

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



ESTIMATED TIME  
8 HOURS

DATE: November 20, 1995

SUBJECT: Observer Program

**ACTION REQUIRED**

Receive staff reports, Observer Oversight Committee (OOC) report, and make final decision on whether to proceed with Research (fee) Plan or other alternative.

**BACKGROUND**

In April 1995 the North Pacific Fisheries Research Plan (fee plan) was put on hold by the Council pending resolution of several areas of concern. Fees were continued through 1995, and action was taken to ensure that existing observer requirements remain in place for the 1996 fishing year. The Council's OOC met prior to the September Council meeting and formulated a report to the Council. At the September meeting, the Council also heard staff reports and substantial public testimony, which included an alternative to the Research Plan utilizing a third party, umbrella organization. The Council felt that this alternative needed further development and consideration before a commitment was made to the current Research Plan.

In the limited time available since the September meeting, this development has focused on a third party pay-as-you-go program, as opposed to some form of 'blended' approach (using a third party organization while retaining the fee system). Item C-5(a) is a summary of tasking and responsibilities envisioned under such a system; it identifies those tasks and responsibilities which would be retained by NMFS and which would fall to the third party, umbrella organization (referred to as 'Prime Contractor') and the observer contracting companies. This document was developed by staff with input from the OOC meeting held on October 26-27 in Seattle. Item C-5(b), prepared by NMFS, contains a much more detailed examination of these tasks and responsibilities.

After reaching consensus on the basic structure of this system, the OOC then attempted to summarize the advantages and disadvantages of this system relative to the Research Plan, in the context of the major issue areas which have been identified to date. Their report is included as Item C-5(c) and will be presented by OOC Chair Chris Blackburn.

Item C-5(d) is a copy of the discussion paper from September which addresses the concerns previously identified with the Research Plan, and offers alternative solutions to those concerns. Attached to that item is the report from the September OOC meeting which focused on Research Plan issues. This is provided in the event the Council wishes to revisit specific issues with regard to the Research Plan. Implementation of the Research Plan is still possible for 1997, barring major modifications. If the Council chooses the third party, umbrella alternative, further development will be necessary; but the alternative may also be doable by 1997, under the pay-as-you-go scenario.

Item C-5(e) contains recent comments received on the observer program issue.

**AN ALTERNATIVE TO THE RESEARCH PLAN: THIRD-PARTY INTERFACE TO FACILITATE  
INDUSTRY REQUESTS AND PAYMENT FOR OBSERVER SERVICES**

A third party organization would be selected to provide specified contractual functions of the NMFS groundfish observer program in a manner that provides an "arms-length" relationship between persons requiring observer coverage and companies that provide observer services. The Alaska Department of Fish and Game may develop a similar arrangement to provide shellfish observers. Only one organization would be selected to provide this service (hereafter referred to as "the Prime Contractor") and act as the coordinator of business relationships (i.e., subcontracts) with competing companies providing observer services (hereafter referred to as "subcontractors"). A single Prime Contractor also could best organize all scheduling for observer services and minimize the potentially negative competitive effects that could occur if more than one contractor (and associated arrangements with subcontractors) existed. Responsibilities of the Prime Contractor would include:

- Procurement and management of subcontracts with companies providing observer services;
- Assurance that NMFS observer and observer contractor standards are met;
- Oversight of observer deployment and provision of specified groundfish observer sampling and/or safety equipment;
- Collection of payment for observer services directly from vessel and processor owners;
- Payment to subcontractors for observer services; and
- Assurance that timely and accurate observer data is submitted to NMFS consistent with applicable Federal or State regulations governing this activity.

NMFS would maintain functions necessary for the management of observer data, including the debriefing process. Briefing and training of observers by outside organizations (e.g., OTC) may be authorized at the discretion of the management agencies.

**To accomplish the purpose of an agreement between NMFS and the Prime Contractor, the Prime Contractor would:**

- a. provide qualified observers including minorities and women.
- b. maintain an incentive program to retain an experienced observer corps; [for purposes of this document a 6:4 target ratio is proposed of experienced observers (persons serving as observers for more than two deployments) to new observers (persons serving as observers for two or less deployments). This target ratio as well as criteria for defining "experienced" observers is subject to change pending the input of the OOC and the Council].
- c. arrange the scheduling for observer services with industry and ensure that deployment and logistical support are provided to place observers aboard fishing vessels and in or on both shoreside and floating processors;
- d. maintain contact with vessels and processors to provide coverage and maintain a record of all communications with the vessel or processor.
- e. provide NMFS various cost reports.
- f. provide groundfish observers with all gear necessary to complete an observer's assigned deployment; a proposed list of required gear will be provided by NMFS.
- g. ensure that qualified observers are provided by initiating and maintaining subcontracts with companies providing observers. These subcontracts shall be reviewed and approved by NMFS

and include the following provisions for which the Prime Contractor and subcontractor are jointly responsible:

1. maintain an "arms-length" relationship between subcontractors and vessel and processor owners who are required to obtain observer coverage, this avoiding potential conflict of interest.
2. submit to NMFS a list of individuals to be deployed as groundfish observers or observer candidates prior to the beginning of a training or briefing session at the schedule dictated by the NMFS groundfish Observer Program Office. Individual observers or observer candidates shall meet the observer qualification, certification, and training requirements set out in the NMFS groundfish Observer Manual.
3. supply alternate observer candidates if one or more observers (A) are rejected by the Government, (B) fail to successfully complete observer training or briefing, (C) are injured and must be replaced, or (D) resign prior to completion of duties, and be capable of meeting unanticipated needs on short notice.
4. provide the Government with notification that the observer physical exam requirement has been met prior to training or briefing, and maintain updated physical exams for prior observers.
5. provide compensation (monetary and/or non-monetary) and adequate insurance for each observer during all days an observer is under contract.
6. provide observer coverage to vessels and processors at the direction of the Prime Contractor, while abiding by all groundfish conflict of interest standards.
7. make all logistical arrangements for successfully and efficiently deploying observers.
8. 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 Prime Contractor and NMFS.
9. monitor observer performance to ensure satisfactory execution of duties and conformance with NMFS conduct and conflict of interest standards.
10. ensure that observers complete an in-cruise data review when required.
11. complete a NMFS-specified quality review of the observer data prior to the start of groundfish observer debriefing; make appropriate arrangements to meet groundfish observer program scheduling requirements.
12. 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 Prime Contractor/subcontractor 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.
13. maintain a detailed cost accounting of each observer trip and all allowable expenses charged to the Prime Contractor. Trip-by-trip cost data shall be provided to the Prime Contractor within 30 calendar days of the completion of each observer field deployment.

14. submit or update logistics reports of groundfish observer status on the NMFS logistics ORACLE database.
- h. develop and maintain communications (at times this shall be daily) between Government program personnel and Prime Contractor and subcontractor administrative personnel to ensure all tasks listed above are successfully carried out. The Prime Contractor shall keep the Government apprised of any problems experienced relating to the operation of the program and deployment of observers. Communications require e-mail connectivity through the Internet.
- i. develop criteria for the technical evaluation and selection of subcontractors providing observer services; and
- j. delineate a total quality assurance plan for performance under this contract.

**The responsibilities of the Government (NMFS) are to:**

- a. oversee the contract and the Prime Contractor;
- b. develop and provide the Prime Contractor/subcontractors with observer work requirements, sampling methodology, and data collection requirements.
- c. conduct groundfish certification training and recertification briefings for all observers and notify the Prime Contractor of training and briefing schedules;
- d. provide the Prime Contractor/subcontractors with guidelines for quality review of observer data prior to groundfish observer debriefing and instructions for entry or transfer of electronic files of observer deployment data to NMFS.
- e. conduct in-cruise reviews of observer work performance and data at Kodiak or Dutch Harbor field stations.
- f. conduct observer debriefing.
- g. conduct periodic evaluations of Prime Contractor performance, and provide the Prime Contractor with results and recommendations for improvement.

**THIRD-PARTY INTERFACE TO FACILITATE INDUSTRY REQUESTS  
AND PAYMENT FOR OBSERVER SERVICES**

**An Alternative to the North Pacific Fisheries Research Plan  
Requested by the North Pacific Fishery Management Council**

At its September 1995 meeting, the North Pacific Fishery Management Council (Council) requested that an alternative to the Research Plan be developed. The actual motion by Mr. Mace that was adopted by the Council for staff development of an alternative to the Research Plan is as follows:

I move that the Council request the Pacific States Marine Fisheries Commission (PSMFC), or other appropriate agency, to submit an alternative research proposal in addition to the status quo and the NMFS (Research) Plan, for consideration and final action at the December Council meeting. This proposal will include, among other provisions, an administrative procedures framework, analysis of funding options, bonding requirements, uniform salary schedules, and insurance provisions.

The Council's motion suggests that more than one organization may be interested in providing third-party programmatic functions that have been carried out in the past by management agencies. As a result, NMFS probably will need to develop a Request for Proposals (RFP) that would be distributed to organizations interested in competitively bidding for this service. At this time, NMFS only can provide guidance on the proposed functions of a third party organization and the associated specifications for competitive bids to provide these functions. Specific bid proposals would need to be developed by interested organizations. These proposals would be evaluated under the Federal procurement process prior to awarding a contract to the organization that best meets the needs and intent of a long-term observer program.

The Council's motion did not delineate specific alternatives that it wished staff to develop and assess, although it made clear that it expected an alternative to the Research Plan be developed and assessed prior to its December 1995 meeting. The current Research Plan required several years to develop and implement. Any alternative program that attempts to address the issues that gave rise to the Research Plan may take a similar amount of time to develop and implement, depending on the level of complexity needed to meet various Council, industry, special interest group, and management agency needs.

At this time, only one alternative to the Research Plan is developed for Council consideration that is based on a third party organization providing specified functions and funded by a "pay-as-you-go" mechanism rather than a user fee concept as implemented under the Research Plan. This approach was taken for several reasons. First, legal and policy issues associated with contracting with a third-party organization must be identified and resolved before this arrangement is incorporated as an integral component of the day-to-day operation of the observer programs. Similarly, the option of a funding mechanism based on a "pay-as-you-go" concept must be developed sufficiently to assess whether this option can be designed to adequately address the problems that currently threaten the integrity and quality of the observer data necessary to manage the North Pacific fisheries. Once these assessments are completed, the Council may be in a position to consider other alternatives to its current Research Plan that blend components of the pay-as-you-go alternative with a fee-based funding mechanism authorized under section 313 of the Magnuson Act. If the Council wished to pursue this approach, numerous options exist for a "blended" funding mechanism that would require further Council guidance and staff time to develop and assess.

Second, the short time available to staff to develop and assess an alternative to the Research Plan and the expressed desire to have such a program implemented by 1997 suggests that the alternative program should be as simple as possible to allow a timely effective date. A "pay-as-you-go" funding mechanism without the complications of a revised fee-based program probably provides the best hope for timely implementation of an alternative to the Council's current Research Plan.

#### The Alternative to the Research Plan:

A third party organization would be selected to provide specified contractual functions of the NMFS groundfish and ADF&G shellfish observer programs in a manner that provides an "arms-length" relationship between persons requiring observer coverage and companies that provide observer services. Only one organization would be selected to provide this service (hereafter referred to as "the Contractor") and act as the coordinator of business relationships (i.e., subcontracts) with competing companies providing observer services (hereafter referred to as "subcontractors"). A single Contractor also could best organize all scheduling for observer services and minimize the potentially negative competitive effects that could occur if more than one Contractor (and associated arrangements with subcontractors) existed. Responsibilities of the Contractor would include:

- Procurement and management of subcontracts with companies providing observer services;
- Assurance that NMFS/ADF&G observer and observer contractor standards are met;
- Oversight of observer deployment and provision of specified groundfish observer sampling and/or safety equipment;
- Collection of payment for observer services directly from vessel and processor owners;
- Payment to subcontractors for observer services; and
- Assurance that timely and accurate observer data is submitted to NMFS or ADF&G consistent with applicable Federal or State regulations governing this activity.

NMFS and ADF&G would maintain functions necessary for the management of observer data, including the debriefing process. Briefing and training of observers by outside organizations (e.g., OTC) may be authorized at the discretion of the management agencies.

For purposes of developing this alternative, staff have assumed that the Contractor would provide observers for NMFS and ADF&G observer programs under the same agreement or contractual arrangement. However, no statutory or other directive currently exists outside the Research Plan that would prevent the development of separate and different infrastructures for the NMFS groundfish and ADF&G shellfish observer programs to better meet an agency's resource management needs.

Two options have been preliminarily identified by General Counsel, Alaska Region, to establish a working agreement with a third-party organization. The first option would be a "Joint Project Agreement". This approach does not involve a competitive RFP process to select the third party. Rather, NMFS would develop a set of objective criteria for selecting the third party organization and select an organization based on those criteria as well as a demonstration that the selected organization has a mutual interest in becoming a partner in the joint project agreement. This

process probably is the easiest to implement from the perspective of NMFS. However, a joint project agreement could be challenged by other organizations interested in providing services. If this occurs, program implementation could be delayed significantly.

The second option would not predispose management agencies to any particular organization to provide third-party services and involves a competitive procurement action. This seems to be the option envisioned by Council. Furthermore, public testimony before the Council, as well as discussions at the September 1995 OOC, indicate that more than one organization may be interested in providing interface services between the management agencies, industry, companies providing observer services, and observers themselves. As a result, an RFP would need to be developed in parallel with rulemaking to authorize third party involvement in providing specified programmatic functions. Actual selection of a Contractor may be delayed until rulemaking is approved to authorize such a program. Nonetheless, this approach may be preferred given the apparent interest and capability of more than one organization to fulfill the functions envisioned by the third party structure.

**DRAFT GUIDANCE AND SPECIFICATIONS FOR A THIRD-PARTY ORGANIZATION TO  
PROVIDE SPECIFIED PROGRAMMATIC FUNCTIONS OF THE  
GROUNDFISH AND CRAB OBSERVER PROGRAMS**

The Government anticipates award of one contract resulting from a solicitation process. The Contractor shall furnish the necessary personnel, material, equipment, services, and facilities (except as otherwise specified), to carry out the functions described below.

**1. INTRODUCTION**

Industry-funded observer programs have been developed by management agencies for the Alaska groundfish and shellfish fisheries. These observer programs provide the data necessary for the management, conservation and scientific understanding of the Alaska groundfish and shellfish 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 quality data required to manage the groundfish and shellfish 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 Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA) and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) (FMPs). The FMPs 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 Fishery Management Plan for the Commercial King and Tanner Crab Fisheries of the Bering Sea and Aleutian Islands (Crab FMP). 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.

Problems with the current observer programs have been identified. 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.

One option to address these problems would be to enter into a contract with a third party organization that would serve as an interface between vessel and processor owners who are required to obtain observer coverage and companies that provide observer services. Observers would continue to be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries and living marine resources. Vessel and processor owners would be required to obtain observers from the Contractor, as well as pay the Contractor directly for the cost of observers. The Contractor would arrange for observers through subcontracts with companies providing observer services.

