


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke   
Executive Director

DATE: June 18, 1991

SUBJECT: North Pacific Fisheries Research Plan

**ACTION REQUIRED**

Receive report from Data Committee and consider approving plan for Secretarial review.

**BACKGROUND**

In April the Council directed the Data Committee to further refine their recommendations for a proposed user-fee program. The Committee met on June 5-6 in Seattle and their recommended fee system is in Item C-3(a). Item C-3(b) is the system from April, as revised by the Advisory Panel. The Data Committee's full report is in Item C-3(c).

One of the issues which needs to be addressed focusses on start-up funding which the Committee views as critical to the success of the user-fee program. Since the Committee meeting, elements of the fishing industry have been working toward convincing Congress that a special appropriation is needed for the program in 1992. An ad hoc industry meeting on this issue is tentatively scheduled for this week and a report may be available. In addition, questions have been raised as to the amount needed to start the program. A letter from Dr. Bill Aron providing this estimate is provided as Item C-3(d).

The Council is scheduled to take final action on the user-fee program at this meeting. Copies of the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis dated March 19, 1991 are available should you need them for reference.

**SUMMARY OF USER FEE ALTERNATIVES  
(As Recommended by Data Committee 06/06/91)**

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

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

Key Elements and Options of Proposed User Fee System

- ✓ 1. A fisheries research plan will be developed for all fisheries under the Council's jurisdiction excluding salmon.
- ✓ 2. The Plan, or the implementing regulations, will identify the covered fisheries by species group and area. These will be referred to as the plan fisheries. ~~The Council needs to determine the list of commercial and recreational fisheries to be included for the collection of user fees.~~
- ✓ 3. Initially, the plan fisheries will include both State water and EEZ areas, as identified by the Council. Include donut hole fisheries contingent upon federal jurisdiction in this area.
- ✓ 4. The Plan, or the implementing regulations, will identify the research plan fisheries from which fees will be collected. The Plan will be designed to collect fees in a cost effective manner from the participating fisheries to support observers in those fisheries and incorporate financing of the BSAI ~~and~~ CRAB observer program.
- ✓ 5. The Regional Director, in consultation with the Council, will establish the (fee) for the fishing year. The fee will be expressed as a percentage of ~~exvessel value~~. The fee will be set in accordance with the MFCMA.   
*the value of the fish + of shellfish harvest.*
6. Although the fees may be assessed against all fishing vessels and fish processors, the fees will be collected from all (i.e., onshore and at-sea) processors participating in the user fee fisheries. The total fees to be collected from each processor will be the product of the established fee and the estimated ~~exvessel~~ harvested value of fish ~~the processor received from the user fee fisheries.~~ In the case of a catcher/processor, fish retained for processing are considered to be received fish. The estimate of ~~exvessel~~ value will be based on the amount of fish by species group received for processing and a fishery-wide estimate of ~~exvessel~~ price by species group. The estimates of ~~exvessel~~ prices will exclude any value added by processing. For the purposes of the user fee system, a fishing operation that delivers fish to a processor outside of the Council's jurisdiction (e.g., Canada, Washington, or Oregon) will be considered to be a processor. ~~The Council needs to select their preferred option:~~

Option 6a: Only retained catch will be subject to user fees.

Option 6b: Both retained catch and discards ~~will~~ may be subject to user fees.

Option 6b(1): Should discarded catch be used in determining user fees. A published discard rate is used for the plan fisheries and an assumed value estimate for discards will be used in calculating fees. These two variables (discard rate and discard value assumption) would be based on Council/NMFS review of catch and value data. A further consideration, would be to phase-in the schedule for implementing this rule (ex.25% of the discard fee in first year, 50% in second year, 75% in third year, and 100% in every year thereafter).

Still in 0  
Exvessel price and fish usage data provided by each processor who purchased unprocessed fish in the user fee fisheries will be used to estimate the exvessel value of user fee fishery fish for that processor and period. For integrated harvesting and processing operations that do not purchase unprocessed fish, data provided by all processors who purchased unprocessed fish in the user fee fisheries will be used to estimate the average exvessel price by species group for that period.

7. Each processor that purchases fish from a user fee fishery will calculate the quarterly fee payments based on the amount of fish it received, the fee, and the actual exvessel price paid to the fisherman. Other processors who receive fish from a user fee fishery will base payments on the amount of fish it received, the fee, and the NMFS published exvessel prices. The fees will be due within 30 days of the end of the fishing quarter on which the fees are assessed.
8. After each twelve-month period, the actual fee liability of each processor will be calculated by the NMFS. If a processor's fee liability is greater than the quarterly payments that were received, the processor will be billed for the difference and the bill will be due within 30 days. If the quarterly payments exceed the fee liability, the difference will be used as a credit toward future quarterly payments. It would be a violation to make late or inadequate payments. Fee collections will be administered by the NOAA Office of the Comptroller.
9. All fish processors participating in plan fisheries will be required to have a federal permit. Processors will apply for a federal permit annually. The permits will be issued semi-annually to any processor that is current with respect to its fee payments.

Consensus  
10. Any additional information necessary to implement the Plan will be made available by ~~improving the fish ticket system or by changing reporting requirements. Council should consider asking the Data Committee to perform or review for the September meeting.~~

11. ~~The best available information will be used to determine: (1) the fee to be used each year; (2) the exvessel prices that will be published and used by processors who do not purchase fish to calculate their quarterly fee payments; and (3) the exvessel prices that will be subject to public review prior to becoming final.~~

11 12. ~~Each operation with an observer requirement will be responsible for obtaining observers from the NMFS. The lead time required to obtain an observer will be specified by the Observer Plan. The Observer Plan Oversight Committee will address lead time.~~

12 13. ~~Start-up funding is required to implement the North Pacific Fisheries Research Plan. Sufficient federal funds are made available through special appropriation or to implement Plan reprogramming. In the return, some operations must continue to pay directly for required observers.~~

Suboptions:

- i. Vessels and plants required to take observers continue to pay directly to contractors, but these vessels and plants would not be subject to the user fees associated with the observer coverage.
- ii. Full fees for all operations but user fee credits (up to the 1% assessment limit) for direct payments for required coverage.

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

Option 14a: Reduce the cost of the Plan.

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

Option 14c: Have a supplemental observer program.

15. Council appoint an Observer Plan Oversight Committee.

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## SUMMARY OF USER FEE ALTERNATIVES

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

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

### Key Elements and Options of Proposed User Fee System

1. A fisheries research plan will be developed for all fisheries under the Council's jurisdiction excluding salmon.
2. The Plan, or the implementing regulations, will identify the covered fisheries by species group and area. These will be referred to as the plan fisheries. Initially, the plan fisheries will be the ~~Alaska groundfish and halibut fisheries and the BSAI king and Tanner crab fisheries. include all fisheries, except salmon, that are within council jurisdiction.~~
3. Initially, the plan and user fee fisheries will include both State water and EEZ areas.

~~Option 3a: Initial - Do not include donut hole fisheries in program.~~

Option 3b: Include donut hole fisheries.

4. The Plan, or the implementing regulations, will identify the research plan fisheries from which fees will be collected. These will be referred to as the user fee fisheries.

~~Option 4a: Initial - collect fees from groundfish, halibut and Bering Sea/Aleutian Islands king and Tanner crab fisheries to support groundfish observers. Do not incorporate State crab observer program into Plan.~~

~~Option 4b: Same as 4a, except exempt crab catcher/processors or floating processors which pay for State observers. Crab catchers not paying for State observers would pay into federal program.~~

Option 4c: Same as 4a, but incorporate financing of the State BSAI crab observer program into Plan.

~~Option 4.d User fees will be collected from all processors that receive BSAI king or Tanner crab; however, each processor would receive a credit up to the full amount of its user fee liability for its direct payments for required observer coverage. The State observer program will not be incorporated into the Plan.~~

5. The Regional Director, in consultation with the Council, will establish the fee for the fishing year. The fee will be expressed as a percentage of exvessel value. The fee will be set so that the total fees are expected to equal which ever is less: (1) the cost of implementing the fisheries research plan minus any other Federal funds that support the observer program and any existing surplus

in the North Pacific Fishery Observer Fund; or (2) 1% of the total exvessel value of all the plan fisheries. The fee will be established prior to the beginning of the fishing year for which it will be used.

6. Although the fees may be assessed against all fishing vessels and fish processors, the fees will be collected from all (i.e., onshore and at-sea) processors participating in the user fee fisheries. The total fees to be collected from each processor will be the product of the established fee and the estimated exvessel value of fish the processor received from the user fee fisheries. In the case of a catcher/processor, fish retained for processing are considered to be received fish. The estimate of exvessel value will be based on the amount of fish by species group received for processing and a fishery-wide estimate of exvessel price by species group. The estimates of exvessel prices will exclude any value added by processing. For the purposes of the user fee system, a fishing operation that delivers fish to a processor outside of the Council's jurisdiction (e.g., Canada, Washington, or Oregon) will be considered to be a processor.

