

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



ESTIMATED TIME  
2 Hours

DATE: April 12, 1995

SUBJECT: Observer Program

**ACTION REQUIRED**

- (a) Receive status report on user fee program implementation and review specifics of solicitation process.
- (b) Review technical/policy issues with regard to overall research plan.

**BACKGROUND**

(a) Program implementation and solicitation process

Collection of fees to fund the research (observer) plan began this year, with fishing/processing operations receiving credit for direct payments to offset the plan fee. Full implementation of the program is scheduled to begin in 1996. In June, the annual research plan cycle will begin with the Observer Oversight Committee (OCC) and the Council reviewing the full suite of considerations relative to the fee setting process for the upcoming year. These considerations include fish prices, agency budgets, costs of observer coverage, placement of observer coverage, and finally, the fee itself for 1996. These decisions will be finalized by the Council in September.

In the meantime, NMFS has started the solicitation process for selection of observer contractors to be used in 1996 and beyond. The solicitation is now on the streets, with the schedule calling for proposals to be submitted by May 1, the review process to occur in May, and the contract(s) to be awarded in September or October. Several issues of concern have been identified by observer contractors and fishing industry participants relative to the solicitation process. These include insurance requirements, numbers of contractors to be used in 1996 and beyond, and the timing of the contract awards. Item C-6(a) contains the elements of the research plan as adopted by the Council in June of 1992. The part pertaining to the contracting process is contained on page 1, section B.1.b.

One of the primary concerns appears to be the lack of specific insurance requirements in the NMFS solicitation. Specific insurance requirements were recommended by the Council's Insurance Technical Committee (ITC) last fall. These same minimum insurance requirements are still being recommended, and are outlined in a letter to the Council dated March 24, 1995 from Mr. Jerry Nelson who chairs the ITC (Item C-6(b)). The letter is signed by other industry participants and observer contractors, and suggests that the RFP must contain minimum insurance requirements, not only to facilitate standardization across contractors, but to adequately protect observers, contractors, and fishing vessels. Mr. Nelson's letter is endorsed by several individuals and fishing companies. Item C-6(c) contains major provisions and excerpts from the RFP for reference. NMFS staff will be available to address the concerns raised regarding the solicitation process.

The Council's OOC will meet in late May or the 1st and 2nd of June for their annual review and recommendations to the Council on fee percentages. We are tentatively scheduling the ITC to meet at about the same time, though the necessity and timing of that meeting may hinge on developments stemming from this Council meeting.

(b) Other issues relative to research (observer) plan

Now that the implementation phase of the research plan is underway, other issues have been identified which warrant the attention of the Council. Item C-6(d) is a letter from NMFS which outlines three significant issues for Council consideration. In summary, these are:

Issue #1: State authority to implement observer coverage requirements:

For 1995, coverage requirements in Federal waters are contained in the research plan, though Category 3 authority in the FMP still allows the State of Alaska to implement coverage requirements as well. Beginning in 1996, the research plan calls for all coverage requirements, for both groundfish and crab fisheries, to be annually determined based on available funds under the research plan. For both 1995 and 1996, the Board of fish is recommending additional levels of crab observer coverage (primarily on Adak and Dutch Harbor king crab catcher vessels). A letter from the Board is contained under Item C-6(e) and indicates that the fisheries will not be opened without this additional coverage. This letter suggests that for 1995, Council action is required to allow these vessels to receive credit for direct payments, and thus avoid 'double payment' in 1995. For 1996, it is anticipated that this additional coverage would be covered under the Research Plan fee.

The situation in 1996 and beyond is particularly relevant to the Research Plan and the 2% maximum fee. Rough calculations at this time indicate that the additional coverage suggested for the crab fisheries would likely be covered within the overall 2% ceiling, as long as no additions are made to the groundfish requirements. Though it may not be a problem for this cycle, it is virtually certain that additional coverage requirements for groundfish, coupled with additional crab observer requirements, will be constrained by the 2% ceiling at some point in the future. Because of this, the Council may want to address the issue now, and determine how it will deal with crab observer coverage in the future. One approach would be to allow the State to make coverage requirements separately, and these would be paid for, above and beyond the fee percentage, by those required to have the coverage. This also raises the generic issue of supplemental programs, whether they be crab fishery coverage, CDQ fishery coverage, or some other type of program requiring additional observer coverage.

Issue #2: Supplemental fee collection for 'special' programs

The NMFS letter suggests that certain, special programs in the future may fall outside of the research plan and the 2% fee, and therefore would require some other payment mechanism. One approach would be to amend the Magnuson Act to authorize a supplemental fee collection program beyond the research plan. Such fees could be deposited in the general Observer Fund to avoid creation of a separate, independent program. The Council may still need to develop criteria which would define 'special' programs, which would be funded separately from the fee percentage.

Issue #3: Application of research plan fees and coverage to State waters.

Under the research plan, federally permitted vessels no longer can be required to carry observers when fishing inside State waters, nor can the fee be assessed against landings from State waters. The Council may wish to explore with the State an amendment to the Magnuson Act which would authorize the Council to extend the fee collection program and observer requirements to federally permitted vessels fishing in State waters, if such action is deemed necessary for conservation and management of fishery resources managed under Council FMPs.

On a separate note, Item C-6(f) is a letter to Mr. Ron Hegge, Chairman of the Council's Enforcement Committee, containing a briefing on issues associated with Observer Program compliance monitoring. This was a follow-up to a request from the January 1995 Council meeting.

**ELEMENTS OF THE  
NORTH PACIFIC FISHERIES RESEARCH PLAN**

(as adopted by the North Pacific Fishery Management Council  
on June 28, 1992, and revised by the Council on December 7, 1993)

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

**A. OBJECTIVES**

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

**B. ELEMENTS OF THE NMFS GROUND FISH (HALIBUT) OBSERVER PROGRAM**

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

## 2. Duties of observers

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

- a. collecting data on catch, effort, bycatch, and discards of finfish and shellfish, including PSCs, and transmitting required data to facilitate in-season management;
  - b. collecting biological samples which may be used to determine species, length, weight, age and sex composition of catch and predator prey interactions;
  - c. collecting data on incidental take of marine mammals, seabirds, and other species as appropriate; and
  - d. other duties as described in the NMFS observer manual, available from the Alaska Fisheries Science Center.
3. Data collection, transmission, and input programs shall be implemented according to the following:
- a. NMFS would be responsible for entering, editing, and maintaining all of the data collected by observers.
  - b. The Regional Director would review fishery monitoring programs and report to the Council on methods to improve data collection and sampling techniques, provide for real-time data transmission from the groundfish and halibut fleet, including daily reporting, and other measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs.
  - c. NMFS could continue to release observer data authorized for disclosure under existing regulations and guidelines.

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

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

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

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

## 2. Duties of observers

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

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

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

### 1. Annual determination of the level of coverage

Levels of observer coverage may vary by fishery and vessel size depending upon the objectives to be met for each fishery. This applies to all groundfish and crab fisheries under North Pacific Fishery Management Council (Council) FMP jurisdiction and includes possible coverage for vessels participating in the halibut fisheries. During the first year of the Research Plan, observer coverage levels in the groundfish fishery would be as required by the Federal Observer Plan at the time the Research Plan is approved. All king and Tanner crab catcher/processors and mothership processors in the BSAI area would continue to carry observers under the State Shellfish Onboard Observer Program during the first year of the Research Plan. Starting with the second year of the Research Plan (January 1, 1996), the level of observer coverage would be determined annually by the Regional Director in consultation with the Council and the State of Alaska. In making that annual determination, the Council, State, and Regional Director will

consider: (1) the levels of coverage required to provide reliable information for management purposes and to achieve the objectives of the Research Plan and (2) the amount of available funds.

## 2. In-season changes to the level of coverage

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

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

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

## E. OBSERVER OVERSIGHT COMMITTEE

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

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

1. Recognizing the differences in the missions between the ADF&G crab observer program and the NMFS groundfish observer program, but wishing to provide for the maximum efficiency in administration and implementation of the groundfish and crab observer programs, NMFS and ADF&G will form a work group to do the following:
  - a. develop consistent, cost effective, and compatible observer training and debriefing procedures;
  - b. develop consistent data collection, transmission, and processing systems including a single data base available to both agencies on a real-time basis;
  - c. identify costs which are appropriate for reimbursement to the State pursuant to the Magnuson Act;
  - d. review costs and identify possible cost savings measures, including the use of public or private contractors to perform some or all of the duties under the Plan; and
  - e. review the costs and benefits of training groundfish observers in Alaska or elsewhere.
2. The University of Alaska, as an observer training entity, shall be included as an ex-officio member of the agency work group for the purpose of part F.1.a above.
3. On an annual basis, NMFS and ADF&G will provide to the Council a report detailing steps taken to improve overall coordination between the two observer programs and to improve administrative efficiency.

**G. FEE ASSESSMENT**

1. The following fisheries would be subject to fee assessment (Research Plan fisheries):
  - a. Gulf of Alaska groundfish,
  - b. Bering Sea and Aleutian Islands groundfish,
  - c. North Pacific halibut off Alaska, and
  - d. Bering Sea and Aleutian Islands king and Tanner crab.
2. Fees will be assessed at up to 2% of ex-vessel value of fish and crab harvested in the fisheries identified above. Fees will be expressed and assessed on the basis of ex-vessel value. In addition to the 2% limit, the fees are limited by the cost of the Plan after deducting for funds from other sources.
3. Fees from the program may only be used to pay for: (1) stationing observers including the direct costs of training, placing, maintaining, briefing, and debriefing observers; (2) collecting, verifying, and entering collected data (not manipulating data); (3) supporting an

insurance risk-sharing pool; and (4) paying the salaries of personnel to perform these tasks. The fees cannot be used to pay administrative overhead or other costs not directly incurred in carrying out the Plan, or to offset amounts authorized under other provisions of law.

4. All Research Plan fisheries will contribute to the total value of the fisheries. Annually, NMFS, in consultation with the Council and ADF&G, will use the best information available to project the value of fisheries. The projection will be based on factors that may include, but are not limited to standard ex-vessel prices by species or species group, projections of retained catch by species or species group, product form, and discards. NMFS will annually calculate standard ex-vessel prices of species harvested in Research Plan fisheries. The standard prices will be based both on ex-vessel price information from the most recent 12-month period for which data are available and on factors that are expected to change the average ex-vessel prices in the coming year. These standard ex-vessel prices, projections of retained catch, and the resulting projection of the total ex-vessel value of the Research Plan fisheries will be subjected to public review.
5. Annually the Regional Director, in consultation with the Council and ADF&G, will establish a fee percentage taking into account the value of the Research Plan fisheries, the percent of fee assessments that are expected to result in nonpayment, the costs of implementing the Plan, other sources of funds, and limitations on the total amount that can be collected. This will be done concurrent with Council approval of observer needs of the fisheries. This annual process will be completed by the time the fisheries commence. The fee will be expressed as a percentage of the ex-vessel value of the fisheries. The reports and budget documents outlined in this Plan shall be provided annually to the Council a month prior to its June meeting. The Observer Oversight Committee established by the Council shall review these budgets and reports and provide a recommendation to the Council at the June meeting. The Council will review the Committee's recommendation and take final action in September.

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

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

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

- a. costs for observer training and certification;
- b. costs for stationing observers on board crab vessels or at shoreside processors including travel, salaries, benefits, insurance;
- c. costs for data collection, transmission, and input;



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

H. FEE COLLECTION

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

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

I. FIRST YEAR OF THE RESEARCH PLAN

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

1. The Research Plan fees would be assessed and collected from all processors participating in Research Plan fisheries.
2. The observer requirements in the Federal Observer Plan and in the State BSAI king and Tanner crab regulations that are in effect when the Research Plan is approved would remain in effect during the start-up year.

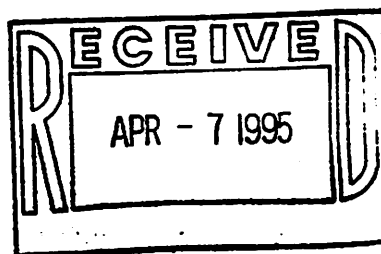
3. Vessel operators and processors that currently are required to pay directly for observer coverage under the Federal Observer Plan and under State regulations would continue to pay directly for observer coverage.
4. For those whose direct observer payments are equal to or greater than the billed fee assessment, additional payments beyond direct payments will not be required.

**J. FUNDING SHORTFALLS**

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

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

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**March 24, 1995**

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

**Re : North Pacific Groundfish Fisheries Observer Program**

**Dear Mr. Lauber:**

**Members and participants in the Insurance Technical Committee (ITC) have been keeping abreast of the recent developments regarding the observer program. We recently met with most factions of this industry affected by the observer program amendments. We now all join together, as evidenced by the signatures hereto, to express our concerns about the insurance requirements, or lack thereof, in the Request For Proposals (RFP) for the revised observer program scheduled to begin in 1996. For the reasons set forth herein, we believe that the RFP must contain minimum insurance requirements, paid for by the Research Plan, not only for the protection of the observer but for the protection of the entire program.**

**As matters presently stand, even while complying with the RFP in 1996 the contractor could foreseeably obtain coverage that is inadequate to cover its entire liability for injury or illness of the observer, leaving an uninsured exposure that simply would not be covered by the vessel owner's P&I insurance. Such a gap in coverage could put the contractor at great financial risk and expose the injured or ill observer to uncompensated damages. Clearly, such a situation would have a negative impact on the entire industry and must be prevented.**

**When the ITC met on November 4, 1994 in Seattle, it was the committee's studied opinion that insurance requirements for contractors should be standardized to guarantee certainty and equity for all involved parties, including the contractor, vessel owner or plant owner and, not in the least, the observer. Taking into consideration the multi-jurisdictional status currently enjoyed by the observer, the ITC believes that an insurance package must be provided to include the following:**

March 24, 1995

To : North Pacific Fishery Management Council

Re : Observer Program

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- Marine Employers' Liability to cover seamen's claims under the Jones Act and General Maritime Law with a minimum \$1,000,000 limit of liability;
- U.S.L. & H.;
- State Workers' Compensation, as required;
- Contractual General Liability with Additional Insured status for vessel or plant owners and with \$1,000,000 per occurrence/\$2,000,000 aggregate limits of liability;

In addition, to cover the potential gaps in coverage, while simultaneously reducing the potential for overlapping coverage, we strongly recommend that the insurance package include a Hold Harmless and Indemnification Agreement in favor of the vessel owner or plant owner. Attached is a form with the agreed upon wording. The hold harmless agreement, currently provided by several contractors, has several benefits. It consolidates the parties (contractor and vessel/plant owner) against whom a claim is made so that the claim is ultimately handled more efficiently and economically because there is no fight over apportionment of liabilities. Each claim is handled in a fair and consistent manner because there is only one insurance provider. And, perhaps most importantly, the observer knows exactly where to turn if he/she becomes injured or ill. Because vessel/plant owners are being assessed a fee to cover the cost of the proposed observer program in 1996, we believe the program must allow as much protection as is currently afforded.

We are confident the council will give this matter their full consideration and we invite your comments and questions. Thank you for your time and consideration.

Sincerely,



Jerry Nelson

Chair - Insurance Technical Committee

Managing Partner of Courageous Seafoods

3510 - 1st Avenue N.W.

Seattle, Washington 98107

(206) 545-9501 Facsimile (206) 545-9536

March 24, 1995

To : North Pacific Fishery Management Council

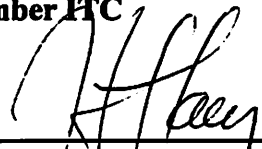
Re : Observer Program

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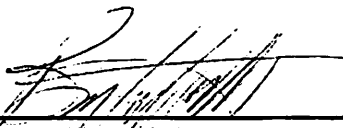
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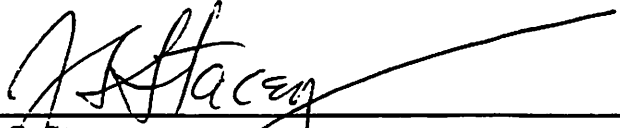
Michael Lake  
Alaska Observers, Inc.  
Member ITC

By: 

Craig Nodtvedt  
LeGros/Buchanan & Paul  
Member ITC

By: 

Bruce Thiffault, Vice President  
F.I.S. Marine / F.I.S. Insurance Services  
Member ITC

By: 

Joseph S. Stacey  
LeGros Buchanan & Paul  
Participant in ITC Meeting 11/4/94

By: See attached/gm

Nancy Munro  
Saltwater, Inc.  
Member ITC

By: 

Jeanne Matejovsky  
F.I.S. Marine

## **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT**

**The Contractor (observer company) agrees to defend, indemnify and hold harmless Vessel Owner for claims which may be asserted by or on behalf of Contractor's observers for illness or bodily injury, including death (howsoever caused and whether caused in whole or in part by the fault or neglect of Vessel Owner), arising from the observer's service on the vessel except for:**

- a. any claim for payment of punitive and/or exemplary damages;**
- b. any claim which would not be a recoverable claim under a P&I policy form SP-38.**

**Vessel Owner understands and agrees that should coverage by ["X" Insurance Company] for the contractual liability undertaken by contractor as outlined above be hereafter limited, canceled, modified, or denied, or in the event that any tender of defense by Contractor under its duty to hold harmless, indemnify and defend Vessel Owner is rejected by Insurance Company before or after any claim is made, adjudicated, settled or after any tender of defense made by Vessel Owner under this hold harmless agreement, then at such time the duty of Contractor to hold harmless, indemnify and defend Vessel Owner shall be null and void and of no effect. The Vessel Owner additionally agrees that to the extent that the hold harmless and indemnification provision is found to be null and void or inoperative in any way due to denial of coverage by Insurance Company for any reason, such failure of the hold harmless and indemnification covenant shall not constitute breach of this Agreement or offset or excuse in any way Vessel Owner's obligations to perform under this Agreement and pay for the services provided by Contractor.**



