


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: April 16, 1990

SUBJECT: Comprehensive Data Gathering and Observer Program

ACTION REQUIRED

Review 1990 program, including observers, logbooks, and reporting requirements. Provide guidance to NMFS as necessary.

BACKGROUND

On November 7, 1989 the Secretary approved Amendment 18/13 to the Gulf of Alaska and Bering Sea/Aleutian Islands Groundfish Fishery Management Plans (FMPs) which established a domestic observer program and a revised logbook/data reporting system. Since then the National Marine Fisheries Service (NMFS) has been working overtime to implement and administer the new programs. Representatives of NMFS who are working closely with the program are available to present a status report on both the observer program and the data collection system.

An important component of the domestic observer program is the Observer Plan which, for any given year, describes the responsibilities of NMFS, the observer contractor, observers, fishermen, and processors. A copy of the final rule which implemented the 1990 Observer Plan is provided for reference as item C-5(a).

When approving the observer program in June 1989, the Council discussed the likelihood of making refinements to the observer and other data gathering programs as we gained experience with the new system. Council discussion and guidance to NMFS with regard to the 1991 Observer Plan should be completed by the September 1990 meeting. Therefore, beginning with this meeting, the Council will receive status reports on the data gathering program and have the opportunity to identify and help address problem areas.

Since the beginning of the year, we have received several letters from the public with specific reference to the data gathering program. A summary of all public comment is provided as item C-5(b). Most of the correspondence has been sent to you in Council mailings. Letters received since the last mailing are provided in item C-5(c). While most of the comments concern the observer program, the comprehensive letter from Alec Brindle raises concerns with logbook/reporting requirements.

252A; at Cookeville, Tennessee, by adding Channel 297A and removing Channel 254A at Spencer, Tennessee; by adding Channel 300A and removing Channel 253A; at Burkesville, Kentucky; and by adding Russell Springs, Kentucky, Channel 224A.

Karl A. Kensingler,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3160 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-324; RM-6774]

Radio Broadcasting Services; Ebenezer, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 280A to Ebenezer, Mississippi, in response to a petition filed by JimBar Enterprises. The coordinates for Channel 280A are 32-54-13 and 90-10-18 at a site 10.6 kilometers (6.6 miles) southwest of the community.

DATES: Effective March 22, 1990; The window period for filing applications for Channel 280A at Ebenezer will open on March 23, 1990, and close on April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-324, adopted January 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Ebenezer, Channel 280A.

Federal Communications Commission.

Karl Kensingler,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3159 Filed 2-9-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-0015]

RIN 0648-AD04

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA announces approval of regulations to implement the Observer Plan provided for by Amendments 13 and 18 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska (FMPs), respectively. This action is necessary to implement specific provisions of the mandatory domestic observer program. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

EFFECTIVE DATE: February 7, 1990.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) that was prepared for Amendment 13 and 18 may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the Observer Plan are available by writing to the above address or to the Observer Program Office, Alaska Fisheries Science Center, 7000 Sand Point Way NE, Building 4, Seattle, Washington 98115. Copies are also available through the NMFS Computer Bulletin Board in Juneau, phone: 907-586-7609.

FOR FURTHER INFORMATION CONTACT: Robert Maier, Fishery Biologist, Alaska Fisheries Science Center, Seattle, NMFS at 206-526-4195 or Janet Smoker, Fishery Management Biologist, Alaska Region, Juneau, NMFS at 907-586-7230.

SUPPLEMENTARY INFORMATION: Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (COA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

The Secretary approved Amendments 13 and 18 under section 304(b) of the Magnuson Act. Those amendments contained certain management measures as listed in the final rule published at 54 FR 50386 (December 6, 1989). One of the listed measures authorized a comprehensive domestic observer program. An Observer Plan to implement provisions of this program has been prepared by the Secretary in consultation with the Council. Regulations were proposed to implement the Observer Plan (54 FR 51042, December 12, 1989) and comments were invited through December 21, 1989. Forty letters of comments were received. They are summarized and responded to in the "Response to Comments" section, below.

The Secretary, after reviewing comments received, including those submitted by the Council during its December 5-8, 1989 meeting, has determined that final regulations implementing the Observer Program are necessary for fishery conservation and management, and are consistent with the Magnuson Act and other applicable law.

Based on comments received, and expressed Council intent for the observer program, the contents of the Observer Plan have been updated. Main features of the Observer Plan are described below, including the responsibilities that will be imposed on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS-certified contractors who will provide observers to groundfish fishing vessels and shoreside processors. This notice also describes observer qualifications, standards of observer conduct, conflict of interest standards for observers and contractors, and reasons for revoking contractor or

observer certifications. Implementation aspects of the Observer Plan are described as follows:

Responsibilities of NMFS—The NMFS is responsible for (1) the overall program administration, (2) training or certification of observers, (3) contractor certification, (4) debriefing of observers, (5) coordination of observer coverage for the subject fisheries, (6) monitoring of logistics, and (7) management of the data collected by the observers. Each of the aspects of NMFS responsibilities is further described as follows:

1. Program administration.

Administration includes establishment of general program policy, specification of observer duties and qualifications, sampling methods, data format, and policy with respect to observer safety. It also includes specifications of contractor certifications and overseeing NMFS personnel and budgets.

2. Observer training and certification.

Observers who meet the basic educational and experience qualifications stated in the Observer Plan and who are hired by certified contractors to be placed onboard domestic vessels will be required to successfully complete a 2½ week training certification program conducted by NMFS, or its designated agent, prior to being deployed on board a domestic vessel or at a shoreside processing facility. Individuals who have successfully completed either a foreign or domestic groundfish observer deployment in a program administered by NMFS will be required to attend only a two to four day briefing. Certification training will be provided, at a minimum, on a scheduled quarterly basis and more frequently if required. The training of observers is critical to the overall success of the observer program and the quality of information collected. Because observers will collect fisheries information for Federal management of the Alaska groundfish fisheries, training must be consistent and must respond to changing management and data collection needs. The observer certification may be revoked if the observer fails to perform assigned duties satisfactorily, or does not adhere to standards of conduct prescribed by NMFS.

3. Contractor certification. The NMFS must certify contractors prior to their providing observers to the industry to assure that the contractors do not have a financial or personal conflict of interest with the fishing vessel or shoreside processing facility owners, and to assure that the contractors understand their responsibilities. NMFS will review technical proposals submitted by prospective contractors

that describe task performance to ensure that they are able to adequately provide the required services under the mandatory observer program. The costs of providing observers will not be considered in the evaluation. Firms submitting proposals judged adequate to provide services and which do not have a financial or personal conflict of interest will be included in a list of certified contractors from which industry members can obtain their required observers. A contractor could lose certification if the contractor is found to have a financial or personal conflict of interest with either vessel or shoreside processor owners or the contractor is deficient in the performance of the duties prescribed by NMFS.

4. Observer debriefing. Debriefing observers will be done by staff of the NMFS observer program located at debriefing sites. Debriefing sites will be at Dutch Harbor and Kodiak, Alaska, and such other major fishing ports as deemed necessary by NMFS, and at the Alaska Fisheries Science Center (AFSC) in Seattle, Washington. Observers will be debriefed between deployments to make information available for editing, assimilation, and analysis.

5. Coordination of observer coverage and logistics. NMFS will coordinate observer coverage with certified contractors to ensure scientifically adequate sampling and to ensure receipt of information from the observers.

6. Data management. NMFS is responsible for the entry, editing, and database management of the data collected by observers.

Responsibilities of vessel operators and managers of shoreside processing facilities. The vessel operators and managers of shoreside processing facilities are responsible for costs of deploying observers on board vessels or at shoreside processing facilities including but not limited to bunk, meals and transportation. They are also responsible for coordinating with NMFS-certified contractors to assure that observer coverage meets requirements contained in regulations. Any vessel operator or manager of a shoreside processing facility who is required to accommodate an observer is responsible for obtaining a NMFS-certified observer from any of the certified observer contractors. The vessel operator or manager of a shoreside processing facility will pay the cost of the observer directly to the contractor.

Prior to the vessel beginning fishing, the observer must notify the AFSC, through the contractor, that he/she is on board the vessel and prepared to

perform his/her duties as an observer. Prior to receiving groundfish and commencement of processing operations by a shoreside processing facility, a observer must notify the contractor that he/she is on site and prepared to perform his/her duties.

A vessel operator must maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

- (a) Adequate fire fighting equipment;
- (b) One or more life rafts capable of holding all persons on board; and
- (c) Any other equipment required by regulations pertaining to safe operation of the vessel.

A manager of a shoreside processing facility must:

Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

Responsibilities of certified observer contractors. Contractors must be certified by NMFS. Firms holding a contract with NMFS to provide observer services will be included in the list of certified observer contractors. No limit is placed on the number of contractors which can participate in the observer program and a vessel owner or manager of a shoreside processing facility can choose to work with whichever contractors they select. Contractors are responsible for the following tasks:

1. Recruiting, evaluating, and hiring of qualified candidates to serve as observers.

2. Ensuring that prospective observers have obtained the required NMFS certification.

3. Providing observer salaries, benefits, and personnel services.

4. Providing workmen's compensation and insurance to cover and protect observers injured in the performance of their duties.

5. Providing all deployment logistics to make observers available and to place the observers on board the fishing vessels or at shoreside processing facilities.

6. Providing substitute observers in the event an observer has to be removed from, or leaves, a vessel or a shoreside processing facility.

7. Arranging observer debriefings at specified debriefing ports.

8. Assuring that all observer catch messages and other required

transmissions between the observer and NMFS are delivered to NMFS within a time specified by the Regional Director.

9. Assuring that all trip data, reports, and specimens collected by observers are delivered to NMFS within five working days of the completion of each observer trip.

10. Assuring that all gear and equipment issued to observers by NMFS is returned to a storage place designated by NMFS within five working days of the completion of the observer trip.

For purposes of the Paperwork Reduction Act only, both the contractors and the observers, while not direct employees of the United States government, are nonetheless, acting as agents or representatives of the government.

Observer Qualifications

Observers placed onboard domestic vessels or at shoreside facilities by a contractor must be certified by NMFS to serve as an observer under this program. To be certified by NMFS, an observer should have a bachelor's degree in fisheries or wildlife biology or related field of biology and natural resource management. If sufficient numbers of qualified and acceptable applicants with the above educational background are not available, individuals with senior standing within one of those programs listed above or individuals with an Associate in Arts (A.A.) degree in fisheries or wildlife science or technology may be substituted. If sufficient numbers of individuals with any of the above qualifications are not available, the contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

Prior experience as an observer through a program administered by the NMFS Observer Program of the AFSC is not required. Individuals who have satisfactorily served as an observer for a program administered by the Observer Program of the AFSC during the past 24 months must attend a two to four day certification briefing provided by NMFS prior to deployment. Individuals who have not served as an observer or who last satisfactorily served as an observer prior to the past 24 months must attend and successfully complete a 2½ week certification training provided by the AFSC prior to deployment.

Prior to deployment, each observer must receive a NMFS certification acknowledging successful completion of the NMFS training program. Each observer must agree to provide all data collected to NMFS. Each observer must agree to adhere to the NMFS standards of conduct for observers.

Standards of Observer Conduct

Observers must abide by the standards of conduct listed in title 15 CFR Subtitle A, part 0 of the Department of Commerce Regulations and the following:

General standards of behavior:

In addition to the standards given above, the observer must avoid any behavior which could adversely affect the confidence of the public in the integrity of the program. Observers are thus expected to conduct themselves in a manner which will reflect favorably upon the program. This means acting in an honest, professional, business-like manner in all situations. Specific guidelines follow:

(1) Observers must diligently perform their assigned duties.