~~Option 6a: [Deleted]~~

Option 6b: Both retained catch and discards will be subject to user fees ~~accept king and Tanner crab discards in king and Tanner crab fisheries.~~

~~Option 6c: [Deleted]~~

Option 6d: Exvessel price and fish usage data provided by each processor who purchased unprocessed fish in the user fee fisheries will be used to estimate the exvessel value of user fee fishery fish for that processor and period. For integrated harvesting and processing operations that do not purchase unprocessed fish, data provided by all processors who purchased unprocessed fish in the user fee fisheries will be used to estimate the average exvessel price by species group for that period.

~~Option 6e: Require at-sea processors to weigh or volumetrically measure the fish to determine the true weight of fish retained for processing, and discards, require catcher vessels to weigh or volumetrically measure discards.~~

7. ~~Each processor that purchases fish from a user fee fishery will calculate the quarterly fee payments based on the amount of fish it received, the fee, and the actual exvessel price paid to the fisherman. Other processors who receive fish from a user fee fishery will base payments on the amount of fish it received, the fee, and the NMFS published exvessel prices. The fees will be due within 30 days of the end of the fishing quarter on which the fees are assessed.~~
8. After each twelve-month period, the actual fee liability of each processor will be calculated by the NMFS. If a processor's fee liability is greater than the ~~monthly~~ quarterly payments that were received, the processor will be billed for the difference and the bill will be due within 30 days. If the ~~monthly~~ quarterly payments exceed the fee liability, the difference will be used as a credit toward future ~~monthly~~ quarterly payments. It would be a violation to make late or inadequate payments. Fee collections will be administered by the NOAA Office of the Comptroller.

~~Option 8a: [Deleted]~~

~~Option 8b: [Deleted]~~

~~Option 8c: [Deleted]~~

~~Option 8d: [Deleted]~~

Option 8e: Quarterly payments with annual reconciliation.

9. All fish processors participating in plan fisheries will be required to have a federal permit. Processors will apply for a federal permit annually. The permits will be issued semi-annually to any processor that is current with respect to its fee payments.
10. The information necessary to implement the Plan will be made available by improving the fish ticket system or by changing reporting requirements.
11. The best available information will be used to determine: (1) the fee to be used each year; (2) the exvessel prices that will be published and used by ~~catcher~~processors to calculate their ~~monthly~~ ~~quarterly~~ fee payments; and (3) the exvessel prices that will be used to calculate post season fee liabilities. The information and the resulting fee and prices will be subject to public review prior to becoming final.
12. Each operation with an observer requirement will be responsible for obtaining observers from the NMFS. The lead time required to obtain an observer will be specified by the Observer Plan. ~~It is expected to be two months. The Observer Plan Industry/Council Oversight Committee will address lead time.~~
13. Funding is required to implement the North Pacific Fisheries Research Plan in early 1992.

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

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

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

Suboptions:

~~i. Vessels and plants required to take observers continue to pay directly to contractors and the user fee would be assessed without regard to the direct payments to contractors.~~

~~ii. Vessels and plants required to take observers continue to pay directly to contractors, but these vessels and plants would not be subject to the user fee for catch associated with the observer coverage.~~

~~iii. Vessels and plants required to take observers continue to pay directly to contractors, but these vessels and plants would be subject to only half of the normal fee for catch associated with the observer coverage.~~

iv. Full fees for all operations but user fee credits for direct payments for required coverage.

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

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

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

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

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

~~Option 14.d Have a supplemental observer program.~~

~~Option 14e: Have Observer Plan Industry/Council Oversight Committee address this issue. In addition the AP recommends that the Council write a letter to the Secretary requesting support for funding of this Plan.~~

15. Council appoint a Observer Plan Oversight Committee.



## DATA COMMITTEE REPORT

June 5-6, 1991

Alaska Fisheries Science Center, Seattle

The Data Committee met on June 5-6, 1991 in Seattle, Washington. The agenda topic was to further refine the proposed user-fee program with the advice of interested members of the fishing industry. Committee members in attendance were Dave Hanson, Chairman; Ron Hegge, Larry Cotter, Bob Alverson, Henry Mitchell, and Phil Chitwood. Council members Wally Pererya, Rick Lauber, and Joe Kyle were also present. Staff present to support the committee were Steve Davis, NPFMC; Russ Nelson, Janet Wall, Jerry Berger, Joe Terry, Ron Berg, and Dale Evans, NMFS; Denby Lloyd, Larry Nicholson and Earl Krygier, ADF&G. There were approximately 10 members of the public in attendance.

For purposes of providing a basis for discussion, the Committee used the Summary of Alternatives list, prepared for the April Council meeting showing the recommendations of the Advisory Panel (Attachment 1). Other reference documents distributed included the March 19, 1991 draft of the EA/RIR/IRFA analysis on the North Pacific Fisheries Research Plan; and a list of several industry recommendations on the user-fee program submitted to the Council as part of testimony in April.

At the request of the Chairman, Russ Nelson provided an overview of the current domestic groundfish observer program. Basically, the last year and a half has been spent organizing the program, training and fielding observers, and solving problems as they arise. Given the Council's bycatch management programs and the need for statistically reliable database for bycatch management, a good portion of the Center's effort has been focused on improving bycatch data collection and data-flow to the analysts at the Center and managers at the Regional Office. Most of the sampling design work has been performed on the trawl segment of the fishery. Sampling design work still needs to be performed for fixed gear.

The current observer program has been developed with the following information objectives:

- PSC Monitoring
- Product Recovery Rates/Monitoring TACs
- Marine Mammal Interactions
- Stock Assessment (length/age data)
- Ecosystem Analysis (feeding studies)

Roughly 50% of the 1991 observer force have prior experience as NMFS observers. This statistic is similar with the high rate experienced during the peak of the foreign observer program. In 1990, only 35% had prior experience. With more experienced observers in the field, the quality of data should improve.

Dale Evans presented an overview of a memo prepared by NOAA-General Counsel providing information on several outstanding legal questions raised by the Committee at its last meeting (Attachment 2).

1. Can the federal user-fee program be used to support the State of Alaska's crab observer program?  
Yes.
2. Does the MFCMA allow for more than one observer program within a Council's jurisdiction?  
Yes.

3. Does the 1% cap apply to the fishery as a whole or on a per vessel basis?

It is the opinion of NOAA-GC that it applies to the fishery as a whole.

4. The user-fees will be collected from fishermen by processors, who will submit periodic fee payments, comprised of the fishermen's and processor's share, to the federal government. Federal permitting of processors will be required. Given that the North Pacific Council's jurisdiction is Alaska, can processors receiving fish from Alaska but are located in Canada or Washington be required to possess federal permits and submit fees?

For U.S. processors, the answer is Yes. The user-fee plan could stipulate that fishermen delivering to Canadian processors be required to submit fees.

5. Is the proposed user-fee a "tax"?

It is the opinion of NOAA-GC that the user-fee described under the North Pacific Fisheries Research Plan is a fee.

6. Would any up-front funds supplied from the federal government need to be deducted from the Observer Fund once it was established in the Treasury?

Yes unless the language accompanying the appropriation states specifically that the amount would not be deducted from the Observer Fund.

The Committee was provided a handout showing current estimates of the ex-vessel values for 1990 fisheries off Alaska, except salmon (Attachment 3). At this point, the Committee's attention turned to Attachment 1.

Item 1,2,3  
and 4 :

Originally the drafters developed two fishery categories: (1) plan fisheries for purposes of valuation and creating the largest funding potential given the 1% user-fee cap; and (2) user-fee fisheries for the purposes of actually collecting funds. It was possible that the Council might choose to list fisheries as plan fisheries but exempt them from actually paying user-fees. Given recent Council discussion and the opinion of NOAA-GC, it appears that all fisheries listed as plan fisheries must participate in providing funds for the observer program, therefore there is no longer a need to create two fishery categories.

The discussion then focused on the list of fisheries to include in the user-fee program (Attachment 3). Representatives of the State of Alaska raised concerns with the idea of including herring and Gulf of Alaska crab and other internal waters fisheries in the program. It was noted that the Council does not manage these fisheries and that there are no FMPs for these fisheries. State official's anticipate considerable opposition to the user-fee program if these fisheries were included.