**U.S. DEPARTMENT OF COMMERCE  
WESTERN ADMINISTRATIVE SUPPORT CENTER  
SEATTLE, WASHINGTON**

**REQUEST FOR PROPOSALS**

**SOLICITATION NO: 52ABNF500051**

**TITLE: NORTH PACIFIC FISHERIES OBSERVER PROGRAM**

**CLOSING DATE/TIME: 5/1/95 AT 2:00 P.M. LOCAL TIME**

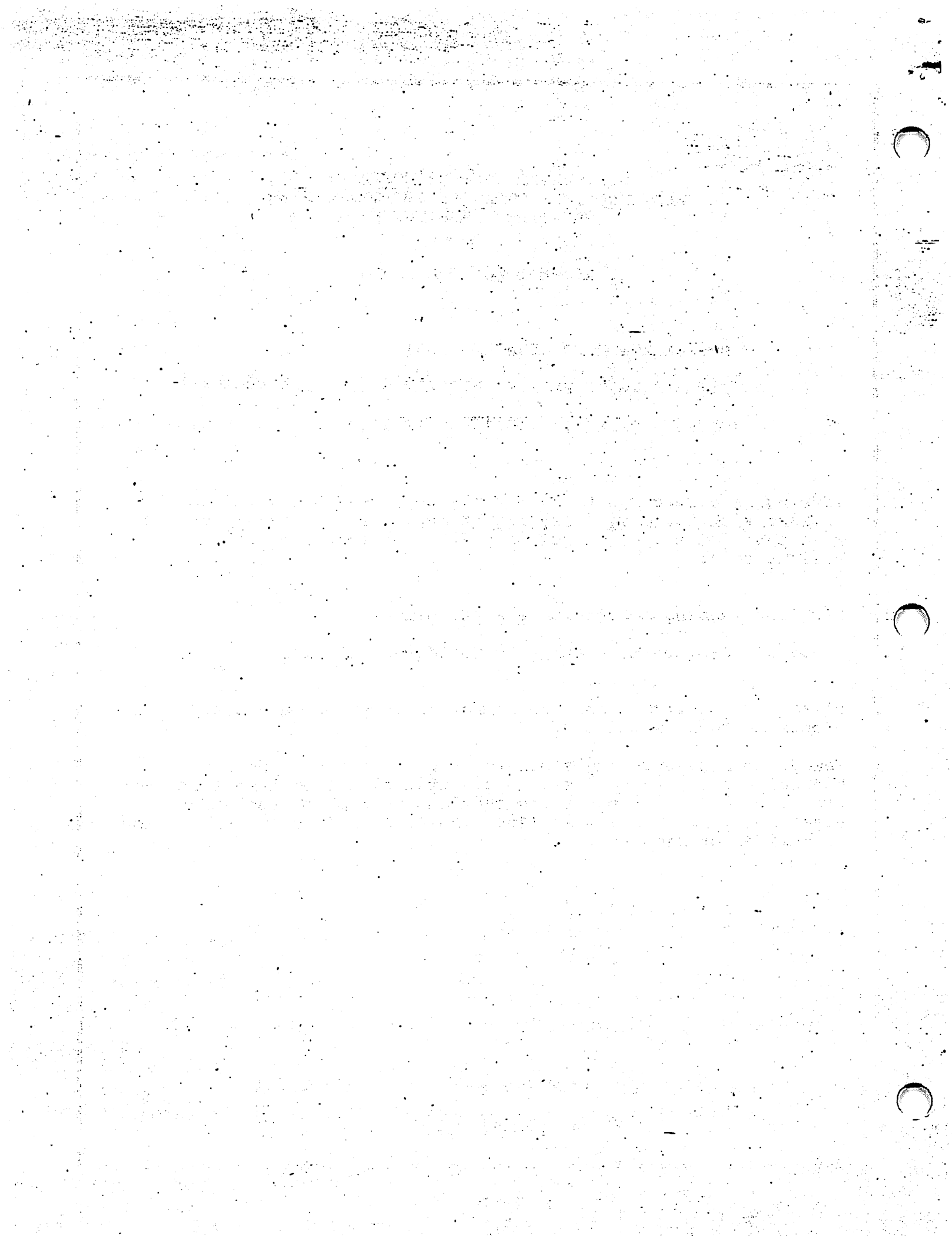
**Offerors are required to submit the completed solicitation package with two originally signed copies of the SF-33 (page 2) with their offer, by the closing date set forth in the solicitation.**

**Sections needing completion are as follows:**

**SF-33, Section B, Section F, Section K, SF-1411**

**Please see Section L for the number of technical and cost/price proposals to be submitted.**

**The Government encourages offers to present the Technical approach orally rather than in the traditional written form. See Provision L.7 for further instructions on oral presentations. Please call Don Wadhams at (206) 526-6036 if further information is desired or required.**



**SOLICITATION, OFFER AND AWARD**

OMB Number 0690-0008 Expiration Date: November 1996

1. This contract is a rated order under DPAS.(15 CFR 350) RATING:

CONTRACT NO.		3. SOLICITATION NO. 52ABNF500051	4. TYPE OF SOLICITATION <input checked="" type="checkbox"/> NEGOTIATED (RFP)
5. DATE ISSUED 03/22/95		6. REQUISITION/PURCHASE REQ. NO. NFFS2200500061	
7. ISSUED BY CODE  NOAA, WASC, PROCUREMENT DIVISION 7600 SAND POINT WAY NE., BLDG. 1 BIN C15700 SEATTLE, WA 98115-0070		8. ADDRESS OFFER TO (If other than Item 7)	

NOTE: In sealed bid solicitations, "offer" & "offeror" mean "bid" & "bidder".

**SOLICITATION**

9. Sealed offers in original and (See L9) copies for furnishing the supplies or services in the Schedule will be received at the place specified in Item 8, or if handcarried, in the depository located in BLOCK 7, until 2:00 PM local time on 05/01/95. CAUTION-LATE Submissions, Modifications, and Withdrawals: See Section L, Provision No. 52.214-7 or 52.215-10. All offers are subject to all terms and conditions contained in this solicitation.

10. FOR INFORMATION CALL: A. NAME: DON WADHAMS  
FAX: 206-526-6025 B. TEL.: 206-526-6036 (No Collect Calls)

**11. TABLE OF CONTENTS**

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A	SOLICITATION/CONTRACT FORM
B	SUPPLIES OR SERVICES AND PRICES/COSTS
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D	PACKAGING AND MARKING
E	INSPECTION AND ACCEPTANCE
F	DELIVERIES OR PERFORMANCE
G	CONTRACT ADMINISTRATION DATA
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L	INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS
M	EVALUATION FACTORS FOR AWARD

EXCEPTION TO STANDARD FORM 33

STANDARD FORM 33 (REV-4-85)  
FAR(48 CFR) 53.214 (C)

52ABNF500051

SOLICITATION, OFFER AND AWARD  
OFFER (Must be fully completed by offeror)

NOTE: Item 12 does not apply if the solicitation includes the provisions at 52.214-16, Minimum Bid Acceptance Period.

12. In compliance with the above, the undersigned agrees, if this offer is accepted within \_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date for receipt of offers specified above, to furnish any or all items upon which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the schedule.

13. DISCOUNT FOR PROMPT PAYMENT (See Section I, Clause No. 52.232-8)  
10 Calendar days \_\_\_%    20 Calendar days \_\_\_%    30 Calendar days \_\_\_%    \_\_\_ Calendar days \_\_\_%

14. ACKNOWLEDGEMENT OF AMENDMENTS (The offeror acknowledges receipt of amendments to the SOLICITATION for offerors and related documents numbered and dated:

AMENDMENT NO                      DATE                      AMENDMENT NO                      DATE

15A. NAME AND ADDRESS OF OFFEROR  
Code:                      Facility:

16. NAME AND TITLE OF PERSON  
AUTHORIZED TO SIGN OFFER

15B. TEL NO. (with area code) \_\_\_\_\_

(Type or Print)  
17. SIGNATURE:

15C. [ ] CHECK IF REMITTANCE ADDRESS IS DIFFERENT FROM ABOVE-ENTER SUCH ADDRESS IN SCHEDULE

18. OFFER DATE:

AWARD (To be completed by Government)  
19. ACCEPTED AS TO ITEMS NUMBERED    20. AMOUNT    21. ACCOUNTING AND APPROPRIATION

22. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION  
[ ] 10 U.S.C. 2304(c) ( ) [ ] 41 U.S.C. 253(c) ( )

23. SUBMIT INVOICES TO ADDRESS IN CLAUSE G.1:(2 Copies)

24. ADMINISTERED BY CODE  
NOAA, WASC, PROCUREMENT DIVISION  
7600 SAND POINT WAY NE., BLDG. 1  
BIN C15700  
SEATTLE, WA 98115-0070

25. PAYMENT WILL BE MADE BY CODE  
NOAA, WASC, FIELD FINANCE OFFICE  
7600 SAND POINT WAY NE., BLDG. 1  
BIN C15700  
SEATTLE, WA 98115-0070

26. NAME OF CONTRACTING OFFICER    27. UNITED STATES OF AMERICA    28. AWARD DATE

(Type or Print)

(Signature Contracting Officer)

IMPORTANT - Award will be made on this Form or on Standard Form 26, or by other authorized official written notice.

EXCEPTION TO STANDARD FORM 33

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**PART I - THE SCHEDULE****SECTION B - SUPPLIES OR SERVICES AND PRICES/COSTS****B.1 SCHEDULE OF ITEMS AND PRICES/ESTIMATED COSTS**

The Contractor shall provide the following services at the listed prices and/or within the estimated costs listed in this schedule. Services provided shall conform with all applicable terms and conditions of this contract.

As the Government anticipates award of three contracts resulting from this solicitation, this schedule is broken into three contract shares: Share A = 42% of the estimated requirement; Share B = 33% of the estimated requirement; Share C = 25% of the estimated requirement. Offerors wishing to be considered for each of the three contract shares must complete each section of the schedule. Offerors must, at a minimum, propose to provide the entire quantity listed in Share C of the schedule (C.1 through C.35) to be considered for contract award.

Copies of this schedule will, upon request, be provided in electronic format (3.5 or 5.25 inch disk, in LOTUS 123 format).

The Schedule of Items begins on the following page.



BASE YEAR - CALENDAR YEAR 1996

CLIN	DESCRIPTION	UNIT	ESTIMATED QUANTITY	FIXED PRICE PER DEPLOYED DAY	ESTIMATED NO. DEPLOYMENTS	EST PRE/POST DEPLOYMENT COSTS	EXTENDED TOTAL
A.01	Observers for CP/MS in the BS&AI (Average 70 Day Deployment)	Deployed Day	8400		120	\$ _____ \$ _____	
A.01-1	Grade 1 Observer	Deployed Day	2520	\$ _____	36	\$ _____ \$ _____	
A.01-2	Grade 2 Observer	Deployed Day	4130	\$ _____	59	\$ _____ \$ _____	
A.01-3	Grade 3 Observer	Deployed Day	1750	\$ _____	25	\$ _____ \$ _____	
A.02	Observers for SSDV in the BS&AI (Average 70 Day Deployment)	Deployed Day	2590		37	\$ _____ \$ _____	
A.02-1	Grade 1 Observer	Deployed Day	770	\$ _____	11	\$ _____ \$ _____	
A.02-2	Grade 2 Observer	Deployed Day	1260	\$ _____	18	\$ _____ \$ _____	
A.02-3	Grade 3 Observer	Deployed Day	560	\$ _____	8	\$ _____ \$ _____	
A.03	Observers for SSPP in the BS&AI (Average 70 Day Deployment)	Deployed Day	840		12	\$ _____ \$ _____	
A.03-1	Grade 1 Observer	Deployed Day	210	\$ _____	3	\$ _____ \$ _____	
A.03-2	Grade 2 Observer	Deployed Day	420	\$ _____	6	\$ _____ \$ _____	
A.03-3	Grade 3 Observer	Deployed Day	210	\$ _____	3	\$ _____ \$ _____	
A.04	Observers for CCP/CFP in the BS&AI (Average 30 Day Deployment)	Deployed Day	1800		60	\$ _____ \$ _____	
A.04-1	Grade 1 Observer	Deployed Day	540	\$ _____	18	\$ _____ \$ _____	
A.04-2	Grade 2 Observer	Deployed Day	900	\$ _____	30	\$ _____ \$ _____	
A.04-3	Grade 3 Observer	Deployed Day	360	\$ _____	12	\$ _____ \$ _____	

OPTION PERIOD 1 - CALENDAR YEAR 1997

CLIN	DESCRIPTION	UNIT	ESTIMATED QUANTITY	FIXED PRICE PER DEPLOYED DAY	ESTIMATED NO. DEPLOYMENTS	EST PRE/POST DEPLOYMENT COSTS	EXTENDED TOTAL
A.08	Observers for CP/MS in the BS&AI (Average 70 Day Deployment)	Deployed Day	8400		120	\$ _____ \$ _____	
A.08-1	Grade 1 Observer	Deployed Day	2520	\$ _____	36	\$ _____ \$ _____	
A.08-2	Grade 2 Observer	Deployed Day	4130	\$ _____	59	\$ _____ \$ _____	
A.08-3	Grade 3 Observer	Deployed Day	1750	\$ _____	25	\$ _____ \$ _____	
A.09	Observers for SSDV in the BS&AI (Average 70 Day Deployment)	Deployed Day	2590		37	\$ _____ \$ _____	
A.09-1	Grade 1 Observer	Deployed Day	770	\$ _____	11	\$ _____ \$ _____	
A.09-2	Grade 2 Observer	Deployed Day	1260	\$ _____	18	\$ _____ \$ _____	
A.09-3	Grade 3 Observer	Deployed Day	560	\$ _____	8	\$ _____ \$ _____	
A.10	Observers for SSPP in the BS&AI (Average 70 Day Deployment)	Deployed Day	840		12	\$ _____ \$ _____	
A.10-1	Grade 1 Observer	Deployed Day	210	\$ _____	3	\$ _____ \$ _____	
A.10-2	Grade 2 Observer	Deployed Day	420	\$ _____	6	\$ _____ \$ _____	
A.10-3	Grade 3 Observer	Deployed Day	210	\$ _____	3	\$ _____ \$ _____	
A.11	Observers for CCP/CFP in the BS&AI (Average 30 Day Deployment)	Deployed Day	1800		60	\$ _____ \$ _____	
A.11-1	Grade 1 Observer	Deployed Day	540	\$ _____	18	\$ _____ \$ _____	
A.11-2	Grade 2 Observer	Deployed Day	900	\$ _____	30	\$ _____ \$ _____	
A.11-3	Grade 3 Observer	Deployed Day	360	\$ _____	12	\$ _____ \$ _____	

**B.2 MINIMUM AND MAXIMUM CONTRACT AMOUNTS**

During the period specified in the ORDERING clause (FAR 52.216-18), the Government shall place orders totalling a minimum of 10,000 Deployed Days. The amount of all orders shall not exceed 50,000 Deployed Days. These minimum and maximum amounts are program totals. Each contract awarded under this program will be allotted a proportional share (42, 33, or 25 percent) of the minimum and maximum amounts.

The applicable minimum and maximum amounts for this contract are:

Minimum: \_\_\_\_\_ Deployed Days  
 Maximum: \_\_\_\_\_ Deployed Days

(To be completed at contract award)

Minimum and maximum amounts for awarded option periods will be specified at the time the options are exercised.

**B.3 ESTIMATED AND ALLOWABLE COSTS--FULLY FUNDED CONTRACTS****(a) Estimated Costs**

The estimated cost of this contract is \$ \_\_\_\_\_. This cost shall be subject to the provisions of clause 52.232-20, "Limitation of Cost" and clause 52.216-7 "Allowable Cost and Payments."

**(b) Allowable Costs**

- (1) Final annual indirect cost rate(s) and the appropriate base(s) shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- (2) Until final annual indirect cost rates are established for any period, the Government shall reimburse the contractor at billing rates established by the appropriate Government Representative in accordance with FAR 42.704, subject to adjustment when the final rates are established. The established billing rates are currently as follows:

**B.4 OBSERVER GRADES**

An observer grade system is intended to provide observers with an incentive to make multiple trips by compensating experienced observers at a higher rate. Under the current system, a grade 1 observer is one with no previous observer experience. A grade 2 observer is one who has served as a certified fisheries observer

**B.4 (Continued)**

on one or two deployments. A grade 3 observer is one who has served as a certified observer on 3 or more deployments. This is not a mandatory system. Alternative systems to encourage observers to make multiple trips will be evaluated based on their merit.

**B.5 DEFINITION OF TERMS/ACRONYMS**

For the purposes of this solicitation/contract, the following definitions of terms apply:

CCP/CFP: Crab Catcher-Processor/Crab Floating Processor

CP/MS: Catcher-Processor/Mothership

SSDV: Shore Side Delivery Vessel

SSPP: Shore Side Processing Plant

COVERAGE DAY: Each deployed day that the observer is providing observer coverage for actual fishing or processing operations.

DEPLOYED DAY: Each employed day between the time an observer arrives at the point of vessel/processor embarkation (not to exceed two days prior to the scheduled embarkation date) and the time the observer disembarks from the vessel/processor for travel to post-cruise debriefing.

EMPLOYED DAY: Each day that an observer is employed by the contractor.

OBSERVER DEPLOYMENT: The period between arrival at the point of embarkation (not to exceed two days prior to the scheduled embarkation date) and the date that the observer disembarks for travel to post-cruise debriefing.

POINT OF HIRE: Where used in this solicitation/contract, point of hire means the location where the observer attends training or briefing.

**B.6 ASSIGNMENT OF VESSELS/PROCESSORS**

It is anticipated that each contractor will be assigned its proportional share of each fishery and vessel type listed in the Schedule of Items and Prices (clause B.1). In addition, vessel coverage types (100% and 30%) will be assigned in the same proportional shares.

**B.6 (Continued)**

The Government will attempt to assign individual vessels/processors within each fishery and category so that coverage can be obtained in the most economical manner possible. Contractors will have the opportunity to make recommendations as to how this can be best accomplished during the scheduled pre-performance meeting. Where no economic advantage exists, vessel/processor assignment (within each fishery/category specified in the schedule) will be made at random.

**B.7 PRE/POST DEPLOYMENT COSTS**

This is a fixed price contract with cost-reimbursement provisions for costs associated with training/briefing, travel, and debriefing only. Reimbursable costs under this contract are limited to the following:

Direct Observer Compensation (salary and/or per diem) during training/briefing, travel (to point of embarkation and point of debriefing). No direct observer compensation will be reimbursed where the observer candidate fails to complete certification training or fails, by choice, to embark on at least one deployment.