(2) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations that are observed. Falsification of observer data will be grounds for decertification.

(3) Observers must keep all collected data and observations made onboard the vessel or in the processing plant, confidential according to the Federal guidelines on confidentiality.

(4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the observer program as a whole. These actions or activities include, but are not limited to:

(a) Excessive drinking of alcoholic beverages (however, if the vessel or shoreside facility maintains a stricter alcoholic beverage policy for its employees, then the observers must comply with said policy);

(b) Use or distribution of illegal drugs; and

(c) Physical or emotional involvement with vessel or shoreside processing plant personnel.

Behavior which is contrary to these standards or to the intent of these standards are grounds for the decertification of the offending observer.

Conflict of Interest Standards for NMFS Certified Observers and Contractors

Contractors certified by NMFS to provide observer services to the fishing industry, and observers certified by NMFS to perform observer duties, cannot have either a financial or personal interest in the vessels or shoreside facilities they are employed to observe. A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shoreside

facility being observed that results from a property interest of business relationship in that vessel or shorebased facility. A personal interest is defined as an interest or involvement held by the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit. The provision for remuneration of certified observers does not constitute a conflict of interest.

(a) Conflict of interest standards for certified observers.

A NMFS-certified observer:

(1) Must be employed by an independent contracting agent certified by NMFS to provide observer services to the industry;

(2) May not have a financial interest in the observed fishery;

(3) May not have a personal interest in the vessel or shoreside facility to which he or she is assigned;

(4) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions, or judgement.

(b) Conflict of interest standards for certified observer contractors.

A NMFS-certified observer contractor:

(1) May not be an individual, partnership, or corporation with a personal or financial interest in the observed fishery, shoreside facilities or vessels, other than the provision of observers;

(2) Shall assign observers to vessels or shoreside facilities without regard to requests from vessel owners or operators for a specific individual;

(3) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer contractor's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions or agreements.

Reasons to Revoke Contractor or Observer Certification

A. The NMFS certification of an observer can be revoked by NMFS for the following reasons:

(1) A certified observer fails to satisfactorily perform the duties of an observer as prescribed by NMFS.

(2) A certified observer fails to abide by the standards of conduct described by NMFS.

(3) A certified observer is shown to have a conflict of interest with respect to the fishery, shoreside facility, or vessel to which he/she is assigned.

B. The NMFS certification of a contractor to provide observer services to industry can be revoked by NMFS for the following reasons:

(1) A certified contractor is shown to have a conflict of interest with respect to the fishery, shoreside facilities or vessels to which observers are being provided.

(2) A certified contractor has failed to satisfactorily perform the responsibilities of certified observer contractors prescribed in the observer plan.

Implementation Policy

(a) *Observer program start up and enforcement.* Full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice. NOAA recognizes, however, that some vessel operators and managers of shorebased processing facilities may experience start-up problems. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

(b) *Vessel participation.* Operators of all domestic fishing and processing vessels equal to or longer than 125 feet length overall will be required to carry an observer during all days expended during fishing trips.

For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaska port or leaves the EEZ and contiguous territorial sea.

Length overall (LOA) means horizontal length from stem to stern (see definition at §§ 672.2 and 675.2 of the regulations).

Operators of all domestic fishing and processing vessels that are 60 feet LOA and longer but less than 125 feet LOA and which fish more than 10 days during any calendar quarter (January-March, April-June, July-September, and October-December) must carry an observer for at least 30 percent of the days expended during fishing trips undertaken during that calendar quarter.

Vessels less than 60 feet in LOA must carry observers only if required by the Regional Director.

Compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught

incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

(c) *Shoreside processor participation.* Managers of shoreside facilities that annually receive 10,000 mt. round weight, or more of groundfish must have an observer at the facility on each day it receives groundfish during those months in which they receive a total of 1,000 mt or more of groundfish for the month.

Managers of shoreside facilities that annually receive between 1,000 mt and 10,000 mt. round weight, of groundfish must have an observer at the facility for 30 percent of the days of any month in which they receive a total of 500 mt or more of groundfish for that month.

Managers of shoreside processing facilities that annually receive less than 1,000 mt. round weight, of groundfish must have an observer if required by the Regional Director.

(d) *Exemption within the waters largely regulated by the State of Alaska.* With respect to observers on vessels, the Observer Plan does not apply in the following waters where groundfish are managed entirely by the Alaska Department of Fish and Game:

Clarence Strait and Chatham Strait—Waters shoreward of a line connecting the following points in the order listed: intersection of 55°25'20" N. latitude and 132°41'32" W. longitude; Cape Muzon Light; northernmost tip of Eagle Point on Dall Island; southernmost tip of Point Arboleda; northernmost tip of Point San Rogue; southernmost tip of Cape Ulitka; northernmost tip of Cape Lynch; southernmost tip of Helm Point; westernmost tip of Hazy Island; Cape Ommaney Light, just north of 57°30'00" in Peril Strait; westernmost tip of Column Point; northernmost tip of Soapstone Point; southernmost tip of Cap Spencer; Yakobi Rock; and Yakobi Island.

Prince William Sound—Waters shoreward of lines connecting the following points in the order listed: Point Whitshed; Point Bentlinck; Cape Hinchbrook; Zaikof Point; Cape Clear; and Cape Puget.

Secretarial authorization for the mandatory domestic observer program set forth in Amendments 13 and 18 was based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. He implements, therefore, specific provisions of the Observer Plan. As additional information is obtained through the observer program, the Secretary will work with the industry to develop and refine the domestic Observer Plan to meet the needs of both

fishery management agencies and the fishing industry.

Secretarial policy requiring 100 percent observer coverage of vessels with an overall length equal to or greater than 125 feet long remains unchanged from the proposed rule and draft Observer Plan. In 1989, 69 vessels were in this size category. Assuming 142 fishing days per vessel, which was the rate in 1989, 9,798 observer days could be required for this segment of the fleet in 1990 at a cost of \$2,449,500 based on a cost estimate of \$250 per observer day.

Secretarial policy, which establishes a new minimum length of up to 60 feet for vessels that will not be required to carry an observer, varies from that stated in the proposed rule and draft Observer Plan. Those documents proposed that operators of vessels under 50 feet would not be required to carry an observer, unless they are required to do so by the Regional Director. Comments received (see "Response to Comments Received" section, below) indicated that benefits of placing observers on vessels in the 50-60 feet size category is not appropriate, because these vessels catch such small amounts of groundfish that the cost would not be justified. The Secretary analyzed vessels between 51 and 59 feet with respect to amounts that they harvested in 1989. Vessels in this size category numbered 196 and harvested 13,542 mt of groundfish, or percent of the total harvest by domestic annual processing (DAP) vessels.

Many of these vessels are "limit seiners"—vessels that have a keel length of 50 feet but an length overall of 58 feet. They are used primarily to purse seine for salmon, but are also used to a small extent to catch sablefish and rockfish with hook-and-line gear. The Secretary has determined that the benefits gained by placing observers on these relatively small, albeit numerous vessels, do not justify the costs that would be imposed on them. Conversely, vessels between 60 and up to 125 feet length overall can more easily accommodate an observer and harvest a significant amount of groundfish. In 1989, 217 vessels in this size category harvested 253,587 mt of groundfish, or 19 percent of the total harvest of 1.3 million mt delivered to U.S. processors. The Secretary has determined that the significant harvest by these vessels and the information obtained from these operations justify the observer costs.

Secretarial policy for shoreside processing facilities varies from that stated in the draft Observer Plan. The final Observer Plan now requires shoreside processing facilities that receive 10,000 mt or more of groundfish

annually to have an observer for only during those months in which the total amount of groundfish received is 1,000 mt or more. The number of occurrences (months) in which these facilities received landings of 1,000 mt or more per month was 53. Assuming 30 days per month, 1,590 observer days would be required for this category of processing facility in 1990 at a cost of \$397,500 based on \$250 per day.

The Observer Plan also requires shoreside processing facilities that receive at least 1,000 mt but less than 10,000 mt of groundfish annually to have an observer for only 30 percent of the days during those months in which the total amount of groundfish received is 500 mt or more. The Secretary determined that the amounts of groundfish received during some months are small in the aggregate and the benefits gained by having observers do not justify the costs. Based on 1989 landings, 13 facilities had total landings of at least 1,000 mt but less than 10,000 mt. The number of occurrence (months) in which these facilities received landings of 500 mt or more per month was 63. Assuming 30 days per month, and 30 percent coverage, 623 observer days would be required for this category of processing facility in 1990 at a cost of \$155,750 based on \$250 per day.

Differences Between the Final Rule and the Proposed Rule

1. A definition of overall length is added in §§ 672.2 and 675.2 to define lengths of vessels that participate in the observer program.

2. Paragraph (f) *Exemption*, in § 672.27 and § 675.25 is deleted, and any references in the proposed rule to paragraph (f) are deleted. These paragraphs in the proposed rule had listed one exemption that might be allowed to excuse a vessel operator or manager of a shoreside processing facility from complying with the Observer Plan. Based on Council comments, the Secretary has determined that no exemptions will be allowed. The Council, as well as the Secretary, believes that the management of the public fishery resources can only be accomplished through the attainment of observer information and that allowing fishing or processing to occur without opportunity for representative sampling is contrary to the public interest.

Difference Between Implementation Policy in the Proposed Observer Plan and the Final Observer Plan

The proposed Observer Plan did not include policy with respect to start-up problems in complying with the Observer Plan by vessel operators and

managers of shorebased processing facilities who are required to have 100 percent observer coverage. The final Observer Plan includes start-up policy. While full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice, good faith efforts by operators and managers to obtain observers as soon as possible will be considered when enforcing compliance with the Observer Plan.

In the proposed Observer Plan, the Secretary preliminarily determined that vessels shorter than 50 feet in length would not be required to comply with the Observer Plan. In response to comments received, the Secretary has determined that vessels under 60 feet will not be required to comply unless specifically required to do so by the Regional Director. Vessels 60 feet length overall and longer, however, must be required to comply with the Observer Plan. Reasons for these changes are provided above.

The final Observer Plan also specifies that vessels 60 feet or longer but less than 125 feet that conduct actual fishing operations for only 10 days of any calendar quarter will not be required to carry an observer. If during any calendar quarter they fish for more than 10 days, then they will be required to carry an observer for at least 30 percent of their fishing trips during those calendar quarters.

In the proposed Observer Plan, the Secretary preliminarily determined that shoreside processing facilities that receive 10,000 mt or more of groundfish during the fishing year must have an observer on site for each day they receive groundfish. In response to comments received, the Secretary has determined that an observer must be present at such processing facilities each day those facilities receive groundfish during those months when total groundfish receipts are 1,000 mt or more. This change accommodates those shorebased processing facilities that receive large amounts of groundfish over a short period of time and then receive only small amounts during periods when other fisheries (e.g., salmon fisheries) dominate the operations. Rather than employing an observer with little to do during most months, managers of shorebased processing facilities can plan for those months in which they will receive 1,000 mt or more during a month and employ an observer for just those months.

Further, rather than requiring those facilities that receive between 1,000 mt but less than 10,000 mt annually to have an observer during 30 percent of the

days they receive groundfish, the Secretary has determined that this coverage will apply only for those months when the total amount of groundfish received is 500 mt or more. Again, managers of shorebased processing facilities can plan for those months in which they will receive 500 mt or more during a month and employ an observer for just those months.