In addition to the mandatory observer requirements set out in Federal regulations governing the groundfish fisheries (50 CFR parts 672 and 675) and Alaska State regulations governing the shellfish fisheries (AS 16.05.005 and AS 16.05.251), 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 NMFS groundfish observer program 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 AND RESPONSIBILITIES**

The purpose of this contract is to provide NMFS and ADF&G the quality observer data necessary to manage the Alaska groundfish and shellfish fisheries and the living marine resources harvested and impacted by those fisheries. The Contractor will collect payment for observer services from vessel and processor owners requesting such service and will fulfill these requests through subcontractual arrangements with companies providing observer services. Costs incurred by the Contractor to fulfill these and other functions listed below will be set out in the bid proposal submitted to NMFS in response to the RFP. These costs will be passed on to industry through a surcharge to the cost of observer services.

**To accomplish the purpose of the contract, the Contractor shall:**

- a. provide qualified observers including minorities and women.
- b. maintain an incentive program to retain an experienced observer corps; [for purposes of this document a 6:4 target ratio is proposed of experienced observers (persons serving as observers for more than two deployments) to new observers (persons serving as observers for two or less deployments). This target ratio as well as criteria for defining

"experienced" observers is subject to change pending the input of the OOC and the Council].

- c. arrange the scheduling for observer services with industry and ensure that deployment and logistical support are provided to place observers aboard fishing vessels and in or on both shoreside and floating processors;
- d. maintain contact with vessels and processors to provide coverage and maintain a record of all communications with the vessel or processor.
- e. provide NMFS and ADF&G various cost reports.
- f. provide groundfish and crab observers with all gear necessary to complete an observer's assigned deployment; a proposed list of required gear is set out in Appendix 1.
- g. initiate and maintain subcontracts with companies providing observers. These subcontracts shall be reviewed and approved by NMFS and include the following provisions for which the Contractor and subcontractor are jointly responsible:
  - submit to NMFS [or ADF&G] a list of individuals to be deployed as groundfish [or crab] observers or observer candidates prior to the beginning of a training or briefing session at the schedule dictated by the NMFS groundfish [or ADF&G crab] observer program office. Individual observers or observer candidates shall meet the observer qualification, certification, and training requirements set out in the NMFS groundfish Observer Manual [or the ADF&G Observer Manual for Alaska Crab Processors].
  - 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.
  - provide the Government with notification that the observer physical exam requirement has been met prior to training or briefing, and maintain updated physical exams for prior observers.
  - provide compensation (monetary and/or non-monetary) and adequate insurance for each observer during all days an observer is under contract.
  - provide observer coverage to vessels and processors at the direction of the Contractor, while abiding by all groundfish and crab conflict of interest standards.
  - make all logistical arrangements for successfully and efficiently deploying observers.
  - 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 Contractor and NMFS.

- monitor observer performance to ensure satisfactory execution of duties and conformance with NMFS or ADF&G conduct and conflict of interest standards.
  - ensure that observers complete an in-cruise data review when required.
  - complete a NMFS-specified 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.
  - 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/subcontractor 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.
  - maintain a detailed cost accounting of each observer trip and all allowable expenses charged to the Contractor. Trip-by-trip cost data shall be provided to the Contractor within 30 calendar days of the completion of each observer field deployment.
  - submit or update logistics reports of groundfish and crab observer status on the NMFS logistics ORACLE database.
- h. develop and maintain communications (at times this shall be daily) between Government program personnel and Contractor and subcontractor 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 e-mail connectivity through the Internet.
- i. develop criteria for the technical evaluation and selection of subcontractors providing observer services; and
- j. delineate a total quality assurance plan for performance under this contract.

**The responsibilities of the Government (NMFS and/or ADF&G) are to:**

- a. oversee the contract and the Contractor;
- b. develop and provide the Contractor/subcontractors with observer work requirements, sampling methodology, and data collection requirements.
- c. 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.
- d. provide the Contractor/subcontractors with guidelines for quality review of observer data prior to groundfish observer debriefing and instructions for entry or transfer of electronic files of observer deployment data to NMFS.

- e. conduct in-cruise reviews of observer work performance and data at Kodiak or Dutch Harbor field stations.
- f. conduct observer debriefing.
- g. conduct periodic evaluations of Contractor performance, and provide the Contractor with results and recommendations for improvement.

The Contractor, NMFS, and ADF&G will coordinate closely to meet the demands of the Alaska groundfish and shellfish management regimes, and to provide for other critical elements such as observer safety.

#### **4. SCOPE OF WORK**

This work requires supplying qualified observers through subcontracts with companies providing observer services 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.

A strong link exists between the quality of the final product, the observer 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. Quality data 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. Section 3 of this statement lists Contractor and Agency responsibilities to be met.

For the sake of clarity this guide for expected responsibilities of a third party organization 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 2.3 million metric tons of various groundfish species annually. In 1994 over 1800 vessels harvested groundfish.

Although the duration 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 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 NMFS groundfish observer program, the appropriate levels of observer coverage will be established in regulations at 50 CFR part 672 and 675. The Director of the Alaska Region (Regional Director), NMFS, may increase or decrease the observer coverage requirements for the groundfish 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 set out at 50 CFR 677.10.

## 7. CRITICAL FACTORS

**Subcontracts to provide observer services.** The Contractor shall issue subcontracts with companies that provide observer in a manner necessary to meet required observer levels. Elements that must be included these subcontracts are listed in section 3.

### Observer Qualifications, Recruiting, and Hiring

Academically, observer candidates shall have a bachelor's or higher degree from an accredited university with a major in fisheries, wildlife biology, or a related field of biology. Candidates should have a minimum of 30 semester hours or equivalent in applicable biological sciences, and

should also have at least two undergraduate courses in math and statistics, (one each). Formal course work utilizing personal computers is also desirable and may be required in the future. If sufficient numbers of candidates meeting these educational prerequisites are not available, the Contractor/subcontractor 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. The minimum mathematics and statistics program prerequisite is 5 semester hours. If sufficient numbers of individuals with any of the above qualifications are not available, the Contractor/subcontractor may seek approval from NMFS to hire individuals with other relevant experience or training.

Experience is an important consideration, especially when enough candidates do not meet the preferred academic qualifications. Other relevant experience and training should be given strong consideration in this case. 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/subcontractor 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.

A list of individuals to be hired, and their respective qualifications, shall be submitted to NMFS for approval at least 2 working days prior to the beginning of the scheduled observer certification training or briefing session. The Contractor/subcontractors should, however, gain approval for candidates as early as possible, allowing enough time to replace those NMFS does not approve.

***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 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 and the standards of fitness needed to be an observer. The Contractor/subcontractor shall provide a standardized description of these concerns to the examining physician. All physicians who evaluate an

observer candidate's physical fitness must indicate they are aware of the nature of the work and the fitness standards and have considered this while administering the physical. Physicians shall be required to sign the standardized description. The Contractor/subcontractors shall maintain records of physical examinations, and make them available to NMFS upon request.

Upon request, NMFS may consider and grant a waiver for certain conditions not passed in an individual physical. The Contractor/subcontractors shall submit the form used for physical examinations as part of the proposal, with NMFS final approval upon contract award.

NMFS requires that the Contractor/subcontractors 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. The Contractor/subcontractors shall provide NMFS notification that the physical exam requirement has been met prior to training or briefing. NMFS will grant exceptions to this requirement on a case-by-case basis should there be extenuating circumstances, although physicals must then be completed 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. 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/subcontractors to consider the screening tests administered early during training, including basic math and algebra, computer skills, and health/physical fitness. 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 and climb up a ladder. Observer candidates who do not maintain an acceptable standard of conduct during training shall not be certified.

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 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. The Contractor is 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 its 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** The Contractor/subcontractors shall terminate observers who fail to complete certification training successfully, abide by established conduct and conflict of interest standards or whose work is determined by NMFS to be unsatisfactory (resulting in suspended certification or decertification). Each observer receives a NMFS certificate acknowledging successful completion of the observer training program. Observers also agree, in writing, 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. 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/subcontractors shall ensure that a potential observer 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. Salaries and any additional incentives (including items other than direct monetary compensation) proposed by the Contractor will be considered as part of the total observer compensation package and shall address all compensation from the time an observer begins training through the time the observer completes debriefing. How well this package addresses the need for reliable observers will be evaluated.

**Point of Hire** Where used in these guidelines, point of hire for groundfish observers is the training or briefing center closest to the observers' residence, regardless of where the observer actually receives his/her training or briefing. Currently, the point of hire for groundfish observers residing in Alaska is Anchorage, Alaska, and the point of hire for groundfish observers residing in the continental United States is Seattle, Washington. The point of hire for shellfish observers is always Anchorage.

The Contractor/subcontractors shall make every effort to ensure that the point of hire is the location where the observer receives training or briefing. However, in cases where the point of hire differs from the actual training/briefing site, travel costs between point of hire will be reimbursable only when prior approval is obtained, in writing (including Facsimile or e-mail) from the Contractor.



[note to reviewers: NMFS is currently seeking advice from sources of industry (including subcontractors, observers, and other training centers) regarding the point of hire issue.]

**Observer Logistics** The Contractor/subcontractors 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/subcontractor 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 the Contractor/subcontractors 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/subcontractors. 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 be limited to a maximum deployment period of 90 days unless NMFS approves an extended trip.

The Contractor shall ensure that observers have agency specified sampling gear as well as safety gear, rain gear, boots, and gloves appropriate for observer work. NMFS and ADF&G will provide specific guidance on the types and quantities of gear to be provided (see Appendix 1 for preliminary NMFS guidance on gear to be provided to groundfish observers).

**Vessel Coverage** The Contractor shall provide required observer coverage for all vessels and processors. The Contractor shall provide the level of observer coverage requested as prescribed by NMFS and outlined in regulations at 50 CFR parts 672 and 675. NMFS will establish any changes to these coverage levels and work with the Contractor to provide adequate notice of any such change.

Working with vessels and processors to meet the observer coverage requirements will perhaps be the most challenging aspect of a Contractor's operation. The Contractor is 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. Proposals will be evaluated on the basis of the prospective Contractor's ability 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/subcontractors 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. The Contractor 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 the Contractor 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/subcontractors' 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.

Insurance A package of insurance coverage should be carried by the Contractor/subcontractor which covers all possible situations and protects against exposure the three parties involved: observers, contractors, and vessel owners. Such a package shall include the following:

- Maritime Liability to cover 'seamens' claims under the Jones Act and General Maritime Law;
  - Coverage under the U.S. Longshore and Harbor Workers Act.
  - States Worker's Compensation as required;
  - Contractual General Liability;
  - Employee Related Practices;
- (\$1 million minimum for Jones Act liability and U.S.L.&H.).

Preferred additional coverage would include:

- Personal Property;
- Employee related practices;

- Waiver of Subrogation in favor of vessel or plant owner, and Additional Insured status for vessel or plant owners on liability coverage;
- Hold Harmless wording in favor of vessel or plant owners included in contractual liability coverage.

**Data and Data Reports** In-season data shall be submitted to NMFS 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 observer. Based on this evaluation, NMFS will determine whether the work performed was satisfactory or unsatisfactory. Individuals whose performance is unsatisfactory shall be decertified and cannot 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 NMFS debriefing process ensures the data are complete and comprehensive before departure of the observer. Prior to NMFS debriefing, the Contractor/subcontractors 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/subcontractors 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/subcontractors data quality review must be approved by NMFS. The data quality review is considered an important task 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 the Contractor/subcontractors.

The Contractor/subcontractors 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. The Contractor shall be responsible

for developing an effective means of communicating necessary logistics information and fishery notices to observers at sea and in shoreside facilities. The Contractor 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/subcontractors shall be delivered to NMFS within 6 hours of receipt.

Although the Contractor cannot enforce safety rules, regulations, and statutes, the Contractor 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. The Contractor shall keep NMFS apprised of any problems experienced relating to program operations and observer deployment.

The Contractor shall provide NMFS current listings of observer assignments, deployment plans and schedules. At a minimum this information shall be provided to NMFS weekly.

**Logistics and Cost Reports** The Contractor/subcontractors shall maintain and submit to NMFS the reports defined below.

- copy of the contracts with companies providing observer services.
- weekly logistics report.
- observer deployment cost reports.
- observer personnel data sheets.
- Annual reports, including evaluation reports on all subcontractors.

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

**Quality assurance Plan:** The Contractor will be providing a host of services, including 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. The Contractor shall, therefore, submit a total quality assurance plan, addressing each aspect of the proposed performance. The plan 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 BSAI KING AND TANNER CRAB FISHERIES**

Although ADF&G is responsible for the management 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 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 Shellfish Observer Field Manual.

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 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. The Contractor 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.

The training, sampling and work requirements, vessel assignments, debriefing, and data management for the crab Observer Program will be provided by ADF&G for NMFS. Like the groundfish program, the crab Observer Program requires the Contractor 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 and Contractor requirements, procedures, and qualifications are summarized in the current Shellfish Observer Field Manual.

## 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 Shellfish Observer Field Manual under "Observer Training Requirements".

The Contractor shall meet the requirements specified in the current Shellfish Observer Field Manual, specifically, provide ADF&G in Dutch Harbor with transcripts, resumes, other work history documents, and proof of a completed physical no less than 14 days prior to training. Qualification documents received after this 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. Observers will undergo a safety training similar to that of the groundfish training program. As with the groundfish Observer Program, Contractor/subcontractors 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. The Contractor/subcontractors shall be responsible for this cost. The current approved shellfish observer training facility is the University of Alaska Observer Training Center, Anchorage, AK. The Contractor/subcontractors shall arrange for up to four observer training classes each year. Classes currently require 14 days, but may change in the future.

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. The Contractor/subcontractors 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 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 Shellfish Observer Field Manual.

*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. The Contractor 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 ADF&G. 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* NMFS will delegate the responsibility for oversight of observer vessel assignments to ADF&G.

*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 program.

*Data and Data Reports* ADF&G does not require the Contractor/subcontractors to complete a data quality review of the observer data before debriefing. All data are turned into ADF&G

directly by the observer. As with the groundfish Observer Program, all data are confidential and the property of the Government.

Debriefing Debriefing must be scheduled by the Contractor/subcontractor 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 program 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.

Observer Gear The Contractor shall provide observers with the sampling and safety gear and equipment as specified in the current Shellfish Observer Field Manual. The Contractor/subcontractors 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**

A detailed account of the Contractor's and ADF&G's responsibilities can be found in the Shellfish Observer Field Manual.



APPENDIX 1. List of gear to be provided to groundfish observers. Appendix 1.2 provides the model number and cost of specific sampling gear, including reference material.

