


MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: December 7, 1992

SUBJECT: Observer Program

ACTION REQUIRED

- a. Receive status report on North Pacific Fisheries Research Plan.
- b. Final action on proposed regulatory amendment for changes to current Observer Program.

BACKGROUND

Research Plan

At their June meeting in Sitka the Council approved the Research Plan and requested staff to prepare the Proposed Rule package to be forwarded to the Secretary of Commerce for approval. Regulations are currently being drafted but are not yet completed due to the press of other Council tasking. Legislation, attached to a driftnet bill (H.R. 2152, published August 12, 1992), has been signed by the President and changes the Magnuson Act Authorization language for the Research Plan. The wording is more specific and now authorizes a fee limit of up to 2% of exvessel value of plan fisheries. This is consistent with Council action from June, but eliminates any confusion and controversy surrounding the use of first wholesale value. In order to make the Plan consistent with the authorizing language of the Act, the Council should adopt a technical amendment to their previous action from June. This means deleting reference to first wholesale value in the Research Plan, and leaving the fee percentage at up to 2% of exvessel value. The Proposed Rule package is expected to be completed in January for submission to the Secretary of Commerce. Public hearings on the Proposed Regulations could be held in March, a little later than previously expected.

If approved, the Research Plan could become effective, subject to availability of federal funding to facilitate the one year start-up funding of the program. Full implementation could begin in May of 1994, assuming adequate start-up funds are accumulated. Recent calculations by NMFS staff indicate that the fee percentage associated with current levels of observer coverage would be 1.13%, while a fee percentage of 1.35% would be required for year one in order to accumulate the \$5 million in necessary start-up funding, assuming no additional funds are appropriated by Congress. Given the current schedule, it looks like the Council will need to address this at their April 1993 meeting. The Observer Oversight Committee could meet sometime shortly before to provide their recommendations to the Council.

Current Observer Program

At the September meeting the Council reviewed a draft EA/RIR/IRFA for proposed changes to the existing Observer Program. These proposed changes are intended to correct deficiencies in the current program. Revisions and additions requested by the Council in September have been incorporated into the revised analysis, dated October 27, 1992. A summary of the proposed changes is as follows:

1. Reduce the lower length limit for 100% coverage from 125' to 115'.
2. Reduce the lower length limit for 30% coverage from 60' to 55' or 57'.
3. Change the 30% coverage requirement from a quarterly requirement with no connection to target fishery to a monthly requirement, possibly also by target fishery, of a quarterly requirement by statistical area.
4. Consider reducing the level of coverage for vessels fishing with pot gear.
5. Change the requirement for observer coverage from fishing trip days to fishing days and define 'fishing days'.
6. Revise conflict of interest standards for observers and observer contractors.
7. Require multiple observers on some processing vessels.

Changes approved by the Council at this meeting could be implemented by mid-1993, possibly sooner, and would be in effect until full implementation of the Research Plan. Under the Research Plan, levels of observer coverage will be evaluated annually, and may vary by specific fishery. Observer coverage levels adopted under this regulatory amendment do not necessarily carry directly over under the Research Plan.

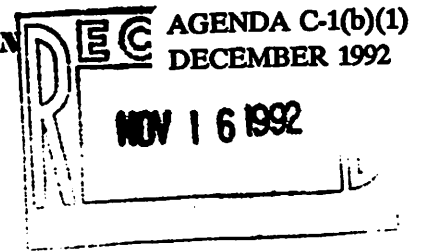
Item C-1(b)(1) is a letter from Fishing Vessel Owner's Association expressing specific concerns with some of the analyses contained in the draft EA/RIR/IRFA. The primary concerns are (1) that some of the cost estimates associated with the proposed alternatives are underestimated, and (2) what the proposed changes would mean in terms of the fee percentage to be collected under the Research Plan, when it becomes effective. A response from the NMFS is contained in your notebook as Item C-1(b)(2).

Under Item C-1(b)(3), you will find several additional letters from industry organizations, observer representatives, and observer contractors which contain recommendations to the Council on the proposed changes to the Observer Program.

**FISHING VESSEL OWNERS' ASSOCIATION
INCORPORATED**

ROOM 232, WEST WALL BUILDING • FISHERMEN'S TERMINAL
SEATTLE, WASHINGTON 98119

SINCE 1914



November 10, 1992

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

RE: EA/RIR Domestic Groundfish Observer Plan GOA/BSAI

Dear Staff:

I am writing in regards to the EA/RIR on Domestic Groundfish Observers associated with the Gulf of Alaska and Bering Sea/Aleutian Islands.