The Observer Plan now exempts vessel compliance in certain areas that lie in the Southeast Alaska archipelago and in Prince William Sound. Fisheries in these areas are managed entirely by the Alaska Department of Fish and Game.

The proposed Observer Plan was silent with respect to compliance of vessel operators making landings of groundfish that were caught in other fisheries. The Observer Plan now makes clear that compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

The Observer Plan also excludes operators of catcher vessels from having to carry an observer in mothership operations in which catcher vessels transport the codend part of a trawl through the water to a mothership in such a manner that no sorting of catch is possible. An observer would be on a mothership and would be able to record all required information. In this type of operation, an observer on a catcher vessel would serve little purpose.

The preamble to the final rule now includes more information that is also part of the Observer Plan. Additional information is found under the following subheadings: Observer Qualifications; Standards of Observer Conduct; Conflict of Interest Standards for NMFS Certified Observers and Contractors; and Reasons to Revoke Contractor or Observer Certification. This information was part of the Observer Plan that was provided by the Regional Director to the public during the December 6-21, 1989 public comment period.

Response to Comments Received

Forty letters of comments were received during the comment period. Most comments were supportive of the observer program, but some contained recommendations for changes resulting from different industry perspectives. Most of the comments focused on the following issues: small boats cannot carry observers without incurring unfair costs; the 30 percent observer coverage requirement is too high; observer coverage should be calculated semi-

annually rather than quarterly; observers at shore-based processing facilities are redundant if vessels delivering to them also have observers; no relationship exists between vessel length and catch; and the Federal government should pay for the observer program. Comments are summarized and responded to below.

Comment 1. No exemptions should be allowed for operators of vessels and managers of shorebased processing facilities that are required to comply with the Observer Program.

Response: The final rule has excluded provision for exemptions.

Circumstances will arise that warrant an exemption, but provision for exemptions without defining exactly those circumstances would result in confusion as to whether an exemption might be granted. Some participants might take advantage of an exemption provision and jeopardize the intent of the observer program. Individual circumstances will be considered on a case-by-case basis when making citations or when assessing penalties.

Comment 2. Observer coverage should be based on actual production, either historical or theoretical, rather than on vessel length, because a relationship between vessel length and production does not exist.

Response: While the relationship between production and vessel length is not linear for each gear type, examination of catch data shows that, overall, larger vessels harvest more groundfish than do smaller vessels. For purposes of the observer program, vessel length was a parameter that could best be defined for purposes of industry planning. Another parameter such as production might be used if justified by experience gained from the observer program.

Comment 3. Vessels in the 50-124 foot category should be covered semi-annually rather than quarterly.

Response: Information obtained from the segments of the observed fleet must be representative if NMFS is to use it to manage those fleet segments. To be truly representative, it should be collected according to statistically valid means. Ideally, the information ought to be collected in a completely randomized manner. Because such collections are not feasible, information must be collected over as short a time period as possible to be reasonably representative. If observer coverage is semi-annual rather than quarterly, the frequency of the information collected will be reduced. It will, therefore, be less representative, and less useful for management purposes. Quarterly observer coverage will be required.

Comment 4. Thirty percent coverage on a large number of vessels (e.g., 352 vessels) is unnecessary and should therefore be changed to 20 percent.

Response: As high a percent coverage as possible is necessary to obtain representative information for management purposes. Biological data is often variable and samples from too small a number of vessels would not be representative. Even though the total number of vessels is high, segments of the fleet use diverse gear types and participate in different fisheries in geographically separate locations. In the Gulf of Alaska, for example, as few as two or three trawl vessels may be fishing for rockfish at any one time, and they may be miles apart. To be representative, therefore, 30 percent coverage is required. This level of coverage may be reduced if experience gained indicates that a reduction is warranted without jeopardizing the program.

Comment 5. The vessel size category system for assigning observers does not take into account a vessel's ability to pay costs nor does it fairly distribute the costs.

Response: The composition of the groundfish fleet is diverse with respect to fishing power, earnings, and potential to afford observer coverage. The Secretary of Commerce does not have access to information on vessel net earnings to determine which vessels are unequally impacted by the Observer Plan. A tax on groundfish landings or production to obtain revenue with which to Federally fund observer coverage is likely a fair way to distribute costs. The Secretary is not authorized, however, under the Magnuson Act to levy taxes. After a year's experience with the observer program, new ways to more fairly distribute costs may become evident.

Comment 6. Observer coverage on catcher vessels is not necessary, because information can be collected from log books or by shoreside observers.

Response: The information that will be available from catcher vessels will be extremely useful in fishery management. Many of these vessels participate in fisheries in different areas, both geographically as well as bathymetrically than do catcher/processor vessels. Although information about retained catch from catcher vessels might be sampled by shorebased observers, information on discarded groundfish or prohibited species could not be collected other than by observers at sea. Even with the use of Federal logbooks, this information must be validated by at-sea observers. However,

as previously stated, the Observer Plan does exclude catcher vessels in mothership operations in which the codend part of a trawl is transported through the water to the mothership in such a manner that no sorting of catch is possible.

Comment 7. The Secretary must give authority to local officials to exempt vessels from carrying an observer if the vessels are unable to do so.

Response: For purposes of conveying policy, no vessels will be exempt from carrying an observer. As a practical matter, circumstances will arise in which a vessel operator or manager of a shorebased processing facility has not been able to acquire or keep the services of an observer. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

Comment 8. Vessel operators should not be required to submit fishing plans prior to the start of a season.

Response: Vessel operators are not required to submit fishing plans. Vessel operators have the responsibility of working through the certified contractor to obtain sufficient observer coverage to satisfy the 30 percent coverage of their fishing effort.

Comment 9. Observers at shore-based facilities would have nothing to record because sorting groundfish and prohibited species occurs at sea, and, therefore, the requirement that shoreplants have observers should be eliminated.

Response: Observers on vessels will not be able to observe vessel operations 24 hours a day, even on large vessels where 100 percent observer coverage is required. Actual coverage on vessels will likely be 30 percent or less. Less than complete information will be the result. Exacerbating the problem of partial data is policy that requires vessels less than 60 feet in overall length to carry observers only when required by the Regional Director. Many of these vessels will be delivering catches to shore-based processing facilities. Observers at shore-based processing facilities will be able to partially fill this gap by being on hand to obtain information from landed catch. Even though prohibited species are required to be discarded at sea, experience has shown that some remain with the landed catches. Observers at shore-based facilities will be able to better document bycatch of prohibited species, which will result in more accurate total mortality estimates.

Comment 10. Costs should be borne by NOAA through a product value tax

Response: The Secretary is not authorized under the Magnuson Act to tax products.

Comment 11. If shoreside observers are required, coverage should be based on monthly production to account for those shore-based facilities that produce large and small groundfish amounts seasonally, and thus avoid observer deployment during periods of small groundfish production.

Response: The Secretary has revised implementation policy such that shoreside processing facilities that process 10,000 mt or more of groundfish will need to have an observer only during the days in those months when total groundfish received is 1,000 mt or more for that month. Also, shoreside processing facilities that process 1,000 mt or more but less than 10,000 mt annually must have an observer for just 90 percent of the days during months when they receive 500 mt or more of groundfish.

Comment 12. If more cost effective, a NMFS staff person responsible for debriefing observers ought to fly to Kodiak rather than require several observers to fly to Seattle.

Response: The Secretary intends that observers be debriefed as close to the fishing grounds as possible. The Secretary also intends that the observer program be as cost effective as possible. Depending on circumstances, a debriefer will be sent to the observers rather than requiring observers to be sent to the debriefer.

Comment 13. The industry seeks assurance that information obtained from the observer program be kept confidential.

Response: Information collected by observers in the course of biological sampling is administratively confidential. This type of information may be released, but only with the consent of the vessel operator or manager of a shorebased processing facility. Information obtained by observers from the fishery industry, e.g., logbook and other information that reveals the business and identity of the vessel operator or name of a processing facility, is statutorily confidential. The Secretary may not release statutorily confidential information obtained from the fishing industry pursuant to the Magnuson Act. NOAA directives require the safekeeping of these data by Federal employees. Unauthorized release of statutorily confidential data is a Federal offense.

Comment 14. Will an observer be provided a survival suit or is that the responsibility of the vessel operator? Will a vessel operator need to provide for a larger life raft to accommodate an

observer? Do vessels fishing inside of 3 miles need to carry an observer?

Response: Observers will be provided their own survival suits. Vessel operators must provide life rafts large enough to accommodate safely the entire crew and the observer. All vessels that have a Federal permit to fish for groundfish must comply with the observer program, with the exception of specified waters in Clarence Strait and Chatham Strait as well as Prince William Sound. See implementation policy, above for definitions of these internal waters.

Comment 15. A vessel operator must have the option to accept or reject a particular observer. A cadre of observers should be stationed in each major port, because too much time would be required to bring an observer from Seattle.

Response: This type of concern must be resolved between the vessel operator or manager of a shore-based facility, and the contractor. The Secretary is only concerned that vessel operators and managers of shoreside processing facilities comply with the Observer Plan.

Comment 16. Although vessels under a particular size and shoreside processing facilities that produce a minimum amount of groundfish annually do not have to accommodate an observer, provision should be made that even these entities must be covered in certain situations when required.

Response: Implementation policy dictates that, although vessels under 60 feet in length and shoreside processing facilities that receive less than 1,000 mt of groundfish a year normally will not have to accommodate an observer, the Regional Director reserves regulatory flexibility such that even these entities may have to accommodate an observer if required.

Comment 17. Observer coverage of medium size vessels should be based on 30 percent of their trips rather than on 30 percent of effort, because such coverage would be easier to document.

Response: Observer coverage based on trips would not be equitable. A vessel operator could comply by carrying an observer on a short trip and then make two long trips without an observer. Conversely, another vessel operator could make three long trips and carry an observer on just one of those trips. The burden would shift disproportionately to the vessel operator making the long trips. Observer coverage will be based on 30 percent of the days fished during fishing trips. For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaskan

port or leaves the Alaska EEZ or territorial sea. Under this interpretation, transit time from ports such as Seattle cannot be used to gain credit for observer days.

Also, lost fishing time prior to fishing cannot be counted. Conceivably, a vessel operator could expend time without actually fishing to gain credit for observer days, discharge the observer, and then continue fishing with no observers on board. Once fishing has commenced, however, lost fishing time due to unforeseen circumstances (e.g., weather or mechanical breakdowns) will be counted toward observer days until the vessel arrives at an Alaskan port or departs the EEZ or the territorial sea. Transit time to ports outside the EEZ or the territorial sea (e.g. Seattle or the "donut hole") will not count toward observer days. With the use of Federally required fishing log books, a vessel operator will be able to know the number of days that he has already fished. He will also be expected to be able to estimate the number of days he intends to fish in the future. Once a trip has started, lost fishing time for unforeseen circumstances (e.g., engine breakdowns, bad weather, etc.) will be counted in favor of the vessel operator. That is, the number of days the observer is on board is counted toward the 30 percent coverage even though fishing has been curtailed due to unforeseen circumstances beyond the vessel operator's control.

Comment 18. Observers should not collect information that would be used for compliance purposes.

Response: Observers are not enforcement agents. Nonetheless, information they collect during their role in collecting information about total fishing mortality of groundfish and prohibited species will be submitted to NMFS for purposes of monitoring quotas and verifying compliance with regulations.