Direct Travel Costs such as air fare, ground transportation (taxis, etc.), and excess baggage charges. This applies to travel from training/briefing to point of embarkation and from point of disembarkation to the next point of embarkation or to the location of debriefing only. Costs associated with daily travel while in training/briefing and debriefing, or during deployed periods are not reimbursable.

In cases where it is advantageous for the observer to ride a fishing vessel from Seattle to the observed fishery, the period from the point of embarkation until the vessel commences fishing/processing operations in the observed fishery shall be considered travel. Travel costs, including salary, incurred during this period will be reimbursable, if included in the contractor's cost/pricing proposal at award. Travel costs incurred for this mode of transportation shall not exceed the costs that would have been incurred if the observer traveled by commercial airline to the appropriate point of embarkation in Alaska.

Where final debriefing takes place in Kodiak or Dutch Harbor, post-debriefing observer travel costs may be reimbursed at a level not to exceed the Government rate for airfare between the point of debriefing and the point of hire.

**B.7 (Continued)**

Travel costs not included in the Contractor's proposal will not be reimbursable under the contract. No Contractor fee/profit may be included in or associated with the above reimbursable costs.

**B.8 ORDERING OFFICIALS**

Only the Contracting Officer or the Administrative Contracting Officer are authorized to order services under this contract.

**B.9 ORDERING OF OBSERVER SERVICES**

The primary method of ordering observer services under this contract will be the issuance of quarterly delivery orders which provide updated lists of vessels or processors requiring observer coverage for which the contractor is responsible and obligate funding sufficient to cover the estimated observer coverage requirement for each quarter.

The secondary method of ordering observer services under this contract will be the issuance of supplementary delivery orders. This method will be used as requirements for observer coverage for additional fishing vessels are identified or to change vessel assignments, at the discretion of the Contracting Officer, when it is determined to be in the best interests of the Government.

When it is determined to be in the best interests of the Government, supplementary delivery orders may be competed between observer providers under contract with the Government. Award of supplementary delivery orders will be made on a best value basis.

Best value decisions are made at the sole discretion of the Contracting Officer, and will be based on proposed cost/price, proposed observer qualifications, and the Contractor's performance record. The Contracting Officer's decision to award a supplemental delivery order is not subject to disputes under the disputes clause.

**SECTION C - DESCRIPTION/SPECIFICATIONS/WORK STATEMENT****C.1 STATEMENT OF WORK/SPECIFICATIONS**

The Contractor shall furnish the necessary personnel, material, equipment, services and facilities (except as otherwise specified), to perform the following Statement of Work/Specifications.

**1. INTRODUCTION**

The Secretary of Commerce (Secretary) has approved the North Pacific Fisheries Research Plan (NPFRRP or Research Plan) for the Gulf of Alaska (GOA) groundfish fishery, Bering Sea and Aleutian Islands (BSAI) management area groundfish fishery, BSAI area king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska (Research Plan Fisheries). The Research Plan provides for an industry-funded Observer Program to promote management, conservation, and scientific understanding of groundfish, halibut, and crab resources. The purpose of this contract is to provide the National Marine Fisheries Service (NMFS) and the Alaska Department of Fish and Game (ADF&G) the data required to manage Research Plan fisheries and the living marine resources harvested or impacted by those fisheries.

**2. BACKGROUND**

In 1989, the North Pacific Fishery Management Council (NPFMC or Council) developed and approved an observer program as part of groundfish amendments 18 and 13 to the respective GOA and BSAI Groundfish Fishery Management Plans. The plans and implementing regulations required levels of observer coverage which varied with the size of the fishing vessel or quantity of fish processed by floating or on-shore processors. Under these regulations the cost of obtaining and stationing observers aboard vessels or in processors was paid for by the owners and operators of the vessels and processors required to carry observers. Observers were obtained through Contractors certified by NMFS. The observers were also required to be certified by NMFS through successful completion of an observer training course conducted by NMFS at the Alaska Fisheries Science Center (AFSC). All duties and data collection methods were developed and specified by NMFS. Upon completion of their deployment, observers were debriefed by NMFS staff.

The BSAI king and Tanner crab fisheries are managed by ADF&G, with oversight by the NPFMC, in accordance with the King and Tanner

## C.1 (Continued)

Crab Fisheries Management Plan. The Alaska Board of Fish mandated the implementation of an observer program for the BSAI king and Tanner crab fisheries in 1988. Since its inception the shellfish Observer Program has operated in a manner similar to the groundfish Observer Program, requiring some processors and vessel owners to carry observers and pay directly for observers from one of ADF&G's certified observer Contractors.

Two problems with the current Observer Programs have been identified. First, the costs of observer coverage is not borne by all fishery participants. Under the current Federal Observer Program, some groundfish operations are required to pay for 100 percent observer coverage, others are required to pay for 30 percent coverage, and still other operations that benefit from the Observer Program pay none of the cost, such as crab catcher vessels and halibut vessels.

Second, the current method of paying for observers limits NMFS and State of Alaska control and impedes each agency's ability to manage the programs effectively. Observer contractors are not solely responsible to NMFS or to the State of Alaska for the quality of their work performance; they sometimes have conflicting responsibilities to their clients, to whom they are providing observers, and to NMFS or to the State. The owners and operators of vessels and processors have been responsible for making arrangements with an observer contractor of their choice to meet observer requirements and for paying the costs of observers directly to that contractor. This direct business relationship, and the ability of an owner or operator to select among a group of contractors, means that the contractors, and indirectly the observers, work for the operators that they are observing. This relationship could provide a means for an operation to reward or penalize contractors and their observers and thus negatively influence the work performance of the observers and the quality of the data collected. This appearance of a conflict of interest could reduce the credibility of observer data.

To resolve these problems the Magnuson Fishery Conservation and Management Act was amended in 1990 to authorize the NPFMC and the Secretary of Commerce to establish a North Pacific Fisheries Research Plan. The Research Plan applies to all fisheries under the jurisdiction of the NPFMC, except for salmon fisheries. In 1994 the Secretary approved the Research Plan which requires that observers be stationed on certain fishing vessels and fish processors participating in the BSAI management area groundfish, GOA groundfish, and BSAI area king and Tanner crab fisheries. These requirements may be extended to the halibut fishery.

Observers shall be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries and living marine resources under the



## C.1 (Continued)

Council's authority. The Research Plan also established a system of fees to pay for implementation costs. The fees are based on the exvessel value of the retained catch in the Research Plan fisheries.

The fees will be deposited in the North Pacific Fishery Observer Fund established by the U.S. Treasury and will be available to the Secretary for the purposes of implementing and carrying out the Research Plan. When implemented, the Research Plan and the observers which it provides will replace the current system where owners and operators obtain and pay for the cost of observers directly to certified Contractors. The Research Plan and its implementations are explained further in the preamble to the Proposed Rule and the Final Rule (Attachments #5 and #6).

In addition to the mandatory observer requirements imposed by amendments 18 and 13 to the GOA and BSAI Groundfish Fishery Management Plans, NMFS requires observers to gather data on marine mammals similar to that previously required by the Marine Mammal Protection Act (MMPA) Amendments of 1988. NMFS continues to gather data on the species and number of marine mammals taken in the fisheries and other information deemed appropriate for the purpose of contributing to the protection of marine mammals or the understanding of marine ecosystems, including fishery resources and seabirds. Observers funded and placed through the Research Plan will be used to fulfill objectives similar to those of the MMPA. However, observers employed under this contract are not Marine Mammal Protection Act Observers.

3. OBJECTIVES

The purpose of this contract is to provide NMFS and ADF&G the data necessary to assess and manage Research Plan fisheries and the living marine resources harvested and impacted by those fisheries. To accomplish this task the Contractor shall:

- a. provide experienced high caliber observers and qualified biologists to serve as observers;
- b. arrange the scheduling with industry and provide the deployment and logistical support required to place observers aboard fishing vessels and in or on both shoreside and floating processors;
- c. provide supervision of the observers during their employment period;
- d. deliver accurate and complete data and final observer reports to NMFS or ADF&G as required upon the completion of each field deployment; and

## C.1 (Continued)

- e. provide NMFS and ADF&G various cost reports.

The responsibilities of NMFS and ADF&G are to:

- a. oversee the contract and the Contractors;
- b. certify candidates as observers through training, testing, and briefing, and conduct debriefings upon completion of a tour of duty;
- c. specify the scope and type of data to be collected, manage in-season data transmissions from observers, and
- d. manage the data collected by observers and make data available for fisheries managers and other user groups.

Contractors, NMFS, and ADF&G will coordinate closely to meet the demands of the North Pacific Groundfish Fisheries management regime, and to provide for other critical elements such as observer safety.

#### 4. SCOPE OF WORK

This work requires supplying qualified observers to meet prescribed coverage levels and providing data for fisheries management. Supplying qualified observers requires support for these observers during each phase of their employment period, or "tour of duty". The tour of duty includes training or briefing, travel to and from port, standby periods, data collection on fishing vessels or processors, and the debriefing process.

The work involved in this contract is, in a sense, personnel and cost management. Observers are the personnel; costs are related to the support provided observers (e.g., compensation) and of deploying them to fishing vessels. There is a strong link between the quality of the final product, the data, and how well personnel and logistics are managed. Good personnel management facilitates maintaining a corps of experienced and dedicated observers, which is critical to the collection of high quality data. Data that are accurate and precise promote better fisheries management. Quantity (meeting coverage levels) is an important consideration as well. Cost-effective use of observers promotes the objective of meeting coverage needs, also resulting in better fisheries management.

Special consideration must be paid to those elements which are critical to meeting the objectives and addressing the entire scope of the work. These "Critical Elements" are detailed below,

**C.1 (Continued)**

followed by a list of Contractor and Agency responsibilities to be met. For the sake of clarity this statement of work addresses the Research Plan groundfish and crab Observer Programs separately.

**5. DESCRIPTION OF THE GROUND FISH FISHERIES**

The groundfish fisheries in the Exclusive Economic Zone (EEZ) of the BSAI and GOA produce a harvest of nearly 2 million metric tons of various groundfish species annually. In 1994 over 1800 vessels harvested groundfish.

Although the length of specific fisheries vary considerably, vessels generally fish for groundfish throughout the year in the Bering Sea and Gulf of Alaska. Fishing vessels participating in the fishery utilize four basic kinds of gear; trawls, hook-and-line, pots or traps, and jigs. Vessels using these types of gear can be grouped into two general classes: catcher/processor vessels and catcher vessels. Catcher/processor vessels, those that have the capacity to catch fish and process their catch, range from about 75 to over 500 feet in length. Catcher vessels, those that must deliver their catch to a fish processor (floating or shoreside), are usually less than 150 feet in length. Catcher/processor vessels have the capability to remain at sea for long durations (months) while catcher vessels make trips as short as a few hours or as long as 10 days.

Fish processors within the groundfish fishery include shoreside plants and floating processing vessels. Shoreside plants are located on land and usually receive catch from catcher vessels; catches are generally sorted or partially sorted at sea. Catcher vessels sometimes deliver unsorted catches as well. Floating processors receive either sorted or unsorted catch (usually the transfer of net codends) from catcher vessels at sea.

**6. DESCRIPTION OF THE GROUND FISH OBSERVER PROGRAM**

In 1994, about 400 groundfish vessels were 60 feet or greater in overall length and subject to mandatory coverage by the groundfish Observer Program. Nearly 90 of these vessels were 125 feet or greater in overall length and were required to have 100% observer coverage when participating in the fishery. The remaining roughly 310 vessels were between 60 and 124 feet overall length and were required to carry observers on 30% of their fishing days in each calendar quarter during which they participated for more than 3 fishing days in a directed fishery for groundfish.

During 1994, groundfish observers collected data at approximately 21 shoreside and 18 floating processors. Processors that process 1,000 metric tons (mt), calculated in round weight equivalents, or

**C.1 (Continued)**

more of groundfish during a calendar month have been required to have an observer present during each day they receive or process groundfish. Processors that process 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month are required to have an observer present at least 30 percent of the days they receive or process groundfish.

In accordance with the objectives of the Research Plan and given the funds available from the North Pacific Fishery Observer Fund, the appropriate levels of observer coverage will be established annually. The Director of the Alaska Region (Regional Director), NMFS, may increase or decrease the observer coverage requirements for Research Plan fisheries in-season to improve the availability of observer data, and to ensure solvency of the Observer Program.

NMFS will publish changes in observer coverage requirements in the Federal Register. In mid-1994 adjustments were made concerning observer coverage requirements in certain fisheries. Observer coverage requirements applicable through December 31, 1995 are recorded in at 50 Code of Federal Regulations (C.F.R.) 677.10 and can be found in the Final Rule which is available for review (Attachment #6).

**7. CRITICAL FACTORS**

**Observer Qualifications, Recruiting, and Hiring:** Observer candidates should be evaluated based upon academic standing, experience, personality attributes (character and integrity), and physical fitness. Contractors are expected to develop means to determine a candidate's suitability for employment as an observer.

Academically, observer candidates shall have a bachelor's or higher degree from an accredited college or university with a major in one of the natural sciences. Candidates shall have a minimum of 30 semester hours or equivalent in applicable biological sciences, and shall also have successfully completed at least two undergraduate courses in math and statistics (one each). The minimum mathematics and statistics program prerequisite is 5 semester hours. Formal coursework utilizing personal computers is also desirable. If sufficient numbers of candidates meeting these educational prerequisites are not available, the Contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or equivalent. If sufficient numbers of individuals meeting the above qualifications are not available, the Contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

Experience is an important consideration, especially with respect

## C.1 (Continued)

to candidates who do not meet the preferred academic qualifications. Other relevant experience and training should be given greater consideration in such cases. The groundfish Observer Program does not have minimum qualification standards regarding experience, except that all applicants are required to have computer skills and be able to work competently with standard database software and computer hardware. The Contractor shall indicate how experience, and what facets of experience, shall be considered to provide observer candidates who are most likely to successfully complete training and become part of a qualified observer corps.

The mental and emotional demands on observers are rigorous. Candidates should be mature and capable of working independently without direct supervision and under stressful conditions. They should also be self-motivated, possess good judgment, and be able to work and live in close quarters with fishermen in a professional and respectful manner. The nature of this work requires individuals with a great deal of personal integrity. The Contractor shall address the means used to obtain these types of individuals.

The recruiting of observers requires the development of materials which describe the Observer Program, observer position, and conditions of employment. The Contractor shall submit materials proposed for use in the recruiting and evaluation of observers. NMFS reserves the right to make final approval of these materials upon contract award.

Preapproval of candidates who meet the stated qualifications requirements will not be necessary. NMFS should be consulted regarding any proposed candidate for which there is some question regarding qualifications. A list of individuals to be hired, which includes their full name, sex, and social security number, shall be submitted to NMFS at least 2 working days prior to the beginning of the scheduled observer certification training or briefing session. Contractors should, however, submit candidate information as early as possible, allowing enough time to register students for training or briefings.

**Physical Condition:** Working aboard vessels or in processors is a dangerous occupation. An individual must be physically fit with no safety-endangering conditions. Some physical conditions which are manageable on land can become life-threatening in remote situations. Work stations can be remote, often several days from trained medical assistance, and the physical demands of the work are strenuous. Personal safety and the safety of others may depend upon one's ability to pass through narrow doors or passageways or to climb steep constricted ladders and stairs.

All observer candidates must have passed a physical examination

## C.1 (Continued)

within 12 months prior to deployment, certifying that they do not have health problems or conditions which would jeopardize their safety or the safety of others while at sea or in a processor, or prevent them from performing their duties satisfactorily. Prior to the examination, the certifying physician must be made aware of the dangerous, remote, and rigorous nature of the work. The Contractor shall maintain records of physical examinations, and make them available to NMFS upon request. The Contractor shall submit the form used for physical examinations as part of the proposal.

NMFS requires that the Contractor maintain a current physical exam and medical history for each observer deployed. This information must be available (accessible immediately) for review in case of a medical emergency. Physicals must be completed prior to or within the first few days of training. The physical exam cannot be scheduled at a time which interferes with training or briefing.

**Observer Training, Briefing, and Testing:** Individuals who have not served as a North Pacific groundfish observer in the past 2 years must attend and successfully complete an observer certification training course conducted at the AFSC or alternate training site authorized by NMFS (please refer to Attachment #7, "Manual for Biologists Aboard Groundfish Vessels" for a detailed list of training topics). Observer certification training currently lasts 3 weeks, but may change in the future. A series of homework assignments and tests will be administered during training to determine levels of understanding and abilities. These include species identification, data recording and calculations, and a comprehensive final on all topics. Observer candidates must obtain acceptable assignment and test scores in order to receive certification. It is especially important for Contractors to consider the screening tests administered early during training, including computer skills and basic math and algebra. As part of their certification training observers shall undergo safety and cold water survival training. Observer candidates are required to demonstrate the ability to put on an immersion suit in a timely manner, and with the immersion suit donned enter the water and make their way approximately 50 m.

Observers remain certified until the end of their tour of duty or for specific durations when post-training or briefing deployment delays occur. If an observer remains undeployed from 1 to 3 months after completion of training, the observer must participate in a 2-day briefing. If the observer is not deployed from 3 to 6 months after training, a 4-day briefing must be attended. When more than 6 months have passed since the completion of training, the observer must again successfully complete the 3-week class.

Individuals who have completed a tour of duty as a certified groundfish observer satisfactorily must be recertified prior to

## C.1 (Continued)

another deployment. Those individuals whose last tour was within 12 months must attend a 2-day briefing, whereas those whose last observer trip was made from 12 to 24 months previous must attend a 4-day briefing. Observers may be required to attend a 4-day briefing or retake the full training session, based upon an evaluation of data from their most recent trip. If 2 years (24 months) have passed since the completion of their last deployment, prior observers must again successfully complete the training course. Briefings (whether they are 2- or 4-day) expire after 1 month when deployment is delayed.

Recertification briefings will be conducted at the AFSC in Seattle, WA, at one of the observer field stations, or at an alternate briefing site authorized by NMFS. NMFS or alternate training programs authorized by NMFS will normally conduct the full training session at least once per quarter. Two- to four-day briefings for experienced observers will be scheduled on an as needed basis.