No. of Items	Circle New or Used	Item Description	No. of Items	Circle New or Used	Item Description
___	N/U	baskets, 2 - 4	___	N/U	calculator
___		basket lid	___	N/U	clipboards, 2
___		rope, 20 ft.	___		shipping label
___		lubricant oil	___	N/U	50 or 100 kg scale,
___		scouring powder	___		serial no. _____
___		sponge, 2	___	N/U	12 kg scale,
___		length measuring board	___		serial no. _____
___		plastic length-freq strip, 2	___	N/U	2 kg scale, serial no. _____
___		plastic data sheets, 3	___	N/U	scale hooks, 3
___	N/U	measuring tape reel, 15m or 30m	___	N/U	survival suit
___	N/U	fish gaff	___	N/U	strobe light
___		plastic bags, 10	___		life vest & whistle
___		zip-top salmon snout bags, 5	___		hardhat and chinstrap
___		scale envelopes, 30	___		

CARDBOARD BOX WITH THE FOLLOWING:

___		pencils, No. 2 yellow, ~ 3	___	N/U	flashlight
___		drawing pencils, 3	___		extra batteries, 4
___		mechanical pencil	___	N/U	knife
___		mechanical pencil leads, 1 tube	___	N/U	forceps, 1
___		pens, black, ~ 4	___	N/U	scalpel handles, 2
___		pencil leads, 1 tube	___		scalpel blades, 10
___		eraser stick	___	N/U	thumbcounter
___		block eraser	___		2 m tape measure
___		hole reinforcements and tabs	___		ear plugs 3 pr.
___		ruler	___		3 vials for sab. tags & oto.
___		thumbtacks & paperclips	___		looseleaf rings, 3
___		rubber bands	___		

ISSUED PUBLICATIONS:

___		sampling manual	___		ADF&G area maps
___		logbook	___	N/U	Eschmeyer, fish guide
___		binder of data forms	___		Species I.D. guide
___		wallet folder for long forms	___	N/U	Marine mammal guide
___		Gov't envelopes (3)	___		

**SPECIAL PROJECT EQUIPMENT**

**STOMACH SAMPLING:** Buckets, bags, etc. are issued by the stomach lab and these items should be returned to that lab when debriefing.

**CRAB PROJECT:**

- \_\_\_ dividers, crab meas.
- \_\_\_ plastic crab meas. form

**OTOLITH/SCALE COLLECTION:**

- \_\_\_ otolith vials, 200, 100 per box
- \_\_\_ vial block, 1
- \_\_\_ plastic otolith form
- \_\_\_ cod knife
- \_\_\_ forceps (1 pr.)

**FISH COLLECTION:**

- \_\_\_ various plastic bags, manila and waterproof tags

**OPTIONAL EQUIPMENT**

**CATCHER BOAT OBSERVERS:**

- \_\_\_ N/U mustang suit
- \_\_\_ N/U knee pads
- \_\_\_ leg wrap bands

**LOONGLINE OBSERVERS:**

- \_\_\_ N/U mustang suit
- \_\_\_ thumbcounters, 3 more
- \_\_\_ protective eyewear

**PLANT OBSERVERS:**

- \_\_\_ survey tape (for marking totes)

**WOC COASTAL HAKE OBSERVERS:**

- \_\_\_ Miller & Lea, ID book

**OPTIONAL:**

- \_\_\_ twine or light cord
  - \_\_\_ AC adaptor for calculator
  - \_\_\_ cellophane tape
  - \_\_\_ pencil sharpener
  - \_\_\_ 1" looseleaf rings
  - \_\_\_ Zak roe knife for sexing fish
  - \_\_\_ Pacific Fishes of Canada, (an ID guide by Hart)
  - \_\_\_ whetstone
-

Vessel Data Forms for 3 months:

Form 1US (for longliners) .....	20
Form 2US .....	20
Form 3US (for trawlers) .....	150
Form 3US (for longliners) .....	150
Species Description Forms	
Rockfish .....	20
Flatfish .....	20
Misc. ....	15
Form 7US .....	45
Form 8US .....	2
Form 9US (obs. collecting age structures) .....	30
Form 9US (other obs.) .....	5
Form 10US .....	10
Form 11US .....	10
Catch message Form A .....	40
Catch Message Form B .....	25
Catch Message Form for Voice (CMV) .....	2
Catch Messages - Daily (CMD) .....	3
Halibut Inseason Form .....	3
Salmon Retention Form .....	15
Plain white paper for misc. fax messages .....	5
Tagged Fish Form .....	3
Marine Debris:	
Observations (of Disposal - all observers) .....	2
Observations (of Catch & Disposal - special project) ...	4
Sighting Survey Form (special project only) .....	2
Port Sampling Forms:	
Form A .....	20
Form 3US .....	25
Form 7US .....	45
Form 9US .....	30
Plant Report Answer Sheets .....	2

Item	Cost	Model	Make
<b>APPENDIX 1</b>			
Partial list of items issued to North Pacific Groundfish Observers. Refer to gear list to determine specific items or quantities for type of deployment. Note that all prices are Government rates, and unit costs vary depending upon quantity ordered. Costs are most recent available (1994/1995), and are subsequent to change upon reordering item.			
Basket, standard sampling	\$ 78.00	BK-55	Sekisui
Basket, with castors and sockets	\$ 93.00	BK-54 / ER43R	Sekisui
Basket Lid	\$ 16.00	#2 Exterior Ply/23.25 X 16.75"	Special Manufacture
Book, Eschmeyer et. al: Fish Guide	\$ 13.95	ISBN 0-395-33188-9	Houghton Mifflin Co., Boston
Book, Hart: Pacific Fishes of Canada	\$ 25.00	ISBN 0-660-10459-8	Bulletin 180, Fisheries Research Board of Canada
Book, Wynne: Marine Mammal Guide*	\$ 15.00	ISBN 0-486-25651-0	University of Alaska, Fairbanks
Book, Miller and Lea: Fish Guide	\$ 5.00	ISBN 0-931876-13-3	University of California
Calculator	\$ 20.00	Elsimate EL-334H or equiv.	Sharp Instruments
Data binder	\$ 25.00	Forms for 1 90-day deployment	
Dividers	\$ 5.10	AL-8	Kemper
Fish gaff	\$ 15.00	18 in	Orange "Fish Pick" or equiv.
Flashlight	\$ 10.00	Roughneck Warrior	Ray-O-Vac
Forceps	\$ 5.00	NP-PK-5	VWR Scientific
Hardhat with chinstrap	\$ 9.20	YB-18988	MSA V-Gard
Knee Pads	\$ 28.05		Proline
Knife, serrated 4.5 in blade	\$ 13.95	MBS-26	Spyderco
Knife, finger grip (for sexing fish)	\$ 1.00	Roe knife	Zak
Laptop Computer (either make/model)	\$ 1,911.00	486SX-25, Model 170	Contura Aero
Laptop Computer	\$ 2,056.00	486 DX2-40, 130 Mb	Gateway Handbook

Lifevest	\$ 30.00	ILV 465 or equiv.	Stearns
Length measuring board	\$ 38.71	04-22045	Special Manufacture
Otolith vials, 100 count per box	\$ 36.28	2-dram polyethelene vials	Special Manufacture
Plastic Forms, length frequency	\$ 6.00	Special Order	Government Printing Office
Plastic Forms, sampling data	\$ 6.00	Special Order	Government Printing Office
Plastic Forms, otolith	\$ 6.00	Special Order	Government Printing Office
Plastic Forms, crab measurement	\$ 6.00	Special Order	Government Printing Office
Protective eyewear	\$ 5.20	ZXT or equivalent	Crews
Anti-Exposure Suit	\$ 406.00	MS 2175	Mustang
Scale, 12.5 kg	\$ 42.00	IN-25	Chatillion
Scale, 2 kg	\$ 38.00	IN-4	Chatillion
Scale, 5 kg	\$ 38.00	IN-10	Chatillion
Scale, 50 kg	\$ 150.00	235-6M	Salter
Scalpel Handle (2ea.)	\$ 12.56	1050 #5	Bard Parker
Strobe	\$ 80.00	F-4	Firefly
Survival suit	\$ 289.00	Universal - 340A0	Stearns
Tape measure, 2 m	\$ 4.11	Any metric tape measure	
Tape measure, 15 m	\$ 19.88	C11-8453-42	Sokkia-Eslon
Tape measure, 30 m	\$ 26.50	C11-8453-44	Sokkia-Eslon
Thumbcounter	\$ 8.50	24100 or equiv. (4 digit) metal	SPARCO

Sheet1

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Basket Lid	\$ 16.00	#2 Exterior Ply/23.25 X 16.75	Special Manufacture	Government Manufacture
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Forceps	\$ 5.00	NP-PK-5	VWR Scientific	
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Plastic Forms, crab measurement	\$ 6.00	Special Order	Government Printing Office	Government Printing Office
Protective eyewear	\$ 5.20	ZXT or equivalent	Crews	
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Scale, 2 kg	\$ 38.00	IN-4	Chatillion	The Scale People
Scale, 5 kg	\$ 38.00	IN-10	Chatillion	The Scale People
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Thumbcounter	\$ 8.50	24100 or equiv. (4 digit) metal	SPARCO	Any office supply store

**REPORT - OBSERVER OVERSIGHT COMMITTEE (OOC)**

October 26-27, 1995

The following persons were in attendance:

OOC members: Chris Blackburn (Chair), Christian Assay, Brian Bigler, Paula Cullenberg, John Iani, Michael Lake, Mandy Merklein, Jerry Nelson, Arni Thompson, Teresa Turk, Gary Westman. Also attending were Dr. Rich Marasco and Phil Rigby as SSC representatives. The meeting was also attended by Council member, Wally Pereyra.

Agency personnel: NPFMC - Clarence Pautzke, Chris Oliver  
NMFS AFSC - Bill Karp, Shannon Fitzgerald, Martin Lofflead, Joe Terry  
NMFS Regional Office - Sue Salveson, Kim Rivera  
NOAA GC - Connie Sathre  
WASC - Don Wadhams (briefly addressed OOC on procurement issues)  
ADF&G - Ken Griffin, Seth Macinko  
PSMFC - Dave Hanson, Al Didier

Public/industry: Brent Paine, Joe Blum, Tracy Mayhew, Chuck Jensen, Thorn Smith, and others not identified.

**EXECUTIVE SUMMARY**

Following are the significant differences, identified by the OOC at its September meeting, between the Research Plan's fee program as developed by the OOC in September and a pay-as-you-go program managed by a third party umbrella group as developed by the OOC at its October meeting.

A "Summary Comparison" table showing each issue or item considered under each of the two options and any identified advantages or disadvantages is included as part of the minutes of this meeting.

Numbers below refer to the numbered box in the attached "Summary Comparison" Table.

**PROGRAM MANAGEMENT**

- a. Procurement & Management: Third party option offers more flexibility. (Box 2)
- b. Equipment and Safety Gear: Future procurements, upgrade and maintenance of observer sampling equipment and safety gear more economical under third party management. (Box 5)
- c. Collection of Vessel Payments: Under third party option vessels will be required to pre-pay estimated observer costs. Under Research Plan, vessels pay at time of delivering, but NMFS and processors responsible for costs and burdens of fee collection. (Box 6)

## DATA COLLECTION

- d. Determination of Coverage Levels: Research Plan, within the limits of the 2% cap, offers the greatest flexibility to set observer coverage levels at statistically suggested levels. Any pay-as-you-go system requires justifying the increased costs to the segment of the fleet where observer coverage levels may be increased. For small vessels, increased observer coverage levels may not be economically feasible under a pay as go plan.

However, under the Research Plan a supplemental pay-as-you-go program may become necessary to meet management needs which may create a "blend" program. (Box 23).

- e. Flexibility to Fine Tune Coverage Levels: More easily done under the Research Plan at this time. Regulatory processes could be developed in the future to add flexibility to a pay-as-you-go program — though justifying increased direct costs to individual vessels may continue to be difficult. NOTE that under either option, the OOC feels the ability to regulate when a vessel takes an observer is necessary. (Box 19).

## COST:

- f. Distributional Costs: Research Plan bases cost on value and volume of fish caught which, compared to the current pay-as-you-go program, increases daily costs for large operations or operations taking high value species and reduces costs for low volume and/or low value species fisheries. All vessels contribute to the program costs under a fee plan.

Under a pay-as-you-go system, all vessels pay similar daily fees irregardless of volume/value of fish delivered. Only those vessels carrying observers pay for observer coverage (Box 21).

- g. Annual Cost: The predictability of annual costs for observer coverage is greater under the third party pay-as-you-go system than under the Research Plan fee system. The OOC felt the cost per day of observers would fluctuate much less year to year than a fee based on exvessel value. (Box 22)

## INTRODUCTION

The meeting was called to order on Thursday morning by Chair, Chris Blackburn, with an overview of the OOC's task, which was seen as basically two-fold: (1) to define and describe how the third party 'umbrella' concept would work, including major tasks, duties, and responsibilities of each party involved (NMFS, third party umbrella organization, and observer contracting companies), and (2) to construct a summary comparison of the Research Plan vs. third party umbrella system, in terms of major issue areas identified, and to summarize the advantages and disadvantages of each. **At this time, the OOC dealt only with a third party pay-as-you-go concept**, feeling that a possible 'blended' system (having a third party umbrella group while retaining a fee program) would need further definition and additional time to flesh out. Therefore, all references to 'third party' system in this report refer to a pay-as-you-go program.



Representatives from the Pacific States Marine Fisheries Commission (PSMFC) were invited and were present to assist the OOC in developing specific tasking under a third party concept, because of their general expertise in administering government contracts and because of their specific expertise with administering observer programs on the west coast (PSMFC was requested to provide advise to the OOC by a formal motion of the Council at the September 1995 meeting). The OOC recognized that eventual award of a third party contract will likely be accomplished through a competitive bid process, with PSMFC being only one of several potential bidders. This perspective was reinforced in an admonishment from Mr. Don Wadhams (WASC division) to the committee. The OOC, in its capacity as a Council advisory body, wishes to note that involvement of PSMFC in these discussions was in no way intended, or expected, to prejudice in any way any future procurement and contracting processes.

The OOC received a letter from industry essentially supporting development of a third party pay-as-you-go system. This letter also provided suggestions on some of the specifics of such a system, and was endorsed by AFTA, UCB, PSPA, NPLA, Wards Cove Packing Company, Unisea, Tyson Seafoods, and Mr. Jerry Nelson.

The OOC also received a letter from the Association of Professional Observers (APO) which contained a proposed observer salary and compensation package (attached). The OOC did not specifically address this letter, or the compensation issue, feeling that an observer compensation package could be similarly developed under either alternative (the Research Plan or Third Party pay-as-you-go) and is not necessarily a critical issue in determining which alternative to pursue. The OOC recognizes that this is a critical issue for whichever alternative is chosen, and will have to be dealt with separately.

### STRUCTURE, FUNCTION, AND TASKING UNDER THIRD PARTY ALTERNATIVE

The first day of the OOC meeting was devoted to resolving the major structure and tasking issues with regard to the third party alternative; i.e., what it looks like and how it works. NMFS staff presented an overview of a discussion paper entitled, "Third Party Interface to Facilitate Industry Requests and Payment for Observer Services." This paper described, from the agency's initial perspective, which duties and responsibilities would fall to the third party contractor (and subcontractors) and which duties and responsibilities would be retained by the government. This paper could be further developed into a draft 'Statement of Work,' to which potential bidders for the third party contract might respond.