Comment 19. Observers should be trained in Alaska. Experience gained through fishing should count with respect to fulfilling observer qualifications.

Response: An observer's ability to professionally fulfill his responsibilities is independent of where he is trained. Training, therefore, will not be restricted to just Alaska sites. Although actual fishing experience is useful, the aspects of carrying out responsibilities with respect to biological sampling necessitates formal training in biological sciences.

Comment 20. Registered length is superior to length overall for purposes of determining participation.

Response: Registered length is no longer favored as a measure of vessel length. Different measurements (e.g., keel length, water line length) have been all referred to as registered length. Length overall is superior, because it is measurable and easiest to document.

Comment 21. Domestic fishermen are entitled to same exemption process as foreign and joint venture fishermen.

Response: The purpose of the observer program is to obtain information necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries. This information will be used to make informed decisions about conserving groundfish stocks or allocating among U.S. fishermen, who now dominate this groundfish fishery. Past history for providing exemptions for joint venture or foreign fishermen is not relevant.

Developing a rigorous system whereby U.S. vessel operators could gain an exemption would be administratively burdensome and not in the National interest, given the complexities of potentially valid reasons for exemptions. Nonetheless, NOAA will consider good faith efforts by operators and managers to maintain required observer coverage when enforcing compliance with the Observer Plan.

Comment 22. No more than one observer should be required on a vessel even if marine mammal observers are also required.

Response: Marine mammal observers are also considered to be natural resource observers. These observers will be used in special cases to collect information where the mandatory observer program is not able to respond. No more than one observer, whether a marine mammal observer or an industry observer, will be required.

Classification

The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendments 13 and 18. The Assistant Administrator found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this rule is not a "major

rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council for Amendments 13 and 18. A copy of the EA/RIR/FRFA may be obtained from the Regional Director at the address above.

The Under Secretary concluded that this rule would have significant effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Regional Director at the address above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

Other Matters

The Assistant Administrator for Fisheries finds for good cause that this rule should be made effective immediately. The industry has been well-advised that this program is intended to become effective as soon as possible after the beginning of 1990. The waiving of the cooling off period is not expected to be burdensome to the industry because NOAA recognizes some start-up problems may occur when the observer program is implemented. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the observer plan. Observer data needed for inseason management decisions and for future management planning and decision-making must be obtained at the beginning of the fishing year. If this rule is delayed, information will be foregone for the length of the delay. This information pertains to (1) incidental catches of prohibited species, including crab and Pacific halibut, in the groundfish fisheries, (2) incidental catches of groundfish species in the target groundfish fisheries, and (3) interactions between the groundfish fisheries and marine mammals and birds. Some of the groundfish fisheries may last as little as three or four weeks after the fishing year starts on January 1, 1990. If observers are not deployed

during these fisheries, information will not be available to make informed management decisions in 1991. In addition, the Assistant Administrator, mindful of the decline of Stellar sea lion populations in the waters off Alaska, The observer coverage required under this rule will provide important information concerning the effects of fishing for groundfish on these populations. In particular, immediate deployment of observers will provide timely and more complete information on interactions during the winter fisheries. Therefore, the Assistant Administrator has determined that it is impractical and contrary to the public interest to delay for 30 days the effective date of this rulemaking under provisions of section 553(d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Dated: February 8, 1990.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

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

2. Section 672.2 is amended by adding the definition of "length overall" in alphabetical order as follows:

§ 672.2 Definitions.

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

3. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels sub-

to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements.*—(1) *Compliance by vessels.* An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities.* (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) One or more life rafts capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold,

process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish and fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for part 675 continues to read as follows:

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

5. Section 675.2 is amended by adding the definition of "length overall" in alphabetical order as follow:

§ 675.2 Definitions.

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders,

outboard motor brackets, and similar fittings or attachments.

6. Section 675.25 is revised to read as follows:

§ 675.25 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) *Purpose.* The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) *General requirements—(1)*

Compliance by vessels. An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities—(1)* an operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

- (A) Adequate fire fighting equipment;
(B) One or more life rafts capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board or fish and fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;
(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

[FR Doc. 90-3147 Filed 2-7-90; 11:36 am]

BILLING CODE 3510-22-M

PUBLIC COMMENT SUMMARY

Brad Tischer, Fisherman, Kodiak - Supports the Council's intent of the observer program. Objects to the exemption of vessels less than 60' in length from taking observers. He cites how some vessels in this category have a larger hold capacity than his 80' vessel. He believes all vessels should be required to carry observers. There are many 58' salmon boats that have the capability of taking observers.

John Bruce, Deep Sea Fishermen's Union - Recommends Council consideration of Mr. Tischer's opinion.

Jeff Stephan, United Fishermen's Marketing Assn. - Requests that the council and NMFS consider exempting pot vessels less than 125' in length (100' length is another option) for carrying observers. He cites concerns over profitability by pot boats working to develop the Pacific cod fishery. He also cites lack of bycatch problems associated with the pot fishery. He suggests that an alternative could be reducing the now required 30% coverage to 5-10%

Michael Ferguson, Fisherman, Pelican - Owns a 65' longline vessel and objects to the requirement of taking and funding an observer because of lack of space on his vessel, and a financial inability to pay the costs. While some boats work more groundfish and can handle observers, his vessel does not. He has requested an exemption from taking an observer.

Don Young, Congressman for All Alaska - Forwarded letters from Jeff Stephan and Michael Ferguson. He requests that the council consider a limited exemption process that can be used on a case-by-case basis.

Marilyn Pritchard, Fisherman, Seward - Objects to the observer coverage requirement (in this case, on vessels 60' to 125' in length) due to the financial burden it places on a limited sector of the industry. She believes that either a poundage fee or traditional federal funding be used to support research programs. Observer costs are too high to be borne by the industry. Training, at-sea work, debriefing, broken observer contracts, wear and tear on the vessel, all impose unreasonable costs.

Katherine Little, Fisherman, Cordova - Owns a 77' longline vessel which has bunk space for only its 7-man crew. She objects to the observer requirement citing lack of space on her boat and the high costs of an observer. Is concerned that the requirement will put small commercial fishing operations out of business.

Alec Brindle, Alyeska Seafoods - Supplied comments from his division managers on the logbook/reporting requirements. Believes the daily production logbook is cumbersome and not practical. Recommends that longer time periods are needed for filling out catch and product reports. He says filling out the product transfer log and weekly catch/product reports is very time consuming and duplicative. Suggests that catch/production figures be presented in units of pounds rather than metric tons.

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE
2331 RAYBURN BUILDING
TELEPHONE 202-225-5765

COMMITTEES:
INTERIOR AND INSULAR
AFFAIRS
MERCHANT MARINE AND
FISHERIES
POST OFFICE AND
CIVIL SERVICE



AGENDA C-5(c)
APRIL 1990

701 C STREET BOX 3
ANCHORAGE ALASKA 99513
TELEPHONE 907-271-5978

BOX 10, 101 12TH AVENUE
FAIRBANKS ALASKA 99701
TELEPHONE 907-456-0210

401 FEDERAL BUILDING
P.O. BOX 1247
JUNEAU ALASKA 99802
TELEPHONE 907-988-7400

501 FEDERAL BUILDING
KETCHIKAN ALASKA 99902
TELEPHONE 907-225-6880

P.O. BOX 1605

KENAI ALASKA 99611

Box 477

KODIAK ALASKA 99615

P.O. BOX 1860

NOME ALASKA 99762

RECEIVED
MAR 29 1990

Congress of the United States

House of Representatives

Washington, D.C. 20515

March 7, 1990

ACTION	ROUTE TO	INITIAL
	Exec. Dir.	
	Admin. Off.	
	Exec. Sec.	
	Staff Asst. 1	
	Staff Asst. 2	
	Staff Asst. 3	
	Interpreter	
	Mail/BBKA	
	Sec./Typist	

Dr. Don Collinsworth
Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Dr. Collinsworth:

I am forwarding copies of two letters I have recently received regarding the domestic fishery observer program required under the Bering Sea and Gulf of Alaska Groundfish Fishery Management Plans. Both letters make the point that some level of observer coverage below that which is required by the Fishery Management Plans should be considered in individual cases.

As you know, I have supported industry funded observer programs on domestic vessels. Further, I have no wish to be involved in the fishery management process that led to adoption of these amendments. At the same time, I can foresee a need for some sort of case-by-case consideration of exemptions from observer coverage. I therefore hope that the Council will consider a limited exemption process when the Fishery Management Plans are reviewed in the future.

I look forward to continuing working with you and the other Council members in the conservation and management of our fisheries.

Sincerely,

DON YOUNG
Congressman for all Alaska

DY:rmw

Enclosures

United Fishermen's Marketing Association, Inc.



P.O. Box 1035 Kodiak, Alaska 99615

Telephone 486-3453



Steve Pennoyer, Regional Director
Alaska Region, NMFS
P.O. Box 21668
Juneau, Alaska 99802

February 17, 1990

Dear Steve,

We would like to request a modification of the Observer Regulations that apply to domestic vessels that harvest pacific cod (p. cod) with pots. UFMA represents pot fishermen, trawlers and longliners who harvest groundfish in the Gulf of Alaska and the Bering Sea/Aleutian Islands. In an effort to help our groundfish fishermen understand their responsibilities regarding the Observer Regulations, we have conducted several meetings during which we discussed the details of such Regulations. It is as a result of those meetings that we request that vessels that are less than 125' long (less than 100' long as an alternative), and that harvest p. cod with pots, be subject to the same Observer Regulations that apply to vessels that are less than 60' in length; that is, that these vessels not be required to carry observers.

Several owners and operators of vessels that are either now harvesting or intend to harvest p. cod with pots feel that the Observer Regulations are economically disadvantageous to their profitability, and to their ultimate success in utilizing the p. cod resource. Pot fishing for p. cod is a relatively new and developing fishery, and has the potential of providing a good alternative opportunity to large numbers of U.S. fishermen to participate in the harvest of groundfish. The pot fishery for p. cod is generally known to be a clean fishery, with few bycatch problems, and provides a good quality product. Generally, the potential profitability of harvesting p. cod with pots is encouraging to many fishermen, but the additional cost of carrying an observer for these vessels is having the effect of discouraging some fishermen from entering into this fishery. Many in the U.S. fishing industry and government have attempted to achieve the objective of greater utilization of groundfish by American fishermen and processors; the harvest of p. cod with pots provides U.S. fishermen and processors with opportunities in the groundfish resource that they otherwise may not have; the Observer Regulations may have the effect of discouraging this development.

However, we do see some benefit from limited (significantly less than 30%) observer coverage on vessels that harvest p. cod with pots. Limited observer coverage on these vessels would not only demonstrate that this method of harvesting p. cod is clean, but would also lessen the cost burden to these vessels. Observer coverage on these vessels at the 5% to 10% level, or preferably on a "by request" basis, would not only serve the purpose of demonstrating that this fishery is clean, but would also lessen the cost factor for these vessels to the point that more vessels could economically participate in this method of harvest. In addition to the cost considerations to the vessel, we believe that the amount of useful observer information that may be provided by the current 30% observer coverage requirement on this class of vessels does not justify the costs of program administration that would be incurred by NMFS.

Sincerely,

Jeffrey R. Stephan
Manager

cc: Mr. Ron Berg
Mr. Clarence Pautzke

FEB 15 '90 16:36 TOWN OF PELICAN

203

P.2/3

Box 32
Pelican, AK 99832
February 15, 1990

The Honorable Don Young
Congressman for Alaska
Juneau District Office
P.O. Box 21247
Juneau, AK 99802

Dear Ms. Hudson:

This letter is follow-up to our phone conversation earlier today.

