not going to ~~Sincerely,~~ jeopardize their careers by falsifying data for their contractors. Their contractors would have to bribe them to do that and most if not all observers would not take bribes.

NMFS repeatedly uses observers as their whipping posts in order to justify their

LT:jb
op/mc

goal of obtaining more power over the whole program. This is the nature of government agencies to concentrate as much power as possible to build their empires at other peoples expense

They are quite concerned about potential conflicts of interest. Why don't they just audit the private contractors to maintain conflict of interest standards. Government officials have also been known to take bribes. Observers are generally younger and more idealistic than government officials and therefore less likely to compromise themselves.

I worked 8 months in 1990 as the logistics coordinator for Pacific Observers and never once was asked to put a specific observer on any vessel. NMFS has a rule that one observer can only cover a 100% vessel once. This helps eliminate conflict of interest. And on 30% vessels timing of observer availability ^{returning} from one vessel determines who gets on the next available vessel.

I am also concerned what would happen to observer salaries if only "a limited number of Federal contracts issued through the competitive Federal procurement process" were issued. Where is the most likely place observer contract costs could be cut in order to obtain a contract? The salary paid to observers. Observers are all ready under paid especially those going out on the 80 ft Bering Sea cod trawlers. That is a dangerous fishery. With reduced salaries less and less observers will do a second trip. This will result in less reliable data (first time observer data is less reliable than that from 2nd & 3rd trips, etc) and more risks to the captain having more green observers on board. If the fishery wants more reliable data they need to establish a more professional observer corps by increasing observer pay, giving them long term benefits and generally developing a more full time employment status with rotations. Believe it or not there are observers out there that would do this on a long term basis with proper encouragement.

The observer salaries reflected in Table 1.1 are higher than reality. NMFS seems to have skewed the data for their own benefit. The \$3900 salary for a two month deployment (most are 3 months) is high even for two. Many contractors do not pay an observer fully through training. Even if they do an observer only goes through training once. Therefore for 2nd and 3rd deployments that figure is high.

In the same table I am not sure what Benefits at 12.6% they refer to. I only get my observer pay and no more. Also why is a figure for per diem per month added in? Even if an observer is paid at less than at sea pay while their vessel is in port (which Pacific Observer doesn't do) most observers don't spend 5 days in town on offloads of factory trawlers. It is more like three days.

In requiring vessels to give NMFS 2 months notice for observer coverage I find that very unrealistic for shoreside delivery vessels. They need to be able to respond to changes in the market and fishery. Only private contractors have the flexibility to respond to market demands.

NMFS never listens to observers and their comments on the observer program. They seem to be so self-centered that they think they know what is best for observers. They need to have a forum where observers can voice their criticisms of the program. Observers have plenty of positive suggestions. This should be done at the close of a major fishery when many observers are in Seattle for debriefing.

Thank you for taking the time to read my letter and I hope I have provided some positive input.

Sincerely,

Renee Kibner

P.S. Please consider the observers in your plan. Without well paid, happy observers you can't expect good data.



ALASKA CRAB COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

April 18, 1991

Mr. Steve Pennoyer
Regional Director
National Marine Fisheries Service
PO Box 1668
Juneau AK 99802

RE: COMMENTS ON NORTH PACIFIC FISHERIES RESEARCH PLAN

Dear Steve:

The Alaska Crab Coalition ("ACC") is pleased to provide comments on the "user fee alternatives", which appear in the Draft Environmental Assessment/Regulatory Flexibility Analysis for the North Pacific Research Plan ("Plan"), dated March 19, 1991 and in the Summary of User Fee Alternatives provided with the Plan. The ACC is committed to the effective implementation of the Plan, in accordance with the provisions of the 1990 amendments to the Magnuson Fishery Conservation and Management Act ("Act"). The ACC was in fact, instrumental in the development of the amendments which mandated the establishment of the Plan.

In principle, the ACC believes that the Plan should be comprehensive in scope and that the costs of its implementation should be borne by the affected fishing industry at large. However, the ACC recognizes as a practical matter that these goals are best achieved in a matter that allows for a period of transition from the existing system.