Secondly, the OOC discussed a more specific tasking summary prepared by PSMFC which outlined in more detail the actual tasks and responsibilities of each party under a third party umbrella system. This included specific tasking of the government, third party contractor, and observer company subcontractors and provided an excellent starting point for the OOC's subsequent discussions. It is expected that Council and NMFS staff will continue work on these documents to complete a fully developed tasking summary for Council consideration in December.

### ISSUE AREAS - DISCUSSION AND COMPARISON

After arriving at consensus on how a third party pay-as-you-go program would basically work, the OOC attempted to summarize the major tasks involved under either alternative, identify who would be

responsible, and explore any advantages or disadvantages associated with the Research Plan or the third party system. Major issue areas which have recently been identified were treated in the same manner — we attempted to describe how each alternative would deal with the issue, and whether one alternative held an advantage over the other. This exercise took the second day of the meeting and the results are depicted in the attached matrix titled, "SUMMARY COMPARISON OF OBSERVER PROGRAM ALTERNATIVES."

This matrix is intended to capture the primary discussions and findings of the committee. Comparisons are based on the current Research Plan, recognizing that some changes could be made to the Research Plan where relevant. Other specific points raised in these discussions are summarized below:

Selection of third party contractor:

It was pointed out by WASC staff (government procurement and contracting) that there may be no way to prevent the third party umbrella group from actually providing the observers themselves, essentially circumventing any subcontracting to companies providing observers. This scenario would obviously compromise the program, as it would no longer be a 'third party' system, and would take away the arms length relationship currently envisioned under this alternative. It may be that wording in the RFP (must guarantee arms length relationship, for example) would prevent this situation, but the OOC was concerned enough to ask the Council's Executive Director to request a legal opinion from NOAA-GC on this issue. There was also a general question as to what extent the contract between government and the third party umbrella group could stipulate how the subcontracts would be solicited and awarded. For example, could a specific, or minimum, number of subcontractors be stipulated? Could minimum salaries be stipulated? A better understanding is needed of how this 'prime' contract, between the government and the umbrella group, would work and what specific stipulations can be included. The request to NOAA-GC would also ask for clarification of which fisheries could be included under the fee plan. For example, is it only fisheries for which an FMP exists, or could it include non-FMP fisheries in federal waters?

Some concern was also expressed over the fact that, under this alternative, only one organization would be responsible for supplying observers to the industry, even though they may utilize multiple observer contracting companies to do so. In the event of non-performance, or substandard performance, what recourse would the industry and government have to remedy the situation and still have an active observer program. The consensus of the OOC was that, although an immediate remedy may be impossible, the RFP could be reissued to 'force a response' or award the contract to another organization. It is also possible that conditions could be included in the prime contract itself to alleviate these concerns.

Finally, on the issue of selecting the prime contractor, the OOC heard from NMFS that a possible alternative to an open RFP process would be a 'joint project agreement.' Under this scenario, NMFS would establish basic ground rules and select an organization which meets the criteria established, rather than issue a competitive RFP. The OOC was interested in this option for several reasons, including the fact that the timelines for implementation of the third party system could be significantly shortened, and hopes that this option will be explored further.

### Debriefing:

There was discussion of whether the third party umbrella group, or others, should be involved in the debriefing process, for reasons which include potential cost reductions. Allowing someone other than the government to conduct debriefings could give rise to conflict of interest perceptions and data integrity concerns. Although alternatives could be explored in the future, including an elite observer corps to assist in debriefings, the consensus of the OOC is that debriefing should remain an agency function at this time, to be conducted only by NMFS and ADF&G.

### Observer Compensation:

As noted above, the issue of observer salaries/compensation was not directly addressed by the OOC under the assumption that it could be dealt with the same way under either alternative. However, the OOC does recognize the importance of this issue and is concerned with how and when it would get resolved. First is the question of whether minimum salaries should be set, followed by the question of what the minimums should be. Merely requiring a contractor to maintain a given ratio of prior observers does not necessarily solve the general issue of observer compensation. Setting a minimum salary does not entirely solve the issue either, as overall job satisfaction and professionalism are dependent on a variety of factors in addition to base pay. Base pay is only one of these factors. The bottom line at this time is that the OOC does not feel that this issue requires resolution prior to deciding on the basic course of the observer program.

### Number of contracting companies:

Under the current RFP for the Research Plan, three contractors would be selected, leaving out two of the existing five companies. The OOC still feels that this is appropriate if the Council goes with the Research Plan (see September OOC minutes), though NMFS presented in September options for amending the RFP to change this structure. Under the third party alternative, all five existing companies could be utilized, but there is no guarantee that this would occur.

### Review of subcontractor performance:

The OOC feels that under either system there needs to be an explicit review process, and that it should accommodate input from observers and other public and industry.

### Total cost issues:

The OOC's discussion of overall costs boiled down to the fact that there appears to be no significant difference between the two alternatives, but that costs of observer coverage under either program would increase above current costs to accommodate any increases in observer pay. The OOC also expressed concern that there was a greater possibility that the current \$2.2 million budgeted for the observer program would be discontinued as a result of government downsizing, and that government downsizing

may jeopardize the continued ability of the agency to adequately staff the program. Also, it was noted that ADF&G continued financial support for the crab program is uncertain.

Distributional cost:

Distribution of the costs of observer coverage is perhaps the most fundamental difference between the two alternatives. The obvious differences between a fee plan and pay-as-you-go are highlighted in the attached matrix relative to this issue. During the OOC discussions the following points were noted:

- Under the Research Plan, some fisheries, such as midwater pollock, may pay a disproportionately high percentage of overall observer costs, even though that fishery may be the sector with the lowest overall coverage needs. Changes in prices could further redistribute these relative costs.
- Under pay-as-you-go, costs per day of observer coverage will be similar for all vessels/plants.
- Some of the intermediate sized vessels that appear to have high (4-8%) observer costs relative to their gross revenues, may participate in other fisheries which are not accounted for in arriving at this percentage. The percentage is based solely on Research Plan fisheries, and may not reflect revenues from, for example, salmon fisheries.
- Under third party pay-as-you-go, some sectors will continue to pay no costs.
- Uncertainty in fish prices may lead to unpredictability in fee revenues generated under the Research Plan.

## Summary Comparison of Observer Program Alternatives by OOC (10/27/95)

PART I <i>Major Tasks:</i>	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
1 • Overall timing	January 1997 implementation	January 1997 possible, depending on whether additional system development is required.	Neutral
2 • Procurement & management of subcontracts with companies providing observers	NMFS through RFP process (only if Council takes action at December 1995 meeting).	Third Party Contractor (selected through RFP or sole source) selects from NMFS/ADFG certified contractors	Third party more flexible, particularly should non-performance arise during contract period.
3 • Assurance that NMFS/ADFG observer & observer contractor standards are met	NMFS/ADFG	Third Party Contractor	Neutral
4 • Oversight of observer communications, logistics & deployment	NMFS/ADFG/observer company	Third Party Contractor/Subcontractor (umbrella group assigns a subcontractor to a vessel/plant). NMFS/ADFG retain some communication functions.	Neutral
5 • Provide sampling/safety gear	Contractor/subcontractor	Subcontractor	Future procurements, upgrade, and maintenance more economical under third party management
6 • Collection of payments directly from vessels and plants	NMFS via across-the-board fee program	Third Party Contractor via up front payment (could incorporate mechanism for standardized observer cost <u>within</u> major fishery subcomponents).	Pre-payment requirements may impose burden on industry under third party system. Under Research Plan, the fee collection process is very burdensome to processors and NMFS.
7 • Payment to subcontractors for observer services	NMFS	Third Party Contractor pay subcontractor who then pays observer.	Neutral

PART I (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
8 • Submit timely and accurate observer data to NMFS/ADFG	Subcontractor for groundfish (NMFS), observer for crab (ADFG).	Third Party Contractor/Observer	Neutral
9 • Management/Use of Observer Data	NMFS/ADFG	NMFS/ADFG	Neutral
10 • Training/Briefing	NMFS/ADFG/OTC	NMFS/ADFG/OTC	Neutral
11 • Debriefing	NMFS/ADFG	NMFS/ADFG	Neutral
12 • Initial data quality reviews	Contractor	Third party contractor/subcontractor/ADFG	Neutral
<p>PART II</p> <p><i>Major Issue Areas</i></p>			
13 <i>Observer Insurance</i>	Specified insurance minimums included in RFP.	Same minimums specified under this program.	Neutral
14 <i>Observer Compensation (\$)</i>	At this time, no specified salary but overall observer compensation package is key component in evaluating contractor bids. Includes provision for minimum levels of prior observers. <u>Could</u> stipulate minimum or range of salaries.	Includes provision for maintaining minimum level of prior observers; Overall compensation reflected in each subcontractor's bid. <u>Could</u> stipulate minimum or range of salaries.	Neutral - could be done the same under either system.
15 <i>Impacts to Current Contracting Companies</i>	Would utilize 3 contractors; 2 existing companies will cease, under current RFP. Could be modified in future.	Third party contractor would be responsible for selection of certified subcontractors. Could utilize 1, 5, or more.	Third party alternative could provide opportunity for all existing contractors to continue, but does not necessarily guarantee it.

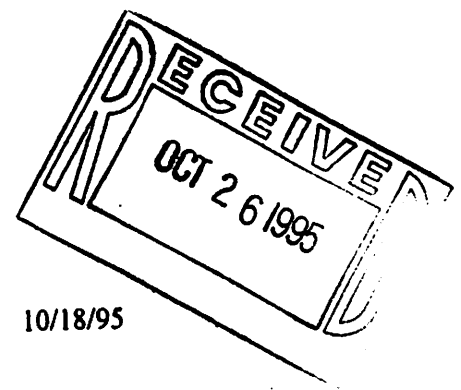
PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
16 <i>Conflict of Interest Concerns</i>	Establishes "arms length" relationship; government is the client, not the fishing operation. Vessel still works directly with one company for at least a year, but NMFS assigns company to vessel. Vessel has no choice.	Establishes "arms length" relationship; third party umbrella organization is the client. Vessel could work with multiple contractors, as assigned by prime contractor.	Neutral - but because vessels may be reassigned for shorter periods, third party system may further diminish conflict of interest problems between vessels and specific contractors (more flexibility with regard to subcontract process); both systems sever direct financial relationship.
17 <i>Review of companies providing observers</i>	Review process built into RFP	Periodic review of third party contractor by NMFS. Review of subcontractor performance by Contractor/NMFS/ ADFG. Perceived enhanced ability to regulate subcontractors.	Remedial action may be quicker/easier under third party system, though third party may be more vulnerable to liability.
18 <i>Determination of Coverage Levels</i>	Annual specification process with OOC, Council & ADF&G. Changes in coverages by fishery or vessel category may be less controversial, however, because it will not directly redistribute costs to fishing operations (within 2% cap).	Coverage levels set in regulations by Council/BOF through regulatory amendment process. Changes will redistribute costs to fishing operations, and thus will be more controversial.	Currently, advantage lies with Research Plan's ability to efficiently redistribute coverage where most appropriate without directly raising costs to specific vessels.
19 <i>Flexibility (annually &amp; in-season) to fine tune coverage levels</i>	There is an annual process to facilitate changes each year. Flexibility to assign coverages in-season (will not directly affect each fishing operation). Research Plan allows for 'fleet coverage' as opposed to vessel coverage. Ability to regulate when a vessel takes its coverage.	Less flexible annually due to regulatory process, though it is expected that a more flexible spec-type process would be incorporated (making it function similar to Research Plan). Little or no <u>in-season</u> flexibility. Need to develop ability to regulate when a vessel takes coverage. Change by Council process will redistribute costs to fishing operations.	Initially, advantage lies with Research Plan; over time, it is expected to be the same, though implementation under third party system may be more difficult due to direct cost implications.

PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
20 <i>Cost Projections (assuming current coverage levels) ★</i>	Industry Cost - \$6.6 million + \$.5 million + \$.3 million = \$7.4 million <u>total cost to industry</u> . (Assumes NMFS would continue to pay \$2.2 million. \$.5 million of ADF&G and \$.3 million in fee collection process would now be paid by industry ). Fee percent would be 1.1%. (Total cost is \$9.6 million)	Industry Cost - \$6.6 million in observer costs, plus third party overhead (@ 8% overhead, <u>total cost to industry would be \$7.1 million</u> ). Assumes NMFS & ADF&G continue to pay \$2.2 and \$.5 million respectively. (Total cost is \$9.8 million)	Neutral
21 <i>Distributional Cost Incidence</i>	All vessels/processors pay across-the-board fee on landings. For large operations, this will result in higher costs than status quo. For mid-size, cost will likely be lower. Supplemental Program would add to these costs.	Cost based on whether an operation is required to carry observer(s). Some operations will continue to pay no observer costs. Some operations may pay as high as 4-8% of their exvessel Research Plan fisheries.	See minutes for discussion points
22 <i>Annual cost issues</i>	Fluctuates annually depending on fish prices, etc.	Could change annually, but operations have knowledge of fixed cost per day.	More certainty in planning under Third Party system
★ Taken from September 25, 1995 NMFS report.			



PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
23 <i>Supplemental Coverage Considerations</i>	2% cap may require additional payments via "pay-as-you-go" program for coverage above and beyond normal data collection. Strictly defining activities covered by fee may keep fee percentage down, but supplemental payments for special programs would increase costs for these participants. Some crab fisheries would be outside Research Plan.	N/A. All required coverage determined by Council/BOF process and borne directly by those required to carry observers.	Under third party system, supplemental program is moot - it does not exist. Third party program guarantees arms length relationship for all coverage. Research Plan would likely require supplemental pay-as-you-go, thereby creating a "blend" program.
24 <i>Budget Review and Oversight</i>	Annual process in place for review of agency costs, observer costs, etc. OOC, then Council review and set fee percentage based on available funds.	Need to establish annual review of costs and audits.	Neutral
25 <i>Cost-reduction Incentives</i>	Flexibility to adjust coverage levels may reduce costs. May be offset by reduced incentives to minimize number of days an observer is retained, though this tendency is addressed in regulations. No market incentives to drive down actual observer costs - this will be in RFP contractual arrangement.	Agency costs continue to be paid by NMFS/ADFG. Specification of coverage levels directly affects costs to industry. Direct business relationship between subcontractor and vessel, which tended to drive costs down, no longer exists, though competitive forces exist in prime contractor/subcontractor relationship. Incentive for vessels (30% coverage) to reduce observer days.	Neutral

Association for Professional Observers (APO)  
P.O. Box 27214  
Seattle, WA 98125-1614



10/18/95

Dear Concerned Citizen,


As you know, the North Pacific Fisheries Management Council (NPFMC) voted 6-5 against implementation of the Research Plan. However, the NPFMC did not outright kill the Research Plan but will hear this plan and variations of the current "pay as you go" system at the December meeting in Anchorage.