**Observer Corps:** The consistent collection of high quality field data is critical to the success of fisheries management and rests on the ability of the Observer Program to maintain experienced, professional, and highly motivated observers. Contractors are therefore required to develop and implement a program to provide and maintain a corps of certified observers that make repeated trips throughout the year. The Contractor shall be evaluated on their ability to retain high caliber, experienced observers. This is best accomplished by cooperating with NMFS to nurture the observer's commitment to the Observer Program and by providing various incentives.

**Maintaining Observer Certification:** Observers who fail to complete certification training successfully, abide by established conduct and conflict of interest standards (Attachments #1 and #2, respectively), or whose work is determined by NMFS to be unsatisfactory (resulting in suspended certification or decertification) shall not be employed under this contract. Each observer receives a NMFS certificate acknowledging successful completion of the observer training program. Observers shall also agree to provide all data collected to NMFS, to maintain the confidentiality of that data, and to adhere to NMFS observer standards (conduct and conflict of interest). To maintain certification, observers must complete the appropriate training or briefing sessions, maintain the prescribed standards of conduct, and not violate the conflict of interest guidelines. If an observer's behavior violates the standards of conduct or conflict of interest, the decertification process will be initiated (Attachment #3). Individuals whose certification has been suspended or who have been decertified by NMFS cannot serve as an observer unless the suspension or decertification action is rescinded. The Contractor shall ensure that a potential observer

## C.1 (Continued)

is in good standing.

**Observer Compensation Package:** Compensation for observers (monetary and non-monetary) must promote the goal of attracting and maintaining a corps of responsible biologists to collect accurate and precise data for fisheries management.

**Observer Logistics:** The Contractor shall make the necessary arrangements to support observer deployment-related logistics, including (1) travel from the training or briefing site (except in certain cases) to the port of embarkation; (2) all travel between ports required to redeploy an observer while in Alaska; (3) in-cruise briefings, as required; (4) monitoring of vessels or processors, and (5) travel from the port of debarkation or processor to the training/briefing site. The Contractor shall provide all air travel; other commercial travel when air travel is not available (e.g., bus), excess baggage fees, lodging, meals, ground transportation, and other appropriate miscellaneous expenses. While in travel status these are considered allowable (reimbursable) expenses.

Maximum allowable rates for meals and lodging are U.S. Government per diem rates, but Contractors are encouraged to find accommodations or methods which provide adequate living conditions and expenses which are less than the maximum allowable rate. Adequate living conditions should provide observers with a safe, clean, and quiet place to sleep, bathe, and complete their paperwork.

The provision of either living expenses, living quarters, or some combination of these for observers during training, briefing, and debriefing (unless being conducted in the field at the Dutch Harbor or Kodiak field offices) is at the discretion of the Contractor. The levels of support, in conjunction with salary and incentives, will be considered as part of the total compensation package to observers. The provision of any of these items will be evaluated regarding whether the goal of maintaining qualified observers to provide accurate precise data is met.

To maintain data quality, NMFS requires in-cruise data reviews and limits the total deployment period. Observers working out of Kodiak or Dutch Harbor may be requested to report to the respective Observer Program Field Office early during their deployment for an in-cruise data and work review. The Contractor will be informed when observer in-cruise reviews are required. If an observer's performance is below average, NMFS field station staff can require additional reviews. Failure by an observer to fulfill the in-cruise review requirement is justification for an unsatisfactory performance rating and may lead to suspension or decertification. NMFS may exempt experienced observers in good standing from the in-cruise review requirement. Observers shall



## C.1 (Continued)

be limited to a maximum deployment period of 90 days unless NMFS approves an extended trip.

NMFS will provide each groundfish observer with the sampling and safety gear required to perform observer duties (see Attachment #7, NMFS Manual for Biologist Aboard Domestic Groundfish Vessels, for a list of gear items supplied). All gear and equipment issued to an observer shall be returned to NMFS, either at the completion of an observer deployment or pursuant to a schedule determined by NMFS. The Contractor shall replace certain gear items, as indicated in the Groundfish Observer Manual and including any computer equipment issued, that are damaged, lost, or stolen gear and equipment. These are not reimbursable costs. Lists of accountable gear items and acceptable replacements will be provided by NMFS. The Contractor shall ensure that observers have raingear, boots, and gloves appropriate for observer work. These items are not currently provided by NMFS, although they are critical to safe and effective data collection. The Contractor may consult with NMFS for guidance on the types and quantities to provide.

**Vessel Coverage:** The Contractor shall provide required observer coverage for all vessels and processors assigned under this contract. NMFS reserves the right to reassign vessels or processors, and assign new vessels or processors to maintain the balance specified at award. Furthermore, where the Contractor is, for any reason, unable to provide observer coverage for a specified vessel or processor, NMFS reserves the right to assign said vessel or processor to another Contractor.

Upon contract award NMFS will assign each Contractor specific vessels and processors. The Contractor shall provide the level of observer coverage requested as prescribed by NMFS and outlined in the Research Plan. NMFS will establish the coverage levels, Contractor-vessel/processor assignments, and a list of the approved ports of observer embarkation and debarkation on an annual basis. Vessel assignments will be reaffirmed on a quarterly basis. To ensure that coverage is met, vessel and processor operators/owners must notify the appropriate NMFS-assigned Contractor in writing or facsimile copy, at least 60 days prior to the need for an observer. Processor and vessel operator/owners must again notify the appropriate Contractor, in writing, facsimile copy, or by telephone, at least 10 days prior to the need for an observer, to update coverage needs and make final arrangements for observer deployment. Substantial changes could occur between 60 and 10 days prior to observer deployment, so Contractors are encouraged to remain in close contact with vessel and plant operator/owners.

Working with vessels and processors to meet the observer coverage requirements will perhaps be the most challenging aspect of a

**C.1 (Continued)**

Contractor's operation. Contractors are expected to understand that a vessel's fishing schedule is dynamic and often unpredictable, susceptible to changes in fishery openings, weather, vessel breakdown, strikes, or other problems. Furthermore, the Alaska Regional Director may enact in-season changes regarding observer coverage requirements with little prior notice. Contractors must be able to understand, predict, and respond to such changes in a manner that maximizes the number of observer coverage days without compromising an observer's ability to collect quality data. The Contractor shall maintain contact with assigned vessels and processors to provide coverage, and maintain a record of all communications such as facsimile's and telephone calls.

The Contractor shall supply alternate observer candidates if one or more observers (1) are rejected by NMFS, (2) fail to successfully complete observer training, (3) are injured and cannot perform their duties, or (4) resign prior to completion of duties. Contractors shall, in addition, be capable of meeting unanticipated needs on short notice.

The Contractor shall use observers efficiently to minimize cost while maximizing coverage to vessels and processors. However, an observer cannot be placed on more than four vessels or processors within their contract period (usually 2 to 3 months) without the approval of NMFS. During any 12-month period an observer cannot spend more than 90 days on any individual vessel, unless the Contractor has received NMFS approval for an extension. This 90-day limit does not currently apply to shoreside processor observers. The Contractor must assign observers to vessels or processors without regard to requests from vessel owners and/or operators for, or for exclusion of, specific observers. Any such requests shall be reported to NMFS.

NMFS may direct Contractors to place observers with certain expertise on specific vessels or in specific fisheries. Additionally, NMFS may recommend, approve, or disqualify observers selected by the Contractor to conduct special projects while deployed.

**Field Coordinators:** Provision of field coordinators to facilitate deployment logistics, briefing, and debriefing of observers is at the Contractor's discretion and will be considered in evaluation of the technical and cost proposals submitted. However, the use of field coordinators is encouraged if large numbers of observers are deployed. To lower costs, Contractors are encouraged to share the services of a port coordinator in ports where more than one Contractor operates.

**Insurance:** Observers must be adequately covered by policies insuring against, for example, injury, loss of work, liability,

**C.1 (Continued)**

and accidental death. Insurance is required during the entire period an observer is employed, including training or briefing, travel to and from port, standby time in port, at sea deployment, and while debriefing. The adequacy and cost effectiveness of proposed insurance coverage will be considered in the evaluation process. No specific coverages, beyond that required elsewhere in the contract, are recommended, although Contractors shall provide whatever insurance is required by appropriate state and federal regulations. (See Contract Clause H.2 - INSURANCE COVERAGE, for additional insurance requirements)

Providing adequate yet cost-effective insurance coverage is particularly problematic in the current operating environment. The insurance issue has been taken up by various agency and industry groups attempting to provide clarity and promote legislation. Contractors shall remain informed and respond to developments to ensure adequate, cost-effective insurance is maintained.

**Data and Data Reports:** In-season data shall be submitted by the observer according to the needs and schedule dictated by NMFS. Final data and reports shall be submitted at a debriefing with NMFS upon the completion of each deployment.

NMFS will notify the Contractor of final acceptance of all trip reports and data collected on an observer trip (or field deployment) basis and will advise the Contractor of the quality of data and reports submitted by each of their observers. Based on this evaluation, NMFS will determine whether the work performed was satisfactory or unsatisfactory. Individuals whose performance is unsatisfactory will be decertified and shall not be reemployed as an observer in the groundfish program.

**Debriefing:** An observer's post-cruise experience (standby period and debriefing) is critical, and may greatly influence morale, work ethics, and commitment to program goals. The debriefing process ensures the data are complete and comprehensive before departure of the observer. Prior to NMFS debriefing, the Contractors shall provide a data quality review to the specifications of NMFS. The debriefing process entails (1) initial interview with NMFS debriefing staff, (2) NMFS preliminary data review, (3) observer completion of all data corrections noted, (4) observer preparation of affidavits and reports, (5) completion of tasks related to biological specimens or special projects, and (6) cleaning and returning sampling and safety gear. NMFS will take steps to minimize delays in this process.

The Contractor shall perform a review of the quality of observer data prior to the initial interview. Completion of such a review decreases the time an observer spends debriefing. The elements to be included in the Contractor data quality review must be approved by NMFS. The data quality review is considered an important task

## C.1 (Continued)

that must be carried out by skilled personnel familiar with program data collection methods. Data quality reviews must therefore be carried out by individuals trained and approved by NMFS and should be considered key personnel by each Contractor.

The Contractor shall ensure that observers return from port in the most expedient manner, and schedule the initial interview as soon as possible. Individual observers shall be present at each debriefing to answer any questions which may arise. The Contractor shall coordinate with NMFS debriefing staff to track observer progress and ensure observers are completing all work in a reasonable and timely manner. NMFS will notify the Contractor when an observer has completed all debriefing requirements.

Typically, once the initial interview occurs an observer is expected to require from 3 to 5 days to complete all duties, depending upon the number of vessels or processors observed, special projects, affidavits, reports, or other considerations. The Contractor is ultimately responsible for making any changes or corrections requested by NMFS prior to final NMFS acceptance of the data and reports from each trip.

**Communications:** The Contractor shall maintain communications with NMFS staff and observers to ensure program objectives and responsibilities are met. Contractors shall be responsible for developing an effective means of communicating necessary logistics and other pertinent information to observers at sea and in shoreside facilities. Contractors should note that communications with observers at sea can be difficult.

The observer should send weekly or daily catch reports (in-season data) and questions on observer duties or sampling directly to NMFS. Any such communications received by the Contractor shall be delivered to NMFS within 12 hours of receipt. Contractors shall propose how messages they receive on weekends or holidays can most cost-effectively be forwarded to NMFS.

Although Contractors cannot enforce safety rules, regulations, and statutes, Contractors should be concerned with the conditions of the vessels and processors to which observers are deployed. It is important that all observer concerns or incidents pertaining to the safe operation of vessels or processors be reported to NMFS so they can be formally addressed.

The Contractor shall be responsible for handling emergencies or last-minute problems concerning observer logistics. NMFS shall be notified immediately of any emergency involving an observer. Contractors shall keep NMFS apprised of any problems experienced relating to program operations and observer deployment.

Contractors shall provide NMFS current listings of observer

**C.1 (Continued)**

assignments, deployment plans, and schedules. At a minimum this information shall be provided to NMFS weekly. Contractors are responsible for ensuring they have the appropriate hardware and software which will achieve the various communications and data transmission requirements of this contract. The Government is operating in an IBM-compatible DOS/MS Windows-based environment. Further, email connectivity through the Internet and the ability to remotely access the NMFS observer logistics ORACLE database will be necessary.

**Logistics and Cost Reports:** The Contractor shall submit to NMFS the following data (See Clause F.2 - CONTRACT REPORTING REQUIREMENTS for specific content and format data):

- Monthly Cost & Progress Reports
- Observer Deployment Cost Reports
- Weekly Logistics Reports
- Observer Personnel Data Sheets
- Annual Reports

In addition to the above reports, the Contractor shall make available, upon request, a current copy of the standard observer employment contract/agreement, proof of physical exams, and proof of insurance coverage.

**Quality Assurance Plan:** Contractors will be providing a host of services, including providing candidates for observer training, maintaining a corps of high quality observers, providing observer coverage to vessels, logistics support and reporting, data communications, staff interactions with the Government, and others. All aspects of work required under this contract have bearing on the success of the entire program. Contractors shall, therefore, submit their total quality assurance plan, addressing each aspect of the proposed performance. Plans should note the type and quantity of information needed from the Government, such as number and type of data errors per cruise, in order to carry out quality assurance.

**8. DESCRIPTION OF THE BERING SEA & ALEUTIAN ISLANDS (BSAI) KING AND TANNER CRAB FISHERIES**

Although NMFS has ultimate management authority, ADF&G has been delegated with management responsibilities of all shellfish fisheries in the BSAI and GOA. Currently, only the BSAI king and Tanner crab fisheries (henceforth referred to as crab fisheries) fall under the Research Plan. The crab fisheries are opened and closed by target species, area, and time of year. Season length is variable and often unpredictable. Some crab openers can be as short as a few days while others last several months. Fishing vessels participating in these fisheries utilize various size pots which can be set individually or in strings. Vessels can be

## C.1 (Continued)

placed in three general categories: catcher/processor vessels, catcher vessels, and floating processors. Catcher/processor vessels have the capacity to catch and process their catch. Floating processors receive sorted crab from catcher vessels at sea. Catcher vessels must deliver their catch live to a processing facility (floating or shoreside) and are usually less than 150 feet in length. Catcher/processor vessels and floating processors have the capability to remain at sea for long durations (months) while catcher vessels generally make shorter trips. In 1994 approximately 330 vessels participated in the crab fisheries. Of these, approximately 25 were catcher/processors, 17 were floating processors, and the rest were catcher vessels.

Shoreside crab processors are located on land and receive catch from catcher vessels. Sampling at shoreside crab processors is currently conducted by ADF&G staff and is not a part of the Research Plan.

9. DESCRIPTION OF SHELLFISH OBSERVER PROGRAM

In April 1988 the Alaska Board of Fisheries adopted regulations requiring observers on all vessels which processed king crab and bairdi Tanner crab in waters off Alaska. The primary goals of the program were to determine whether retained crab were legal; collect carapace size, age, and condition information; and to collect bycatch data from sampled crab pots. Since initiating the Observer Program, ADF&G has expanded coverage to other shellfish fisheries such as the scallop fisheries and the Bering sea hair crab fishery. The program which deploys observers to these fisheries is known as the Shellfish Observer Program. Currently only the BSAI area king and Tanner crab fisheries fall under the Research Plan, although the plan may be expanded to include other shellfish fisheries. In 1994 approximately 42 vessels processed king and Tanner crab and required observer coverage. A small but growing number of observers is required on catcher vessels in certain crab fisheries. That portion of the shellfish Observer Program which deploys observers to the king and Tanner crab fisheries will henceforth be referred to as the crab Observer Program. The manual used by crab observers is the ADF&G Observer Manual for Alaska Crab Processors (Attachment #8).

There are many similarities in the way the ADF&G crab and NMFS groundfish Observer Programs operate. However, these programs have developed independently and there are significant differences in the primary program missions, duties and status of the observers, and in training and briefing. Both programs collect essential biological and fisheries management data. However, the role of observers in the crab program is enforcement oriented. Crab observers are directed and trained to collect evidence such as photographs of illegally retained crab. An understanding of

## C.1 (Continued)

these differences should be demonstrated in the contract proposals.

The relationship between the ADF&G crab and NMFS groundfish Observer Programs is evolving through the development of the Research Plan. Contractors shall be placing observers in both programs, and vessels may move between crab and groundfish fisheries. NMFS and ADF&G recognize the different program missions but will strive to maximize efficient administration and implementation.

Observer certification, sampling and work requirements, observer debriefing, and data management for the crab Observer Program will be provided by ADF&G for NMFS. NMFS will handle all contract administrative requirements, such as contractor/vessel assignments and monitoring contractor performance. ADF&G will accept observer data on behalf of NMFS, and play a consultative role in certain aspects of contract administration. Like the groundfish program, the crab Observer Program requires Contractors to provide a corps of high caliber and experienced observers to consistently collect quality data. Cross-training and certification of observers for both programs is encouraged.

Many requirements and critical elements previously specified for the groundfish Observer Program are common to the crab Observer Program as well. The primary differences are described below. Specific crab observer requirements, procedures, and qualifications are summarized in the current ADF&G Observer Manual for Alaska Crab Processors (Attachment #8).

10. CRITICAL FACTORS

**Observer Qualifications:** The education and experience qualification standards for crab observer candidates are:

- a. A Bachelor of Science degree in Natural Sciences or;
- b. A valid NMFS groundfish observer certification or;
- c. Other educational or work experience approved by ADF&G and;
- d. Previous work history demonstrating the ability, once trained, to perform the duties of a crab observer effectively.

In addition, crab observer candidates may not have been convicted of any misdemeanor or felony involving fraud, dishonesty, moral turpitude, violence, or a Fish and Game misdemeanor or Fish and Game infraction with a penalty in excess of \$300.00. The observer candidate must be able to demonstrate all the skills listed in the

**C.1 (Continued)**

Observer Manual for Alaska Crab Processors under "Observer Training Requirements".

The Contractor shall meet the observer qualification requirements specified in the Observer Manual for Alaska Crab Processors, including providing proof of a completed physical and other documentation prior to training at a schedule determined by ADF&G. Qualification documents received after the preferred time may or may not be reviewed, depending on available staff time.