The ACC is informed that the National Marine Fisheries Service ("NMFS") is not fully prepared to accept, at the outset of the implementation of the new Plan, the responsibilities of the State of Alaska with respect to the observer program for crab catcher/processor vessels. The ACC is also informed that the State of Alaska would prefer to manage that program, at least for the near future. The ACC accepts these realities, but believes that the State program should be incorporated into the Federal Plan as soon as that becomes practicable, so that there is a single, coherent program for observer coverage for the major fisheries (except salmon) in the EEZ off the coast of

Alaska.

The ACC believes that, the period of transition toward a unified observer program, the crab catcher/processors that pay fees for the State observer program should be credited with those amounts in the calculation of their fees for the Federal Plan. This approach would accord with the requirement in the Act that the fees for the Plan be fairly and equitably distributed among the affected industry groups.

The ACC opposes inclusion of discards in the calculation of fees. The reasoning for this position is straight-forward. Discards have no ex vessel value, as that concept is contemplated in the Act, because the fee is intended to be linked to the income of the fishermen from the sales of their catches.

In addition, the ACC supports the use of actual exvessel price, from fish tickets, as provided by each processor who purchases unprocessed fish in the user fee fisheries, as the basis for estimating the exvessel value of user fee fishery fish and shellfish.

The ACC strongly supports the proposal that observers be obtained through NMFS, and not by direct contract with private firms. The proposal alleviates the concern that there may be a conflict of interest on the part of observer contractors whose incomes depend upon the good will of the vessel owners.

Appropriate funds should be secured by NMFS for the start up of implementation of the Plan. It is the understanding of the ACC that there is a high probability of congressional sympathy for such an approach. The alternative of curtailing the program is unacceptable, as the consequence would be a loss of essential data. The alternative of imposing additional, extraordinary costs on the industry would run directly counter to the clear intent of the Act and would no doubt lead to counterproductive litigation.

In the case of a shortfall of funding following the start-up period, the ACC also suggests that appropriated funds be secured. The alternatives are either destructive of the Plan or inconsistent with the fundamental basis upon which the Congress enacted the authority to assess the industry. Again, there would seem to be a reasonably sound basis for seeking funds from the Congress. The amount of any shortfall requiring appropriated funds would likely be quite modest.

The ACC believes that the Department of Commerce should make every effort to ensure that the Plan is implemented in a timely, orderly, and fair manner. The industry commitment to provide funding is exemplary and the Plan is vitally

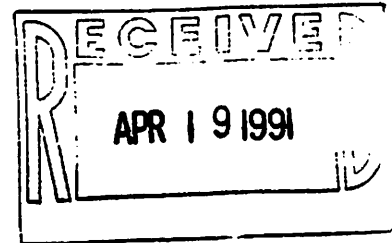
important to the conservation and management of the North Pacific Fisheries. The Department should respond in as constructive and effective manner as possible.

Sincerely,



Arni Thomson
Executive Director

April 16, 1991



North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

RE: EA/RIR/IRFA, N.P. Fisheries Research Plan

Dear Sirs:

I am submitting the following comments pertaining to the aforementioned plan:

I have been working as an observer for the past three years, both in the Foreign JV and Domestic programs. There are two main points that I would like to question here.

First, I think a better review of the projected observer cost per month is necessary considering that the average salary is far less than \$3,905 a month. The 30% coverage cost is prorated as opposed to the 100% coverage cost if the full month of coverage was not used or necessary. That's the way it has been worked since the beginning of the domestic program for the smaller 30% vessel/plants. Also there are no source of benefits, let alone 12.6%, that I am aware of offered to observers. The insurance costs, as I understand it, are covered under the ship's/plant's own policy or that of the Jone's Act for the State of Alaska's Workmen's Compensation coverage. No insurance health plans or benefits have been set up since I've been employed (which has been by two different companies).

Second, it seems to me that decreasing the number of contractors is a good idea, but not to 1 or 2. Most likely with 1 or 2 contractors making the bids, the spirit of competition is lost. Affected the most by this is the observer's salary! This in turn offsets interest in becoming an observer, and continual observer employment after the initial training and deployment. Therefore I believe standards will have to be lowered and lesser qualified people will be hired to collect the data causing further costs and problems later on. Likelihood for conflict of interest will no doubt stem from all this.