Several committee members offered the view that these fisheries should be included because they benefit from the groundfish observer program by its contribution to bycatch management. However, while exempting certain internal waters fisheries which are prosecuted on localized stocks may make sense (ex. Prince William Sound, Chatham St. sablefish, etc.) other internal waters fisheries whose biomass is part of a large, single stock, should be included in the user-fee program. It was also noted that there appears to be a growing public/environmental interest in gathering fishery data, not only for the benefit of fishermen, but the public at large (marine mammals, bycatch, seabirds, minimize wastage, etc).

Denby Lloyd presented an overview of the state's crab observer program, its objectives, and its costs (Attachment 4).

While the Committee could reach consensus that all groundfish, halibut, and Bering Sea/Aleutian Islands King and Tanner Crab fisheries be included in the program, no consensus could be reached on the other fisheries. A question was also raised on whether to include recreational fisheries as well? The committee highlights these issues for the Council to resolve.

With reference to Option 3b, the Committee recommends including donut hole fisheries contingent upon federal jurisdiction in this area.

**Item 5:** The Committee recommends frameworking this section so that the program can immediately respond to changes effecting funding. For example, should Congress appropriate start-up funds, or increase the 1% cap, the committee wants to have a program where the Council does not need to formally amend the plan to accommodate the change.

**Item 6:** The Committee recommends that the Council consider the option of including discards in the user-fee program. If discards are to be used in generating fees, the Committee recommends collected fees from only those discarded species which experience fishing mortality. The Committee also recommends Council adoption of Option 6d which specifies that actual exvessel price and fish use data will be used in computing fees by the processor. For those operations who do not purchase unprocessed fish (i.e. "arms-length" transaction), price data gathered from all processors will be used to compute an average for calculating the fees. In cases where there is no processor that purchases unprocessed fish (ex. roe-rocksole fishery), the committee recommends basing the value on the "best information" available.

The Committee recommends deleting Options 6c and 6e from further consideration. It was the Committee's understanding that the Bycatch Committee would look at Option 6e when developing their program.

Under Item 6, the Committee recommends that a new option be considered whereby a published discard rate is used for the user-fee fisheries and that an assumed value estimate for discards be used in calculating fees based on discards. These two variables (discard rate and discard value assumption) would be based on Council/NMFS review of catch and value data. A further consideration, should the Council find merit with this proposal, would be to phase-in the schedule for implementing this rule (ex. 25% of the discard fee in first year, 50% in second year, 75% in third year, and 100% in every year thereafter). The rationale is that it would provide time for the industry to develop methods to minimize discards while not penalizing the fleet immediately.

**Item 7:** No change.

**Item 8:** The Data Committee supports the AP recommendation of quarterly payments of fees with annual reconciliation.

**Item 9:** No change.

**Item 10:** The Committee recommends that the Council authorize a review of the current fish ticket and reporting requirement system and identify revisions and improvements where necessary to accommodate the data requirements needed to implement the user-fee program. The Committee has tentatively scheduled a meeting for August to perform this

review. Changes to reporting requirements will likely require preparation of a regulatory amendment by NMFS this fall. To begin this process, the Committee recommends that the Council request industry comments on the existing recordkeeping and reporting requirements at its June meeting.

**Item 11:** The Committee supports the concept of using the best information available when determining average exvessel price assumptions for use in calculating fee payments by processors who do not purchase their fish.

**Item 12:** No change.

**Item 13 and 14:** The Committee is of the opinion that federal start-up funds are essential if the user-fee program is to work. Should start-up funds not be available, it is likely that the user-fee program will continuously be bankrupt and unable to meet the intent of Congress. A GAO report on the foreign observer program highlighted the need for "working capital" up-front for purposes of administering the observer program (Attachment 5). It is apparent that this issue has been a recurring problem since the establishment of the federal observer program.

Until funds are made available and the user-fee program is implemented, the Committee recommends that groundfish operations continue to pay directly for observer costs. The Committee recognizes that it is unlikely that the user-fee program will be in place until late-1992 given the required Secretarial review period and federal contracting procedures.

It is clear that the 1% funding cap is inadequate to meet the current groundfish observer program funding requirements. Expanding the funding requirements to include the crab observer program and possibly expanding observer coverage to halibut fisheries is absolutely out of the question without (1) increasing the cap; or (2) reducing the costs of the current groundfish observer program.

The Committee recommends that the Council request NMFS to prepare a review of the current observer program, its levels of coverage, and identify cost savings areas within the program which could be undertaken, should start-up funds not be available. Such a review should have as a goal maintenance of the integrity of the observer database. The review should be prepared for Council review at its September meeting when they are scheduled to review the NMFS Observer Plan and recommend amendments to the plan. If possible, this NMFS report should be made available to the Data Committee in early September so that they can develop their recommendations to the Council.

The Committee identified several options for the Council to consider:

1. Approve the recommended user-fee plan, recognizing that it is a framework plan that will require federal start-up funds to implement. The Council would highlight the need for start-up funds in its transmittal letter to the Secretary. In the interim, industry and NMFS would continue with the current groundfish observer program and method of paying for it.
2. Approve the user-fee plan and a new observer program to be supported by user-fees. The current NMFS Observer Plan would be retained and coordinated with other observer programs.
3. Maintain status quo with regard to the current observer program and initiate an attempt to convince Congress that an amendment to the MFCMA is necessary to increase the funding cap from 1% to a higher percentage, with or without federal matching funds as an option. Also, Congress should consider an alternative of deleting reference to "exvessel value" in the MFCMA which could allow for an increase of funds within the 1% cap.

**Item 15:** The Committee recommends that an Observer Plan Oversight Committee be established and that it not be limited to Council family members but open to other industry representatives and environmental organizations.

### **OTHER ISSUES**

The Committee recommends that the Council consider formalizing an annual review/amendment cycle for the purpose of reviewing the observer program and the user-fee plan.

The Committee received a presentation on the federal contract process. Several concerns were raised over the length of time to prepare and approve contracts, and the types of contracts used (e.g. sole-source, cost-plus contracts, etc.). Several questions were raised to NMFS: Is there a way to sole-source funds to an outside entity for administering the funds as a way to speed up the contracting process? Can industry/Council/Observer Oversight Committee be provided with quarterly reports on budget expenditures?

Attachment 1 is Agenda item C-3(b) in June 1991 meeting note books.

June 4, 1991

DRAFT

TO: Steve Pennoyer  
Dale Evans

FROM: Lisa Lindeman

SUBJECT: Questions on Fisheries Research Plan -- Data Gathering Committee

1. Can the fishery observer fund be used to reimburse the State of Alaska for expenses incurred in its crab observer program?

Section 313 (d) of the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1863(d)) states the fishery observer fund is available. . . for the purpose of carrying out the provisions of this section (section 313), subject to the restrictions in subsection (b)(2) of this section.<sup>1</sup>

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<sup>1</sup>Subsection (b)(2) provides that

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

- (A) Provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;
- (B) Be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the northern Pacific halibut fishery;
- (C) Provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;
- (D) Not be used to offset amounts authorized under other provisions of law;
- (E) Be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

could include collecting information necessary for the conservation, management and scientific understanding of any fisheries under the Council's jurisdiction, the fund should be available to reimburse the State for costs incurred in its program, subject to the restrictions set forth in section 313(b)(2).

2. Does the MFCMA require that the observer program, which is an element of the fisheries research plan authorized under section 313, be the only observer program for the fisheries under the Council's jurisdiction? Can the existing observer program remain in effect while the "new" observer program is implemented?

The MFCMA authorizes preparation of a research plan for all fisheries under the Council's jurisdiction and requires the stationing of observers on certain fishing vessels and U.S. fish processors. The language of the statute does not require that the observer program established under the plan be the only observer program in place for the fisheries under the Council's jurisdiction.

The legislative history, however, indicates Congress expected the research plan observer program would not be the only observer program for the North Pacific fisheries. The legislative history specifies Congress' intent that the plan observer program should be coordinated with existing observer programs.<sup>6</sup>

3. Does the 1% cap apply to the fishery as a whole or on a per vessel basis?

MFCMA section 313(b) sets forth standards which the research plan and the fee system, must meet. Section 313(b)(2) requires, among other matters, that the system of fees established under the plan must be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery (subsection (b)(2)(E)).

The language of the MFCMA is unclear as to whether the one percent cap applies to the fishery as a whole or on a per vessel basis. The legislative history, however, speaks in terms of a per vessel

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<sup>6</sup>The legislative history (H. Rep. 393, 101st Cong., 1st Sess. 32 (1989)) states:

It is the Committee's intent that the Secretary and the Council will coordinate any research program under this section with programs being carried out under other provisions of law involving observers on domestic fishing vessels. This will help ensure that observers are used efficiently.



for the sound conservation and management of the fisheries in the Pacific Northwest. The fee system is incidental to the main purpose of the legislation and arguably does not change its primary purpose of conservation and management. Further, use of the fees collected are restricted to costs of stationing observers, actual cost of inputting data, and assessments for a risk-sharing pool, etc. -- to ensure that the fees pay only for the benefit received.