At the request of industry and contractors, the Association for Professional Observers (APO) has put together a package of reasonable requests for perusal. This package should be the primary foundation and focus on which to build a competent, dedicated and healthy observer corps. If you or your organization is submitting an alternative observer plan to the NPFMC, we would welcome a copy of that plan by November 15, 1995. In providing us with your ideas we will have adequate time to review your offer and perhaps give thoughtful suggestions on how your plan might satisfy our goals.

Some points we would like you to identify and consider:

- A. How long will your plan take to implement? Observers are on their last gasps of hope for an improved system and continue to be plagued by the inadequacies of the current system.
- B. What will the overall efficiency be of this modified or new plan? Will extra cost incurred serve to offer any safeguards for observers or only a means of siphoning money away from their paychecks?
- C. Will observers have a forum for input into evaluating and facilitating a better program?
- D. Will the overall pressure imposed on contractors and observers decrease with this plan?
- E. Will observers be fairly and adequately compensated for their work as outlined in the package?
- F. What, if any, interim measures are identified for 1996 or the time lag between implementation of your proposed plan?

Thank you for your time and consideration. We hope this package is helpful in incorporating and prioritizing issues within the North Pacific observer program. If you have any questions or suggestions, please contact us at the address listed on the top of this page. We look forward to working with you toward a viable and successful observer program for 1996 and the future.

Sincerely,  
  
Teresa A. Turk  
for the APO

## **PROPOSED OBSERVERS SALARIES & COMPENSATION PACKAGE\***

The Association for Professional Observers (APO) is submitting the following list of compensation and salary requests to all interested companies, state and federal agencies, as well as individuals. If observers are compensated appropriately, data quality and integrity will remain at a high standard. We feel this package represents a fair and minimal criterion for retaining experienced observers while contributing to a more professional attitude and standard among the fishing industry as a whole.

### **1. The System**

- Observers will be placed on boats by a scientific need for data.
- Contractors must be bonded or some other mechanism in place to prevent observers from not being paid for work already performed (e.g. Arctic Observers, Inc.)
- An "arms length" distancing mechanism between contractors and vessel owners must be created.
- NMFS will develop and implement an annual review and evaluation of contractors. This report will be made available to all observers. NMFS will give significant weight from these "report cards" in determining future contracts regarding observers.
- An annual review of this program will be held by the OOC.
- Observers must be included in the long term structure and evaluation of program, contractor and the system as a whole in whatever plan is implemented.
- Contractors will be required to maintain an 80% return rate of prior observers. At least 50% of these priors (40% of total work force) must have successfully completed 3 contracts or more. Any special projects or special contracts must be offered to priors with 3 or more contracts completed. NMFS must approve of these personnel placements and will be given the option of deciding upon personnel.
- NMFS, ADF&G or contractor continues to supply observers with all sampling gear.
- All penalty clauses in observer contracts must be removed by contractor(s). Observers understand there must be a deterrent against observers breaking their contract to take another job.

\* This package is not inclusive of our request and will be modified dependent on the plan submitted for our review.

- Insurance type(s) and level of coverage must be included in observer's contract. Given the harsh working conditions, APO suggest insurance be provided by contractor, NMFS, industry or ADF&G to cover the loss of gear.
- Contractor must provide observer with a signed copy of the contract for her/his records.
- Observer must be allowed at least 5 days after debriefing to turn in receipts for travel expenses and other reimbursable.
- Contractor must pay observer within 30 calendar days of work performed including bonuses.
- If observer decides a boat is unsafe, contractor will report information to NMFS, and observer will be placed on another vessel deemed safe and not dismissed. An observer will not be placed on unsafe vessel without NMFS or USCG inspecting and approving vessel.
- NMFS will develop in cooperation with industry and the APO, a formal means by which a "problem" observer will be removed from that particular vessel.
- Contractors must hold harmless any observer(s) participation in any political or lobbying effort (e.g. APO) and must place these observers in a consistent and fair fashion in relation to other (non-politically active) observers.
- There will be no minority or gender considerations when placing observers on vessels. NMFS and industry must assure or develop a system where fishing companies do not pressure observers or contractors because they do not want a minority or a female on board their vessel.

## 2. Compensation:

- Standardized insurance for all observers regardless of contractor, vessel type or project. This insurance coverage will be inclusive from the time of starting briefing or training until the time of completion of debriefing. This standardized insurance must be approved by the APO and the ITC, and OOC.
- Contractor, NMFS, or ADF&G supplies observers with raingear which includes but is not limited to:
  - A. 1 set of Alaska standard (Helly Hansen, Grunden's) of the correct size rain pants and rain coat in good condition with no holes or tears.
  - B. 1 pair of Alaska standard (X-tra tuf) rain boots of the correct size in good condition free of holes or leaks with clean wool insoles and tread on the bottom of the boot.
  - C. 4 pairs of Alaska standard gloves that fit, are free of holes and are of the observer's choosing.

- Contractor continues to pay for all travel related costs including: excess baggage, transportation to and from airport, hotel or any other costs associated with travel regardless of weather delays, airline strikes or another situation beyond the control of the observer.
- Observer accommodations during the entire contract including training, briefing, and debriefing will be in safe neighborhoods (no YMCA, Rainier Valley or downtown locations of Seattle), clean and of comfortable temperature (60-70F). Each observer will have their own bed with clean linen-no sleeping on the couch or floor. In sum, the accommodations must be consistent with that of a professional biologist operating within the United States.

### 3. Salaries:

- Since observers are prohibited from and unable to take other employment, observers should be compensated at the rate of at least 70% of salary for days briefing, debriefing, training, and down time before deployment. However, this does not include days between boats while stationed in the field. A minimum per diem rate of \$35/day and housing while in Seattle or any other briefing/debriefing location.
- Observers will be paid at the following rates from the day of departing from their briefing/training station until they arrive back at the location of their debriefing.
 

• First contract observers will be paid:	\$ 120/day
• Second and third contract observers will be paid :	\$170/day
• Four or more contracts observers will be paid:	\$ 220/day

Observers remind industry that these salary levels are still quite low. In our presentation to the NPFMC, 12 hours/day was used as the standard when, in fact, observers are working much longer days and are responsible for being on call 24 hours/day.

NORTH PACIFIC FISHERIES RESEARCH PLAN IMPLEMENTATION ISSUES

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

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

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

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

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

1. Data Integrity

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

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

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

## 2. Flexibility

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

## 3. Cost Equity

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

## 4. Cost Containment

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

in observer coverage to monitor compliance.

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

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

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

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

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

approaches to certain problems or aspects of the work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

Attachment 1

RESEARCH PLAN

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

September 6, 1995

Research Plan Projections

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

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

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

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

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

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

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

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

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

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

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

1.	Recoverable Research Plan costs				
1.1	Agency costs				
	Observer Programs				
	Alaska Fisheries Science Center				\$ 2.2
	ADF&G				\$ 0.5
	Total				\$ 2.7
	Fee Collection Programs				\$ 0.3
	(Alaska Regional Office, Alaska Enforcement Office, Alaska General Counsel, Western Administrative Services Center)				
	Total agency costs				\$ 3.0
1.2	Observer contractor costs (12 months of observer coverage)				
		Groundfish	Crab	Halibut	Total
		\$6.2	\$2.6	\$0.0	\$ 8.8
1.3	Total recoverable costs				\$11.8
2.	Recoverable costs net of Observer Fund balance and other funds				
	Total recoverable costs				\$11.8
	- Fund Balance at end of previous year				\$ 0.0
	- Other funding				\$ 2.2
	= Net recoverable costs				\$ 9.6

The \$2.2 million of other funding is from NMFS. About \$1.5 million of this is MMPA money.

3.	Exvessel value:	Groundfish	Crab	Halibut	Total
		\$435	\$204	\$ 72	\$711
4.	Nonpayment rate on fee liability:		5 percent		
5.	Fee percentage:	[100 x (\$11.8 - \$0 - \$2.2) / \$711] / (1 - 0.05) = 1.42%			

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

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

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

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

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

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

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

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

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

Attachment 2

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

September 6, 1995

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

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

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



technical quality and cost effectiveness when procuring Research Plan contractors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

level of observer experience necessary to meet each coverage request .

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

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

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

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

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

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

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

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

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

contracts.

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

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

EXECUTIVE SUMMARY OF RECOMMENDATIONS

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

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

FEE SYSTEM  
GENERAL RECOMMENDATION - FEE SYSTEM

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

RECOMMENDED ELEMENTS OF A FEE SYSTEM

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

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

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

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

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

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

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

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

Observer representatives preferred the minimum salary option.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**COST CONTAINMENT ISSUES**

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

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

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



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

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

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

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

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

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

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

## **PROCESSOR ISSUES**

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

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

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

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

### INTERACTION WITH ADEFG AND BOARD OF FISH

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

### CONTRACTING ISSUES

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

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

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

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

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

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

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

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

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

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

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

#### PSMFC - Potential Involvement

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

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

### DATA INTEGRITY

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

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

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

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

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

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

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

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

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

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

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

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

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

## CONCLUSION

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

### Research Plan

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

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

**Pay-as-you-go**

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

Present for meeting:

**OOO members:**

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

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

**Staff:**

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

**Public and Industry:**

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



## COURAGEOUS SEAFOODS

3510 First Ave N.W.  
Seattle, WA 98107

Phone: (206) 545-9501  
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November 20, 1995

Mr. Chris Oliver  
North Pacific Fishery Management Council  
605 West Fourth Avenue  
Suite 306  
Anchorage, Alaska 99510

Re: Modified Pay-As-You-Go Observer Program

Enclosed is a clean copy of the "Elements of a Modified Pay-As-You-Go Observer Program" that industry representatives circulated at the Observer Oversight Committee ("OOC") meeting in Seattle last month. Although the industry's proposal is referenced in the OOC minutes you prepared, our outline of points was not attached.

As indicated to the OOC, the modified pay-as-you-go plan is supported by a very diverse group of industry representatives, associations and companies. The group will be presenting testimony in favor of such an approach at the December meeting of the Council and would appreciate it if you would include the enclosed document in the materials prepared for the Council's review in December.

Sincerely Yours,

Jerry Nelson  
Courageous Seafoods

Enclosure

ELEMENTS OF A MODIFIED PAY-AS-YOU-GO OBSERVER PROGRAM

As Proposed by Industry to Observer Oversight Committee  
at its Meeting in Seattle October 23-24, 1995

1. Problems with Research Plan: The primary problem with the Research Plan ("RP") is its inability to fund increased levels of observer coverage in certain circumstances (e.g., harvest priority, VIP programs, IFQs, IBQs, etc.). The legislatively mandated 2% cap on RP fee assessments, plus increased costs associated with beefing up the observer compensation package, will prevent the Council/NMFS from responding to increased observer demands already on the horizon without resorting to some sort of "supplemental" program to provide additional coverage levels as will inevitably be necessary. There is also concern that NMFS will reprogram funds the agency currently allocates to administer the observer program -- just as ADF&G has done with its costs under the current research fee proposal -- thereby shifting government costs to industry and decreasing the amount of money available to fund observer coverage.

2. Problems with the Old Pay-As-You-Go Program: The major flaw in the old pay-as-you-go program was the perceived conflict of interest involved when vessels hire their own observers. In addition, the lack of standardized insurance coverage for observers and shrinking compensation levels (the result of competition among contractors to compete on a cost-per-observer-day basis) and the resulting disincentives for observers to sign up for subsequent trips -- thereby diluting the corps of experienced observers -- all lead to potential degradation in data quality and integrity.

3. Objective: Address problems associated with the old pay-as-you-go program without making wholesale changes in the way NMFS has been handling the observer program. (The objective is not to dislodge NMFS or ADF&G from management/oversight of their respective observer programs, but to address the problems identified in paragraph 2 at the lowest possible cost to industry.)

4. Solution: The Council should implement a modified pay-as-you-go observer program. Key elements of the program include:

a. Responsible Agencies. ADF&G (crab) and NMFS (groundfish), maintain their current responsibilities insofar as management of their respective observer programs is concerned;



b. Certification of Contractors. NMFS and ADF&G will certify contractors who are eligible to supply observers for their respective programs. The certification process will include requirements that certified contractors provide specified levels of insurance coverage for observers and a compensation package designed to insure a corps of experienced observers;

c. Framework Coverage Levels. Council (groundfish) and Board of Fish (crab) specify observer coverage levels to be attained by various categories (vessel size, fishery and gear type). In groundfish, the specification process could be part of the December meeting process. Coverage levels will be based on recommendations of the SSC after review of levels necessary to collect scientifically reliable data to manage the various groundfish and/or crab fisheries in the North Pacific;

d. Third Party Contractor. Pacific States Marine Fisheries Commission ("PSMFC") would serve as a go-between between vessels and observer contractors. All payments for observers would be made directly to PSMFC. PSMFC selects contractors to fill the vessel's observer needs and pays the contractor for observer services supplied. PSMFC has the right/obligation to require upfront payment or bonding to insure payment for observers supplied to vessels;

e. Attainment of Coverage Requirements. Vessels remain responsible for meeting annual observer coverage requirements on a fishery-by-fishery basis, but NMFS and ADF&G retain the right to specify that any given vessel will carry an observer on any given trip;

f. All Other Aspects of Observer Program Stay with the Responsible Agency. NMFS and ADF&G remain responsible for observer training, certification, decertification, sampling protocols, data collection procedures, briefing and debriefing, data verification and data assimilation for their respective programs;

g. PSMFC Fees. PSMFC is authorized to charge, on a non-profit basis, up to X% of the observers' costs as a fee to cover PSMFC's costs in performing its responsibilities under this program; and

h. Oversight and Review of Data Collection and Utilization. The Observer Oversight Committee ("OOC") will have a continuing role in reviewing and making recommendations concerning data collection and utilization for management purposes. It is the intent of the OOC to make sure that statistically reliable data is collected and utilized in as cost effective a manner as possible.



The specifics of such a modified pay-as-you-go program are detailed in a memorandum prepared by Council/NMFS staff (attached to Chris Oliver's memorandum of October 13, 1995).