The issue that I would like to bring to Congressman Young's attention is the 1990 National Marine Fisheries Service regulation concerning mandatory observers aboard certain sized harvest vessels participating in the groundfish fishery. The regulation requires that the vessel owner pay the observer and provide room & board.

Our fishing business has always been a family operation with the objectives of providing for the needs and success of our family, and being a producer and contributor to the gross national product of our country. In 1987 we purchased a 65' vessel with the intention of pursuing those objectives in conditions of accommodation and safety. We are hardworking, conscientious fishermen, but by no means highliners.

Now this regulation has put us in a category of carrying an observer because of the length of our vessel, but our situation cannot accommodate one, and we are financially unable to meet the costs of placing one. I know of numerous longliners smaller than ours that operate on a larger scale and run more gear and

harvest more fish. Our operation is simply not of the nature that should mandate an observer.

My husband could provide you with documentation for my claims as he is the one familiar with the administrative end of our business, whereas I am not. Unfortunately, he is not available to do so because our situation due to this regulation has forced him to take a job as deckhand on another boat instead of being able to participate in the 1990 groundfish fishery as we had planned. I can only appeal to you as a mother concerned with the future of her children, and as a wife concerned that a business her husband has been building for 18+ years is threatened with bankruptcy. My viewpoint is an emotional one based on mortgage payments, home heating costs, monthly necessities. For that forgive me, but these are the realities I must deal with in the face of this NMFS regulation.

In our particular case this is an arbitrary regulation without merit. We are asking you, therefore, to give this case particular consideration, and exempt us from carrying an observer. We are willing to cooperate fully in filling out & filing the logbooks.

Your timely attention to this matter is appreciated.

Sincerely,
Mrs. Ellen Ferguson
Mr Michael Ferguson, owner/operator
1/4 DRY PASS
Compass Fisheries
907-735-2249



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service AGENDA C-5

P.O. Box 21668

APRIL 1990

Juneau, Alaska 99802-1668

SUPPLEMENTAL

National Marine Fisheries Service
Fishery Management Division

April 4, 1990

QUESTIONS AND ANSWERS ABOUT NEW RECORDKEEPING AND REPORTING REQUIREMENTS

The Alaska Region has received numerous questions about the new groundfish logbook program and associated reporting requirements. This document is a partial collation of those questions and NMFS' answers to them. As NMFS formulates answers to other questions, NMFS will update this document. Questions and accompanying response are grouped into the following five categories: General; Daily Cumulative Production Logbook; Product Transfer Logbook; Daily Fishing Logbook; and Monthly Product Value Report.

GENERAL

Question 1. How are "at-sea" and "shoreside" processing operations defined for purposes of the groundfish logbook program and reporting requirements?

Any vessel, including a towed barge, that has been issued a Federal groundfish permit as either a mothership processor or catcher/processor, regardless of where it operates, will be considered as an "at-sea" operation. Groundfish processor vessels that have not been issued a Federal groundfish permit and conduct all processing operations within State waters will be considered as shoreside processing operations, as will all shoreside processing plants located on land.

Any vessel that has not been issued a Federal groundfish permit and receives groundfish from federally permitted harvester vessels must comply with all Federal recordkeeping and reporting requirements, including Daily Cumulative Production Logbooks, Product Transfer Logbooks, Weekly Production Reports, Check-in/out reports, and any other recordkeeping and reporting requirements set forth in Federal regulations.

Question 2. How does NMFS intend to enforce compliance with recordkeeping and reporting requirements?

NMFS will contact responsible industry representatives if submitted reports are late or need to be verified, clarified or corrected. Failure to comply with NMFS' request for clarification or more timely submission of reports will be viewed as sufficient basis for referral of the situation to Enforcement for investigation and possible prosecutorial action.



Question 3. Must groundfish processors continue to comply with State of Alaska requirements to fill out ADF&G fish tickets?

Yes, all groundfish harvesters and processors, including those operating outside of State waters but registered under the laws of the State of Alaska, must continue to comply with State requirements for submission of ADF&G fish tickets. The requirement for the submission of ADF&G fish tickets was removed from Federal regulations because such regulations were redundant to existing State authority and regulations to collect the same information. This change in Federal regulations does not preempt State authority to collect ADF&G fish tickets from all groundfish processors, including those operating outside of State waters.

DAILY CUMULATIVE PRODUCTION LOGBOOK (DCPL)

Question 4. Are fish tenders and shoreside buying stations required to maintain logbooks?

Fish tenders and shoreside buying stations that DO NOT PROCESS (freeze) fish will not be required to maintain DCPLs provided that landings of groundfish are documented on fish tickets and the groundfish are then off-loaded at or shipped to a shoreside plant that maintains a shoreside DCPL. The shoreside plant must log all fish tickets from a tender or buying station on the day off-loading of groundfish received from the tender or shoreside buying stations is completed. The receiving shoreside plant will record discard amounts reported to tenders or buying stations by catcher vessel operators and will record all groundfish production information.

Question 5. Must a shoreside processor maintain a DCPL if landed groundfish are caught only from State waters?

All processors must maintain a DCPL and submit Weekly Production Reports if they receive groundfish from vessels that have been issued an annual federal groundfish permit, even if such groundfish are harvested only from State waters. Processors that are required to maintain DCPLs must record the receipt and production information for all groundfish received, including groundfish landed by vessels without a federal permit.

Question 6. Can daily employment information be recorded as man hours per day or must number of employees per day be recorded as set forth in regulations?

Each groundfish processor must record the number of separate individuals employed by that processor for purposes of processing groundfish during a day. This requirement is viewed as the most direct means of attaining information on employment within

various sectors of the groundfish industry for purposes of economic analyses of fishery management alternatives. This requirement may be revised for 1991 if experience during 1990 indicates that employment information may be more easily reported and analyzed as man hours per week. Until regulations are revised, however, processors must report employment as number of individuals, not man hours per day.

Question 7. How do shoreside processors involved in processing groundfish, shellfish, and other finfish record the number of employees involved in "processing" and "other" categories?

The number of "processing" employees should include only the number of individuals involved in groundfish production. The "other" category should reflect a prorated estimate of the number of individuals involved in administration and support of the groundfish processing operations. The "other" category should not include the number of individuals involved in processing crab or other finfish.

Question 8. Do the "Estimated catch receipt weight" recorded in a shoreside processor's or mothership processor's DCPL and "Estimated catch weight" recorded in a catcher vessel's Daily Fishing Logbook (DFL) reflect the same amount and does this amount include estimated groundfish weight or total live weight?

The estimated catch weight recorded by catcher vessel operators in the DFL should reflect the total estimated weight in metric tons of unsorted groundfish and prohibited species. The estimated catch weight receipt recorded by processor managers in the DCPL is the estimated or, if available, actual landed weight of groundfish received, prior to further sorting or discard by the processor. In most cases, this latter value will be less than the estimated catch weight recorded in the DFL except for those operations that receive unsorted codends from harvester vessels.

Question 9. Is groundfish "catch receipt time" recorded as the time when off-loading begins or ends?

Regulations require that information on groundfish receipt be recorded in the DCPL within two hours of such receipt. If off-loading operations exceed two hours, a processor could not comply with this regulation if receipt time is recorded as the time off-loading begins. "Catch receipt time," therefore, should be recorded as the time off-loading ends, allowing for another two hours before such information as ADF&G fish ticket number, receipt time, name of delivering vessel, and estimated catch receipt weight must be recorded in the DCPL.

Question 10. Can groundfish processors record catch receipt and product weight in pounds rather than metric tons?

Some groundfish processors maintain their own business records in pounds or receive limited amounts of groundfish as bycatch in other directed fisheries and find it impracticable to record such small amounts in metric tons. Such processors may record estimated receipt weights and daily production in pounds, provided the DCPLs indicate that such entries are in pounds. However, the Weekly Production Report summarizing DCPL entries for a week MUST continue to report total estimated groundfish receipts and production to at least the nearest tenth of a metric ton.

Question 11. Are groundfish processors required to collect discard information from catcher vessels delivering to them or held accountable for accurate reporting of discards by operators of catcher vessels?

Regulations require operators of catcher vessels to provide processors with information on at-sea discard amounts. This information must be maintained by a catcher vessel operator in the vessel's Daily Fishing Logbook. Groundfish processors are required to accurately record in their DCPL discard information reported to them by operators of catcher vessels, along with discard amounts resulting from processing operations. Processors will not be held accountable for at-sea discard information that is not reported to them by catcher vessel operators. Discard information recorded in the DCPL is used to generate the Weekly Production Reports, which are submitted to NMFS summarizing species specific production and discard amounts occurring during harvesting and processing operations.

Question 12. Won't the recording of discard information in a catcher vessel's Daily Fishing Logbook (DFL) and in a processor's DCPL result in double counting of discard amounts?

Copies of DFLs are submitted to NMFS on a quarterly basis and are not available to fishery managers for inseason quota monitoring. As a result, the information recorded in the DCPL includes discard amounts provided to a processor by catcher vessel operators. The DCPL is then used to generate the Weekly Production Reports which are submitted to NMFS summarizing, by federal reporting area and gear type, species specific production and discard amounts occurring during harvesting and processing operations. This weekly information is used for inseason management of the groundfish fisheries.

Question 13. Are discard amounts recorded on the same reporting date as the receipt of fish?

Discard amounts should be reported in the DCPL for the day that such discard occurs. Discard amounts reported to a processor by a catcher vessel should be recorded in the processor's DCPL on

the day off-loading of fish from the catcher vessel is completed. Additional discard by the processor prior to or during processing operations should be recorded in the DCPL on the day such discard occurs, regardless of when fish are off-loaded.

Question 14. Does a shoreside processor record, in the DCPL, discarded fish as discard or as meal, that is sent to a meal reduction plant.

If a processor produces meal on the premises, that product should be recorded as meal under the production section of the DCPL. If a processor ships an amount of whole fish to an offsite meal reduction plant, that amount should be recorded as discard in the processor's DCPL.

Question 15. Should the discard section of the DCPL include amounts of discarded by-products of processed fish?

No. The discard section of the DCPL should only record discard amounts of prohibited species and unprocessed whole fish and should not include amounts of groundfish byproducts discarded from processing operations.

Question 16. How can a processor track a specific groundfish receipt or landing and record production information specific to that landing, particularly if receipt and production occur on different days?

Production information is not tied to a specific groundfish receipt or landing and, in some cases, may be recorded several days after receipt of groundfish. Production information on finished product must be recorded by noon of the day following such production.

Question 17. Must production amounts of fish meal, bone meal, and fish oil products be broken down by species?

If the number of species involved in meal production makes it impractical to record the amount each species contributes to total meal production, NMFS recommends that a processor's DCPL record those species that comprise 10 percent or more of the total meal production. The Weekly Production Report should also indicate how much fish meal, bone meal, and/or oil is produced for each of the species comprising a significant portion (10 percent or greater) of total meal or oil production.

Question 18. How does a processor record a product not listed as a product type in the logbook instructions?

Additional species products not listed as a product type in the logbook instructions should be identified by the appropriate species code, a product type "97" and an accompanying description

of what the "other" product is, e.g., "livers". This information will be used by NMFS to expand the existing species product codes. To date, the following product type codes have been added to the existing list of product types:

PRODUCT CODE	PRODUCT
19	belly flaps (meat)
34	milt
35	stomachs (internal organs)
36	octopus/squid mantles
37	split, no backbone

Question 19. If a fishing vessel lands groundfish caught in two separate reporting areas, can the receiving processor prorate the associated discard and production recorded for the two areas based on the estimated proportion of catch from each area?