Again I believe a better review is necessary before any decisions can be made. And why is this called a Research Plan?

Sincerely,

Andrew B. Vatter
Andrew B. Vatter

abv
Andrew Vatter
20631 Dothan Rd.
Miami, FL 33189



April 17, 1991

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

re: EA/RIR/IRFA for the North Pacific Fisheries Research Plan.

Dear Council,

We are 27 US owned and operated catcher vessels from the states of California, Oregon, Washington and Alaska, actively engaged in the harvesting of the groundfish fisheries subject to the plan. Please accept these comments which reflect the following goal of our membership.

" To promote responsible behavior by the vessel and fishermen members towards the resource."

The objectives stated in the analysis (page 4) relate almost exclusively to the funding mechanism and level of the user pay program. Because the document doesn't contain the substance of the observer plan program, we are unable to evaluate the costs of that program against that which is contained in this analysis. Further, there is no apparent consideration of the form and function of this program under the present open access regime against other possible regimes to which the fishery may soon transit. Hence the gains or losses to the users of investing in such a program now are not able to be evaluated with regards likely changed circumstances in the near future. Such investment may itself prevent movement to a more rational regime. In short, if we knew what is presently being done and why, we might be able to make suggestions to reduce costs and improve effectiveness and efficiency. If we had some inkling as to the future regime we would certainly do some things differently and more cost effectively. This applies to the entire design of the program, training, deployment on through its implementation.

There is apparently no foundation philosophy guiding the purpose of the program. Therefore we call for two linked policies under which the program and the fishery ought to be conducted.

- 1) Full accountability* of commercial fishing mortality on all fish species managed under an OY, and within a FMP.
- 2) Towards (subsequent) full utilization of such commercially killed fish.

We view full accountability to apply (a) to the tracking of the TAC and (b) to the subsequent disposition of the catch which relates to (2)

We request the levy be applied to all such fish, retained or not. We reject the notion outlined on page 6 and its ramifications for the funding needs, that "in the case of a catcher processor, fish retained are considered to be received fish". Not only does such an approach discount to zero the value of fish caught but not retained; it subverts a true accounting of the resource owned by the Nation, and encourages non accountability and wasteful behavior of individual operators towards the resource. It further encourages and rewards the wasteful motivations implicit in the open access regime and wasteful expedience built in to some unit operations in bulk fisheries such as pollock. What better incentive to prevent waste in all the problem areas mentioned - nursery fish, high grading, burst bags, bycatch etc., than having it count against the TAC and having the perpetrator pay for it in real dollars?

In short we want all fish killed to be counted against the TAC and subject to a levy. For discarded or non retained fish the basis would be the exvessel value for that species. The levy level, in the spirit of "towards full utilization", might initially not be as much as for fish retained but must be enough to serve as an incentive to discontinue waste.

(* includes small and damaged fish discarded for whatever reason; fish lost from burst bags, bleeder or burst panels, including fish dumped for safety reasons; fish high graded for whatever reason; all fish coming over the back deck and an estimation of fish killed which don't come over the back deck.)

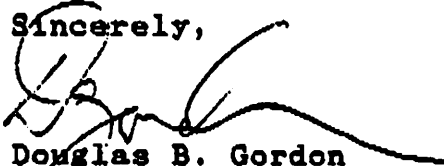
With regard to funding we support that all groundfish, crab, and halibut covered by an OY under an FMP be covered from the shore throughout the EEZ, and into the Donut only if we have jurisdiction there. All such fish should be subject to the levy whether or not an observer is carried, to be paid by all ground fish fishermen. Although this analysis draws no distinction under the present regime between whether the levy is paid for by fishermen or processors, we question if that would be the case if the resource were quasi privatized?

Overall we trust that the program elements and its budget needs will be generated for User comment well in advance of the applicable year so that the program and level of user fees required to fund it may be initially agreed to by the users and the administrators before the percentage amount of the levy is officially struck. We want a committee or board, including industry, to be set up to manage the observer program/research plan/budget along the above lines.