**Physical Condition:** Observers must be physically capable of carrying out their duties and not be incapacitated by chronic or debilitating seasickness. Contractors are required to provide proof of a current physical examination for each observer.

**Observer Training, Briefing, and Testing:** Crab observer candidates shall be trained by ADF&G-approved trainers at an approved training facility. Contractors shall be responsible for this cost. The current approved shellfish observer training facility is the University of Alaska Observer Training Center, Anchorage, AK. The Contractors shall arrange for up to four observer training classes each year. Classes currently require 14 days, but may change in the future. Observers will undergo a safety training similar to that of the groundfish training program.

ADF&G will certify observers through tests which may be administered in Dutch Harbor, Anchorage, or other sites as designated by ADF&G. In addition, observers must spend approximately 2 to 3 days in Dutch Harbor for final orientation and a practicum test. Observer candidates who do not pass these tests will not be certified whereas those who pass and can demonstrate a grasp of the required duties will be granted an observer trainee certification. The maximum trip limit for trainee observers is currently 35 days. An observer with a valid trainee permit will be granted full certification at the discretion of ADF&G. Full certification is based upon the number of trips successfully completed, where the observer has demonstrated a full understanding of the required observer duties and the ability to consistently collect the required data.

Crab observers, whether a trainee or fully certified, must participate in an ADF&G briefing prior to each deployment. Unless otherwise authorized, observers will be briefed at the ADF&G office responsible for management of the observed fishery. Contractors shall schedule all observer briefings at least 48 hours in advance.

**Observer Corps:** As with the groundfish program, the Contractor shall develop incentives that provide the program with a corps of high caliber experienced observers to consistently



**C.1 (Continued)**

collect accurate and precise data.

**Maintaining Observer Certification:** Individuals who have not served satisfactorily as a crab observer in the past 12 months must attend and successfully complete the 2-week ADF&G or ADF&G-authorized training course and exam. Individuals who have satisfactorily served as a crab observer in the past 12 months must attend a pre-trip briefing conducted by ADF&G prior to re-deployment. The Contractor is responsible for ensuring observers follow standards of conduct which are consistent with both federal and state requirements for observers. A detailed description of conflict of interest standards and grounds for decertification in the crab program are listed in the Observer Manual for Alaska Crab Processors.

**Observer Compensation Package:** As with the groundfish program, the Contractor shall provide incentives (may be non-monetary as well as monetary) that attract and retain high caliber observers.

**Observer Logistics:** The Contractor shall provide the same standards and support as in the groundfish program. Contractors must assign observers to vessels without regard to requests from vessel owners and/or operators for exclusion of specific observers. Any such requests shall be reported to the Government. The maximum trip limit for trainee and fully certified observers is currently 35 and 90 days, respectively, per vessel in 12 consecutive months.

In determining the estimated cost for a shellfish observer trip, the Contractor should consider Anchorage, AK as the initial point of hire and Dutch Harbor as the port of vessel embarkation and debarkation. Observers may board or debark vessels in ports other than Dutch Harbor but all observers must be initially briefed and debriefed at Dutch Harbor, unless alternate sites are approved in advance by ADF&G crab Observer Program staff.

**Vessel Coverage:** Contractors will be assigned crab vessels by NMFS in the same manner as occurs with the groundfish vessels.

**Field Coordinators:** The Contractor shall meet the same requirements as stated under the groundfish Observer Program.

**Insurance:** The Contractor shall meet the same standards as in the groundfish Observer Program.

**Data and Data Reports:** Contractors will not be required to complete an observer data quality review before debriefing. Observers shall turn in all data directly to ADF&G, which will accept crab observer data on behalf of NMFS. As with the

**C.1 (Continued)**

groundfish Observer Program, all data are confidential and the property of the Government.

**Debriefing:** Debriefing must be scheduled by the Contractor at least 48 hours in advance, but obtained immediately upon a vessel's return to port. Debriefings shall take place at the office designated by the ADF&G shellfish program (usually Dutch Harbor, AK). At the debriefing, observers must submit fully completed data forms and reports to the Dutch Harbor ADF&G office, unless otherwise instructed.

**Communications:** The Contractor shall maintain communications with ADF&G staff and observers to ensure observer certification and debriefing objectives and responsibilities are met. Unlike the groundfish Observer Program, observers in the crab Observer Program will be in direct radio contact with ADF&G on a regular basis.

**Cost and Logistics Reports:** Cost and logistics reports should follow the same format, content, and schedules as previously identified for the groundfish Observer Program and will be submitted to NMFS, using the appropriate computer/communication hardware and software.

**Observer Gear:** The Contractor shall provide observers with the sampling and safety gear and equipment as specified in the current ADF&G Observer Manual for Alaska Crab Processors. Contractors must maintain gear and equipment in satisfactory working condition.

**Observer Contact List:** The Contractor shall obtain and maintain a permanent address, contact address, or telephone number for each observer employed under this contract. This information shall be provided to the Government when and if contact with a former observer is required.

**11. RESPONSIBILITIES**

The following section delineates Contractor and Government responsibilities under this solicitation for Research Program (groundfish and crab) Observer Programs.

**The Contractor shall:**

- a. provide qualified observers including minorities and women.
- b. submit a list of individuals to be hired as groundfish or crab observers or observer candidates prior to the beginning of a training or briefing session at the schedule dictated by the respective program. Further, Contractors shall meet

## C.1 (Continued)

the crab observer qualification, certification, and training requirements outlined in the ADF&G Observer Manual for Alaska Crab Processors.

- c. supply alternate observer candidates if one or more observers (1) are rejected by the Government, (2) fail to successfully complete observer training or briefing, (3) are injured and must be replaced, or (4) resign prior to completion of duties, and be capable of meeting unanticipated needs on short notice.
- d. provide the Government with notification that the observer physical exam requirement has been met prior to the end of training or briefing, and maintain updated physical exams for prior observers.
- e. provide compensation (monetary and/or non-monetary) and adequate insurance for observers while the observer is employed.
- f. provide observer coverage to vessels and processors in accordance with Government assignments, while abiding by all groundfish and crab conflict of interest standards.
- g. make all logistical arrangements for successfully and efficiently deploying their observers.
- h. maintain communications with observers at sea and shoreside facilities, and report any instances of observer harassment or observer concerns about vessel or processor safety to the Government.
- i. monitor observer performance to ensure satisfactory execution of duties and conformance with applicable NMFS or ADF&G conduct and conflict of interest standards.
- j. ensure that observers complete an in-cruise data review when required.
- k. complete a quality review of the observer data prior to the start of groundfish observer debriefing; make appropriate arrangements to meet groundfish or crab observer program scheduling requirements.
- l. ensure all data, reports, and biological samples from each observer trip are complete and submitted to the Government upon the completion of each cruise. The Contractor is ultimately responsible for making any changes or corrections requested by the Government prior to final acceptance of the data and reports from each trip.

**C.1 (Continued)**

- m. ensure that all groundfish sampling and safety gear are returned according to a NMFS prescribed schedule. The Contractor shall replace certain Government provided gear items, as indicated in the Groundfish Observer Manual, that are damaged, lost, or stolen. Crab observer Contractors provide a complete set of observer sampling gear prior to each testing or briefing session.
- n. maintain a detailed cost accounting of each observer trip and all allowable expenses charged to the Government. Trip-by-trip cost data shall be provided to the Government within 30 calendar days of the completion of each observer field deployment.
- o. submit or update logistics reports of groundfish and crab observer status on the NMFS logistics ORACLE database.
- p. provide NMFS with written quarterly reports comparing average costs per trip with the projected costs provided in the contract cost proposal.
- q. develop and maintain communications (at times this shall be daily) between Government program personnel and Contractor administrative personnel to ensure all tasks listed above are successfully carried out. The Contractor shall keep the Government apprised of any problems experienced relating to the operation of the program and deployment of observers. Communications require email connectivity through the Internet.
- r. maintain contact with assigned vessels and processors to provide coverage, and maintain a record of all communications with the assigned vessel or processor.
- s. be responsible for any hardware, software, and telephone use charges needed to access or communicate with NMFS computer systems. This includes email connectivity through the Internet, operating in an IBM compatible MSDOS Windows environment, and remote access onto the NMFS logistics ORACLE database.
- t. delineate their total quality assurance plan for performance under this contract.

**The Government will:**

- a. specify and notify Contractors of the vessels or processors for which they are responsible for providing observer coverage, through issuance of either quarterly or supplementary delivery orders (See Clause B.8 - ORDERING OF

## C.1 (Continued)

## OBSERVER SERVICES).

- b. annually establish a list of approved observer embarkation and debarkation ports, Contractor vessel and processor assignments, and observer coverage levels.
- c. develop and provide Contractors with observer work requirements, including sampling methodology, and data collection requirements.
- d. conduct groundfish certification training and recertification briefings for all observers and notify the Contractor of training and briefing schedules; delegate certification procedures for crab observers to ADF&G.
- e. supply all groundfish observer sampling and safety equipment.
- f. provide Contractors with instructions for entry or transfer of electronic files of observer deployment data to NMFS.
- g. conduct in-cruise reviews of observer work performance and data at Kodiak or Dutch Harbor field stations.
- h. conduct observer debriefing.
- i. perform periodic evaluations of Contractor performance, and provide the Contractor with results and recommendations for improvement.

**SECTION D - PACKAGING AND MARKING**

**THERE ARE NO CLAUSES INCLUDED IN THIS SECTION**

**SECTION M - EVALUATION FACTORS FOR AWARD****M.1 52.252-1 SOLICITATION PROVISIONS INCORPORATED  
BY REFERENCE (JUN 1988)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the contracting officer will make their full text available.

**I. FEDERAL ACQUISITION REGULATION (48 CFR CHAPTER 1)  
PROVISIONS**

NUMBER	TITLE	DATE
52.217-5	EVALUATION OF OPTIONS	JUL 1990

**M.2 EVALUATION QUANTITIES--INDEFINITE DELIVERY  
CONTRACT**

To evaluate offers for award purposes, the Government will apply the offeror's proposed fixed-prices/rates to the estimated quantities included in the solicitation (and add other direct costs, if applicable). The total evaluated quantities (plus other direct costs) do not necessarily represent the maximum that may be ordered under a resulting contract. This estimate is not a representation by the Government that the estimated quantities will be required or ordered.

**M.3 TECHNICAL EVALUATION FACTORS**

Technical proposals will be evaluated on how well each offeror responds to the following Technical Evaluation Factors and Subfactors. The individual evaluation factors are listed below, in descending order of importance. Factor 1 and Factor 2 are of equal importance. Factors 3 and 4 are of equal importance, but of substantially less importance than Factors 1 and 2.

1. Past Performance: This is an evaluation of the offeror's performance of same or similar efforts based on examples of previous experience and demonstrated abilities. Subfactors (a) through (c) are listed in descending order of importance.

(a) Evaluation of offeror's past performance in providing data to the Government. This subfactor addresses how well the offeror has performed in carrying out its responsibilities under the Observer Plan (Attachment #10 to this solicitation)

(b) Evaluation of offeror's past performance on similar contracts with the fishing industry. This subfactor

## M.3 (Continued)

addresses customer satisfaction in areas such as: The offeror's efforts to meet the needs of its customers (e.g., knowledge of fisheries management and observer coverage requirements and flexibility/cooperation in meeting changing schedule requirements); the general quality of observers provided; and quality of communications (i.e., accessibility, responsiveness, and effectiveness).

(c) Evaluation of offeror's past performance on contracts with observers. This subfactor addresses how well the offeror has performed its duties as an observer employer (i.e., how well it explains, and lives up to its employment agreements, how well it handles observer deployment logistics, and how effectively the offeror maintains communications with the observer during the deployment period.)

2. Technical Approach: Ability to supply required observer services, as demonstrated by technical approach to accomplishing each major task. Subfactors are listed in descending order of importance.

(a) Methods to be used to maintain a corps of experienced, professional observers. This includes evaluation of the offeror's compensation package and other inducements and/or organizational policies which lead to job satisfaction and workforce stability.

(b) Methods used to recruit qualified observer candidates including advertising, identification of sources, information supplied to potential candidates, review, evaluation and selection and hiring procedures.

(c) Methods to be used in establishing, organizing and performance of all logistics associated with the deployment of observers. This includes:

(i) Methods to be used in providing observer personnel services including physical examinations, salaries and insurance;

(ii) Methods to be used in scheduling observers for training or briefing, observer deployments, assignments to vessels or shoreside processors, assignment of sampling requirements so that observer vessel/processor coverage and sampling requirements are met;

(iii) Provisions for communications with observers, vessels and NMFS to provide and exchange required information on scheduling, program status, weekly catch data, emergencies and instructions for observers and



**M.3 (Continued)**

vessels;

(iv) Methods used to stay current with changes in observer coverage requirements, changes in industry, and maintaining contact and tracking requests to provide observer coverage for assigned vessels or plants;

(v) Contingency planning to quickly cover instances where observers are unable to complete scheduled deployments or where observer coverage requirements/levels change.

(d) Quality Assurance Plan: Methods to be used to ensure that the contract deliverables such as observer data (reports and biological samples) and management reports are comprehensive, timely, and of high quality.

3. Demonstrated Experience, Expertise and Capability of Offeror's Organization. Subfactors (a) and (b) are of equal importance..

(a) Technical competence of staff based on resumes of key personnel which show their abilities, education, training and experience in relation to their proposed assignments and areas of responsibilities on this project.

(b) Organizational structure including number of personnel to be assigned, in categories of professional, technical and clerical positions, to each phase of the project including provisions for the backup of each key staff member during planned and unplanned absences.

4. Demonstrated Understanding of the Concept of the Project... Expressed understanding of the purpose of the contract, the role of the contractor and the important aspects of this type of project which lead to successful performance of work. Subfactor (a) is twice as important as Subfactor (b).

(a) Demonstrated understanding of the complexity of the task of providing observer services under the Research Plan.

(b) Demonstrated understanding of the relationship between recruiting quality observers and providing quality data to the Government.

**M.4 EVALUATION OF PAST PERFORMANCE**

Use "Past Performance" as an important evaluation factor is intended to enable the Government to award more contracts to the outstanding performers. To this end, only firms with a history of poor performance will receive a low or negative rating on "Past Performance" factor. Firms with a history of average

**M.4 (Continued)**

performance, or lacking a substantial performance history, will receive an average or neutral rating. Firms with a strong history of reliable performance would receive a high or positive rating.

**M.5 EVALUATION OF PRICE PROPOSALS**

The technical quality is substantially more important than price. Price proposals will be evaluated separately from technical proposals. All technically acceptable offerors' price proposals will be evaluated as to (a) total price proposed, (b) price realism, and (c) reasonableness.

**M.6 AWARD BASIS**

Award will be made to those three (3) offerors whose proposals are most advantageous to the Government, price and other evaluation factors considered. The Government reserves the right to award a contract on the basis of the initial proposals without any negotiations or call for Best and Final Offers. Offerors are therefore urged to submit their best offer with their original submittal. Offerors are to further note that the award will not necessarily be made for capabilities that appear to exceed the Government's minimum requirements for successful performance of the contract. Likewise, an award will not necessarily be made to the lowest price proposed.

## ATTACHMENT #1

### Standards of Behavior for NMFS Certified Observers:

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

- (1) Observers must diligently perform their assigned duties.
- (2) Observers must accurately record their sampling data, write complete reports, and report honestly any observed or suspected violations of fisheries, natural resource conservation, or environmental laws or regulations. Falsification of observer data is grounds for decertification.
- (3) Observers, and their employers, must protect the confidentiality of all collected data and observations made on board the vessel or processing plant. Observers shall not use any data produced under this contract for purposes other than the performance of this contract nor shall observers release, reproduce, distribute, or publish any of this collected data.
- (4) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the observer program as a whole. This would include, but is not limited to:
  - a) engaging in excessive drinking of alcoholic beverages as described in the Manual for Biologists Aboard Groundfish Vessels;
  - b) engaging in the use or distribution of illegal drugs; and
  - c) becoming physically or emotionally involved with vessel or processing plant personnel.

If the vessel or shoreside facility maintains a stricter policy for its employees, then the observer must comply with said policy.

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

**Conflict of Interest Standards for Contractors and National Marine Fisheries Service Certified Observers of the North Pacific Fisheries Observer Program.**

a. Definitions:

1. "Conflict of interest" means that because of other activities or relationships with other persons, a person's objectivity in performing the contract work is, or might be, impaired.
2. "Direct financial interest" means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of duties under the contract;
3. "observed fishery" means any commercial groundfish, shellfish, halibut and salmon fishery in the North Pacific Ocean and Bering Sea.

b. A NMFS certified observer:

1. is only considered to be a NMFS certified observer when employed by a Contractor that holds a contract with NMFS to provide observer services, and is acting within the scope of his/her employment;
2. may not have a direct financial interest in the observed fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities.
3. may not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by the National Marine Fisheries Service, or who has interests that may be substantially affected by the performance or nonperformance of the observer's official duties;

4. may not serve as an observer on any vessel or at any shoreside facility owned or operated by a person (as that term is defined at 50 CFR 620.2) who formerly employed the observer;
  5. may not serve as an observer during the twelve (12) consecutive months immediately following the last day of the observer's employment as a paid crew member or employee in the observed fishery.
- c. A Contractor that is employed by the NMFS under contract to provide observer services, and any employee of that Contractor:
1. shall not hold any direct financial interest in the observed fishery (other than the provision of observer service to NMFS) including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities;
  2. shall assign observers without regard to any preference expressed by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation;
  3. shall not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by the National Marine Fisheries Service, or who has interests that may be substantially affected by the performance or nonperformance of the official duties contractor and/or its employees.

All potential or suspected conflicts of interest shall be disclosed to the Contracting Officer in accordance with the procedures set forth in Contract Clause H.1 - ORGANIZATIONAL CONFLICT OF INTEREST. Remedies for failure to disclose known, suspected, or potential conflicts of interest are the same as those set forth in Clause H.1.

**OBSERVER DECERTIFICATION**

§6 This section --

(a) Prescribes policies and procedures governing the suspension and decertification of NMFS certified observers by NMFS for the causes given in §6.6-2 and §6.7-2; and

(b) sets forth the consequences of suspension and decertification.

§6.1 Applicability.

This section sets forth the procedures for suspension and decertification of NMFS certified observers under the North Pacific Fisheries Research Plan.