Yes. The processor manager should use the estimated hail weight supplied by the fishing vessel operator to arrive at a percentage breakdown of catch by area/gear type and use that percentage to separate production by area/gear type.

EXAMPLE:	Area	Hail wt.	Percent
	515	30 mt	28
	515	50 mt	48
	517	25 mt	24

If production totals 3,000 cartons of product, then 76 percent, or 2,280 cartons are reported for area 515 and 24 percent, or 720 cartons are reported for area 517.

Question 20. Can the weekly cumulative total recorded in the product weight section of the DCPLs be totaled on a weekly basis or must cumulative totals be maintained for each federal reporting area?

Instructions accompanying logbooks state that cumulative production totals should be maintained in the DCPL for each gear type and reporting area in order to facilitate weekly reporting on the Weekly Production Report. Some companies, however, have stated that it is easier for their operation to maintain a single cumulative production total for the week and then break down harvest and production for each reporting area and gear type at the end of the week using daily production figures. The logbook was designed to facilitate the generation of Weekly Production Reports and it is up to the processing company whether or not weekly cumulative totals are maintained by reporting area as long the same method is maintained throughout the year and noted in the logbook. It is imperative, however, that harvest and production amounts for a week as reported in the Weekly Production Report be separated out by reporting area and gear type.

Question 21. Should the DCPL record cumulative production totals for a trip?

No. Cumulative production totals are maintained for each weekly reporting period. At the beginning of each new Sunday-Saturday reporting period, the cumulative production is zero. During the 7-day reporting period, however, cumulative production totals for each species product type are carried forward from one day to the next. At the end of a weekly reporting period, the cumulative production totals for that week for each reporting area and gear type are transcribed onto a Weekly Production Report and submitted to NMFS. This information is used for inseason quota monitoring and management.

Question 22. Are copies of the DCPL submitted at the same time as the weekly production report?

No. Copies of the DCPL must be submitted on a quarterly basis to NMFS, i.e., as soon as is practicable after March 31, June 30, September 30, and December 31. The Weekly Production Report that summarizes logbook entries for each weekly reporting period must be submitted to NMFS within one week after the end of each Sunday - Saturday reporting period.

**NOTE It is extremely important that the DCPLs and Weekly Production Reports indicate primary and ancillary products produced from the same fish. If ancillary products are not coded with an "A" prefix to the species product code, NMFS will assume such products are the only ones produced from a fish and will use the reported product amount to extrapolate round weight equivalents for purposes of quota monitoring. This process will result in a "double counting" of groundfish harvests and early closures of directed fisheries due to calculated groundfish harvests reaching quota limits. Ancillary species product codes properly prefixed with an "A" will not be used to generate extrapolated round weight equivalents for purposes of quota management.*

PRODUCT TRANSFER LOGBOOK

Question 23. Clarify compliance requirements with the Product Transfer Log with respect to shoreside operations.

Product Transfer Logs must be maintained for each day that groundfish product is shipped or received by a processor. Shoreside plants do not have to enter a start date or time in their Product Transfer Log for any shipment other than those involving a cargo vessel. No start date or time is required for loading vans, trucks, or air freight. Date and time must be

recorded when the loading of vans or trucks is completed for a day or when the last air freight shipment of the day leaves the plant (for daily submissions) or the date and time each shipment leaves the plant (for individual van load or flight basis). If a shipment has several destinations, the Product Transfer Log need only record the primary or first intended destination. When product is shipped out on multiple flights during a day or when multiple vans are being filled with product on a continuous basis, a single Product Transfer Log page can be filled out for all flights or vans loaded during a day provided the shipping agent (e.g. Alaska Air Cargo) and primary or initial destination are the same.

Daily sales of groundfish to vessels for bait must also be recorded in the Product Transfer Log. Individual sales of groundfish for bait purposes during a day may be aggregated when recording the amount of product leaving a facility. For example, if 5 different vessels each bought 5 cases of groundfish for bait, the Product Transfer Log would simply record 25 cases of the appropriate species product sold to vessels for bait. The "agent" involved would be listed as "fishing vessels" and only a finish date need be recorded. A processor may not transfer an amount of groundfish to itself to avoid recording the amount of product leaving a facility as bait on a daily basis.

Question 24. If product shipped via air freight has several destinations, must all destinations be listed?

If air freight has several destinations, only the first intended destination needs to be recorded in the Product Transfer Logbook.

Question 25. How do shoreside processors record the transfer of product to retail outlets?

NMFS will accept a company's routine retail sales receipts for retail sales of groundfish product distributed from the company's shoreside plant or local retail establishments. All other shipment of product out of the company's plant must be documented in the plant's Product Transfer Logbook.

Question 26. How do groundfish processors maintain DCPLs and Product Transfer Logbooks when raw fish is transferred from one processor to another?

An example of proper recordkeeping is set forth in the following scenario:

DAY ONE

Processor 'A' receives 10 mt round weight of Pacific cod from catcher vessel BOAT. BOAT reports to processor 'A' that they have discarded 2 mt of cod and 30 halibut. Plant 'A' should record the original ADF&G fish ticket number, receipt time,

catcher vessel information, the estimated 10 mt round weight landing, and discard information for cod (2 mt) and halibut (30 fish) in its DCPL on DAY ONE (the day fish was off-loaded from BOAT).

DAY TWO

Plant 'A' processes 5 mt of cod into fillets producing 1.5 mt of fillets. Plant 'A' should record 1.5 mt Pacific cod fillets in the product section of the DCPL on DAY TWO. Plant 'A' then ships the 5 mt of remaining unprocessed cod to Plant 'B'. Plant 'A' should not log the second 5 mt in a Product Transfer Logbook because it is not a product, however, Plant 'A' must provide Plant 'B' with information on where the cod was harvested (federal reporting area), and by what gear type. Plant 'B' should record the federal reporting area and gear type associated with the receipt of the 5 mt of Pacific cod in its DCPL; instead of a fish ticket number, Plant 'B' would record "received from Plant 'A'", and instead of an ADF&G vessel number, it would record the ADF&G Processor Code assigned to Plant 'A'. Again, Plant 'B' would not log the second 5 mt of cod in its Product Transfer Logbook because it is not a product.

DAY THREE

Plant 'B' processes 4 mt of cod into fillets producing 1.2 mt of fillets. The remaining 1 mt is discarded (or shipped out to a local meal reduction plant). On DAY THREE, the DCPL maintained for Plant 'B' should record discard amounts of 1 mt of Pacific cod and production amounts of 1.2 mt Pacific cod fillets.

DAY FOUR

Plant 'B' ships the 1.2 mt of cod fillets back to Plant 'A'. Both plants would record this transfer in their respective Product Transfer Logbooks as "receipt" or "shipment", which ever is appropriate.

DAILY FISHING LOGBOOK

Question 27. Are catcher vessels required to maintain Daily Fishing Logbooks when they discard or retain groundfish caught in the directed salmon or halibut fisheries?

The NMFS does not require operators of halibut, salmon, or crab vessels to obtain a Federal groundfish permit or maintain a Daily Fishing Logbook unless the operator lands groundfish caught incidentally or retains groundfish for bait or other purposes. If a vessel operator elects to land or retain groundfish caught in the halibut, salmon, or crab fisheries, they must obtain a Federal groundfish permit if fishing activity occurs outside of State waters. Once a vessel has been issued a Federal groundfish permit, the vessel operator must record all groundfish discard and retention amounts regardless of where groundfish were caught.

Vessel operators conducting a directed fishery for halibut, salmon, or crab should not record halibut, salmon, or crab catch in the Daily Fishing Logbook.

Question 28. Are vessels that fish groundfish only for bait required to maintain Daily Fishing Logbooks?

Operators of federally permitted catcher vessels that fish groundfish for bait in the crab or halibut fisheries must maintain a Daily Fishing Logbook and submit copies of the logbook to NMFS on a quarterly basis as required. Catcher/processor vessels that process (freeze) groundfish for bait must maintain the DCPL and provide weekly production reports to NMFS on the amount of groundfish processed for bait.

Question 29. Is gear associated with jigging machine classified as a separate gear type?

Yes. Operations using this gear type should record "jigging machine" as the gear type used in the daily fishing logbook.

Question 30. What is the proper way to record "reporting area" when a single tow transects two different areas?

If a tow occurs in two adjacent areas, the recorded "Reporting Area" is the area in which haul back activity occurs, regardless of where the majority of the tow took place. If a fishing vessel has undertaken 4 tows, 2 each from areas 515 and 517, the effort, estimated catch, and discard information for groundfish harvest in the two areas must be recorded separately in the vessel's Daily Fishing Log. The catcher vessel operator should then provide to the receiving processor the percentage of his total landing and at-sea discards that came from each area (see question 11).

Question 31. In the Daily Fishing Logbook, are tows numbered consecutively on a daily basis, beginning with tow number one each day or are tows numbered consecutively throughout the year, beginning at tow number one only at the beginning of the fishing year?

The instructions accompanying the DFL state that tows should be numbered consecutively on a daily basis. Some operations, however, are in the practice of numbering tows consecutively on a trip by trip or annual basis and have indicated that they would prefer to maintain a consistency in how their operation records catch information. Although numbering tows consecutively on a daily basis was perceived as least burdensome to the industry, it is up to a vessel operator to determine the most feasible means of consecutively numbering tows or sets as long as the same method is maintained throughout the logbook.

Question 32. If a catcher vessel bleeds codends when harvests are too large to deliver to a mothership, can the catcher vessel operator use catch composition as determined by the mothership to determine species discard amounts?

Yes. Recorded discard amounts are an estimate, not an exact account. A catcher vessel must report the estimated tonnage discarded from a codend to the mothership. The mothership will then determine the catch composition of the codend and report this information to the catcher vessel operator to enable his recording of species discard amounts in the DFL. The mothership must record the total of the mothership and catcher vessel discards. The mothership's discard total is then reported in the Weekly Production Report.

MONTHLY PRODUCT VALUE REPORT

The NMFS intends to suspend the requirement for groundfish processors to annually submit monthly product value information. Pending consultation with the North Pacific Fishery Management Council, NMFS intends to revise reporting requirements for product value information to more closely conform with a similar information collection required by Alaska State regulations. Until such revisions are implemented by Federal regulation, groundfish processors are not required to submit product value information to NMFS.

American High Seas Fisheries Association Testimony
North Pacific Fishery Management Council Meeting
Anchorage, AK

April 22-27, 1990

Tuesday 24 April
C-5 Observer Program

Doug Gordon: Thank you Mr. Chairman. I represent a group of 27 catcher vessels Mr. Chairman. I have two basic requests.

First I'd like to say that we support an equitably funded cost recovery program for a comprehensive observer program. It ought to be in the MFCMA. As an interim move we support the program we now have. I never intended to come before you because our members have the attitude that we're going to "bite the bullet"; we're going to shoulder the burden interim to the implementation of an MFCMA based program. But there are circumstances that move me to come before you as follows.