With regard to funding for 1992. The point should not be overlooked that the fish resource is still in the realm of the commons. It has not yet been privatized. We believe Congress has certain obligations to the Nation, to ensure for example, that the best scientific information is made available for management. Congress currently appears ready to renege on its obligation. Under the present interim program the users at the harvesting level have borne the entire cost, \$11 million, most of which to date is applied to the provision of information for the most basic of the management functions - tracking fishing mortality against the TAC. We ask what concomitant improvements or benefits can be pointed to in terms of the environment in which those same fishermen catch the fish and conduct their business within? A decline in conditions of that environment is evident at all levels. The managers (Congress, Council, NMFS) wishing to extract user fees have contributed to a worsening of the operating environment. Fishermen are part owners of the commons but are only the first level users of it. We don't have preferential access to the resource; a more stable or certain operating environment, yet we are bearing almost the entire cost of providing basic management data for a National fishery. Surely Congress has an obligation to contribute towards the costs of this program at a much greater level that it presently appears willing to do. We request through the Council that Congress meet us half way and appropriate \$5 Million to kick start this program in the last quarter of 1991 which is the first quarter of FY 1992. Congress should encourage the Northwest fishery to move in a direction that is morally correct and reasonable. A direction which all US fisheries should take. If the fees are inadequate within the 1% level to fund the plan then we suggest a thorough cost benefit analysis and comprehensive reworking of the plan along lines suggested at the outset to within less than 1% of the exvessel price.

Conflict of interest. We want to relate to observers through the Federal Government (NMFS) not directly with the contractor. Let the contractors provide whatever necessary services to the fleet through NMFS. We want the deployment of observers to be random and at the behest of NMFS not fishermen. With regards two month advance scheduling, we suggest the current uncertainties in the conduct of the fishery make such an advance requirement impractical, but it is a laudable goal to aim for. There are presently 11 contractors. We are concerned over implications in this analysis that the number of contractors could be reduced to the oligopoly situation of two. Won't this tend to increase costs to the users. How will this decrease costs to us?

Sincerely,



Douglas B. Gordon
Executive Director

Steve Hughes - MIDWATER
Dem. Cowles -
Vernie Curry - AFTA
Areni Thomson - ALC
LINDA KOZAN KANDA
Chris Blackburn - An Gabe

Regarding the Domestic Observer Program, we support the following:

1. A NMFS administered program which utilizes private observer contractors certified by NMFS who competitively contract with NMFS, not the vessels, to provide observer services on a dollar amount per observer month basis.

2. That observers be private (not government) employee's hired by contracting companys.

3. That to ensure ^{adequate/appropriate?} random coverage of vessels, NMFS directly assign contracting companys to provide observers to fishing vessels on a vessel by vessel basis for each observer contract period.

4. That contractors invoice NMFS for observer services and that contractors be paid from the NMFS observer fund.

5. That the NMFS observer fund be financed by all harvesting vessels at a rate equal to but not more than 1% of the round weight, exvessel value of their landing. Fees will be assessed landings of all species managed by the NPFMC plus herring. *needs more discussion*

6. That beginning January 1, 1992 fees to the NMFS observer fund be collected from crab landings and from all groundfish landings not covered by observers.

7. That the above fund serve as the initial fund and be collected as future payment for the observer program during which time period the present observer program by groundfish vessels continue to be paid for by vessels in excess of 60 feet in length. At a point in time when six million dollars is collected by the fund, the existing observer program be eliminated in favor of the new program and that all participants be charged the 1% fee to continue the new observer program. *or appropriate amount*

8. That to ensure adequate competition between contractors, to keep costs of the overall program "reasonable" and to keep the process non political, we suggest that no less than six contractors be active in the program at all times.

EMERALD RESOURCE MANAGEMENT

April 19, 1991

Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501

BY TELEFAX

RE: NORTH PACIFIC FISHERIES RESEARCH PLAN

Dear Mr. Chairman:

Our company manages three factory trawlers -- the F/T CLAYMORE SEA, F/T HEATHER SEA, & F/T SAGA SEA -- which primarily fish for pollock in the Bering Sea. We urge the North Pacific Fishery Management Council (the Council) to recommend to the Secretary that he adopt a modification of alternative 1 (Status Quo) which would provide for random assignment of observers through the National Marine Fisheries Service (NMFS). Each vessel would still be required to pay observers directly for services rendered, including salary, food, transportation, and other appropriate costs. This modified version of Alternative 1 would address any current concerns of NMFS regarding possible conflicts of interests in the present system. Alternative 1, as modified, would provide a framework which would avoid the procedural pitfalls which are inherent in Alternative 2, and which would avoid over-regulation of the fishery.