§6.2 Policy.

(a) NMFS shall certify responsible and qualified observers only. Suspension and decertification are discretionary actions that, taken in accordance with the North Pacific Fisheries Research Plan, are appropriate means to effectuate this policy.

(b) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS shall impose suspension or decertification in the public interest and only for the causes and in accordance with the procedures set forth here.

§6.3 Definitions.

"Adequate evidence" means information sufficient to support the reasonable belief that a particular act or omission has occurred.

"Appeals official" means a designee authorized by the NMFS Regional Director to review an observer's suspension or decertification and make a decision to affirm, modify or terminate the suspension or decertification.

"Civil judgment" means a judgment or finding of a civil offense by any court of competent jurisdiction.

"Conviction" means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

"Decertification," as used here, means action taken by a decertifying official under §6.7 to revoke indefinitely, certification of a NMFS certified observer under the North Pacific Fisheries Research Plan; an observer whose certification is so revoked is "decertified."

"Decertifying official" means a designee authorized by the NMFS Alaska Regional Director to impose decertification.

"Indictment" means indictment for a criminal offense. Any information or other filing by competent authority charging a criminal offense shall be given the same effect as an indictment.

"Legal proceedings" means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

"NMFS investigator" means a designee authorized by the NMFS Alaska Regional Director to conduct investigations under this section.

"Observer" (or "NMFS certified observer"), as used here, means any individual that is awarded NMFS certification to serve as an observer under the North Pacific Fisheries Research Plan.

"Preponderance of the evidence" means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

"Suspending official" means a designee authorized by the NMFS Alaska Regional Director to impose suspension.

"Suspension," as used here, means action taken by a suspending official under §6.6 to suspend certification of an observer temporarily until a final decision is made with respect to decertification.

**§6.4 Public availability of suspension or decertification records.**

Public availability of suspension or decertification records shall be subject to the provisions of the Freedom of Information Act and other applicable law.

**§6.5 Effect and timing of suspension or decertification.**

(a) Observers suspended or decertified are not qualified to provide services prescribed by the North Pacific Fisheries Research Plan to vessels and shorebased processing plants.

(b) Suspension and decertification actions may be combined and imposed simultaneously.

**§6.6 Suspension.**

**§6.6-1 General.**

(a) The suspending official may, in the public interest, suspend an observer for any of the causes in §6.6-2, using the procedures in §6.6-3.

(b) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

**§6.6-2 Causes for suspension.**

(a) The suspending official may suspend an observer upon a determination, based upon adequate evidence, that the observer committed any acts or omissions constituting a cause for decertification under §6.7-2.

(b) Indictment for any of the causes for decertification in §6.7-2(a) constitutes adequate evidence for suspension.



§6.6-3 Procedures.

(a) The suspending official shall review all available evidence and shall promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying official.

(b) Notice of suspension. When an observer is suspended, they shall be immediately advised personally or by certified mail, return receipt requested, at the last known residence --

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the observer has committed acts or omissions constituting grounds for suspension under §6.6-2. Such acts or omissions shall be described in terms sufficient to place the observer on notice without disclosing NMFS' evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue;

(3) Of the cause(s) relied upon under §6.6-2 for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice the observer may submit, in writing, documentary evidence and argument in opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless (i) the action is based on an indictment or (ii) a determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(c) In actions not based on an indictment, if it is found that the observer's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official --

(1) Shall afford the observer an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension; and

(2) May, in his or her sole discretion, afford the observer an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official shall make an audio tape of the proceedings and make a copy available at cost to the observer upon request, unless the observer and NMFS, by mutual agreement, waive the requirement for an audio tape.

(d) Suspending official's decision. (1) In actions (i) based on an indictment, (ii) in which the observer's submission does not raise a genuine dispute over material facts, or (iii) in which additional proceedings to determine disputed material facts have been denied on the basis of NOAA General Counsel advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the observer.

(2) (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the observer and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(iii) The suspending official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) Prompt written notice of the suspending official's decision to affirm, modify or terminate the notice of suspension issued under §6.6-3(b) shall be served on the observer personally or by certified mail, return receipt requested, at the last known residence or place of business.

§6.6-4 Period of suspension.

(a) Suspension shall be for a temporary period pending the completion of investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under §6.8, unless sooner terminated by the suspending official or as provided in this subsection. If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(b) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated.

§6.7 Decertification.

§6.7-1 General.

(a) The decertifying official may, in the public interest, decertify an observer for any of the causes in §6.7-2, using the procedures in §6.7-3. The existence of a cause for decertification, however, does not necessarily require that the observer be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observer's present fitness. Accordingly, if a cause for decertification exists, the observer has the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

§6.7-2 Causes for decertification.

(a) The decertifying official may decertify an observer for a conviction of or civil judgment for --

(1) Commission of fraud or a criminal offense in connection with obtaining or attempting to obtain certification, or in performing the duties of a NMFS certified observer as prescribed in the Manual for Biologists Aboard Domestic Groundfish Vessels and summarized in NMFS contract under the North Pacific Fisheries Research Plan.

(2) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(3) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the present fitness of the NMFS certified observer.

(b) The decertifying official may decertify an observer, based upon a preponderance of the evidence, upon a determination that the observer has --

(1) Failed to satisfactorily perform the duties of a NMFS certified observer as prescribed in the Manual for Biologists Aboard Domestic Groundfish Vessels and summarized in NMFS contract under the North Pacific Fisheries Research Plan;

(2) Failed to abide by the standards of behavior for a certified observer as prescribed in the Manual for Biologists Aboard Domestic Groundfish Vessels and summarized in NMFS contract under the North Pacific Fisheries Research Plan; or

(3) A conflict of interest with respect to the fishery, shorebased processing plant, or vessel being observed as defined in NMFS contract under the North Pacific Fisheries Research Plan.

#### §6.7-3 Procedures.

(a) Investigation and referral. NMFS personnel shall promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator shall investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(b) The decertifying official shall review all available evidence and shall promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(c) Notice of proposal to decertify. If the decertifying official determines to proceed with decertification, he or she shall serve a notice of proposed decertification upon an observer personally or by certified mail, return receipt requested, at the last known residence, advising --

(1) That decertification is being considered;

(2) Of the reasons for the proposed decertification in terms sufficient to put the observer on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under §6.7-2 for proposing decertification;

(4) That, within 30 days after receipt of the notice, the observer may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts;

(5) Of the agency's procedures governing decertification decision-making;

(6) Of the effect of the issuance of the notice of proposed decertification; and

(7) Of the potential effect of an actual decertification.

(d) In actions not based upon a conviction or civil judgment, if it is found that the observer's submission raises a genuine dispute over facts material to the proposed decertification, the decertifying official --

(1) Shall afford the observer an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification; and

(2) May, in his or her sole discretion, afford the observer an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official shall make an audio tape of the proceedings and make a copy available at cost to the observer upon request, unless the observer and NMFS, by mutual agreement, waive the requirement for an audio tape.

(e) Decertifying official's decision. (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official shall make a decision on the basis of all the information in the administrative record, including any submission made by the observer. The decision shall be made after receipt of any timely information and argument submitted by the observer.

(2) (i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The decertifying official shall base the decision on the facts as found, together with any information and argument submitted by the observer and any other information in the administrative record.

(ii) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(iii) The decertifying official's decision shall be made after the conclusion of the proceedings with respect to disputed facts.

(3) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification must be established by a preponderance of the evidence.

(f) Notice of decertifying official's decision.

(1) If the decertifying official decides to impose decertification, the observer involved shall be given prompt notice personally or by certified mail, return receipt requested, at the last known residence --

(i) Referring to the notice of proposed decertification;

(ii) Specifying the reasons for decertification; and

(iii) Advising that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(2) If decertification is not imposed, the decertifying official shall promptly notify the observer by certified mail, return receipt requested, at the last known residence.

#### §6.7-4 Period of decertification.

(a) Decertification shall be in force indefinitely or until rescinded.

(b) The decertifying official may rescind decertification, upon the observer's request, supported by documentation, for reasons such as --

- (1) Newly discovered material evidence;
- (2) Reversal of the conviction or civil judgment upon which the decertification was based;
- (3) Elimination of other causes for which the decertification was imposed; or
- (4) Other reasons the decertifying official deems appropriate.

#### §6.8 Administrative review of suspension or decertification

(a) Any observer may petition for review of a suspension decision issued under §6.6-3 or a decertification decision issued under §6.7-3 within 30 days after the date the decision was served. The petition shall be addressed to the appeals official identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals official's written decision to affirm, modify or terminate the suspension.

(b) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

- (1) A finding of material fact is clearly erroneous based upon the administrative record;
- (2) A substantial and important question of policy or discretion is involved; or
- (3) A prejudicial error has occurred.

(c) If the appeals official declines review based on the written petition, the observer shall be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence.

(d) If the appeals official grants review based on the written petition, he or she may request further written explanation from the observer, or the decertifying official or suspending official. The appeals official will then render a

written decision to affirm, modify or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals official shall base the decision on the administrative records compiled under §6.6 or under §6.7, as appropriate. The appeals official will serve the decision on the observer personally or by certified mail, return receipt requested, at the last known residence.

(e) An appeals official's decision imposing suspension or decertification or an unpetitioned suspending or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.



**CONTRACT PRICING PROPOSAL COVER SHEET**

1. SOLICITATION/CONTRACT/MODIFICATION NO.

FORM APPROVED OMB NO. 3090-0116

NOTE: This form is used in contract actions if submission of cost or pricing data is required. (See FAR 15.804-6(b))

2. NAME AND ADDRESS OF OFFEROR (Include ZIP Code)

3A. NAME AND TITLE OF OFFEROR'S POINT OF CONTACT

3B. TELEPHONE NO.

4. TYPE OF CONTRACT ACTION (Check)

<input type="checkbox"/> A. NEW CONTRACT	<input type="checkbox"/> D. LETTER CONTRACT
<input type="checkbox"/> B. CHANGE ORDER	<input type="checkbox"/> E. UNPRICED ORDER
<input type="checkbox"/> C. PRICE REVISION/ REDETERMINATION	<input type="checkbox"/> F. OTHER (Specify)

5. TYPE OF CONTRACT (Check)  
 FFP     CPFF     CPIF     CPAF  
 FPI     OTHER (Specify)

6. PROPOSED COST (A+B=C)

A. COST	B. PROFIT/FEE	C. TOTAL
\$	\$	\$

7. PLACE(S) AND PERIOD(S) OF PERFORMANCE

8. List and reference the identification, quantity and total price proposed for each contract line item. A line item cost breakdown supporting this recap is required unless otherwise specified by the Contracting Officer. (Continue on reverse, and then on plain paper, if necessary. Use same headings.)

A. LINE ITEM NO.	B. IDENTIFICATION	C. QUANTITY	D. TOTAL PRICE	E. REF.

9. PROVIDE NAME, ADDRESS, AND TELEPHONE NUMBER FOR THE FOLLOWING (If available)

A. CONTRACT ADMINISTRATION OFFICE

B. AUDIT OFFICE

10. WILL YOU REQUIRE THE USE OF ANY GOVERNMENT PROPERTY IN THE PERFORMANCE OF THIS WORK? (If "Yes," identify)  
 YES     NO

11A. DO YOU REQUIRE GOVERNMENT CONTRACT FINANCING TO PERFORM THIS PROPOSED CONTRACT? (If "Yes," complete Item 11B)  
 YES     NO

11B. TYPE OF FINANCING (✓ one)  
 ADVANCE PAYMENTS     PROGRESS PAYMENTS  
 GUARANTEED LOANS

12. HAVE YOU BEEN AWARDED ANY CONTRACTS OR SUBCONTRACTS FOR THE SAME OR SIMILAR ITEMS WITHIN THE PAST 3 YEARS? (If "Yes," identify item(s), customer(s) and contract number(s))  
 YES     NO

13. IS THIS PROPOSAL CONSISTENT WITH YOUR ESTABLISHED ESTIMATING AND ACCOUNTING PRACTICES AND PROCEDURES AND FAR PART 31 COST PRINCIPLES? (If "No," explain)  
 YES     NO

14. COST ACCOUNTING STANDARDS BOARD (CASB) DATA (Public Law 91-379 as amended and FAR PART 30)

A. WILL THIS CONTRACT ACTION BE SUBJECT TO CASB REGULATIONS? (If "No," explain in proposal)  
 YES     NO

B. HAVE YOU SUBMITTED A CASB DISCLOSURE STATEMENT (CASB DS-1 or 2)? (If "Yes," specify in proposal the office to which submitted and if determined to be adequate)  
 YES     NO

C. HAVE YOU BEEN NOTIFIED THAT YOU ARE OR MAY BE IN NON-COMPLIANCE WITH YOUR DISCLOSURE STATEMENT OR COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)  
 YES     NO

D. IS ANY ASPECT OF THIS PROPOSAL INCONSISTENT WITH YOUR DISCLOSED PRACTICES OR APPLICABLE COST ACCOUNTING STANDARDS? (If "Yes," explain in proposal)  
 YES     NO

This proposal is submitted in response to the RFP contract, modification, etc. in Item 1 and reflects our best estimates and/or actual costs as of this date.

15. NAME AND TITLE (Type)

16. NAME OF FIRM

17. SIGNATURE

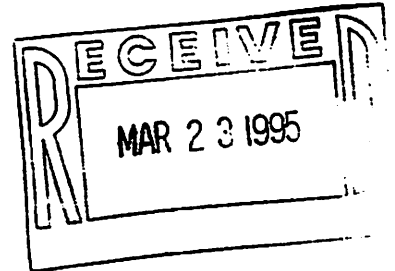
18. DATE OF SUBMISSION



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

AGENDA C-6(d)  
APRIL 1995

March 16, 1995



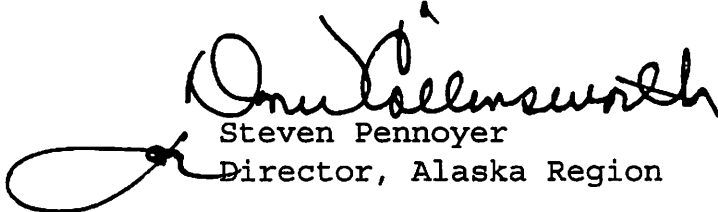
Mr. Richard B. Lauber  
Chairman, North Pacific Fishery  
Management Council  
P.O. Box 103136  
Anchorage, Alaska 99510

Dear Rick,

We believe the North Pacific Fishery Management Council (Council) should consider several issues that address the North Pacific Fisheries Research Plan (Research Plan). Now that we have entered the implementation phase of the Research Plan, issues are being identified that either were raised in the past, but not resolved, or are new concerns for which we request Council guidance.

The attachment to this letter discusses three concerns addressing the Research Plan, two of which result from statutory constraints presented under section 313 of the Magnuson Act. Issues associated with these concerns impact the flexibility of the Council in developing future management programs that require observer coverage for compliance monitoring, as well as 1996 observer coverage specifications. We request, therefore, that these concerns be raised before the Council at its April meeting as a separate agenda item.

Sincerely,

  
Steven Pennoyer  
Director, Alaska Region

Attachment



## Attachment

### North Pacific Fisheries Research Plan Implementation Issues

From NMFS' perspective, all observer coverage specified for the Northern Pacific halibut fishery and for fisheries managed under FMPs prepared by the Council should be covered under the North Pacific Fisheries Research Plan (Research Plan). We take this position for two reasons. First, observer coverage outside the Research Plan would require that a separate observer program and arrangements with observer contractors be established; this would require additional staff and budget resources that currently are not available. Second, the problems that gave rise to the Research Plan would be allowed to continue if observer coverage outside the Research Plan were endorsed.

Given this perspective and recent discussions with ADF&G staff on observer coverage, we have concerns about the statutory language set out in section 313 of the Magnuson Act that authorizes the Research Plan. We also believe that the Council needs to clarify its intent with respect to observer coverage authorized under the Research Plan. Issues raised by staff and our current suggestions to address them are as follows.

Issue 1: Alaska State authority to implement observer coverage requirements for vessels fishing in Federal waters for Bering Sea and Aleutians Islands king and Tanner crab.

The crab FMP currently authorizes Federal observer coverage requirements as a Category 1 management measure, which means they would be fixed in the FMP, and require an FMP amendment to change. The FMP also authorizes observer coverage requirements as a Category 3 management measure, which means they would be neither rigidly specified nor frameworked in the FMP and may be implemented by the State. Federal observer coverage requirements for the crab fisheries currently are specified under the Research Plan. We believe that the crab FMP also allows the State to implement additional observer coverage requirements in Federal waters as a Category 3 measure.

If the State implements observer coverage requirements for the crab fleet in addition to those specified under the Research

Plan, some participants in the crab fishery will pay "double" for observer coverage because they would still be required to pay Research Plan fees, in addition to paying directly for observer coverage. The State currently is considering increased levels of observer coverage for 1996 that were not anticipated by NMFS analysts when projecting the ability of the Research Plan to fund all observer coverage in 1996. If the State's opening of certain crab fisheries in 1995 or 1996 becomes contingent on increased levels of observer coverage, then the cost of this coverage will be borne either by (1) participants in the fishery who will pay Research Plan fees as well as direct costs for observer coverage, or (2) the Research Plan program. Any change to current crab observer coverage requirements specified under the 1995 Research Plan would require that rulemaking be initiated as soon as possible to amend regulations implementing the Plan prior to the opening of the fall crab fisheries.

#### **Options to Address the Issue**

1. The Council could remove the crab fishery from the Research Plan and all crab observer coverage requirements would revert back to the State as a Category 3 management measure;
2. The Council could remove State observer coverage as a Category 3 management measure under the crab FMP, and all observer coverage would be implemented under the Research Plan; or
3. Do nothing and potentially place crab fishermen in the position of having to pay both Research Plan fees and costs for direct observer coverage.

#### Issue 2. Supplemental fee collection program to pay for observers required to monitor activity of vessels participating in special programs.