I'm getting reports from my members, 100% covered members who are delivering shoreside in the Bering Sea and the problem is this. They're using midwater gear to catch pollock. The catches are virtually PSC free or very low. The observer comes onboard, goes to sea, the vessel comes back to the plant. Little or ZERO, and I stress ZERO, sampling is done because that catch goes straight down into RSW and that's a pretty rapid operation. The vessel comes back to the plant, then an observer, paid for by the shoreside plant, engages in up to 14 hours of sampling the catch as it's being unloaded. What these vessels are complaining about is the duplication and the fact that they're bearing between between \$7000 and \$8000 of cost for what is a wash. Now, I've been to the observer contractor involved and this is confirmed - absolute waste of time. If you combine this situation with what you've heard and what you will hear under D-3, I suggest strong grounds for reprogramming observer effort now exist. We heard this morning that a JVP yellowfin sole fishery which has got an adequate funding of PSC halibut (22 mt) wants to be started May 15 (Togiak) but because of the shortage of observers, it may not be able to open until June 23.

Well, the fishery won't be there by that time.

Further, you're also going to hear under D-3 the suggestion relative to individual incentive programs. That a pilot project be implemented on the JV flatfish fishery next year. Associated with this are the concerns that if this program doesn't prove out

it will be 1993 before we have a comprehensive DAP program. That JVP group, both the fishermen and their markets, are absolutely 100% willing to undergo a pilot incentive program now - not next year but this year.

What I suggest Mr. Chairman is that there are situations like these that require consideration, at least, of a reprogramming of observer effort. For those observed situations that I mentioned in the Bering Sea I suggest that coverage could be, in certain circumstances, reduced to at least 30% on the vessels over 125' delivering to shore and that those observers could be reprogrammed somewhere else where they're needed more. I'm asking that's what you consider. In this case shift the observers to the JVP yellowfin sole fishery so that it may proceed May 15 around Togiak when the halibut PSC needs will be minimal and when the almost 100,000 tonnes of YFS worth \$20 million to U.S. harvesters could easily be taken.

The second thing Mr. Chairman, relates to our support of a cost recovery program. Will Council members please rise above the interstate rivalry surrounding the council seat issue which is resulting in this observer program being held hostage at the Congressional level. What the study that the Executive Director mentioned this morning under C-1 legislative update that compares the House and the Senate MFCMA versions does not indicate to you is that the Senate version does not include a provision for cost recovery for a comprehensive observer program. This issue is so important it should be legislated for, no matter what. What I would request, or strongly suggest you consider, is writing to these Congressmen right now on behalf of the Council and industry because the markup of that bill is scheduled for May and they need to hear this sort of sentiment from you. Thank you Mr. Chairman.

Wednesday 25 April

C-7 Inshore/Offshore - Moratorium

Doug Gordon: Mr. Chairman, Members of the Council, I represent 27 U.S. traditional fishermen who own wholly U.S. built and operated fishing vessels in the 85' to 150' category. Please accept these comments in the following light. We want a healthy resource; we want a long term, stable relationship with that resource; and we want maximum freedom to sell our catch into the market of our choice. If you allocate, please recognize and give a higher priority to true American content. We are most concerned at this juncture over the nature and extent of our potential fishing rights within the groundfish fishery now and in future.

Having said that, if allocation is necessary, and we believe it is, then as a first step as we've consistently stated before you since December 1988, there ought to be a moratorium on new

effort entry as a precursor to either consideration of license limitation or IFQs or onshore/offshore allocations. We believe a moratorium and/or onshore-offshore are forms of limited entry and ought to trigger the 303 b(6) provisions of the MFCMA in terms of allocation. We believe that if you allocate, the basis for allocation ought to be weighted heaviest in favor of prior as opposed to present catch history, including and covering the DAH histories from 1979 to 1989.

With regard to a cutoff and delivery date relative to a moratorium we suggest that a "commitment and dependence on the fishery" test be extended from the catch basis to admit entry of vessels with keel laid on or before January 19, 1990 with fish caught/delivered on or before or no later than July 1991. Recognizing, and this is important, that such catch made by new vessel entrants may not be recognized in the allocation formula for such species as pollock and cod for example, which cutoff date might be 1988 or 1989, when these species were "fully Americanized" and oversubscribed by 2.5-3.0 times. A plan amendment will be necessary before December 31, 1990 to cover those species or the fisheries based on them. Similarly plan amendments ought to cover all other groundfish by the end of 1991.

I would be happy to answer questions on how you should treat JVP catch histories in the analysis given that we're not making a final decision here and now. In the spirit of Caveat Emptor (let the buyer beware) we would like to have a full array of options placed before us. (We will not be satisfied as fishermen to have the analysis torqued towards a predetermined outcome by largely processor and/or Alaskan interests.) What we've also told you on past occasions is that if you do allocate, you should allocate on the basis of catch histories and a split based on 125' and 150' for the Gulf and Bering Sea and that along with a moratorium you keep those catch histories in two pools. The reason why the moratorium and catch histories are connected is that if you were to decide to go the next step at some later date and proceed to IFQs, the rights of those vessels wouldn't have been eroded by new entrants into the fishery (in the absence of a moratorium inshore or offshore or both).

On the moratorium we feel there must be an intractable commitment by the Council at this meeting to lock in a cutoff date and pipeline definition as above to stem further effort into the fishery. Within or behind the moratorium fence I don't believe there can be a continued laissez faire open access freedom for the vessels inside to move into existing fisheries. At least not initially. This doesn't mean that at a later date commitment and dependence of existing effort cannot be recognized and be allowed, in a very controlled manner under certain criteria, to be developed by managers together with the effected

industry at a later date, to move into another fishery. Again under strict control. If the Council chooses to allow such laissez faire freedom of movement behind the fence, there must be a clear understanding that no credit will be afforded the catches made by those new vessels until or after the moratorium is lifted. For example if the Council chose to fold in the pollock JVP catch histories, (their DAH catch histories) into some form to an onshore component, and the Council didn't initially go to IFQs, those vessels whose JVP DAH catch base was used as the basis to create an onshore pool quota may not countenance their potential rights being eroded by a moratorium which allowed existing vessels from other fisheries to enter that onshore fishery for pollock to develop a new catch history for themselves and have it recognized at some later date; or for their historic catch base to be used to create an onshore quota for which no moratorium is instituted with the same outcome.

I would like to make a couple of comments on the straw man moratorium definition in conclusion, recognizing that the FPC didn't arrive at any consensus on it. (1) Firstly the MFCMA doesn't regulate processing. As fishermen we wouldn't like you to limit any processing component. Obviously it's in our interest to have maximum number of markets to deliver our fish to just like it's in some processors interest to have maximum number of fishermen to deliver to them. (1b) The 40' exemption again, my general comments apply to that. If you're going to have a real moratorium it should be on everybody initially but that doesn't preclude that at some later date you might opt for community development quotas in some areas and allow those vessels entry. (2)(3) The 20% increase replacement provision, really, if you are honest, defeats the intent of the moratorium, as does the provision in number 3 that allows a conversion to increase at a 20% rate. I've made comments above already on number 4, the freedom flexibility question. The moratorium, at least for a minimum two year period, ought to be rigid across the board. My comments on flexibility seek to balance the management/conservation needs with the aspirations of fishermen to survive, adapt, and be successful. Thank you Mr. Chairman.

Thursday 26 April
Onshore/Offshore

Doug Gordon: Thank you Mr. Chairman. My name is Doug Gordon. I'm here to speak on this issue on behalf of 27 traditional catcher vessels. I request please that you enter into the record on this subject everything I said yesterday about the moratorium. In our view the two issues are linked. I'd like to make a few further comments.

First, with regards the analysis and given a final decision is not being made now. We are happy to see in the analysis the idea

of an inshore/offshore split; including a 70/30 split and an 80/20 split of the traditional JVP catches 1986-88 with the larger portions being folded into the onshore category, the small portion into the offshore category. (Although in AHSFA 70%-80% of the vessels will deliver to shore this will be done under contracts. Contracts and markets change.) We would be happy to see in the analysis the idea of exclusive preferential onshore zones in certain areas. Having said that I'd like to see the idea kept in mind within the analysis of providing the maximum freedom to fishermen to sell their fish in to the market of their choice. Above all I'd like to see in the analysis the JVP catch histories looked at as an entity by themselves and in some form recognized and allocated directly or in a pool to the vessels which made them with the free market bringing the fish in or offshore on the basis of price.

Having said that Mr. Chairman and Members of the Council I really personally believe that the free market in and of itself may not be quite enough. I believe you could justify the idea of separating big boat/small boat, fixed gear/mobile gear, onshore/offshore separately on the socio-economic grounds for the need for stability in the fishery and an orderly regime. I think you could justify the same on the basis of conservation needs in and of itself. Together, combining socio-economic and biological criteria a compelling argument could be made.

For example you cannot seriously believe that it is a good thing to allow 70 factory trawlers to just fish right up to the beach. I think you've got to start really prioritizing here. For example the rights of people of first Nationhood obviously are paramount in certain fisheries. The rights of people who are already in the commercial fishery should be above those who may want to come in. I can't seriously believe that you would think that traditional U.S. fishermen fishing to shoreside or where ever for the last ten years that have a total commitment and dependence on the fishery have a lesser priority right to fish than a grandfathered vessel that's been sold entirely into foreign hands - that is not yet in the fishery (and there about 40 such vessels with 10 of them that are going to come in this year). And that this sort of effort should have an equal priority to pollock to those vessels that have been in the fishery for ten years along with the dependencies upon those vessels? And here I'm talking about the fisherman's families, the shoreside plants, and the communities around them.

Just to make a point, let me give you an example Mr. Chairman and Members of the Council. One of those vessels just happens to be owned by a New Zealand based multi-national corporation. As I understand it, that vessel was grandfathered - those rights were held by Alaskans - they were sold to the New Zealand Corporation which took that right and rebuilt the vessel in Norway.

Subsidized labor, subsidized capital. The vessel has an estimated capacity of 100,000 mt of pollock. You can't seriously believe that that vessel should have an equal right, to come in and vacuum clean the pollock out of our zone, to the vessels that I represent; fully operated and owned American vessels that have been in the fishery for 10 years? That's what we're seriously contemplating here.

That moratorium cut-off date - you note yesterday we support the cut-off date but for pollock if that vessel comes in I believe that you should rule that the catch histories that you're going to recognize for pollock should be cut-off at the latest in 1989. Now that vessel can go fish if you want it to somewhere else, or in the donut hole or somewhere else in the world but not compete with the small traditional 100% U.S. vessels. By our management inaction we're creating a form of arms race here. That's why some people are contemplating building a shoreside delivery vessel the size and capacity and horsepower of a factory trawler. Basically you're destroying the existing and long-standing commitment and dependence of those smaller boats. Nowhere else in the world is this allowed to happen. We've had, here in the Bering Sea, exclusive zones that excluded foreign factory trawlers. Now that they have wrapped themselves in the American flag you've lifted those restrictions. Japan doesn't allow any factory trawlers in its entire 200 mile zone and its because of an onshore/offshore battle that has raged for over 100 years.

Chairman: Thank you Doug. We have to move along. Mr. Alverson?

Alverson: Doug, I notice when you started your testimony you asked that the moratorium comments be included in these comments and in yesterdays moratorium debate I felt a little bit uneasy with that program as it went forward because I feel there is a great linkage between the inshore/offshore issues and that moratorium. There is consideration of maybe an inshore/offshore component to the moratorium. Maybe moratorium on the offshore and not so on the inshore, and you have indicated a willingness of crediting shorebase operations with 70%-80% of the catch history of your joint venture operations.