5. Benefits of the Modified Pay-As-You-Go Program.  
The modified pay-as-you-go approach addresses the primary problems with the RP and the old pay-as-you-go plan because it does the following:

a. Provides the Council with flexibility to add observer coverage whenever management requirements dictate (it is more flexible than the RP). Furthermore, it eliminates the need for a supplemental observer program;

b. Establishes an arms-length relationship between vessels and observer contractors -- thereby helping to protect integrity of the data -- without altering the oversight and control that NMFS and ADF&G now exercise over their respective programs;

c. It provides a mechanism for addressing observers' concerns concerning compensation levels, insurance and other issues;

d. It guarantees payment to contractors and observers in the event of default by vessel owners;

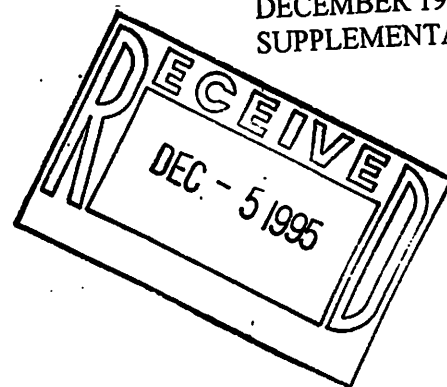
e. It is equity based, with higher costs borne by those vessels/plants that require higher levels of observer coverage -- a true user-based system; and

Submitted By:

Alaska Crab Coalition  
American Factory Trawler Association  
Courageous Seafoods  
Deep Sea Fishermen's Union of the Pacific  
Fishing Vessel Owners' Association  
North Pacific Longline Association  
Pacific Seafood Processors Association  
Trident Seafoods  
Tyson Seafood Group  
Unisea  
United Catcher Boats


 AGENDA C-5  
 DECEMBER 1995  
 SUPPLEMENTAL

December 4, 1995



Clarence G. Pautzke  
 North Pacific Fishery Management Council  
 605 West 4th Ave., Suite 306  
 Anchorage, Alaska 99501-2252

Dear Clarence:

This responds to your letter of November 1, 1995, requesting legal advice regarding contracting and procurement issues under a "third party umbrella" observer system as well as issues related to the North Pacific Fisheries Research Plan. Enclosed please find a legal memorandum from Niel Moeller addressing the contracting questions.

You also requested clarification of what fisheries could be included under the Research Plan. The phrase "fisheries under the jurisdiction of the Council" in section 313 of the Magnuson Fishery Conservation and Management Act can be interpreted two ways. This phrase can be interpreted to include all fisheries within the U.S. exclusive economic zone off Alaska over which the Council has asserted jurisdiction through a fishery management plan (FMP) or other management action, such as the Council's limited management of the northern Pacific halibut fishery under the Northern Pacific Halibut Act. Alternatively, it can be interpreted to include all fisheries within the U.S. exclusive economic zone off Alaska, regardless of whether the Council has exercised that jurisdiction. For example, crab in the Gulf of Alaska (GOA) could be included as a fishery under the jurisdiction of the Council and subject to coverage under the Research Plan, although no crab FMP is in place in the GOA. Both of these interpretations are consistent with the statutory language and legislative history of Section 313. When the North Pacific Fishery Management Council discussed this issue early in the development of the North Pacific Fisheries Research Plan, it decided to include only FMP species and halibut in the Research Plan due to the practical problems associated with collecting fees and deploying observers in non-FMP fisheries.

Sincerely,

Lisa L. Lindeman  
 Alaska Regional Counsel

Enclosure

cc: Margaret F. Hayes  
 Constance J. Sathre  
 Steven Pennoyer




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U.S. DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel, GCNW  
7800 Sand Point Way N. E., BIN C15700  
Seattle, Washington 98115-0070

December 1, 1995

MEMORANDUM FOR: WC33 - Sharon Kent  
FROM: GCNW - Niel Noeller   
SUBJECT: Request for legal review,  
North Pacific Fishery Management Council  
letter to NOAA Regional Counsel

This responds to your request for legal advice regarding procurement issues raised in the referenced letter from the North Pacific Fishery Management Council (Council) to the NOAA Regional Counsel for Alaska, dated November 1, 1995.

The letter asks a number of questions relating to implementation of a 'third party umbrella' observer system for the North Pacific fisheries, including the following:

- Can a prime contractor be required to utilize subcontractors?
- Can a specific number of subcontractors be stipulated?
- Can minimum salaries for observers be stipulated?

The following summary responses and comments address the Council's issues in general terms; further guidance can be provided as the proposal for third party contracting is developed in more specific detail.

1. There appear to be no provisions in applicable procurement law or regulations which would preclude the government from requiring that a prime contractor subcontract a specified portion of the work required under the prime contract. At least one board of contract appeals decision suggests that in certain circumstances the prime contractor will be entitled to an equitable adjustment of the contract price if the government overreaches its rights in ordering the contractor to employ a subcontractor.

Comment: Requiring subcontracting is likely to add to the cost of the contract, by adding additional layers of management, overhead and profit to the government's minimum requirement. Does the Council have a rationale for precluding the prime from providing observers from among its own employees?



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2. Notwithstanding the general policy of promoting free and open competition for subcontracts, the General Accounting Office has at least in some instances upheld the procedure of "directed source" subcontracting, where the government directs the prime contractor to use certain subcontractors. However, if directed source subcontractors are stipulated, the conduct of the procurement must be undertaken in such manner as to insure that all offerors are competing on an equal basis. In addition, as a consequence of stipulating subcontractors, the government may be held to assume responsibility for claims that may arise as a result of a government-specified subcontractor's difficulties in performing the work required under the contract. As an alternative to directed source subcontracting, the government may indirectly influence the prime contractor's selection of subcontractors by establishing prime contractor and subcontractor responsibilities, by requiring government consent to proposed subcontracts, and/or by reviewing prime contractor purchasing systems so as to assure selection of an appropriate subcontractor.

Comment: As noted above, requiring subcontracting will likely increase contract costs by adding subcontractor management, overhead and profit components to the cost of the basic contract requirement. Specifying that the prime use certain subcontractors could enhance such a cost increase by eliminating the element of competition from subcontractor selection.

3. In my view, fisheries observers are service employees for purposes of the Service Contract Act (SCA). Observer services contracts and subcontracts are therefore subject to the SCA's requirement that, absent a collective bargaining agreement, a contractor must pay service employees no less than the wages and fringe benefits found by the Department of Labor (DOL) to prevail in the locality where the services are to be performed or, in the absence of such a wage determination, the current federal minimum wage set forth in the Fair Labor Standards Act.

Comment: Note that it should not be assumed that a DOL wage determination under the SCA will set a contract wage minimum higher than the current federal minimum wage.

### Discussion

#### 1. Can a prime contractor be required to utilize subcontractors?

Prime contractors generally have the primary responsibility for deciding whether to use subcontracts<sup>1</sup> and selecting

<sup>1</sup> The term "subcontract" is broadly defined under Federal Acquisition Regulation (FAR) 44.101 as "any contract ... entered into by a subcontractor to furnish supplies or services for

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subcontractors, though the government may indirectly influence these decisions by establishing prime contractor and subcontractor responsibilities, by requiring government consent to proposed subcontracts, or by reviewing prime contractor purchasing systems so as to assure selection of an appropriate subcontractor.

I am unaware of any provision in applicable procurement law or regulations which preclude the government from requiring that a prime contractor subcontract a specified portion of the work required under the prime contract. However, where the government orders a prime contractor to employ a subcontractor to perform work required under the prime contract and the prime contractor may be entitled to an equitable adjustment of the contract price, together with an extension of the contract performance period if any delay resulted, if the contractor is qualified and had the capability to perform the work itself using its own work force. Mishara Construction Co., Inc., ASBCA Nos. 17957, 18402, 18403, 75-1 BCA ¶ 11,206 (contractor entitled to equitable adjustment for difference between actual cost of doing floor repair and cost it would have incurred doing the work itself, together with time extension for resultant delay).

In addition, subcontractors may not be unreasonably precluded from making direct sales to the government of any supplies or services made or furnished under a contract. FAR 3.503. However, an agreement between the contractor in a contract for acquisition of commercial items<sup>2</sup> and a subcontractor under such contract that restricts sales by such subcontractor to persons other than the contractor does not unreasonably restrict sales to the United States if the agreement does not result in the federal government being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor. 41 U.S.C. § 253g(d).

## 2. Can a specific number of subcontractors be stipulated?

The FAR suggests that subcontracts be awarded in much the same manner as the government awards the prime contract. Reference FAR 44.202-2; see, also, Mr. John H. Jenkins, B-160186 (Nov. 8, 1966) (while statutes relating to contractor selection do not necessarily apply in the case of subcontractors, those laws and related regulations are to be used as guidelines); and

performance of a prime contract or a subcontract."

<sup>2</sup> The term "commercial item" means, inter alia, "services offered and sold competitively, in substantial quantities, in the commercial marketplace based on established catalog prices for specific tasks performed and under standard commercial terms and conditions." 41 U.S.C. § 403(12)(F).

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46 Comp. Gen. 142 (1966). The general practice is to encourage free and open competition for subcontracts in the same manner as in the case of prime contracts.

Notwithstanding the general policy of promoting free and open competition for government subcontracts, the General Accounting Office has upheld the procedure of so-called "directed source" subcontracting. For example, in Matter of: Engineered Systems, Inc., 76-1 CPD ¶ 144, the solicitation issued by the Department of the Air Force, directed that the prime contractor use certain subcontractors. Although GAO ultimately dismissed the protest, it was critical of the government's decision to specify directed source subcontractors. GAO stated that:

Where the contracting agency lists specific subcontractors in the solicitation which the prime contractor must use, it would appear that the Government is taking on a responsibility for difficulties during performance of the prime contract which are occasioned by subcontractor performance problems.

76-1 CPD ¶ 144, at 5 (citing to Franklin E. Penny Co. v. U.S., Ct.Cl. No. 433-73 (October 22, 1975) (government's selection of subcontractor is deemed a warranty by government that selected subcontractor has the ability to do the work contemplated by the contract; delays attributable to such subcontractor's technical problems remain within government's sphere of responsibility).<sup>4</sup>

GAO also expressed concern that the directed subcontracting method of procurement could place certain offerors at a

<sup>3</sup> Compare Matter of National Data Corp., 82-1 CPD ¶ 313, where GAO held that the procuring agency improperly directed the prime contractor to award a subcontract to a company other than the protester. GAO found that the agency action was inconsistent with the "federal norm" requirement for competition to the maximum practicable extent, where the protester was apparently capable of performing the work, and the terms of the prime contract expressly required competition for subcontracts to the maximum practicable extent. Id. at 3.

<sup>4</sup> See Interstate Coatings, Inc. v. U.S., Cl.Ct. No. 34-84C, 32 CCF ¶ 73,208 (1985) (government's specification of supplier may warrant that listed supplier has the ability to do the work contemplated by the contract, but government does not warrant that a government-specified supplier will timely perform within period set by the contract); but, see, Aerodex, Inc. v. U.S., [14 CCF ¶ 83,175] 189 Ct.Cl. 344, 417 F.2d 1361 (1969) (government did breach warranty when specified sole supplier refused to sell required component).

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**competitive disadvantage:**

It appears that a procurement situation such as the one here works to the disadvantage of an offeror which responds candidly and in detail to the RFP by including subcontractor proposals which contain conditions unacceptable to the agency. That is, an offeror which notes the unacceptable subcontractor provisions may be placed in the position of either having to take responsibility for the subcontractors, or else have its proposal considered unacceptable by the contracting agency. On the other hand, an offeror which merely offers to perform the work without exception is in a more favorable position if the agency is willing to consider its proposals acceptable on this basis. Moreover, should difficulties arise during contract performance because of subcontractor problems, such an offeror again would be in an advantageous position since the Government may be held accountable for having directed it to use specified subcontractors.

**Id. at 6.**

As a result of its consideration of potential problems inherent in the directed source subcontracting approach taken in Engineered Systems, GAO suggested to the Secretary of the Air Force that: (1) the need for directed source subcontractors be reviewed prior to the next such procurement; and (2) "if directed source subcontractors are stipulated, the conduct of the procurement must be undertaken in such manner as to insure that all offerors are competing on an equal basis."<sup>5</sup> Id.

Thus, the practice of directed subcontracting may be subject to special scrutiny by GAO and the courts, with respect to possible impermissible restrictions on full and open competition, and with respect to the burden of shared responsibility that the government may assume for claims that arise as a result of a

<sup>5</sup> See, also, Century Construction Co., ENGBCA No. 3440, 75-1 BCA ¶ 11,167, in which the board of contract appeals held that the government improperly rejected a proffered subcontractor. The Board stated:

sole source procurement, except for demonstrated need, is contrary to government procurement policy. Therefore, when a contract requires sole source procurement, the language imposing that requirement, must be clear and unambiguous.

**Id. at 2.**



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government-specified subcontractor's difficulties in performing the work required under the contract.

#### Non-directed source subcontracting

Outside of the unusual case of directed subcontracting, the government's control over a prime contractor's selection of its subcontractors will depend upon the type of prime contract awarded. If the prime contract is a firm, fixed-price contract or a fixed-price contract with economic price adjustment provisions, the prime contractor does not need to obtain the government's consent to a subcontract (FAR 44.201-1(a)), though consent may still be needed for subcontracts resulting from unpriced modifications to those types of contracts.

Where the prime contract is some other type of fixed-price contract, the prime contractor may be required to obtain the government's consent to a subcontract depending upon whether the prime contractor has a purchasing plan that has been approved by the government. If the contractor has an approved purchasing system, it is generally not required to obtain the government's consent to a subcontract. FAR 44.201-1(b). If the prime contractor does not have an approved purchasing plan, consent is needed when the subcontract is: (1) proposed to exceed \$100,000; or (2) one of a number of contracts with a single subcontractor, under a contract for the same or related supplies and services, that in the aggregate are expected to exceed \$100,000. FAR 44.201-1(c).

In addition, the contract may also provide that the contracting officer review and approve a subcontract before it is executed. See FAR 52.244-1 (requiring government contracting officer's written consent before placing subcontracts). When the prime contract is a cost reimbursement or letter contract, the prime contractor is required to obtain consent for a subcontract when the subcontract: (1) is for the fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at in excess of \$10,000, or of any item of facilities; or (2) has experimental, developmental, or research work as one of its purposes. FAR 44.201-2(a).

Similarly, approval is also needed when the prime contractor under a cost reimbursement contract does not have an approved purchasing plan and the prime contractor awards a cost-reimbursement, time and materials, or labor-hours subcontract or a fixed-price subcontract that exceeds either \$25,000 or five percent of the total estimated cost of the prime contract. FAR 44.201-2(b). Even if the prime contractor has an approved purchasing system, government consent may be required for specific subcontracts identified in the subcontracts clause of the contract, which may be subcontracts selected by the contracting officer as needing special surveillance. FAR 44.201-2(c).

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Through the approval process, the contracting officer can exert considerable control over placement of subcontracts, simply by withholding written approval. However, an unreasonable refusal or delay on the part of the contracting officer to approve a subcontract or a subcontractor may entitle the prime contractor to an equitable adjustment of the contract price.<sup>6</sup> Mava Corp. v. U.S., 511 F.2d 548 (1975); see also, J. Lawson Jones Construction Co., Inc., ENGBCA 4363, 86-1 BCA ¶ 18,719. In order to recover, the contractor must demonstrate that the proposed subcontractor was qualified to perform the subcontract work. Appeal of Max Jordan Bauunternehmung, ASBCA 23055, 82-1 BCA ¶ 15,685 (1982).

The Comptroller General has held that the government may limit the award of a subcontract to bidders who are regularly engaged in the furnishing of supplies or the rendition of services of the type desired by the government. 37 Comp. Gen. 196 (1957); see, also, Appeal of Max Jordan Bauunternehmung, supra (government had right to insist that prime contractor use only specified subcontractors to perform certain critical and demanding work). In addition, approval of subcontracts will be withheld from firms listed as debarred, proposed for debarment, or suspended and therefore ineligible to contract with the government. FAR 9-405.