Fees collected under the Research Plan cannot exceed two percent of the value of fish and shell fish harvested under the jurisdiction of the Council (section 313(b)(2)(E) of the Magnuson Act). NMFS believes the revenue generated under the authorized fee collection will meet current observer coverage needs. However, new management programs that require increased observer coverage to monitor compliance (e.g. vessels participating in programs that require additional observer coverage or more than

one observer on a vessel or at a shoreside plant) could not be supported by the current fee structure without jeopardizing observer coverage necessary to monitor catch and discard amounts in the Research Plan fisheries. An increase in the fee percentage likely is not acceptable and would not address the perception of inequity that rises if the fee collection program is used to subsidize fishing operations that require two observers on board a vessel to satisfy increased needs for observer data. The Council's current consideration of an expanded groundfish CDQ program or a harvest priority-type program to address discards in the groundfish fisheries likely could not be implemented without an increase in observer coverage that probably cannot be supported under the current Research Plan.

Option to Address the Issue. If the Council wishes to pursue special management programs that require significant increases in observer coverage beyond the scope of current observer coverage requirements, it will need to address current statutory constraints that limit funding for observer programs to 2 percent of the exvessel value of Research Plan fish. A Magnuson Act amendment to authorize a supplemental fee collection program based on the cost of an observer day or some other unit of cost likely would require the Council to develop criteria to determine when the implementation of a supplemental fee collection program is appropriate. Supplemental fees would be deposited in the North Pacific Fishery Observer Fund. Under a supplemental program, observer services could be provided within the contractual arrangements developed for the current Research Plan.

Issue 3. Statutory constraint to applying the Research Plan fee assessments and observer coverage to State waters.

Section 313 of the Magnuson Act authorizes the Council to establish a system of fees to pay for the costs of implementing an observer program for fisheries under the "Council's jurisdiction." With the exception of the Northern Pacific halibut fishery, Council jurisdiction is restricted to Federal waters. Prior to the implementation of the Research Plan, observer coverage requirements for the Alaska groundfish fisheries were implemented under the North Pacific Observer Plan. Regulations implementing this plan applied to Federally permitted vessels fishing for groundfish in Federal and State waters.

Implementation of the Research Plan superseded the Observer Plan. As a result, Federally permitted vessels no longer can be required to carry observers when fishing for groundfish in State waters, which are outside of the Council's jurisdiction. Similarly, Research Plan fees cannot be assessed against groundfish (and crab) harvested in State waters. This situation could jeopardize NMFS' ability to collect adequate fishery data for Federally managed fisheries in State waters and creates an incentive to fishermen to redistribute fishing effort (real or alleged) into State waters to avoid having to carry an observer or pay Research Plan fees.

**Option to Address the Issue:** The Council may consider exploring with the State of Alaska an amendment to the Magnuson Act that would authorize the Council to extend the Research Plan fee collection program and observer coverage requirements to Federally permitted vessels fishing in State waters if such action is necessary for the conservation and management of fishery resources managed under FMPs prepared by the Council.

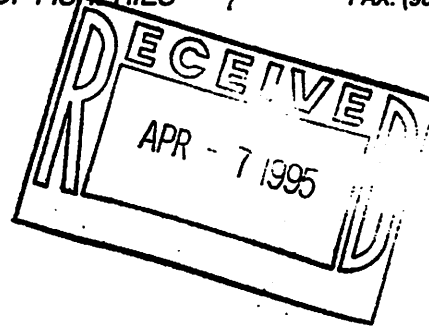
# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### BOARD OF FISHERIES

AGENDA C-6(e) ✓  
APRIL 1995  
TONY KNOWLES, GOVERNOR

P.O. BOX 25526  
JUNEAU ALASKA 99802-5526  
PHONE: (907) 465-4110  
FAX: (907) 465-6094



March 23, 1995

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

Dear Chairman Lauber:

Re: Observer coverage on catcher-only vessels in the Adak and Dutch Harbor king crab fisheries.

At its March 1995 meeting the Alaska Board of Fisheries determined that in the Adak and Dutch Harbor king crab fisheries it is necessary to require observer coverage on catcher vessels as well as processor vessels. Alaska Department of Fish and Game reports indicate red king crab stocks in the Adak Management Area are severely depressed. If observer coverage is not required, the Adak fishery will not be opened in 1995 because adequate monitoring of the resource is not otherwise available.

The current shellfish observer coverage incorporated under the North Pacific Research Plan applies only to vessels that process king and Tanner crab (also required by the State of Alaska under 5 AAC 39.645). In recent years the number of processing vessel carrying observers has declined in both the Adak and Dutch Harbor king crab fisheries. At this time the majority of the participating fleet is made up of catcher-only vessels, which are not currently required to carry observers. This has resulted in a loss of information necessary to manage these stocks for sustained yield.

National Marine Fisheries Service does not conduct crab surveys in these areas, and the vast size of the Adak and Dutch Harbor management areas make implementation of new comprehensive biological surveys cost prohibitive. The board determined observer coverage on all vessels is the only means available to collect information sufficient to manage these stocks and allow a fishery.

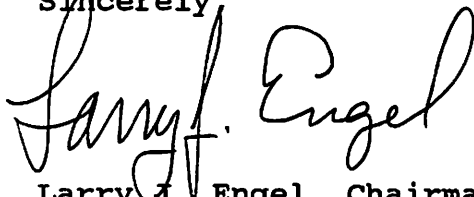
The Board of Fisheries concluded, based on department reports, that current data gathering mechanisms are insufficient to ensure sustained stock protection.

Considering the need for this program, the goals and objectives of the FMP and the seven National Standards, the board adopted a proposal requiring observers on all catcher vessels in the Adak and Dutch Harbor king crab fisheries beginning with the September 1 opening of the Dutch Harbor brown king crab fishery.

The board formally requests the North Pacific Fishery Management Council to initiate rulemaking to incorporate this additional coverage under the North Pacific Research Plan. Quick action by the council is needed to ensure this can be accomplished in 1995 so fishers can receive credit to escape duplicate payments for observer coverage since participants would still be required to pay Research Plan fees in addition to paying directly for observer coverage in these fisheries. In 1996, it is anticipated that the Research Plan would allow normal incorporation of this coverage.

The Board wishes to thank the members of the Council for their efforts in resolving this issue.

Sincerely

A handwritten signature in cursive script that reads "Larry J. Engel". The signature is written in dark ink and is positioned to the left of the typed name.

Larry J. Engel, Chairman  
Alaska Board of Fisheries





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

Alaska Enforcement Division  
P.O.Box 21767  
Juneau, AK 99802-1767

March 28, 1995

Mr. Ron Hegge  
2431 Seabring Circle  
Anchorage, AK 99516

Dear Mr. Hegge:

During the January 1995 meeting of the North Pacific Fishery Management Council, you requested a briefing on issues associated with Observer Program compliance monitoring. At that time, we indicated our plans to hold a meeting of Alaska Fisheries Science Center, Alaska Regional Office, Office of Enforcement, NOAA General Counsel, and United States Coast Guard staff to discuss this topic, and promised to brief you following that meeting.

A meeting was held in Juneau on March 6-8, 1995. Several issues were addressed, including the topic of Observer Program compliance monitoring.

We reviewed the current compliance monitoring responsibilities of observers and discussed problems that have arisen. All participants recognized the critical role that observers play in compliance monitoring and the likelihood that this role will increase in importance. The following issues were discussed:

- **Observer harassment and interference** have occurred since the inception of the program and have become more serious as compliance responsibilities have grown. When observers are intimidated, they are less likely to report violations and file affidavits, their ability to collect objective data is undermined, and the integrity of the program may be



compromised. We agreed to work together to address these concerns aggressively and make it clear that harassment and interference of observers will not be tolerated. We will evaluate training tools which might better equip observers to deal with harassment.

- **Manipulation of Observer Contractors by Vessel and Plant Operators** occurs under the current regulations and is a significant impediment to enforcement. This problem should cease to be of concern when the Research Plan is fully implemented.
- **Presorting** (sorting before observer sampling) problems have increased with the inception of the VIP and other management measures; this has placed an additional burden on observers and has resulted in frequent negative interactions between observers and crew.
- **Filing of Affidavits and Developing Enforcement Cases** involve cooperation among observers, program staff, enforcement officers, and General Counsel attorneys. Staff cutbacks, which have been particularly severe in the Observer Program, are making this work extremely difficult. In addition, observers are often reluctant to file affidavits for fear of reprisal from vessel crews (or from contractors who are manipulated by vessels and plant operators). Even though we do not expect the staffing problem to be addressed satisfactorily in the near future, we agreed to take the following steps to address this concern:
  - Enforcement officers have recently begun to participate in observer training courses. This will continue, and training in preparation of evidentiary materials will be emphasized.
  - We will set up a system to track affidavits and enforcement actions in progress. We plan to report numbers of investigations in progress by category at NPFMC meetings.

- If resources are available, a NMFS enforcement agent will be assigned to work at the observer program office in Seattle. This individual would be available to participate in training and briefing sessions, and assist observers in preparing affidavits.

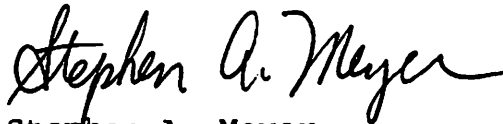
We agreed to meet on a quarterly basis to track process on these issues and address other Observer Program/compliance issues as they arise.

Please feel free to contact us if you have questions on any of the issues raised in this letter. We will be available to attend a meeting of the Council's Enforcement Committee at the next NPFMC meeting, or at an earlier date.

Sincerely,



William A. Karp, Ph.D.  
Task Leader, Observer Program

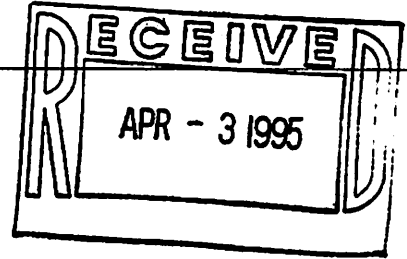


Stephen A. Meyer  
Special-Agent-in Charge  
Alaska Enforcement Division

cc Steven Pennoyer  
William Aron  
Captain William Anderson  
Richard Marasco  
Susan Auer  
Ronald J. Berg  
Susan Salveson  
Jane DiCosimo



cc cov



March 29, 1995

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

Re: North Pacific Groundfish Fisheries Observer Program

Dear Mr. Lauber:

As Risk Manager for UniSea, Inc. and Dutch Harbor Seafoods, Ltd., I am in full support of the views concerning the insurance requirements for the observer program as expressed by Mr. Jerry Nelson, Chair of the Insurance Technical Committee.

Contractors are obligated to provide workers' compensation for their observers as employees. Contractors operate in several jurisdictions. Requiring employers' liability or workers' compensation coverage for all jurisdictions should be a standard.

Contractors have direct control over the activities of the observers and they are responsible for providing their employees with safety training. Liability for injuries or illnesses of observers must remain with the Contractors.

The hold harmless agreement is an appropriate method of assuring the contractor, vessel owners and plant owners that observer claims will be handled in the best interests of the observer.

Consideration of this issue by the Council will be appreciated.

Sincerely,  
UNISEA, INC.

A handwritten signature in cursive script, appearing to read "Steve C. Price".

Steve C. Price, ARM, AIC  
Risk Manager

April 19, 1995

**NORTH PACIFIC FISHERIES RESEARCH PLAN FEE COLLECTION SYSTEM**  
**National Marine Fisheries Service**

Agenda Item C-6(a): Status report on user fee program implementation.

**A. FEE COLLECTION SYSTEM**

The North Pacific Fisheries Research Plan (Research Plan) authorizes NMFS to assess up to a two percent fee on the exvessel value of halibut, groundfish and king and Tanner crab taken in Federally managed fisheries off Alaska. Effective January 1, 1995, Research Plan processors reporting production in these fisheries are responsible for the associated Research Plan fee assessments. The first bimonthly fee assessment bills were issued to Research Plan processors on March 10, 1995, payments being due 30 days later, April 10.

Calculation of Fee Assessments

Effective January 1, 1995, certain Research Plan processors were required to have a Federal processor permit. Permitted processors were assessed a Research Plan fee based on three factors: 1) round-weight pounds of fish (product) reported, 2) standard exvessel price by species, harvest area, gear type, and season, and 3) fee percentage.

1) Industry Reports: For groundfish, the round-weight pounds were derived from NMFS weekly production reports (wpr) and ADF&G fish tickets submitted by Research Plan processors. For crab, the ADF&G Daily Shellfish Catch by Vessel (Crab Weekly Production Report) submitted by Research Plan processors provided the pounds used to calculate the fee assessment. Considering the additional use of these existing reports to calculate a fee assessment, it is imperative that reports are submitted on time and that entries are complete, accurate, clear, and legible. Incomplete, inaccurate, and illegible information can result in billing errors.

2) 1995 Standard Exvessel Prices: as published in the Federal Register at 59 FR 61556, December 1, 1994.

3) 1995 Fee Percentage: 2%

For groundfish

NMFS shoreside wpr (processor portion)	1%
ADF&G fish tickets (vessel portion)	1%

NMFS mothership wpr (processor portion)	1%
ADF&G fish tickets (vessel portion)	1%

NMFS catcher/processor wpr	2%
----------------------------	----

1995 Processor Credits and Vessel Exemptions

During the first year of the Research Plan, vessels and processors required to have observer coverage will pay observer contractors directly for this service in addition to a processor being billed a fee assessment. To avoid a "double payment" situation, processors may reduce the processor's portion of their payment by the amount they have paid directly for 1995 observer coverage as required by Research Plan regulations. The fee assessment to a processor does not include a vessel portion for fish delivered by vessels that are required to have observer coverage under Research Plan regulations (e.g. groundfish catcher vessels  $\geq$  60 ft and crab catcher vessels delivering Chionocetes tanneri, C. angulatus, and Lithodes couesi). The processor is billed only for the processor's portion of the fee in these instances.

Permitted Research Plan processors that receive bills may claim credit for 1995 observer coverage that they have paid directly. For any particular billing period, this credit is fishery-specific and cannot exceed the 1995 cumulative processor's portion of the fee. Any unused credit verified by NMFS can be applied to the next billing period. Required documentation MUST be submitted to the NMFS Observer Program for credit application to a processor's account. This consists of a processor providing documentation of paid observer coverage and observer contractors providing Observer Coverage Payment Receipt Forms. Delay or failure to provide this documentation will result in late charges being assessed and the credit not being applied to a bill until the next billing period.

Billing Period 1 Summary

Fee assessment bills were issued March 10, 1995 to 161 Research Plan processors. The total amount billed was \$4,010,986 (\$1,723,388 for groundfish, \$2,287,598 for crab). As of April 19, \$2,383,046 in payments has been received (59.4% of total amount billed), \$384,329 has been claimed in credits for paid observer coverage (9.6% of total amount billed), and \$114,505 has been disputed (2.9% of total amount billed). An outstanding balance of \$1,129,105 remains (28.2% of total). See the attachments for more detail by fishery.

Billing Period 2, March-April, 1995

The second bimonthly fee assessment bills are scheduled to be issued May 20, 1995. These bills will reflect new catch information from March and April, any revised catch information from January and February, and payments, credits, and disputes received from the first billing. Whereas the first bills were for groundfish and crab only, halibut fee assessments will be included in the second bill (halibut fishery opening March 15, 1995).

## B. 1996 ANNUAL RESEARCH PLAN SPECIFICATION PROCESS

The Observer Oversight Committee (OOC) will meet in late May or early June to review Research Plan reports and budget documents provided by NMFS and ADF&G. The OOC will provide input to the Council on the proposed 1996 Research Plan specifications. The specifications include: standard exvessel prices of Research Plan species, total exvessel value of Research Plan fisheries, observer coverage levels, embarkment/disembarkment ports, and the fee percentage.

**North Pacific Fisheries Research Plan Fee Assessment  
For Period 1-95 as of 4/19/95**

<b>Financial Summary</b>				
	Ground Fish	Crab	Halibut	Totals
Number of Processors	125	44	0	169
Dollar Amount Billed	\$ 1,723,387.69	\$ 2,287,598.08	0.00	\$ 4,010,985.77
Average	\$ 13,787.10	\$ 51,990.87	0.00	\$ 23,733.64
<b>Total Count</b>	<b>63</b>	<b>25</b>	<b>0</b>	<b>88</b>
Payments Received	\$ 639,574.16	\$ 1,743,471.80	0.00	\$ 2,383,045.96
Average	\$ 10,151.97	\$ 69,738.87	0.00	\$ 27,080.07
<b>Total Count</b>	<b>63</b>	<b>13</b>	<b>0</b>	<b>76</b>
Applied Observer Credit	\$ 325,216.71	\$ 59,112.41	0.00	\$ 384,329.12
Average	\$ 5,162.17	\$ 4,547.11	0.00	\$ 5,056.96
<b>Total Count</b>	<b>17</b>	<b>8</b>	<b>0</b>	<b>25</b>
Disputes Claimed	\$ 42,290.40	\$ 72,215.21	0.00	\$ 114,505.61
Average	\$ 2,487.67	\$ 9,026.90	0.00	\$ 4,580.22
<b>Total Credit Received</b>	<b>\$ 1,007,081.27</b>	<b>\$ 1,874,799.42</b>	<b>0.00</b>	<b>\$ 2,881,880.69</b>
<b>Total Unpaid Balance</b>	<b>\$ 716,306.42</b>	<b>\$ 412,798.66</b>	<b>0.00</b>	<b>\$ 1,129,105.08</b>