Doug: I'd like to clarify that Mr. Alverson. I'd accept that being in the analysis. That's what I meant by caveat emptor yesterday. I'd like that option to be there as well as a number of others including catch history of U.S. harvester vessels with the option to allocate directly to them or to them in a pool.

Alverson: Ok - you can choose if that analysis was done.

Doug: Yes

Alverson: I would think that your boat owners would not embrace

very quickly an inshore/offshore or a moratorium concept if the Council were to take your vessels landing history and divvy it up along those lines and then not give you a moratorium on the inshore operations. Is there linkage there in your group between having moratoria and inshore/offshore considerations?

Doug: Yes. I believe there will be when people see the writing on the wall because if you don't have a moratorium on the inshore as well as offshore all you do is create two parallel chaotic situations. You'll just build a fence around the inshore and allow what has happened and continues to happen in the whole fishery to happen in the inshore.

Alverson: I just wanted to draw that out for the record. Thank you.

J. Peterson : Doug, of the 27 vessels that you represent, are they all configured in such a manner that they can deliver fish shoreside - do they have refrigerated holds - do they have horsepower?

Doug: No

J. Peterson: They do not? Then in order for them to be able to make delivery shoreside there would need to be some capital invested in them and perhaps maybe lengthened or strengthened in order to become stable. Would the moratorium prevent that from happening.

Doug: Well you'll note in my testimony yesterday that I suggest it may or may not, at least temporarily. If you're going to have a true moratorium you have a true moratorium. That's why I said you shouldn't have total laissez faire movement from fishery to fishery within the moratorium fence. The points you raise may be a consideration to allow that freedom of choice to bring his catch history, once allocated as a preferential access right, ashore. To enable him to do that obviously he would want to have the idea considered that he'd be able to spend the money for refrigerated seawater systems, repowering, etc. to do that. That's why I say that whatever is allowed within the moratorium fence should be very, very controlled - not laissez faire.

J. Peterson: One follow-up question if I may Mr. Chairman. It would seem to me from an economic point of view your vessels would prefer codend transfers at sea rather than hauling the fish in to shore.

Doug: It's generally recognized that in the best of all possible worlds that that's probably the most economic way of catching the fish but the present realities are not along these lines.

J. Peterson: But it would seem to me that you would have obstacles either way, whether you're talking shoreside market or at sea market. Shoreside market would require considerable capital and alterations in those vessels so that they could deliver shoreside.

Doug: Yes and many of the members who have got a shoreside market position have undergone those kinds of conversions at a cost of about 1.5 to 2.5 million dollars.

J. Peterson: Even if they were altered so they could make deliveries would there be markets for them onshore.

Doug: I doubt that somebody would make the commitment to spend \$2 million unless he did have such a market lined up. There is one instance that I know of in the membership that did have the onshore market that has since declined it but it has to be recognized that that person is also associated with the reflagged Tae Baek Ho vessel which, when it's replacement comes in, will provide an offshore market to several U.S. catcher vessels so I don't know if that decision is connected or whether the sums just didn't add up relative to the market and the cost to tool up for it.

Mr. Lauber: Mr. Gordon, you mentioned that this inshore/offshore allocation could be justified based on conservation but you didn't elaborate on that. Could you tell me how you see this as a conservation issue.

Doug: It's a conservation issue both of the resource base and of the people who are committed to and dependent upon that resource base. Now I can give you examples. If you just allow a laissez faire situation, all the vessels become focused on a fish aggregation, say off Dutch Harbor for pollock, or off the west coast of the South Island on a Hoki resource in New Zealand. What you have happening is just a melee of vessels pounding on those spawning aggregations of pollock or whatever, and a number of things happen. The stocks get fished down to CPUEs that are below what is economic for the smaller boats. Unless they're controlled, the larger boats just dump all their processing rubbish and what-have-you on the grounds until you get souring of the grounds and basically the stock just gets fished down and depleted and their habitat degraded in those localized areas. So the larger boats move away and that has happened all over the world but the smaller boats can't unless they engage in an arms race situation and lengthen themselves many times so they've got the same sort of mobility as a factory trawler. The result is that the benefits from the fishery, to the individual fisherman and to the Nation are dissipated unnecessarily.

R. Lauber: So I understand what you're talking about - if we have an area around where there are existing processing plants -

conceivably you have a situation where you'd have both the harvesters catching and delivering to those plants as well as the factory trawl operations concentrating in the same area. Then after that became either less economic or there were better grounds for the factory trawlers to fish elsewhere, then it would be left to only the shorebased harvesters to fish there and this would continue an operation where it would not only be uneconomic but also they could fish the resource down to a point where there would be greater biological problems.

Doug: It's the most likely scenario and it has happened time out of number.

R. Lauber: And this has happened elsewhere in the world?

Doug: Absolutely. One thing you could consider is creating a zone and excluding certain boats but having done that under certain circumstances you could allow larger boats to come in - say in a midwater mode when the quota that you designated onshore had been taken - with very strict conditions to prevent the sort of biological decimation of the stocks and habitat that you will have undoubtedly if you don't put conditions on the fishery.

Mr. Mitchell: Did they fish the Hoki resource down like that in New Zealand?

Doug: Mr. Mitchell, what they did before they really created a problem is that they banned all factory trawlers 42.5 meters and above from coming inside the 12 mile zone and then they extended that exclusive area out to 25 miles in some places, in the case of Hoki, to take in 25% of the spawning aggregation. It was both for a conservation reason and a small boat/big boat, onshore/offshore reason. Before they did that the little boats just couldn't compete. They were driven to scratch fish elsewhere. The same thing is happening out here. The factory trawler, the bully on the block basically, just comes in and runs over the gear (it's not all of them but it doesn't take too many for that to create havoc). We had accidents down there, we had gear run over, abrogation of the rules of the road, and just basically an uneconomic situation for smaller boats and so that all happened before they went to ITQs.

Mr. Mitchell: Do they have a constitution or National Standards in New Zealand?

Doug: Yes but not like we have here. The body of the law beginning with the Magna Carta to the present embodies NZ's constitution. It should be recognized that the MFCMA and the National Standards represent decades of experience distilled from World fisheries, certainly not from U.S. fisheries exclusively or even in large part.

Mr. Mitchell: But they have reasonable folks.

Doug: Nowhere is perfect Mr. Mitchell. I think their system has certain advantages and disadvantages - as ours does here. I think in the main they do have reasonable folks. Reason, I believe down there has prevailed. It's not to say they haven't had problems. Rationalization of the NZ fishery is continuing.

Mr. Chairman: Thank you Doug.

Thursday 26 April
D-3 Groundfish FMPs - Bycatch

The following is a synopsis of AHSFA testimony on this subject on 3 different occasions. (1) Before the Fish Planning Committee 23 April, (2) Before the Advisory Panel, and (3) Before the Council on the 26th of April. (My memorandum to members of 12 April discussed bycatch management, vessel incentive pools and outlined the 3 options regarding Amendment 12A: roll-overs; with slight changes; with incentives).

That the basis upon which the Secretary of Commerce approved 12A in 1989 was flawed, which has recently been borne out in fact. That was that within the PSC caps the new trawl industry would adapt its behavior in a manner which would allow it to maximize its taking of the groundfish TACs. This has not happened either in the yellowfin sole JVP fishery or the DAP, where less than 10 vessels accounted for 53 percent of the halibut PSC cap which closed Zone 1.

For decent real time information we need a comprehensive observer program with cost recovery in a regional sense, equitably funded across the industry, and the authority to collect mandated in the MFCMA. Further, for incentives to operate in real time along with peer group pressure we need to dispense with the MFCMA confidentiality provisions at the harvesting level.

In general where there is knowledge of life history of target and bycatch species and the relativity between them in different fisheries over time that that knowledge be used for area closures. Unless we have fair incentive programs with "horses for courses" where the punishment fits the crime in real time, then we ought to have such knowledge drive management, not the market like it did this year in the YFS JVP fishery (in conjunction with the lack of authority for the RD NMFS to act in a real time sense.)

Framework authority ought to be given the RD NMFS to real time manage hot spots like occurred in the YFS, the greenland turbot and with crab in Zone 1. But with the caveat that before he acts

he consult with fishermen and the greater industry.

The DAP roe rock sole fishery question. If it is to be allowed, and the economics appear compelling, then it ought to be strictly managed vis a vis PSC with associated stringent disincentives for high bycatch rates which is the likely scenario. That fishery cannot be allowed unfair advantages at the beginning of the year relative to cleaner operations in other fisheries later in the year.

We support adjusting PSCs; express PSCs as a percentage of the TAC for PSC species based on harvestable biomass. That 2% and below not be subject to inter user negotiations. At least right now express existing numbers as percentages ready for changes based on recent surveys and data from a comprehensive observer program. Interests surrounding PSCs cannot be allowed, as of right, to hold the trawl industry hostage.

Support the Industry Bycatch Summit recommendations, as far as they went regarding PSCs, caps and adjusted zone configurations.

Urged incentives that tend towards the individual vessel level. We cannot accept the scenario recently where a handful of bad bycatch operators close down the fleet. Outlined the investment members have made to deliver cod or pollock year round who are now faced with early closures.

With regards a proposed pilot incentive program for 1991 on the JVP yellowfin sole fishery starting May 15. That fishery and its configuration bears little relevance to the present and future DAP industry and its configuration. It won't help DAP in the first 3 months of 1991! If such a pilot fails it could be 1993 before we have a workable DAP incentive program. Maybe the DAP roe rock sole fishery in 1991 would provide a more relevant pilot study. In the short term, given the interim user pay program (costing fishermen \$11 million) we now operate under for observers, coupled with the fact Congress is viewing our willingness to pay as a sign this should become part of our cost of doing business, we are "gun shy" about these proposals from NMFS for vessel incentive pools that operate like insurance pools and for which the entire burden is placed on the backs of fishermen.

Bycatch management coordination over the industry and the data collection in real time upon which is based an incentive program that could close down or sanction individual operators should be run by the federal government.

Planning and budgeting, should be done before each year between Industry, the Council and NMFS. Once agreement on a program plan and budget amount has been struck, then the cost recovery may be

expressed as a fraction of exvessel value for all species except salmon. A levy at the exvessel level could then be struck to cover the agreed to needs. The comprehensive observer program is nuclear to this. For this an amendment to the MFCMA is needed to provide such cost recovery authority to NMFS or the Council, circumscribed in the manner suggested.

With regards the future and incentive programs we ought to aim at data providing real time bycatch rates (daily) by vessel, by gear, by fishery, by area. With a "moving" industry average and real time feedback to the vessel on it, one could envisage an unders-overs situation; a 2 step procedure leading to sanctions, education and remedial action.

The penalty box idea with sanctions as discussed by the Ad Hoc Bycatch Committee and AP I have problems with. If someone has three times the industry average and he finds out about it 1 month later and is sent to shore for 3 weeks to a month what good will that do?

What you need is real time information. I suggest we explore the Inmar-Standard C Satellite System or some other recent technology that may give us what we need. It could become a standard communication system for observers. They could have their own software at a cost of between \$5-11K at the individual level. A not insignificant cost but small relative to closing down entire fisheries. The penalty has to fit the crime. At three times the bycatch rate of the fleet you could consider removing 2/3 the value of his associated target product for example. Further, banishment ashore won't make him fish cleaner. For that he needs to fish and be instructed by someone who knows gear and how to use it, the instruments, and vessel.

In summary we support the recommendations of the AP on 12A. The bycatch problems may be improved by using a mix of traditional tools, new authority, incentives, use of more up to date technology, and some legislative engineering.