6. Would any up-front funds need to be deducted from the 1% collected?

Section 313(b)(2)(A) provides that the total amount of fees collected. . .not exceed the combined cost of (i) stationing observers. . ., (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool. . ., less any amount received for such purpose from another source. . .

If startup funds were obtained through an appropriation, the amount would have to be deducted from the 1% collected unless the language of the appropriation states specifically that the amount would not be deducted from the 1% collected.

Fishing vessels and processors could be assessed additional amounts to provide up front funding as long as a provision was included that at some time the up front payments would be "evened out" when they stop fishing, so the total amount of fees they pay over time does not exceed 1% of the value of the fish they harvested. Since the source of the up front funding would be the same as the source from which the fee is collected, the up front funds should not have to be deducted from the 1% cap.

**Estimated Exvessel Values for 1990  
(millions)**

<i>Date. Conference comments.</i>		Value	Cum. Value	
✓	All groundfish	\$496.3		} Council is <u>very</u> much involved in managing these fisheries (re. FMP (regulatory))
✓	All halibut	\$ 86.9	\$583.2	
✓	BSAI KC and TC	\$316.4	\$897.4	
	BSAI other shell f.	\$ 1.6	\$899.0	} Council not currently involved in management of these fisheries.
	BSAI herring	\$ 11.3	\$910.3	
	GOA KC and TC	\$ 22.6	\$932.9	
	GOA herring	\$ 12.7	\$945.5	

## REPORT ON THE ALASKA MANDATORY SHELLFISH OBSERVER PROGRAM

by

Alaska Department of Fish and Game  
Division of Commercial Fisheries  
(June 13, 1991)

Background:

In April 1988, the Alaska Board of Fisheries adopted regulations requiring onboard observers for all vessels that process king crab and C. bairdi Tanner crab in the waters off Alaska. In 1990, this was expanded to include the C. opilio Tanner crab fishery due to the illegal retention of C. bairdi. The Mandatory Observer Program was adopted after the Board received staff reports which indicated large discrepancies in harvest between catcher only vessels and catcher/processors (C/P). The Board concluded that the only way that the catches could differ so greatly would be due to the processing of sublegal/illegal crab by the catcher/processors.

Because of the significant variability of the data from the two types of vessels, it cannot be inferred from pounds landed, pounds landed per pot lift, or number of registered pots that an individual vessel was fishing illegally. However, when these two types of vessels are examined in aggregate, the department could not envision any variable affecting fishing efficiency that could account for the differences observed, other than lack of sorting of sublegal/illegal crabs. The approximate 60,000 lb average difference between the C/P and catcher only vessels observed in the 1987 Bering Sea red king crab fishery resulted in a total exvessel value of nearly \$5,000,000. There appears to be a substantial financial incentive to land undersized crab. Minimum crab size limit is generally enforced by measurement of crabs at the delivery sites. However, catcher/processors discard carapaces when crab are sectioned and processed at sea, thus avoiding shoreside detection.

The Board, while struggling with this problem, came to the conclusion that there is simply no other way to collect accurate catch data for management and research, and to monitor compliance with existing regulations, than to place observers onboard C/Ps and floating processors. Observers, recording the size structure of the catch, functionally aid in enforcement of minimum size limits.

Additionally, the domestic shellfish C/P fleet has an enormous capability, and could quickly exceed guideline harvest levels for some openings. The fact that some C/Ps were processing large amounts of undersized crab and/or may be processing one species but reporting them as another, made understanding fishing mortality rates on different sized animals nearly impossible without onboard observers.

Observer information, coupled with catch data, is critical for the department to provide inseason and postseason assessment of the fishery and ultimately is used in development of future years guideline harvest levels. The size and dynamics of the catcher/processor fleet seriously strain the ability of the state to conserve and manage this resource, even with the onboard observer program.

#### Description of the State Program:

Domestic fleets are increasingly faced with more and more restrictive management measures due to the lack of adequate observer information. Both state and federal agencies have been required to develop increasingly complex, data-dependent management plans and regulations to manage the various offshore fisheries. But observer programs are costly and difficult to administer. State budgets are faced with serious limitations and continued governmental appropriations to fund such programs, particularly on a continuing basis, are not promising.

The Board of Fisheries mandated 100 percent observer coverage on the C/P fleet, and most of the floating processors, to assure compliance with regulations and to provide representative catch data to aid in the inseason management of the fishery. Because the state can assess taxes only for fishery products which are delivered shoreside, and there is a specific federal prohibition from charging significant domestic fishing fees for resources harvested in the EEZ, the very vessels which we wanted to observe would escape being charged. Therefore, industry funding of this program was deemed the only compromise and comports with the philosophy that industry should help in the management of natural resources when they derive economic benefits from their use.

One of the main questions confronting the Board was -- what segment of the fleet should pay for the observers? Should only the crab catcher/processor vessels pay those costs because they are "causing" the problem? Or should the entire industry help pay the costs because they are receiving benefits of both increased management precision and decreased "cheating" by some C/P crab vessels. This latter approach was deemed most equitable, but impossible to accomplish under taxation avenues open to the state. Therefore, the state went to the U.S. Congress during the reauthorization of the Magnuson Act to press for inclusion of the shellfish vessels within the North Pacific Fisheries Research Plan, both for assessment and dispersion of funds to cover the crab observer program.

Similar to the federal observer program, the state's program utilizes third party contractors, and the department developed guidelines and certification requirements for both observers and contractors, provided training and data collection standards and

forms, tested observers, and provided briefings and debriefings before and after the at-sea observations occurred. Daily reports were required from all observers during king and Tanner crab fisheries. Observers reported, in code, the number of legal males, pots pulled, sampling conditions and statistical areas fished during the previous 24 hour period. The state uses the information which it collects, from both the onboard and shoreside observer programs, to manage the fishery in and out of season, often relying on daily reports to project closures.

The Board of Fisheries has mandated that this program be used to both enforce regulations and collect management information. As an example, the information collected from this program was presented to the Board of Fisheries who, consequently, adjusted crab seasons to reduce bycatch of soft shell, juvenile, and female crab in the Tanner crab fisheries. Additionally, published informational reports have been compiled using ADF&G observer data. Observer information and samples can greatly help our understanding of the dynamics of the crab resources and fisheries. Analysis of bycatch composition and rates will further aid the Board of Fisheries in structuring the crab fisheries.

#### Costs of the State Program:

The state's program calls for 100 percent observer coverage on all C/P vessels, plus on all floating processors not located in close proximity to random-daily shoreside inspection by the department. These observers are funded directly by industry; each vessel contracts directly for the qualified observer placed onboard. Shorebased processors are inspected regularly by departmental samplers.

In the 1990-91 Bering Sea crab fisheries there are presently 29 C/P vessels fishing. Additionally there are 3 C/P vessels fishing as catcher only vessels (but having the capacity to switch back) and two new C/Ps being built. Eighteen floating processors are normally located in remote sites and also need observer coverage. One to three new floaters are apparently being built. The number of catcher only vessels fishing the Bering Sea typically runs between 240 and 250. These catcher vessels presently do not have regular observer coverage, but do - from time to time - take out departmental samplers.

In the current 1990/91 season, 365.6 man-months of observer coverage are projected to be required. A month of observer time is estimated to cost between \$7,000 and \$8,000/observer. Therefore, this program currently costs industry between \$2.56 and \$2.92 million.

The department provides shoreside observers to cover accessible shoreside crab processing plants and floating processors at a cost to the state of \$260,900/yr. (In the federal groundfish program

these observers are paid for by the processor at whose facility the observer is stationed.) Under the departmental program the samplers not only provide observer coverage, but furnish support to observers stationed in the field; they actually act as liaison between the department and contracted observers. Additionally, the department expends \$142,000 on an observer coordinator and part time assistant to brief/debrief observers, test and certify observers, maintain communications with observers at sea, and input data provided by the program. Additional computer input technicians are needed to compile and maintain the database (\$100,000).

Thus, when these costs are accounted for, the crab observer program requires between \$3.06 and 3.42 million dollars to meet operational expenses. The costs of any actual program will vary, however, with the effort applied in the various crab fisheries (see Table 1). For example, if through the implementation of the North Pacific Fisheries Research Plan the monthly cost of an observer could be reduced to \$5,000/observer, then the entire crab program would need about 2.55 million dollars, including costs to the state, for a year requiring maximum observer coverage.

Considering the size and value of last year's crab fishery, it would have provided to the observer fund, at 1.0 percent assessment, about \$3.4 million. This is somewhat above or equal to the projected costs of the observer program using the \$7,000 to \$8,000/observer month figures. This year's crab fishery, because of the size of the catch, may be worth considerably more than last years.