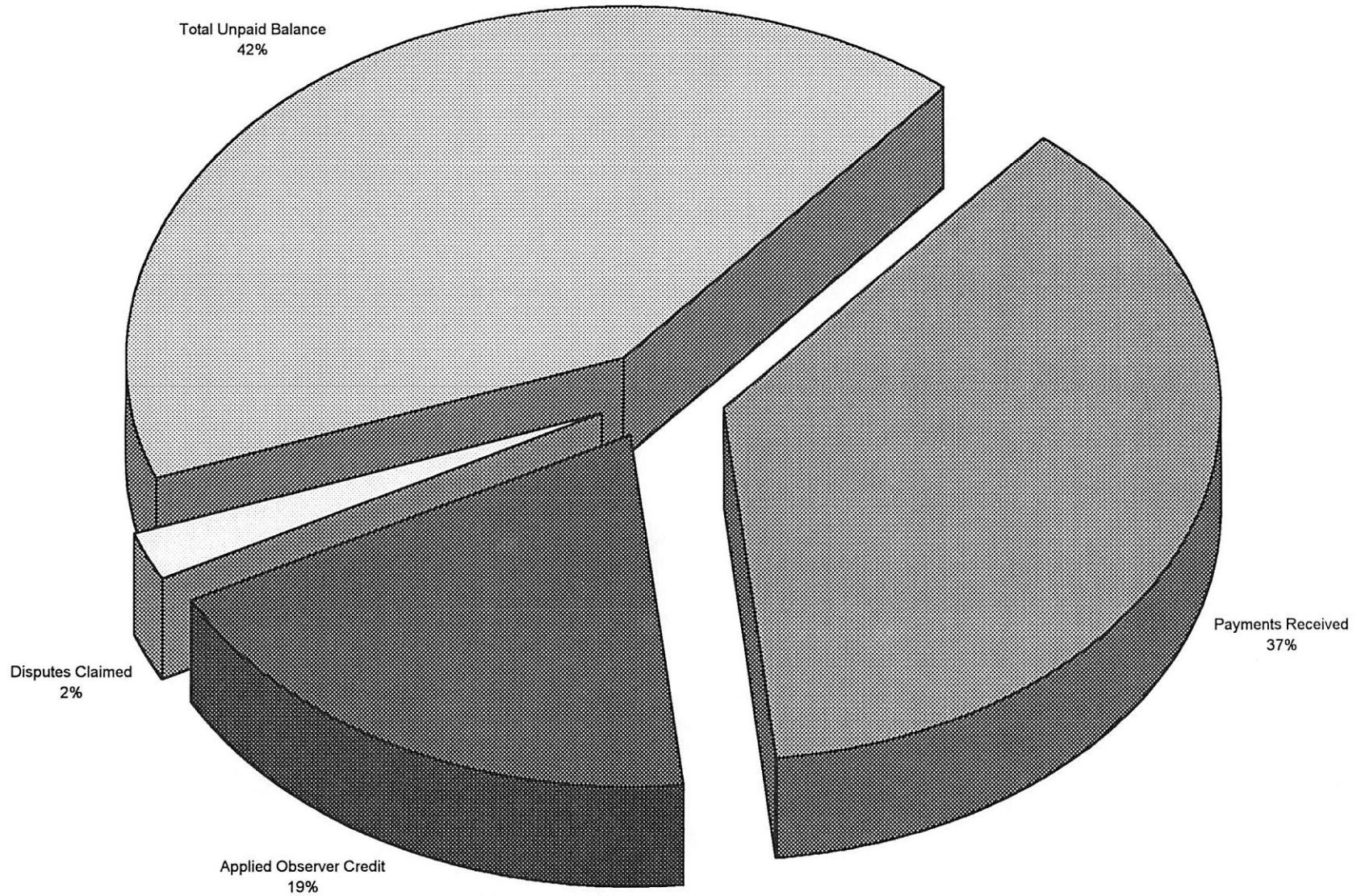
See  
Below

<b>Count Summary</b>			
Total Billings	Total Single FC	Total Multi FC	Total Permitted
161	153	8	420

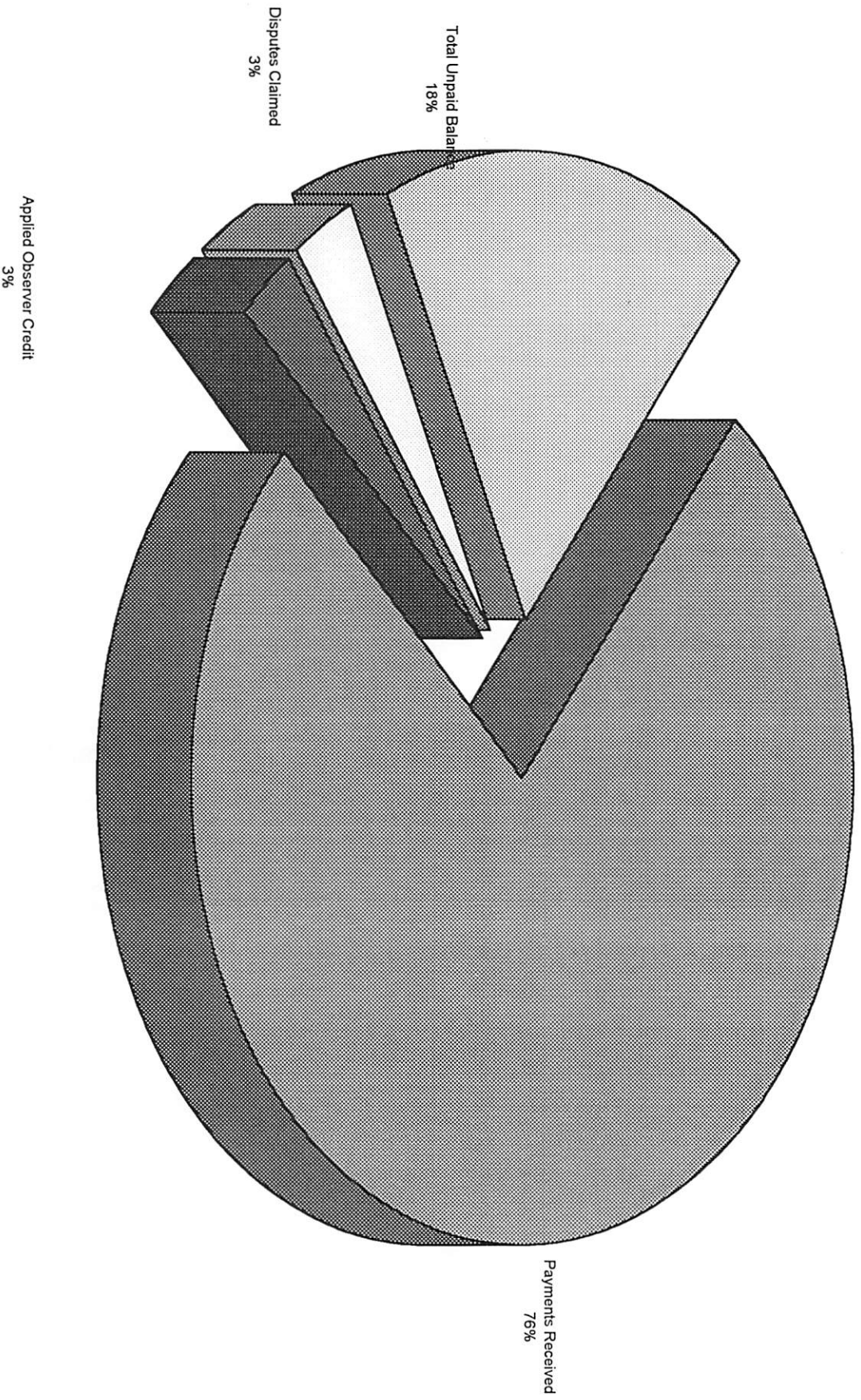
**Real Average \$ 24,912.96**



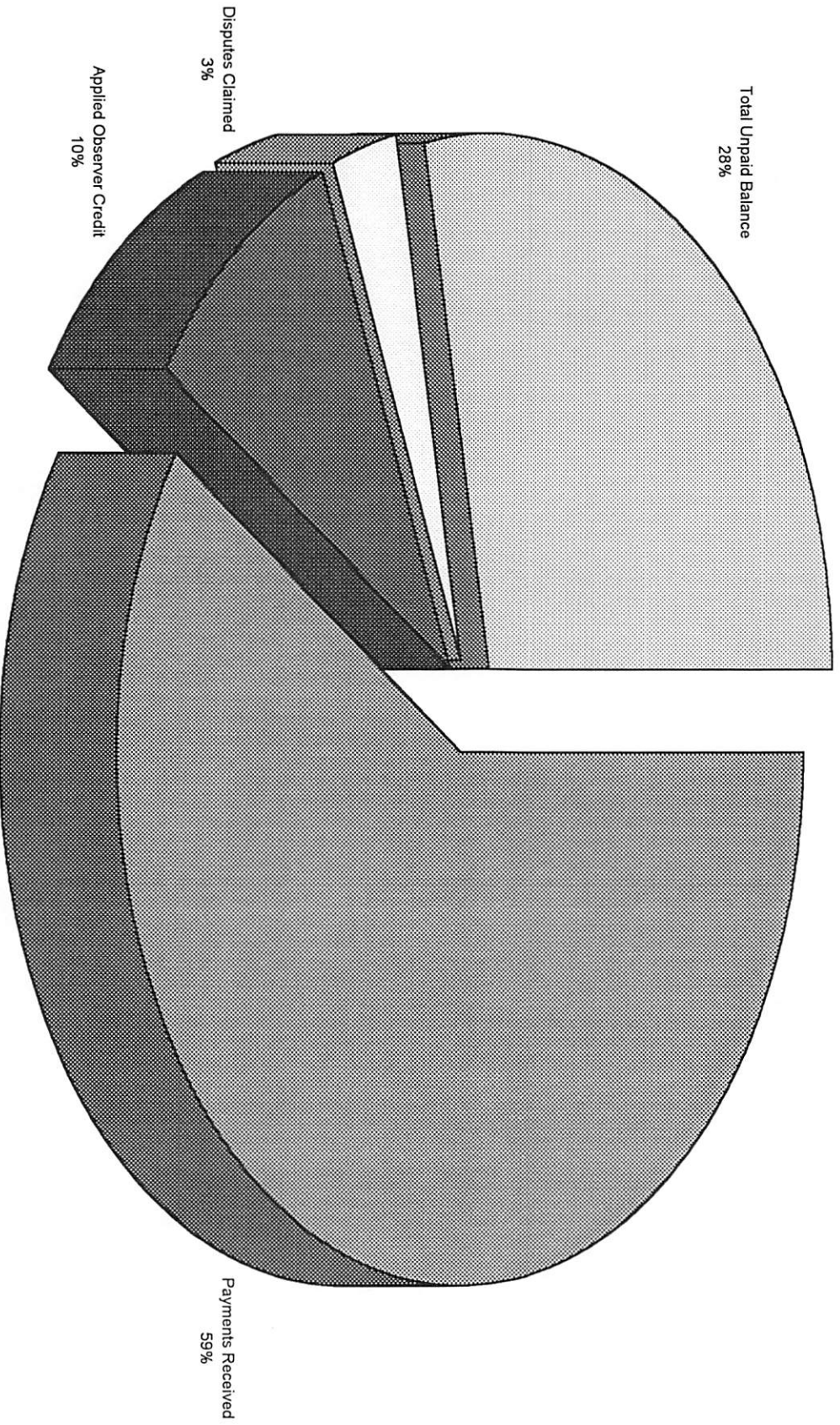
North Pacific Fisheries Research Plan  
Billing Period: 1-95 (Jan-Feb)  
Ground Fish Processors



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



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



*Joe Terry*

**NORTH PACIFIC FISHERIES OBSERVER (RESEARCH) PLAN:  
PRELIMINARY COST AND EXVESSEL VALUE PROJECTIONS FOR 1996**

**April 22, 1995**

VERY PRELIMINARY PROJECTIONS FOR 1996

1. Projection of Recoverable Research Plan Costs for 1996 (millions)

1.1 Agency costs

Observer Programs

Alaska Fisheries Science Center	\$ 2.1
ADF&G	\$ 0.5
Total	\$ 2.6

Fee Collection Programs

\$ 0.3

(Alaska Regional Office, Alaska Enforcement Office, Alaska General Counsel, Western Administrative Services Center)

Total agency costs \$ 2.9

1.2 Observer Contractor Costs (12 months of observer coverage)

Groundfish	\$ 6.2
Shellfish	\$ 3.0
Halibut	\$ 0.0
Total	\$ 9.2

1.3 Total recoverable costs \$12.1

2. Recoverable costs net of Observer Fund balance and other funds

Total recoverable costs	\$12.1
- Fund Balance at end of 1995	\$ 0.0
- Other Funding for 1996	\$ 2.6
= Net recoverable costs	\$ 9.5

The \$2.6 million of other funding is \$2.1 million from NMFS and \$0.5 from ADF&G for the groundfish and crab observer programs, respectively.

3. Exvessel value

Groundfish	\$435
Shellfish	\$200
Halibut	\$ 72
Total	\$707

4. Nonpayment rate on fee liability 5 percent

5. Fee percentage:

$$[100 \times (\$12.1 - \$0 - \$2.6) / \$707] / (1 - 0.05) = 1.41\%$$

With an Exvessel value of \$707 and a nonpayment rate of 5%, a fee of 2% would generate \$13.4 million. Therefore, net recoverable costs could increase by \$3.9 million (13.4 - 9.5) within the 2% fee limit.

Table 1 Cost and Exvessel value projections for 1995 and 1996.

Fishery	Observer months		Observer cost*		Exvessel value (millions \$)		Observer fees **		Observer costs/fees	
	1995	1996	1995	1996	1995	1996	1995	1996	1995	1996
Groundfish			\$6,200,000	\$6,200,000	\$ 435	\$ 435	\$ 8,700,000	\$ 8,700,000	0.71	0.71
Halibut	NA	NA			\$ 80	\$ 72	\$ 1,840,000	\$ 1,840,000	NA	NA
Shellfish										
Norton Sound	1	4	\$ 7,050	\$ 28,200	\$ 0.7	\$ 0.7	\$ 14,000	\$ 14,000	0.50	2.01
Dutch Harbor	31	41	\$ 218,550	\$ 289,050	\$ 6.0	\$ 6.0	\$ 120,000	\$ 120,000	1.82	2.41
St. Matt/Prib.	6.8	7.9	\$ 47,940	\$ 55,695	\$ 26.5	\$ 22.0	\$ 530,000	\$ 440,000	0.09	0.13
Bristol Bay	No commercial fishery									
Adak red	19	19	\$ 133,950	\$ 133,950	\$ 2.7	\$ 2.7	\$ 54,000	\$ 54,000	2.48	2.48
Adak brown	74	210	\$ 521,700	\$1,480,500	\$ 20.0	\$ 20.0	\$ 400,000	\$ 400,000	1.30	3.70
C. bairdi	25	25	\$ 176,250	\$ 176,250	\$ 30.0	\$ 30.0	\$ 600,000	\$ 600,000	0.29	0.29
C. opilio	47.6	49	\$ 335,580	\$ 345,450	\$186.2	\$120.0	\$ 3,724,000	\$ 2,400,000	0.09	0.14
C. tanneri/L. cousei	44	68	\$ 310,200	\$ 479,400	\$ 2.2	\$ 2.2	\$ 44,000	\$ 44,000	7.05	10.90
Scallops	5	54	\$ 35,250	\$ 380,700	\$ 0.6	\$ 7.2	\$ 12,000	\$ 144,000	2.94	2.64
Shellfish sub-total	248	424	\$1,751,220	\$2,988,495	\$274.3	\$203.6	\$ 5,486,000	\$ 4,072,000	0.32	0.73
Grand total	248	424	\$7,951,220	\$9,188,495	\$801.3	\$730.6	\$16,026,000	\$14,612,000	0.50	0.63

\* Crab observer costs at \$235 per day times 30 days = \$7,050/month

\*\* Fees at 2%

Pribilof floater processors same as St. Matthew fishery

L. cousei vessels same as C. tanneri

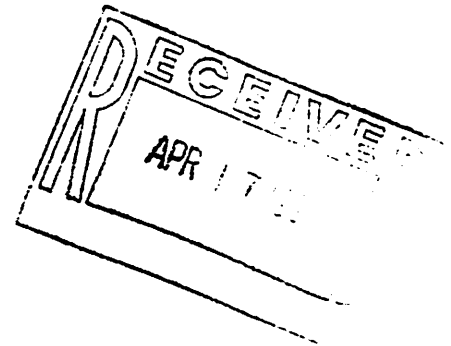
There are 29,200 estimated groundfish observer days in 1995 and 1996; at a cost of \$212 per day.

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April 10, 1995



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

Re: North Pacific Groundfish Fisheries Observer Program

Dear Mr. Lauber:

I am informed that the Council plans to meet this week to discuss the Request For Proposals for the revised fisheries observer program. I recognize that my comments may reach you too late to be useful, but I do want to add my voice to those who have expressed concern to you regarding the proposed requirements for insurance.

I have practiced maritime law for twenty years in Seattle. Most of my work during the last five years has involved insurance defense of Jones Act personal injury claims filed by seamen working aboard fishing vessels and floating processors operating in Alaskan and international waters. My work in the litigation involving the sinking of the ALEUTIAN ENTERPRISE and many other cases has underlined the importance not only of enhanced attention to safety in a very hazardous industry but also the need for adequate insurance to protect against all risks of loss.

One of the members of the Insurance Technical Committee has been kind enough to provide me a copy of a letter addressed to you dated March 24, 1995, in which committee members and other interested persons proposed that broad insurance coverage be required for participants in the observer program and that hold harmless language in favor of vessel or plant owners be required as well. I believe these proposals make sense.

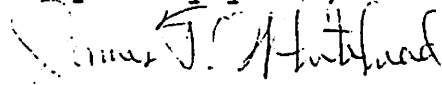
As you no doubt know, the law regarding the status of observers is inconsistent from jurisdiction to jurisdiction. Adequate insurance coverage and provision for indemnification is an important protection for all involved parties, particularly in view of the uncertainty caused by the current state of the law.



Mr. Richard B. Lauber  
April 10, 1995  
Page 2

Thank you for your consideration.

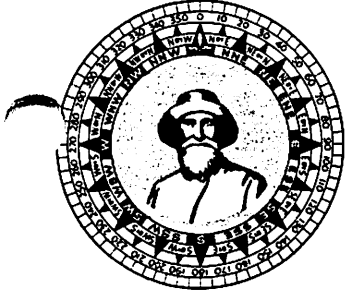
Very truly yours,



James F. Whitehead

JFW:amf

cc: Mr. Jerry Nelson  
Ms. Jeanne Matejovsky



# ALASKA PACIFIC SEAFOODS

DIVISION OF NORTH PACIFIC PROCESSORS, INC.

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

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

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

COMMENTS FROM JOHN SEVIER, ALASKA PACIFIC SEAFOODS

TO THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: 2% FEE PROGRAM - OBSERVER PROGRAM

APRIL 1995

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

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

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

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

*Processors of Quality Alaska Seafoods*

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

Thank you for the opportunity to raise these issues.