A fundamental restriction imposed by GAO is that a contracting officer cannot approve a subcontract that is not in the best interest of the government. See, e.g., Comp. Gen. B-160186, 11 CCF ¶ 80,778 (Nov. 8, 1966) (NASA contracting officer's approval of prime contractor's award to other than low bidder on subcontract was in government's interest where low bidder lacked requisite experience in elevator maintenance).

Other conditions on subcontracting may also apply, depending on the anticipated dollar value of the prime contract. Under FAR

<sup>6</sup> Under regulations that became effective on October 1, 1995, implementing the Federal Acquisition Streamlining Act of 1994 (FASA), the General Accounting Office will not consider a protest of the award or proposed award of a subcontract except where the agency awarding the prime contract has so requested in writing. 4 C.F.R. § 21.5(h). Previously, GAO considered subcontractor protests only in limited circumstances, such as where the government's active or direct participation in the selection of the subcontractor had the net effect of rejecting or selecting a potential subcontractor or significantly limiting subcontract sources. Matter of National Data Corp., supra, 82-1 CPD ¶ 313, at 2. It remains to be seen whether, notwithstanding the limitation of the new regulation, GAO would assume jurisdiction of a subcontractor protest of a procurement involving active government direction of subcontracting.

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19.702, any contractor receiving a contract for more than \$100,00 shall agree in the contract that small business concerns and small disadvantaged business concerns shall have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. If the prime contract is expected to exceed \$500,000, the apparent successful offeror is required to submit an acceptable subcontracting plan. FAR 19.702(a). The subcontracting plan must include separate percentage goals for using small business concerns and small disadvantaged business concerns as subcontractors and a description of the efforts the offeror will make to ensure that small and disadvantaged businesses will have an equitable opportunity to compete for subcontracts. FAR 19.704.

### 3. Can minimum salaries for observers be stipulated?

FAR Subpart 22.10 prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965 (SCA), as amended (41 U.S.C. 351, et seq.), the applicable provisions of the Fair Labor Standards Act of 1938 (FLSA), as amended (29 U.S.C. 201, et seq.), and related regulations and instructions issued by the Secretary of Labor (Secretary).

Under FAR 22.1002-1, and U.S. Department of Labor (DOL) regulations,<sup>7</sup> federal government service contracts over \$2,500 must contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent federal employee classifications and wage rates. The same requirements also apply to all subcontractors under a government service contract. 29 C.F.R. § 4.114(a).

A "service contract" is any government contract, the principal purpose of which is to furnish services in the United States through the use of service employees. FAR 22.1001. The term "service employee" means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as defined in Part 541 of Title 29, Code of Federal Regulations. FAR 22.1001. FAR 22.1003-5 cites a number of examples illustrating some of the types of services that have been found to be covered by the SCA, including "data collection, processing and analysis services." 29 C.F.R. § 4.130(a) lists additional examples that might be analogous to observer services, including "geological field surveys and testing" and "surveying and mapping services."

The SCA applies to service contracts performed in the United States, and does not apply to contracts performed outside the

<sup>7</sup> 29 C.F.R. § 4.5.

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United States. FAR 22.1003-2. Under FAR 22.1001, "United States," for purposes of implementing the SCA, includes "any State of the United States," and the "Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, et seq.)." The term "outer Continental Shelf" means "all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in section 1301 of [Title 43 U.S.C.], and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control...." (Emphasis supplied.) The term "lands beneath navigable waters" means:

(2) all lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide and seaward to a line three geographical miles distant from the coast line of each . . . State . . . .

43 U.S.C. § 1301(a)(2).

In my view, the authorities cited support finding that the SCA applies throughout the U.S. exclusive economic zone (EEZ); and would therefore apply to observers working aboard fishing vessels operating in the EEZ, as well as to observers working in shoreside processing plants.<sup>8</sup>

As indicated above, for service contracts over \$2,500, to

<sup>8</sup> DOL regulations further clarify the geographical coverage of the SCA. Under 29 C.F.R. § 4.112(a)(2):

a contract which is performed essentially outside the United States, . . . is not covered by the Act. For example, a contract for services to be performed on a vessel operating exclusively or nearly so in international or foreign waters outside the [Outer Continental Shelf lands] . . . would not be covered. However, if a significant or substantial portion of a service contract is performed within the statutory geographic limits, the Act applies; and [a DOL wage determination] must be included in the . . . contract.

In close cases involving a decision as to whether a significant portion of a contract will be performed within the United States, as defined under the Act, DOL should be consulted, since such situations require consideration of other factors such as the nature of the contract work, the type of work performed in the United States and how necessary such work is to contract performance, and the amount of contract work performed or time spent in the United States vis-a-vis other contract work. 29 C.F.R. § 4.112(a)(3).

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which no predecessor contractor's collective bargaining agreement applies, the contractor must pay service employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the FLSA.<sup>9</sup> FAR 22.1002-3. In preparation for service contracting, the contracting officer must request a wage rate determination (WRD) from the DOL by submitting a notice of intent to make a service contract. DOL then issues a determination, and the contracting officer must include it in the solicitation and contract. FAR 22.1012-1. Absent a collective bargaining agreement, service employees are paid the prevailing wage in the locality for each particular classification of service work. 29 C.F.R. § 4.53; FAR 22.1009.

The wage determination issued by DOL under the SCA is a floor and not a ceiling, and represents the minimum wage the contractor must pay to its employees covered by the determination.<sup>10</sup> The inclusion of the wage determination in the solicitation is not a representation by the government that labor can be obtained by the contractor at those rates, and each bidder has the burden of ascertaining for itself its probable labor costs. Millar & Fallin, 50 Comp. Gen. 548 (1971); see, also, JBS Missouri, Inc., ASBCA No. 34044, 87-2 BCA ¶ 19,904 (contract not subject to adjustment for any increase in wages beyond point necessary to comply with DOL determination of minimum wages and fringe benefits, because such increase was based on contractor's business judgment and was not required to comply with the wage determination); Comp. Gen. B-212380, 31 CCF ¶ 71,553 (Aug. 2, 1983) (solicitation properly specified minimum wage rates as required by SCA, but contracting agency not required to reject any proposals that provide for wages in excess of the solicitation's wage determinations).<sup>11</sup>

<sup>9</sup> Under FAR 2.1002-4, "no contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a) (1) of the Fair Labor Standards Act (29 U.S.C. 206)." Currently, 29 U.S.C. § 206(a) (1) specifies a minimum wage of not less than \$4.25 an hour.

<sup>10</sup> Observer salaries would be subject to analysis along with all other subcontractor cost or pricing data required to be submitted to the contracting officer for the determination of price reasonableness for the prime contract. FAR 15.806-1(a) (1).

<sup>11</sup> Compare FAR 22.101-2(a), which provides that contractor labor policies and compensation practices "are not acceptable bases for allowing costs in cost-reimbursement contract or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government."

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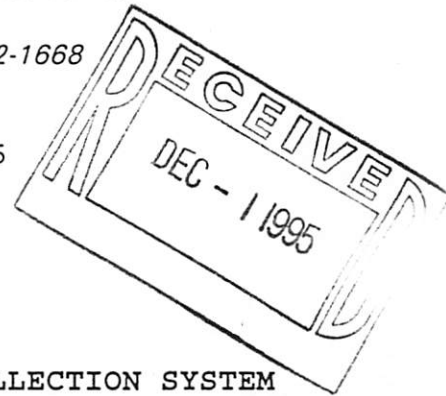
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Questions concerning the applicability of the SCA to an acquisition may be referred to the agency labor advisor, or submitted to the Wage and Hour Division of the Department of Labor for determination. FAR 22.1003-7. The Secretary of Labor is also vested with authority to grant "variances, tolerances and exemptions . . . [as he may find] necessary and proper in the public interest or to avoid the serious impairment of government business." 41 U.S.C. § 353(b).



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

AGENDA C-5  
 DECEMBER 1995  
 Attachment



November 29, 1995

**NORTH PACIFIC FISHERIES RESEARCH PLAN FEE COLLECTION SYSTEM**

**Status Report on Fee Assessment Billings**

Four Research Plan fee assessment bills have been issued. A brief summary of financial activity as of November 22, 1995, follows. Attachments provide more detail for each fishery.

**A. FINANCIAL SUMMARY**

<u>BILL PERIOD</u>	<u>#BILLS</u>	<u>TOTAL \$ BILLED</u>	<u>TOTAL \$ UNPAID (%)</u>
1	161	4,010,986	111,442 (2.8%)
2	248	2,590,871	49,275 (1.9%)
3	337	1,009,071	107,257 (10.7%)
4	383	1,233,765	1,153,392* (93.5%)

\*4th period bill payments were due November 27, 1995

TOTAL BILLED	8,843,234
PAYMENTS RECEIVED	5,019,146 (56.8%)*
OBSERVER CREDITS	2,219,903 (25.1%)
DISPUTE DECISIONS	184,008 (2.1%)
UNPAID BALANCE	1,420,177 (16.1%)

**B. FEDERAL PROCESSOR PERMITS:** Semi-annual processor permits are required to receive or process fish from Research Plan fisheries. Permits are issued free of charge but will not be issued unless all outstanding Research Plan fees have been paid. 456 permits were issued for the January-June 1995 period and 360 were issued for the July-December 1995 period. Processor permit renewal applications were mailed mid-November 1995 for the January-June 1996 period.

\* As of November 29, 1995, an additional \$358,618 was received in payments and observer credits, reducing the unpaid balance to \$1,061,559 (12% of the total amount billed).



**North Pacific Fisheries Research Plan Fee Assessment  
Financial Summary Worksheet  
YTD as of 11/27/95**

Dollar Amount Billed	\$ 4,715,521.39
	Groundfish
Payments Received	\$ 1,957,253.34
Applied Observer Credit	\$ 1,871,029.14
Disputes Decided	\$ 75,554.64
Total Unpaid Balance	\$ 811,684.27

Dollar Amount Billed	\$ 3,272,793.84
	Crab
Payments Received	\$ 2,579,211.11
Applied Observer Credit	\$ 348,874.10
Disputes Decided	\$ 103,965.45
Total Unpaid Balance	\$ 240,743.18

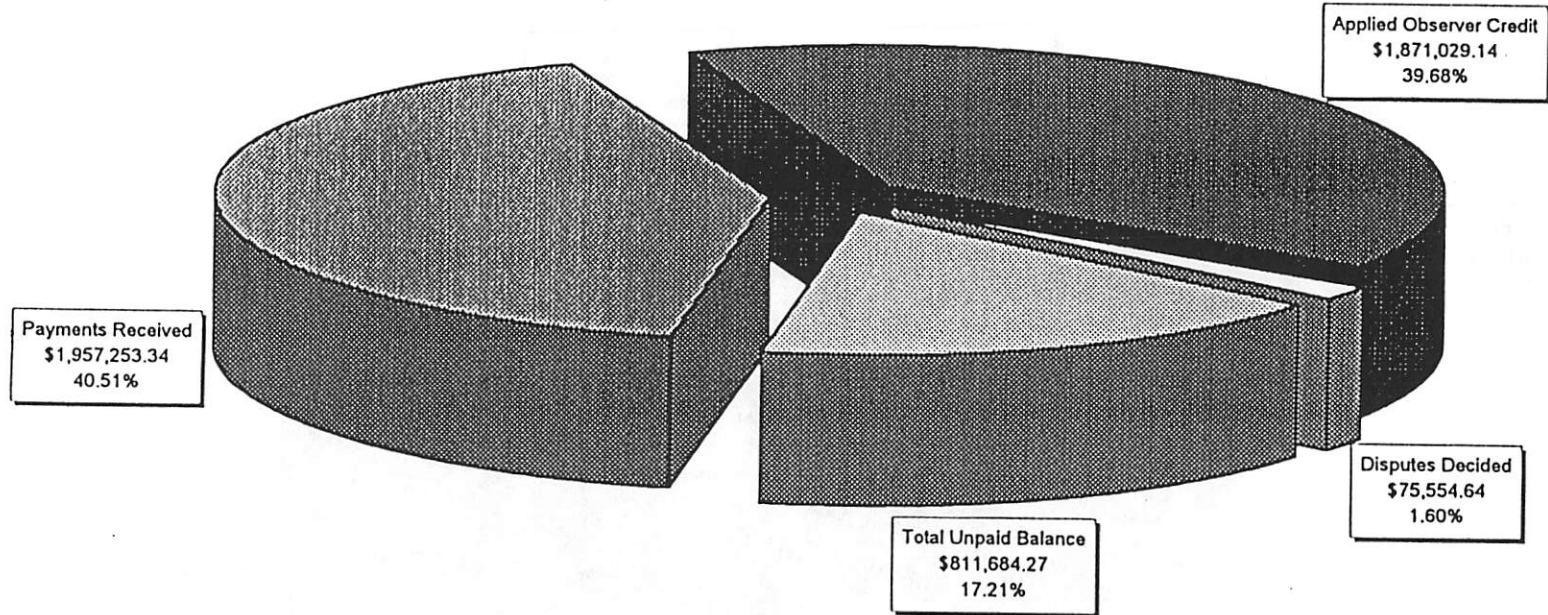
Dollar Amount Billed	\$ 854,918.27
	Halibut
Payments Received	\$ 482,681.09
Applied Observer Credit	\$ -
Disputes Decided	\$ 4,488.01
Total Unpaid Balance	\$ 367,749.17

Dollar Amount Billed	\$ 8,843,233.50
	Totals
Payments Received	\$ 5,019,145.54
Applied Observer Credit	\$ 2,219,903.24
Disputes Decided	\$ 184,008.10
Total Unpaid Balance	\$ 1,420,176.62