Concern that the state's program may not be representative of total fleet dynamics has been raised. While the state does not normally have observers on catcher vessels, there is a catch delivery sampling program to cover catcher vessels. For the at-sea sampling program, the number of vessels is less important than the number of pots and the number of pot hauls which are observed. There is no information which would indicate that the observed fleet is fishing in areas different, or more effectively, than the unobserved fleet. Therefore, department biologists believe that the present monitoring system is statistically representative of the bycatch levels and shell condition which the whole crab fleet is experiencing. It should be noted that pot gear is more predictable, as far as repeatability, than trawl gear for the same area. There are significant variations in trawls themselves, and how they fish, that are not observed in pot gear for most of our fisheries. The major exception are the longline crab fisheries in the Adak area which have highly variable pot types. As the catcher-processor fleet dominates this fishery, sampling coverage currently approaches 50 percent of the landings. Due to these factors, it is not anticipated that the state program will be significantly expanded from the present level of coverage of the C/P and floating processor fleet.

## Recommendations for the North Pacific Fisheries Research Plan:

In summary, the observer program has proven to be an extremely important management tool. This program has had two primary objectives, enforcement of regulations and collection of biological data to assist in managing the fishery. The Alaska Department of Fish and Game has found these two objectives intrinsically linked. Without enforcement of regulations, accurate data from the fishery may not be obtained.

This observer program evolved pursuant to the Bering Sea king and Tanner Crab Fisheries Management Plan (FMP) and was delegated to the State under Category 3. Any federal program, under Category 1, would still need to meet coordination needs of the state managers. We believe that any federal assessment of the Bering Sea crab fleet, under provisions of the recent Magnuson Act reauthorization, must be used, at least in part, to fund the costs to crab vessel operators and the costs to the state. The costs are currently estimated to equal somewhat less than one percent of the fisheries' exvessel value.

The Department's specific recommendations for the crab observer program to the NPFMC's Data Gathering Committee, include the following:

- 1) Any assessments to the Bering Sea crab fleet should be used, primarily, to offset the costs of the crab observer program.
- 2) The number of observer contractors should be reduced, through a competitive bid process, down to one. Bid specifications would include performance bonding requirements, plus minimum qualifications outlined in the state's crab observer manual. The competitive bid process would provide equal opportunities for private and educational institutions. Competitive bidding might also bring down the total program cost.
- 3) The state would continue to provide coordination for the program including:
  - a. Briefing and debriefing observers.
  - b. Certification testing of observers.
  - c. Decertification of observers.
  - d. Assist contractor with training.
  - e. Determine sampling procedural changes.
  - f. Analyze observer data.
  - g. Prepare reports.

Table 1. Distribution of effort, in man months, of crab observers by area and species. Table depicts minimum, maximum, and 1990-91 levels of effort experienced during a full season of crab fishing in the Bering Sea.

Fishery	Minimum, Maximum, and 1990-91 Observer Effort Level Experienced, Years 1988-1991.		
	<u>Minimum</u>	<u>1990-91</u>	<u>Maximum</u>
Bristol Bay - Red King Crab	10.7	20.5	20.5
Adak - Red/Brown King Crab	20.0	55.0 <sup>2</sup>	88.5
Dutch Harbor - Brown King Crab	0.5	7.3	7.7
South Peninsula - <u>C. bairdi</u>	0	0.0	0.9
Norton Sound - Red King Crab	0	2.0	2.0
Chukchi Sea - Red/Blue King Crab	0	0.0	2.3
Bering Sea - <u>C. opilio</u>	60 <sup>1</sup>	225.0 <sup>2</sup>	225.0 <sup>2</sup>
St. Matthew - Blue King Crab	0	5.3	9.8
Bering Sea - <u>C. bairdi</u>	0	50.5	50.5
Bering Sea- Brown King Crab	<u>0</u>	<u>0.0</u>	<u>1.2</u>
Total	91.2	365.6	408.4

<sup>1</sup> This is an estimate of the number of observer days required under a minimum season

<sup>2</sup> Projected observer coverage for the 1990-91 season.



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INTERNATIONAL PACIFIC HALIBUT COMMISSION

ESTABLISHED BY A CONVENTION BETWEEN CANADA  
AND THE UNITED STATES OF AMERICA

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MEMO

**TO:** Bycatch Working Group  
**FROM:** Donald A. McCaughy  
**DATE:** June 12, 1991  
**SUBJECT:** Next Meeting

JUN 17 1991

The next meeting of the Bycatch Working Group will be at the International Pacific Halibut Commission office, beginning at 10:00 a.m. on Tuesday, July 2, 1991.

DAM:ps

Distribution: Richard Beamish  
Steve Pennoyer  
Sue Salvesson  
Loh-Lee Low  
Tom Wilderbuer  
Bruce Leaman  
Jake Rice  
Clarence Pautzke ✓

cc: Commissioners

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REPORT BY THE

# Comptroller General

OF THE UNITED STATES

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## The Foreign Fishing Observer Program: Management Improvements Needed

The Magnuson Fishery Conservation and Management Act, as amended, authorized the placement of U.S. observers on foreign fishing vessels permitted in the U.S. Fishery Conservation Zone. Observers are to collect various types of biological data and monitor foreigners' compliance with U.S. fishery laws and regulations. The costs of the observer program are paid for by the foreign fishers.

GAO found that limited funds at the beginning of some fiscal years have affected the extent of observer coverage until sufficient revenues are collected from foreign fishers. In addition, GAO found that while the estimated cost billing and collection system followed by the Fisheries Service has been reasonable under the circumstances, it has been cumbersome to administer and has resulted in substantial over and under billings.

GAO also presents information on (1) health and safety standards for foreign fishing vessels and the need for sanctions against inadequate vessels, (2) use of observer-generated data, (3) observer training, and (4) use of contract observers.

GAO also makes several recommendations to improve the management of the program. \*



--The observer training program.

--The use of contract observers in the Northwest and Alaska program.

NEED FOR WORKING CAPITAL AND  
IMPLEMENTATION OF A BILLING  
SYSTEM BASED ON ACTUAL COSTS

The American Fisheries Promotion Act of 1980 amended the Magnuson Act by establishing a revolving fund for the observer program but did not provide initial working capital. To provide funds for the program, the Fisheries Service has followed an advance estimated billing process based on the anticipated level of foreign fishing, planned level of observer coverage, and established cost factors.

While foreign fishers are billed in advance for estimated costs, the Fisheries Service has been restricted from pursuing its planned level of observer coverage at the start of some fiscal years, until sufficient funds have been collected and become available for obligation. According to the Fisheries Service, earlier billing of foreigners is not the solution because the earlier bills are prepared the more speculative they would be due to limited information on the level of foreign fishing.

In addition, while GAO believes that the Fisheries Service's methods and procedures to forecast foreign fishing, develop estimated bills, account for actual costs, and reconcile estimated bills with actual costs have been reasonable given the need to issue advance estimated bills, they have been cumbersome to administer, have resulted in notable over and under billings, and have generated inquiries from foreign fishing interests about their bills and program costs. The Fisheries Service has considered providing working capital for the observer program fund to address this problem but no action has been taken to do so, largely because of budget considerations. Observer program managers indicated that the amount of working capital needed could range from \$3 million to \$7 million. (See pp. 6, 7, and 8.)

GAO believes that with a sufficient amount of working capital, the Fisheries Service could

pursue its planned program level and implement a billing system based on actual costs.

NEED FOR HEALTH AND SAFETY  
STANDARDS TO JUDGE ADEQUACY  
OF FOREIGN FISHING VESSELS

While the number of instances of unsafe and unhealthful conditions on foreign fishing vessels have been few, according to the Fisheries Service, observers have occasionally been placed on substandard vessels.

The Secretary of Commerce is authorized to not place or to remove an observer from a vessel judged to be unfit, but Commerce has no standards for assessing the general seaworthiness of and health conditions on foreign fishing vessels. The Fisheries Service has for some time recognized the need for standards to judge the safety and health conditions to help better assure that observers are only placed on adequate vessels. It has been developing general guidelines which it expects to complete in late fiscal year 1985. However, it views this effort as an interim measure that will lead to the development of more comprehensive standards.

If the Fisheries Service declines to place or removes an observer from a vessel because of unsafe or unhealthful conditions, the vessel can continue to fish without being observed and without penalty or restriction. The Fisheries Service has recognized that by not placing observers on unsafe or unhealthful vessels and not having the authority to impose sanctions, the foreign fishers may see these circumstances as an incentive to maintain poor conditions to avoid being observed. In February 1985 the Secretary of Commerce submitted a draft bill to the Congress including a proposal to amend the Magnuson Act to provide authority to impose sanctions against inadequate or unsafe foreign fishing vessels and issue regulations setting forth the circumstances for imposing sanctions. The House Committee on Merchant Marine and Fisheries has been considering the feasibility and implications of the proposal. (See pp. 14 and 17.)