Before the Council considers selecting Alternative 2, the government must carefully analyze the preferred alternative to ensure a user fee is being imposed rather than a tax. A user fee is defined as a fee to pay for a service which is being provided. A user fee is a specified amount that does not exceed the cost of the service provided. User fees are the same fixed rate when the amount of service provided can vary on a case-by-case basis.

A tax is defined as a redistribution of income. According to the House Ways and Means Committee, an ad valorem or percentage fee are almost always a tax, not a user fee. Under the U.S. Constitution (Article I, Section 7) tax measures can only originate in the House of Representatives. This constitutional requirement is important in consideration of this issue because the provision authorizing a percentage fee for observer coverage originated in the U.S. Senate.

Reviewing the legislative history of the 1990 amendments to the Magnuson Act may be helpful in determining whether or not a tax has been enacted. The House version, H.R. 2061, passed the House in February of 1990. Section 118 of H.R. 2061, authorizes the North

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Pacific Management Council to prepare and submit a "Fisheries Research Plan" to the Secretary. The House version does not specify a percentage or ad valorem fee. Had the bill contained a percentage or ad valorem, similar to the version that was approved by the Senate, the House Ways and Means Committee would have most likely requested a sequential referral for approval of a tax measure.

In this specific instance this issue may be somewhat clouded because the fee or tax is being paid for a specific program and not to the General Fund. However, in the past, the Ways and Means Committee has asserted jurisdiction over similar user fees that have been passed by the Merchant Marine and Fisheries Committee because the fees were in fact a tax.

The one percent tax was enacted by Section 118 of the Senate bill (S. 1025). This provision requires the fee to "be expressed as a percentage, not to exceed one percentum". Therefore, according to the Ways and Means standards, a tax has been enacted which originated in the Senate rather than the House as required by the Constitution.

A 1% ad valorem user fee is a tax rather than a user fee because it redistributes income and the fee may exceed the cost of providing the service. For example, the cost of placing an observer on one of our vessels is approximately \$19,000 quarterly. According to the EA/RIR, the value of round pollock is \$191 per ton and the 1% user fee would equal \$1.91 per ton. Therefore, approximately 9,950 mt of pollock at \$1.91 per ton would equal \$19,000. However, because our vessel usually exceed that amount of round pollock per quarter we would therefore be paying a user fee that is greater than the cost of the service which is being provided. If Alternative 2 is selected a cap should be set to ensure that no vessels pays more for the observer coverage than the actual cost of placing the observer on the vessel.

The Council and the Secretary should also consider the time frame in which the 1990 Amendments were approved. During the closing days of the 101st Congress, there were several holds placed on the reauthorization of the Magnuson Act by several Members of the Senate. It was finally considered in the closing days of the session when both houses of Congress were working on weekends and late at night to complete action on many bills before adjournment. Had this bill been returned to the House where more careful scrutiny could have been applied, the 1% ad valorem probably would have been scrutinized by the Ways and Means Committee. One of the dangers in the Secretary approving a program based on the 1% tax is

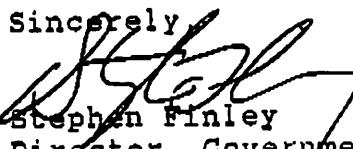
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that the program could be eliminated if the provision is repealed by Ways and Means when technical corrections are made to this bill or as an amendment to a tax bill. This frequently happens to measures which are passed in the closing days of a session.

In conclusion, we request that the Council urge the Secretary to adopt a modified version of Alternative 1. This derivative of Alternative 1 would eliminate any possible conflicts of interest which the EA identifies in the present system. It would also avoid the procedural pitfalls which are contained in Alternative 2.

Thank you for considering our comments.

Sincerely,



Stephen Finley
Director, Government Affairs