North Pacific Fisheries Research Plan  
YTD  
Groundfish Processors  
11/27/95

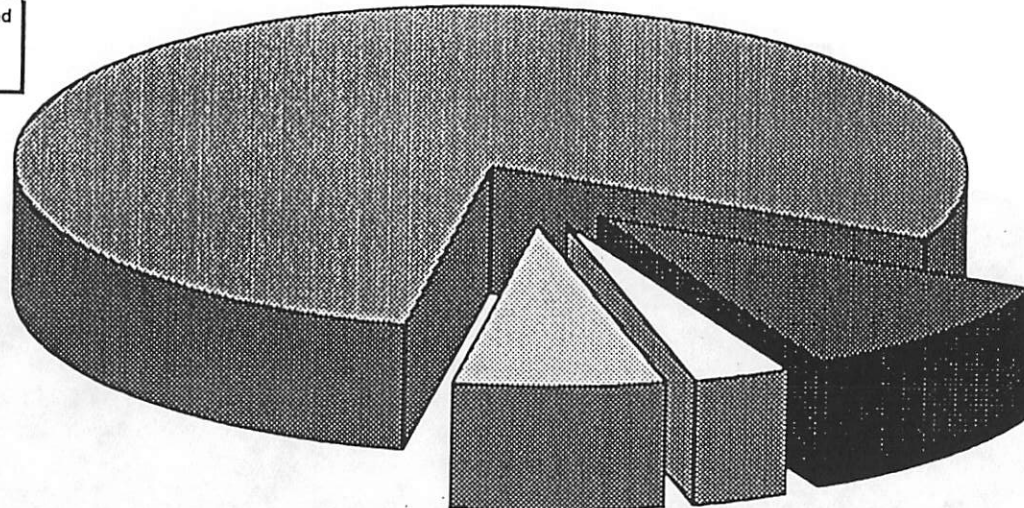
Total Billed: \$4,715,521.39



North Pacific Fisheries Research Plan  
YTD  
Crab Processors  
11/27/95

Total Amount Billed: \$3,272,793.84

Payments Received  
\$2,579,277.11  
78.81%



Applied Observer Credit  
\$348,874.10  
10.66%

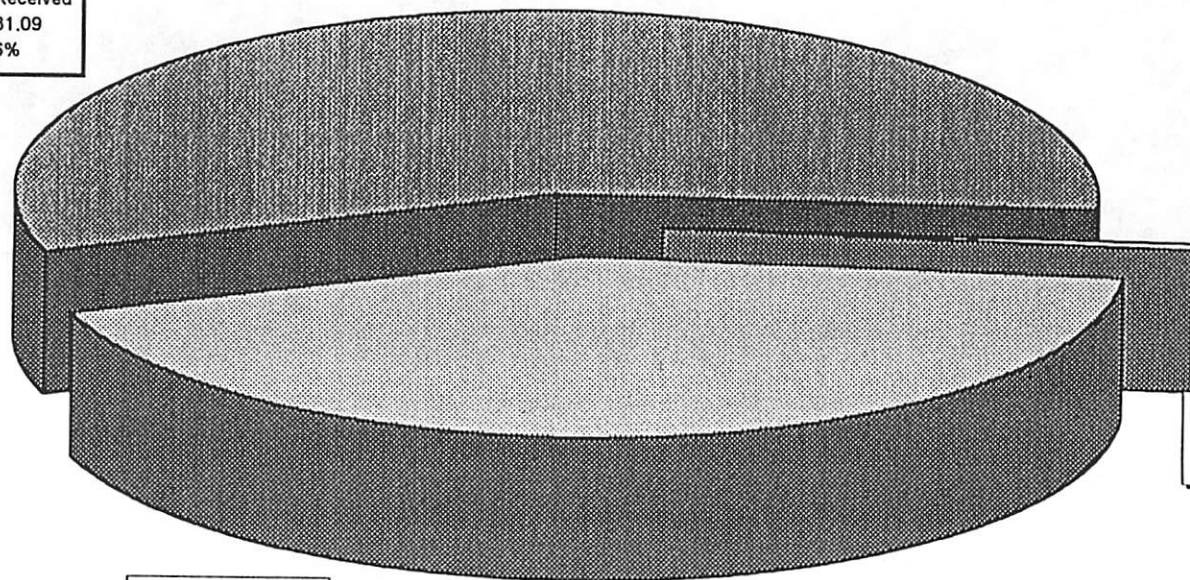
Total Unpaid Balance  
\$240,743.18  
7.36%

Disputes Decided  
\$103,965.45  
3.18%

North Pacific Fisheries Research Plan  
YTD  
Halibut Processors  
11/27/95

Total Amount Billed: \$854,918.27

Payments Received  
\$482,681.09  
56.46%

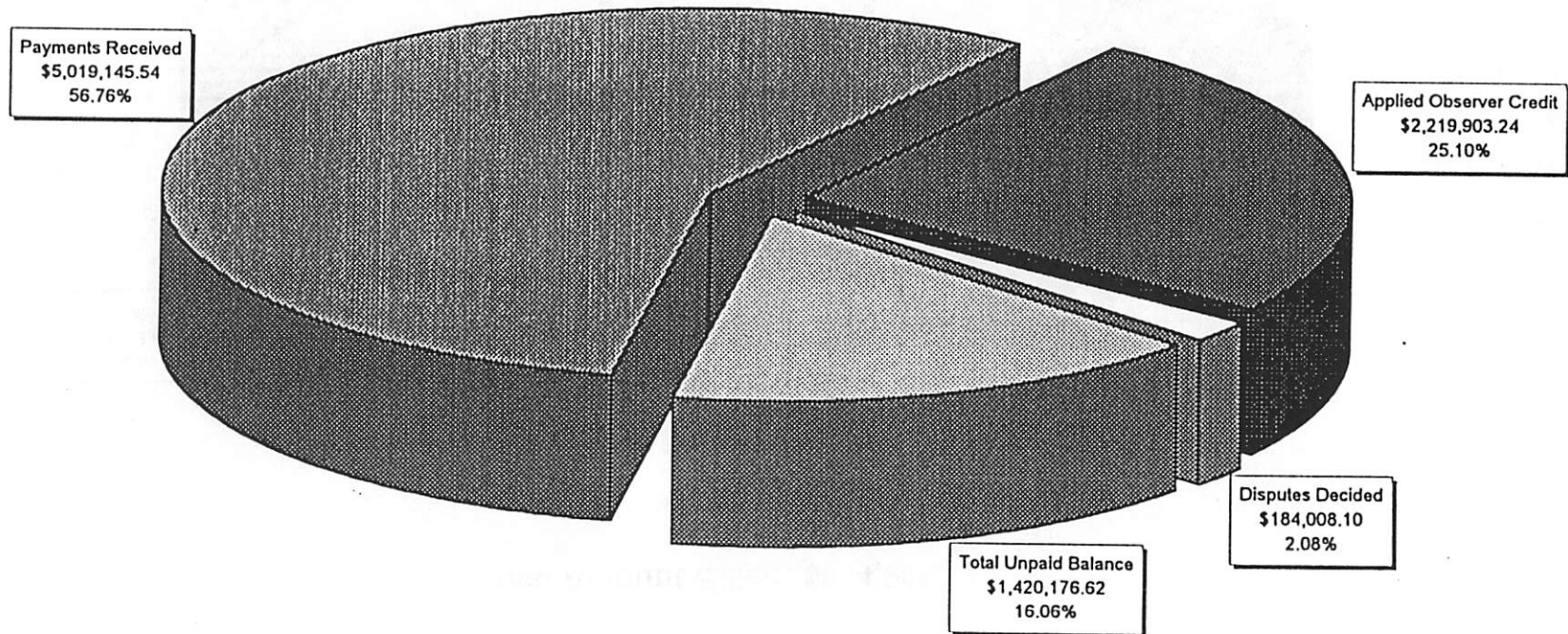


Total Unpaid Balance  
\$367,749.17  
43.02%

Disputes Decided  
\$4,488.01  
0.52%

North Pacific Fisheries Research Plan  
YTD  
Combined Totals  
11/27/95

Total Amount Billed: \$8,843,233.50





FM AK REGION

NPFMC

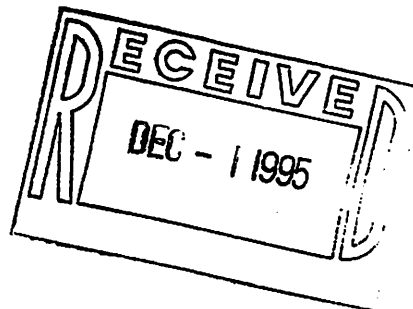
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**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 National Marine Fisheries Service  
 P.O. Box 21668  
 Juneau, Alaska 99802-1668

December 1, 1995

AGENDA C-5  
 DECEMBER 1995  
 Supplemental

Richard B. Lauber  
 Chairman, North Pacific Fishery  
 Management Council  
 605 West 4th Avenue, Suite 306  
 Anchorage, Alaska 99510



Dear Mr. *Rick* Lauber:

NMFS believes that the Research Plan provides the best approach for addressing concerns regarding the observer program and the integrity of observer data. However, recognizing the Council's desire to consider an alternative to the Research Plan at its December 1995 meeting, we have identified an approach which would allow some improvements in the old Observer Plan and be funded through direct payment for mandated observer coverage costs (pay-as-you-go) rather than through a user fee.

The Research Plan was designed to replace the pay-as-you-go Observer Plan because the Council identified changes that were essential to the integrity of the Observer Program. The most important of these changes concerned the business relationships between observer contractors and vessel and plant owners and operators. Under the Observer Plan, vessel and plant owners and operators could negotiate directly with certified contractors for observer coverage. This gave rise to serious conflict-of-interest concerns and resulted in business practices which failed to ensure that observers were treated in a fair and equitable manner. This situation jeopardizes the integrity of the data collected by observers. The management of the North Pacific fisheries largely is dependent on observer data. Therefore, recognizing that resolving the conflict of interest issue is of fundamental concern, the Council indicated that any proposed alternative should create and maintain an "arms-length" relationship between contractors and vessel and plant owners, and ensure fair and equitable salaries and working conditions for observers.

Following the September Council meeting, the Council's Observer Oversight Committee (OOC) was convened to discuss options and formulate recommendations for the Council. In preparation for that meeting, NMFS staff drafted a briefing paper describing a pay-as-you-go alternative under which a single "umbrella" or prime contractor would be responsible for assuring that plants and vessels were provided with the observers necessary to meet mandatory coverage requirements. This prime contractor would receive payments for coverage from industry members and would subcontract with observer contracting companies who would, in turn, hire and deploy observers as directed. Under this scheme, opportunities for fishing companies to negotiate with observer providers would be reduced and concerns regarding observer salaries, insurance, and working conditions could be addressed through contract stipulations.



The OOC discussed possibilities for contracting out additional observer program functions such as checking observer data and debriefing. At this time, we believe that NMFS must maintain control of these functions to adequately monitor observer operations and assess the quality of observer data. We do not believe it appropriate at this time to contract out functions other than those directly associated with contracting for and deployment of observers, and ensuring that observers are provided with required safety and sampling equipment. In general, the OOC concurred with this position.

We believe the Council must recognize a fundamental difference between the current Research Plan and a modified pay-as-you-go program. The pay-as-you-go alternative being considered by the Council further removes the observer from NMFS. Instead of a direct contract between NMFS and observer contractors, NMFS would be required to go through a prime contractor to resolve issues or problems that arise at the observer or observer contractor level. A pay-as-you-go program will have to be carefully developed to ensure that NMFS's ability to identify and respond to observer or observer contractor issues is not unduly compromised.

If the Council chooses to forgo a user-fee based program under the Research Plan in favor of a modified pay-as-you-go system, NMFS would initiate a competitive procurement process to obtain a prime contractor. Based on input from the NMFS Office of Policy and Planning, and General Counsel from NOAA and the Department of Commerce, NMFS has determined that a competitive procurement process would best ensure accountability from the prime contractor, protect the interests of the agency and the Council, and provide free and open competition for a significant business opportunity. As part of this process, we would draft a request for proposals (RFP) and solicit responses from interested parties. All prospective bidders would be treated in the same manner and none would receive preferential consideration. Before preparing an RFP, NMFS would schedule a public meeting for prospective bidders, and solicit comments and suggestions concerning the statement of work from all interested parties. This procurement process would be expected to take approximately one year and additional time may be required for the prime contractor to issue subcontracts with companies providing observer services. We would develop a mechanism for assuring that observer coverage needs will be met in early 1997 if the procurement process is not completed by January 1, 1997.

A repeal of the Research Plan obviously was not anticipated when it was approved. If the Council chooses to take this action, we will need to investigate the regulatory changes required to terminate the 1995 fee collection program, issue refunds of 1995 fees collected to date, repeal the Research Plan, ensure that observer coverage requirements are continued into 1997 if the alternative program is delayed beyond January 1, 1997, and implement the new program. At this time, we anticipate that we would prepare the appropriate analyses and draft rulemaking, as well as a schedule for implementation of a new program, for Council review and final adoption at its April 1996 meeting.

Notwithstanding our preference for the current Research Plan, we believe that a properly designed and implemented pay-as-you-go system could help minimize concerns about the potential for erosion of observer data integrity. Each approach has strengths and weaknesses, but either could address concerns associated with observer contractor/industry business relationships and observer salaries, insurance, and working conditions. Staff will be available at the December Council meeting to review each option and respond to questions. Once we receive Council guidance, I will direct staff to act as rapidly as possible to develop and implement the preferred alternative.

Sincerely,

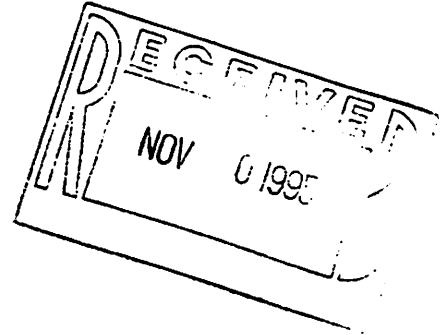


Steven Pennoyer  
Director, Alaska Region

**AMERICAN SEAFOODS COMPANY**

November 29th, 1995

Mr. Richard Lauber, Chairman  
North Pacific Fisheries Management Council  
605 West 4th Ave., Suite 306  
Anchorage, Ak. 99501-2252



Re: Agenda Item C-5 Observer Program

Dear Mr. Lauber:

I am writing on behalf of American Seafoods Co. to comment on the existing Research Plan/observer program. With a fleet of 6 catcher-processors, all with 100 % observer coverage, our observer costs under the Research Plan have skyrocketed, increasing fourfold and by several hundred thousand dollars in 1995. We have always supported a viable observer program and are more than willing to pay our fair share of the costs necessary to obtain sound biological data. Indeed this information is critical for responsible resource management. But there is something wrong when costs quadruple and the level of service remains the same, or even decreases in some cases.

We feel that an equitable fee system will assess costs to fishermen based on their impact on the resource and the actual costs incurred to monitor and maintain the health of a particular fishery or industry sector. In this case observer fees should be structured to reflect the costs of the fisheries that each vessel participates in. Surely if fees increase fourfold for one sector of the industry those additional funds will be used to subsidize the monitoring costs of other fisheries and does not fairly represent the level of monitoring or the impact of each user on the fisheries they participate in. Annual costs to monitor each fishery should be determined and these costs must be borne, just like any other fishery-specific cost, by the participants of that fishery.

If you're concerned about structuring fees based on the ability to pay then you need to take into consideration not only income but expenses. Larger vessels may have greater revenues but they also have higher operating expenses which may result in similar or even lower margins than smaller vessels.

**AMERICAN SEAFOODS COMPANY**


Market Place Tower 2025 First Ave. Suite 900 Seattle, Washington 98121  
(206) 448-0300 FAX (206) 448-0303



The Research Plan has imposed an inordinate burden on certain industry sectors, compared to their impact on the resource and their monitoring requirements. Given the dissatisfaction of the fishing industry with the inequities of the Research Plan, it seems a more rational approach is to give the modified pay-as-you-go plan an opportunity to prove itself satisfactory before putting any more effort into fixing a flawed Research Plan.

Thank you for your time.

Sincerely,

  
Jan Jacobs  
Fleet Manager