GAO believes that sanctions should be established for foreign fishing vessels considered

Alaska Fisheries Science Center  
7600 Sand Point Way NE  
BIN C15700, Building 4  
Seattle, WA 98115

JUN 12 1991

F/AKC2:RN

Mr. Clarence Pautzke  
Executive Director  
North Pacific Fishery Management Council  
P.O. Box 103136  
Anchorage, AK 99510

Dear Clarence,

There was a great deal of discussion at last week's meeting of the Data Gathering Committee on the need for start-up funds or working capital for the Observer Fund which would be established by the North Pacific Research Plan (Research Plan). I want to clarify some of the issues raised in those discussions.

In order for the National Marine Fisheries Service to carry out the program established by the Research Plan and utilize the fees collected from industry, funds must be on deposit in the Observer Fund. Funds cannot be obligated for expenditures prior to deposit. Once the Research Plan is implemented, observers will be procured from government contractors on a quarterly basis. The funds to pay for observer services and to support program operations for that period must be on deposit and available in the Observer Fund.

Industry and the Council's Advisory Panel have indicated that payment of fees on a quarterly basis is their preferred option. Payment would be due 30 days after the end of the quarter. Considering the time required to record deposits and accounting requirements of the Observer Fund, authority to utilize those funds in all likelihood will not be received until close to the end of the next quarter. For the program to be able to operate effectively and obligate the necessary funds to secure observers, six months of operating funds must be available in the Observer Fund before the program can be implemented.

The EA/RIR for the Research Plan estimated the cost of the program for 1992 to be between \$10 million to \$11 million. Approximately one-half of that amount or about \$5 million would have to be on deposit in the Observer Fund to begin the program. The need to have sufficient funds available in advance when operating this program was identified in a 1985 GAO review of the Foreign Fishing Observer Program (GAO report GAO/RCED-85-110, a copy of portions is attached). Unless start-up funds are available through collection of fees in advance of fishing or through an appropriation, the EA/RIR estimates that it could take

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NMFS OBS PROGRAM --- N. Pacific Coun. 003-012

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over two years to collect the funding needed to implement the program.

As this issue is discussed further, please let me know if you have any additional questions.

Sincerely,

William Aron  
Science and Research Director  
Alaska Region

Enclosure

cc: F/AKR - S. Pennoyer

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REPORT BY THE  
**Comptroller General**  
OF THE UNITED STATES

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## The Foreign Fishing Observer Program: Management Improvements Needed

The Magnuson Fishery Conservation and Management Act, as amended, authorized the placement of U.S. observers on foreign fishing vessels permitted in the U.S. Fishery Conservation Zone. Observers are to collect various types of biological data and monitor foreigners' compliance with U.S. fishery laws and regulations. The costs of the observer program are paid for by the foreign fishers.

GAO found that limited funds at the beginning of some fiscal years have affected the extent of observer coverage until sufficient revenues are collected from foreign fishers. In addition, GAO found that while the estimated cost billing and collection system followed by the Fisheries Service has been reasonable under the circumstances, it has been cumbersome to administer and has resulted in substantial over and under billings.

GAO also presents information on (1) health and safety standards for foreign fishing vessels and the need for sanctions against inadequate vessels, (2) use of observer-generated data, (3) observer training, and (4) use of contract observers.

GAO also makes several recommendations to improve the management of the program.



CHAPTER 2  
NEED FOR WORKING CAPITAL AND A  
BILLING SYSTEM BASED ON ACTUAL COSTS

The American Fisheries Promotion Act of 1980 established a special revolving fund for the observer program. However, working capital to initially capitalize the fund was not provided. Because the fund was not capitalized in this way, the Fisheries Service has not been able to consistently implement the planned level of observer coverage at the beginning of some fiscal years until sufficient observer fees have been collected from foreign fishers and are available for obligation.

To obtain funds for the program, the Fisheries Service has developed and followed an advance estimated billing process to collect observer fees from the foreign fishers. While this process has been systematic and reasonable under existing circumstances, it has been cumbersome to administer because of the bill estimating and reconciliation process and has resulted in notable over and under billings. The process has generated inquiries from foreign fishers about their estimated bills and program costs and has required the Fisheries Service to prepare explanations of its billing process and procedures. The preparation of explanations has become an added administrative work load for the Fisheries Service.

Information we obtained indicated that the problems associated with the limited working capital and estimated bills could be resolved if the Fisheries Service had a sufficient working capital to initiate each year's program activity at the planned level and billed foreign fishers for actual rather than estimated costs. Also, the Service could simplify its administrative work load by preparing a comprehensive information package to answer foreign fishers' questions about program costs and their bills.

PLANNED OBSERVER COVERAGE  
AFFECTED BY INSUFFICIENT  
FUND BALANCE

According to Fisheries Service management, the Service has not been able to consistently achieve the planned level of observer coverage because there has not been enough money in the Foreign Fishing Observer Fund when some fiscal years begin.<sup>1</sup>

<sup>1</sup>The Magnuson Act states that all payments made from the observer fund shall be paid only to the extent and in amounts provided for in advance in appropriation acts. According to the Fisheries Service, the billings sent to foreign fishing interests are also limited to amounts established in advance in appropriation acts.



The unobligated cash balance in the fund carried forward from the preceding fiscal year has sometimes forced the program to operate at reduced levels, because collections from the first quarter billings do not begin to show up as receipts to the fund until the end of the first quarter or beginning of the second quarter of each fiscal year. The Chief, Enforcement Division, informed us that the Service has periodically considered suspending the observer program because there was insufficient cash in the fund to obligate for the program.

The following table shows the cash balance carryover from the preceding fiscal year, the planned program levels, and the collections recorded in the fund during the first two quarters of fiscal years 1983, 1984, and 1985.

<u>Fiscal year</u>	<u>Fund balance beginning FY</u>	<u>First quarter planned obligations</u>	<u>First quarter collections</u>	<u>Second quarter planned obligations</u>	<u>Second quarter collections</u>
1983	\$ 588,797	\$2,437,944	\$ 336,049	\$ 90,740	\$2,047,932
1984	1,694,303	1,164,985	1,054,125	1,663,243	3,202,328
1985	268,168	2,290,874	2,510,153	2,369,514	1,670,883

The table shows that in fiscal year 1983, the carryover balance in the observer fund from fiscal year 1982 was \$588,797. The Fisheries Service needed about \$2.5 million to carry out its planned observer program. Most collections from the first quarter's advance estimated billings were not received until the second quarter of the fiscal year. As a result, less than \$1 million was available for obligation during the first quarter. The lack of cash limited the Service to less than half the program level they had planned to implement in the first quarter of fiscal 1983. According to observer program coverage statistics during the first quarter of fiscal year 1983, coverage averaged only 16 percent while the planned level of coverage for the quarter was 40 percent. For fiscal year 1984 which was the first year a full coverage program was planned, the carryover balance from fiscal year 1983 was sufficient to cover planned obligations for the first quarter of fiscal year 1984. However, by the end of the quarter, the program achieved only 40 percent. According to the Fisheries Service, this coverage shortfall was not due to lack of cash in the fund but rather unanticipated administrative delays in finalizing contracts with suppliers of observers for the Northwest and Alaska regional program. As a result the average coverage for the quarter was significantly affected. The fiscal year 1983 situation was repeated in fiscal year 1985 when less than \$270,000 was available in the fund, while the planned level of coverage would have cost \$2.3 million. The Fisheries Service advised GAO that average coverage for the first quarter of the year was only 64 percent.

To address this cash flow problem, observer program managers have considered possible solutions, including (1) billing further in advance for the first quarter to assure that sufficient cash is in the fund when the fiscal year begins, (2) billing further in advance under an annual estimated billing system, (3) obtaining sufficient working capital in advance to cover any estimated cash shortfall that may occur before funds from foreign fishers are received and available for obligation, and (4) obtaining sufficient working capital for the fund in advance that would permit the elimination of an estimated billing and implement a system based on actual costs.

Earlier estimated billings, whether for the first quarter or for an annual billing, were not considered by program managers to be satisfactory solutions because the bills would be more speculative resulting in a greater variation from actual program costs and would likely generate complaints from foreign fishers. Observer program managers believed that an annual estimated advance billing would require some foreign fishers to pay substantial funds well in advance of actual fishing and could create financial burdens on them. In this regard, the program managers believed that obtaining a sufficient amount of working capital would be a practical solution, and if enough working capital were obtained, they could eliminate the advance estimated billing system and follow a post billing system based on actual costs. According to observer program managers, the amount of working capital needed could range from \$3 million to \$7 million and would be based on the Service's estimate of the level of foreign fishing, the planned observer coverage, and the time frame to receive funds from foreign fishers. The amount requested would also depend on whether the decision to obtain working capital would be to handle the short fall in the first quarter and retain the advance estimated billing system, or obtain sufficient capital to implement an actual cost billing system.

In this regard, the Chief of the Service's Enforcement Division told us that program management has considered seeking authority to provide working capital for the Foreign Fishing Observer Fund, but no official action has been taken to request such authority largely because of higher management concerns to contain the size of the agency's budget.

DEVELOPING PROGRAM COST  
ESTIMATES FOR BUDGETING  
AND BILLING PURPOSES

Fisheries Service estimates of observer program costs for budget purposes depends on limited information on the level of foreign fishing that may occur in the budget year. Essentially, the Fisheries Service reviews the current data on the level of foreign fishing and prior years' data. According to the Fisheries Service when budget preparation begins, the decisions to allocate fish to the foreign countries have not been made and

the foreign fishers have not developed their plans for fishing in the U.S. conservation zone in the budget year. The Fisheries Service has recognized the limitations in this information and considers its estimates for a full coverage program educated guesses.

Before the beginning of each fiscal year, usually in July and August, the Fisheries Service collects additional information to help estimate the number of observers that will be needed. The Fisheries Service headquarters and field program management use this information to help predict the number of foreign fishing vessels that will enter the U.S. fishery conservation zone in the upcoming fiscal year. This information includes

- available information from the foreign fishing country on what they believe the level of fishing will be;
- past and current foreign level of fishing, i.e., number of vessels and duration of fishing;
- past and current participation in joint ventures with U.S. fishermen; and
- past and current allocations of fish that can be harvested by the foreign countries.

With the most current information available, the Fisheries Service establishes program requirements estimates in terms of the number of observers that will be needed for the various fisheries. The Service then generates cost estimates using established cost factors and calculation methods and estimates quarterly billings for each country by fishery. These estimated bills are sent to the foreign fishers through their respective governments and are expected to be paid promptly according to established payment mechanisms.

The Fisheries Service has established two methods for collecting observer fees from the foreign governments--a letter-of-credit established at a U.S. bank or a cash payment. The Fisheries Service prefers the letter-of-credit because funds are available to them sooner, but it has accommodated the foreign countries that prefer to pay their observer bills in cash. According to the Fisheries Service, the letter-of-credit arrangement usually takes about 45 days from the day the bill is issued to the point where deposits are received in the fund and are available for obligation. The direct cash (check) payment arrangement can take as long as 180 days before the check clears and the amounts deposited in the fund can be obligated.

At the conclusion of the fiscal year, each country's actual costs are reconciled with payments made on estimated billings and overpayments are credited to the next year's fishing activity. Underpayments are added to the next advance bill.

The Fisheries Service has acknowledged that its advance billing process is cumbersome and time consuming to operate and results in bills that are based on the Service's best guesses of what the level of foreign fishing will be. As a result, both over and under billings have occurred. For example, in fiscal year 1983, the Japanese were overbilled \$1.1 million, while the Soviet Union was underbilled \$167,600. Denmark was billed even though its fishing interests subsequently decided not to fish in the conservation zone. During this particular year the estimated billings ranged from 100 percent over to 78 percent under the actual expenses incurred by the program. In fiscal year 1984 estimated bills versus actual again varied considerably. As examples, the German Democratic Republic was billed \$25,400 while actual costs were \$109,900. Japan was billed \$3.9 million and actual cost were \$2.4 million.

**COST FACTORS AND PROCEDURES  
TO ASSEMBLE AND ACCOUNT FOR  
PROGRAM COSTS**

According to Fisheries Service management responsible for the billing system, the procedures used to develop and account for costs have remained relatively consistent since the observer program began. The specific costs chargeable to the observer program include program management, observer recruiting and training, and actual deployment of the observers to the foreign fishing vessels. These costs have been categorized into direct labor costs and benefits, travel and transportation, contract services and supplies, general program, and indirect costs.

To assist Fisheries Service management in accumulating and accounting for observer program costs, the Foreign Billing and Observer Cost System (FOBOC) was developed to receive and assemble in a standard entry format the level of detailed cost information needed to ensure that all costs incurred by the U.S. government in administering the observer program are recovered. Cost information put into the system are categorized either as trip costs or general costs. Trip costs are directly attributable to a specific observer trip; whereas, general costs are incurred in connection with all observer trips. General costs include overhead costs, general and administrative expenses, or contractor profit and are proportionately distributed to the foreign fishers.

**NOAA General Counsel  
interpretations given  
on cost-related issues**

Either as a result of questions from foreign fishing interests or because of Fisheries Service management concerns about observer program costs, NOAA's General Counsel has periodically interpreted whether the Magnuson Act permits certain costs to be charged to the program. In its interpretations the General Counsel has reiterated its basic position that the observer

program fee was intended to recover only costs associated with placing and maintaining an observer aboard a foreign fishing vessel. In this regard its legal interpretations have provided that

--the amounts charged to foreign fishing interests cover such items as observer salaries, training and supervision of observers, and travel and transportation to and from vessels and

--the observer program fees are limited in scope and not intended to include general administrative costs that can be associated with other provisions of the Magnuson Act.

Among the kinds of cost questions forwarded to NOAA's General Counsel for legal interpretation have been the costs of stationing more than one observer on a vessel, the costs of information management and analysis, the costs to send an observer to testify in court, and the costs of renovating facilities and equipment.

For example, the General Counsel was asked whether costs of managing and analyzing data gathered by observers under the basic observer program could be passed on to foreigners through observer program fees. It was decided that since the costs associated with managing and analyzing observer data are not associated with "placing and maintaining" observers, these costs are not properly included under the observer program, but were, however, recoverable from another section of the act. Regarding costs of renovating facilities and associated utility costs, it was decided that such costs were chargeable under the program because the facilities were considered essential to the preparation and deployment of observers. On the issue of stationing more than one observer on a foreign fishing vessel, it was concluded that there is nothing to prevent placing more than one observer on a particular foreign vessel where it was judged necessary and appropriate to do so.

In our view the General Counsel's legal interpretations on observer program cost issues have reflected reasonable interpretations of the intent of the Congress for the costs recoverable under the observer program. According to Fisheries Service management, these interpretations and others have helped to assure that costs charged to foreigners for observer fees are in keeping with the intent of the Congress.

#### ESTIMATED BILLS GENERATE INQUIRIES FROM FOREIGN FISHING INTERESTS

According to the Fisheries Service, observer fee estimated bills have become a source of periodic telephone and written inquiries from foreign fishers who request explanations from the Service about the process, procedures, and factors used to develop their bills. While these inquiries have become an added

administrative work load for the Service, the Service believes that it has routinely responded with appropriate answers and explanations of its billing process and procedures, and that its responses to the foreign fishers have been satisfactorily received.

We reviewed observer program files containing inquiries from foreign fishing interests and the responses the Fisheries Service provided. Our review revealed that these inquiries ranged from specific questions about particular bills to concerns requiring explanations of major aspects of the bill development process followed by the Fisheries Service.

As an example, the Japan Fisheries Association, representing a portion of the Japanese fishing industry, asked the Fisheries Service a number of questions requiring detailed explanations of billing procedures, cost factors, and calculation methods. Among the questions asked were

1. How was the anticipated amount of observer coverage determined?
2. How is NOAA overhead calculated and allocated?
3. How many Fisheries Service support staff are associated with the observer program? What are their salaries? How are these costs allocated?
4. What functional activities are performed under the two contracts with the University of Washington and Oregon State University? How are these functions performed?

The Service provided this group with a comprehensive, informative package that responded to their questions and concerns. The response required over 90 pages of narrative and supporting documents.

### CONCLUSIONS

The lack of working capital in the Foreign Fishing Observer Fund has periodically prevented the Fisheries Service from providing the planned level of observer coverage at the beginning of a fiscal year until sufficient advance payments have been collected and become available for obligation. The advance estimated billing process used by the Fisheries Service has been cumbersome to administer and has resulted in over and under billings to foreign governments. It has also generated inquiries from foreign fishing interests about the bills they have received and created an added administrative workload to respond to these inquiries.

Given the need to advance bill, the Fisheries Service has developed and followed a reasonable process and system to project estimated and account for actual program costs.

Inquiries from foreign fishing interests have been routinely responded to with detailed explanations, and NOAA's General Counsel, has over the term of the program, provided legal judgments on the appropriateness of the various costs included under the program.

We believe that the program could be managed more efficiently if working capital were provided to capitalize the observer fund, allowing an actual cost billing system. We believe that these actions would permit the Service to pursue the planned level of observer coverage from the beginning of each fiscal year and could simplify the administrative workload now associated with the estimated billing process. We also believe that inquiries from foreign fishers about bills would be reduced. We further believe that the amount of working capital needed should be determined by the Fisheries Service because of the uncertainties involved in this calculation which must be based on an estimate of the level of foreign fishing; its planned level of observer coverage, and the time elapsed between billing and collections.

The Service could also simplify its administrative workload associated with inquiries about bills and related topics if it prepared a comprehensive information package explaining the billing process and procedures that could be used to answer many of these inquiries.

RECOMMENDATION TO THE  
SECRETARY OF COMMERCE

We recommend that the Secretary of Commerce request legislative authority to provide sufficient working capital to capitalize the Foreign Fishing Observer Fund, to permit the Service to pursue a full coverage program from the beginning of each fiscal year and use a billing system based on actual costs.

RECOMMENDATIONS TO THE  
ADMINISTRATOR OF NOAA

If the observer fund is provided working capital, we recommend that the Administrator of NOAA implement a billing system based on actual cost. We also recommend that the Administrator develop an information package on the billing process and procedures that would be responsive to most of the questions raised by the foreign fishing interests about their observer fee bills and program costs.



June 4, 1991

DRAFT

TO: Steve Pennoyer  
Dale Evans

FROM: Lisa Lindeman

SUBJECT: Questions on Fisheries Research Plan -- Data Gathering  
Committee

1. Can the fishery observer fund be used to reimburse the State of Alaska for expenses incurred in its crab observer program?

Section 313 (d) of the Magnuson Fishery Conservation and Management Act (MFCMA) (16 U.S.C. 1863(d)) states the fishery observer fund is available. . . for the purpose of carrying out the provisions of this section (section 313), subject to the restrictions in subsection (b)(2) of this section.<sup>1</sup>

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<sup>1</sup>Subsection (b)(2) provides that

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

- (A) Provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;
- (B) Be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the northern Pacific halibut fishery;
- (C) Provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;
- (D) Not be used to offset amounts authorized under other provisions of law;
- (E) Be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;



Section 313 authorizes establishment of a fisheries research plan for all fisheries under the jurisdiction of the Council,<sup>2</sup> except salmon. The two principal elements of the plan are to: (a) require the placement of observers on board fishing and fish processing vessels and in onshore plants to collect information needed for conservation and management of the fishery; and (b) establish a system of fees to pay for the cost of implementation. Section 313(b) sets out standards which must be met by the observer program and fee system under the research plan, including ensuring that the plan is fair and equitable to all participants in the fishery, and that the cost of implementing the plan is distributed among all those who benefit from the resulting program.

The legislative history indicates the purpose of the research plan is to improve conservation and management of U.S. marine fishery resources<sup>3</sup> and promote research.<sup>4</sup> It further states it is the intent of the Committee that any fees collected under a plan shall be used for implementing that fishery research plan.<sup>5</sup> If the Alaska crab observers would help carry out the research plan, which

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- (F) Be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
  - (G) Provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;
  - (H) Provide that fees collected will only be used for implementing the plan under this section; and
  - (I) Meet the requirements of section 9701(b) of title 31, United States Code.

<sup>2</sup>The phrase "fisheries under the jurisdiction of the Council" for the research plan under section 313 has been interpreted to include fisheries for which an FMP exists as well as those for which an FMP does not exist. For example, crab in the Gulf of Alaska (GOA) would be included as a fishery under the jurisdiction of the Council and subject to coverage under the research plan, although no crab FMP is in place in the GOA.

<sup>3</sup>S. Rep. No. 414, 101st Cong., 2nd Sess. 1 (1990).

<sup>4</sup>H. Rep. No. 393, 101st Cong., 1st Sess. 32 (1990) states the purpose of the plan is to provide a mechanism that will increase the amount of information available for the sound conservation and management of the fisheries in the Pacific Northwest.

<sup>5</sup>Id.

could include collecting information necessary for the conservation, management and scientific understanding of any fisheries under the Council's jurisdiction, the fund should be available to reimburse the State for costs incurred in its program, subject to the restrictions set forth in section 313(b)(2).

2. Does the MFCMA require that the observer program, which is an element of the fisheries research plan authorized under section 313, be the only observer program for the fisheries under the Council's jurisdiction? Can the existing observer program remain in effect while the "new" observer program is implemented?

The MFCMA authorizes preparation of a research plan for all fisheries under the Council's jurisdiction and requires the stationing of observers on certain fishing vessels and U.S. fish processors. The language of the statute does not require that the observer program established under the plan be the only observer program in place for the fisheries under the Council's jurisdiction.

The legislative history, however, indicates Congress expected the research plan observer program would not be the only observer program for the North Pacific fisheries. The legislative history specifies Congress' intent that the plan observer program should be coordinated with existing observer programs.<sup>6</sup>

3. Does the 1% cap apply to the fishery as a whole or on a per vessel basis?

MFCMA section 313(b) sets forth standards which the research plan and the fee system, must meet. Section 313(b)(2) requires, among other matters, that the system of fees established under the plan must be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery (subsection (b)(2)(E)).

The language of the MFCMA is unclear as to whether the one percent cap applies to the fishery as a whole or on a per vessel basis. The legislative history, however, speaks in terms of a per vessel

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<sup>6</sup>The legislative history (H. Rep. 393, 101st Cong., 1st Sess. 32 (1989)) states:

It is the Committee's intent that the Secretary and the Council will coordinate any research program under this section with programs being carried out under other provisions of law involving observers on domestic fishing vessels. This will help ensure that observers are used efficiently.

basis. The Senate report accompanying S. 1025<sup>7</sup> states:

Fees assessed would not exceed one percent of the value of fish and shellfish harvested, and would be based on the value of a vessel's harvest prior to any value-added activities such vessel may undertake. (emphasis added)

The stronger argument therefore would be that the Congress intended the one percent to apply to the value of harvest on a per vessel basis rather than to the value of harvest on the fishery as a whole. Any plan must also be fair and equitable to all participants in the fisheries.

4. The program will be set up to collect fees from processors. All processors will be required to obtain a permit and a condition of the permit will be that the processors must collect the fees under the research plan. Will there be any problem with requiring processors in Seattle or Prince Rupert to collect fees?

Our initial view is that the Secretary should be able to impose permit conditions on domestic processors requiring them to collect the fees as long as the system which is established ensures the fairness and equity of the fee. The condition could apply to processors in Seattle.

The Secretary has no jurisdiction over Canadian processors and so could not require processors in Prince Rupert to collect a fee from vessels delivering fish harvested from fisheries off Alaska. The United States does not have a GIFA with Canada. Further, GATT problems would arise if the Secretary promulgated a regulation which prohibited vessels from delivering to Canadian processors. The plan could provide that if vessels deliver to Canadian processors, the vessels would have responsibility for collecting the fee.

5. Is the fee imposed under the research plan a "user fee" or a "tax?"

We are reviewing this issue. However, our initial view is an argument can be made that the fee is a "user fee" and not a "tax" as long as those who pay the fee benefit from the research program. The legislative history of Pub. L. No. 101-627 as set out in the Senate Committee report<sup>8</sup> states the purpose of the research plan is to provide for effective fishery management in the North Pacific. The primary purpose of section 313 is to provide a mechanism that will increase the amount of information available

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<sup>7</sup>S. Rep. 414, 101st Cong., 2d Sess. 24 (1990).

<sup>8</sup>S. Rep. No. 414, 101st Cong., 2nd Sess. 12 (1990).

for the sound conservation and management of the fisheries in the Pacific Northwest. The fee system is incidental to the main purpose of the legislation and arguably does not change its primary purpose of conservation and management. Further, use of the fees collected are restricted to costs of stationing observers, actual cost of inputting data, and assessments for a risk-sharing pool, etc. -- to ensure that the fees pay only for the benefit received.

6. Would any up-front funds need to be deducted from the 1% collected?

Section 313(b)(2)(A) provides that the total amount of fees collected. . .not exceed the combined cost of (i) stationing observers. . ., (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool. . ., less any amount received for such purpose from another source. . .

If startup funds were obtained through an appropriation, the amount would have to be deducted from the 1% collected unless the language of the appropriation states specifically that the amount would not be deducted from the 1% collected.

Fishing vessels and processors could be assessed additional amounts to provide up front funding as long as a provision was included that at some time the up front payments would be "evened out" when they stop fishing, so the total amount of fees they pay over time does not exceed 1% of the value of the fish they harvested. Since the source of the up front funding would be the same as the source from which the fee is collected, the up front funds should not have to be deducted from the 1% cap.