I am concerned that the cost projections under several options that have been examined are underestimated. In addition to these, I am also concerned that the analysis fails to examine two important issues that the Council should have information about before action should be taken by the Council. The two areas that need analysis are listed in (a) and (b) below.

- (a) With each option that increases coverage and therefore costs, there should be some examination of the statistical benefits of reliability of the data that is gained for the managers. An example of what I am looking for would be an examination of the statistical significance gained by managers in requiring observers on vessels between 55 and 59 feet in length. I would like to see some quantitative estimation other than a generalized comment on this subject. There should be some estimation by those proposing these changes as to the percentage gain in statistical reliability to be gained in each alternative examined.
- (b) The second issue is how much are all the charges going to cost individually and collectively. It would be nice to have a table developed showing a summarization of the costs and the impacts on what this would mean to our "research plan" budget that becomes hopefully effective in 1994.

I am concerned that the current analysis underestimates the costs to the industry or eventually to the "research fund." I would appreciate it if the Council staff or others associated with drafting of the EA/RIR could do some ground truthing with a couple

FAX

(206) 283-3341

LATITUDE: 47° 39' 36" NORTH

DIAL "A VESSEL"

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LONGITUDE: 120° 22' 58" WEST

of observer companies to verify or dispel my concerns.

With regard to the option in section 2.2.2, which would be to lower the minimum size limit for 100% coverage to vessels from 125 feet LOA to 115 feet LOA. My projection of costs are figured based on the number of vessels rather than the aggregate months to be observed. I believe using the estimated aggregate months needed to cover, understates the cost as such an analysis fails to recognize that each vessel will take an observer. If 33 additional vessels will be included for 100% coverage, an additional 84 months of additional coverage will be required, as estimated by the RIR. My cost estimates for these are as follows:

84 months + 33 vessel	= 2.55 months/vessel
Average cost per vessel	= 2.55 x \$7080 = \$18,054
Total cost	= 33 x \$18,054 = \$595,782

My estimate is \$70,000 greater than the RIR estimate.

With examination of the alternative under 3.2.2, the method of aggregating the additional months generates a similar type of underestimate of costs. Under this option, the staff has estimated a need for 38 observer months associated with 165 vessels. The analysis is figured as though you had 3 vessels fishing 12 months each with 100% coverage, with 2 months left over. This is not realistic.

My estimation is that if 38 additional months are required, this will result in each vessel requiring an observer for 6.91 days (38 months x 30 days + 165 vessels). I have rounded that to (7) seven days in my estimate. Using your cost estimate of 8680/month, the cost per vessel is \$2025/vessel [(8680 + 30 days) x 7 days]. The total cost for 165 vessels would be \$334,179. However, the testimony before the Council by various observer companies at the September Council meeting, indicated that they would need to charge for a 10 day minimum to cover all the costs of training and flying and associated problems with coverage on small vessels. The current analysis fails to recognize minimum charges. In this case the cost for a 10 day minimum would cost the industry or the observer fund potentially \$476,850.

The worst example of underestimation, I believe, is on page 19 where a table is provided for the calculation of costs for vessels in the 30% category that fished 10 days or less during a 1991 quarter.

As one example on the top of page 19, if you look at the 4th quarter, the analyst assumes for 40 vessels there will be a need for 2.16 observer months and then multiplied this by \$8680/month for a cost to industry of \$18,749. The reality is the cost to fly

Pacific Fishery Management Council
November 9, 1992
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an observer to a port for each of the 40 vessels will probably cost \$16,000 alone. If the vessels were lucky, they might get an observer company to charge a 7 day minimum. Such a cost would result in \$80,920 for 40 vessels, not \$18,749 $\{[(\$8680/\text{mo.} + 30) \times 7 \text{ days}] \times 40 \text{ vessels}\}$. I believe this option would generate at least \$360,000 to \$400,000 in new costs to the industry and observer fund for all vessels that fish less than 10 days for all the quarters.

Overall, the EA/RIR was well done and clearly identified the issues and the solutions. I am very sensitive to the budgets placed against the future "observer fund" and this is what has generated my concern.

Sincerely,



Robert D. Alverson
Manager

RDA:cb P.S. please forward to
AP & SSC for Dec. meeting.

Alaska Fisheries Science Center
Resource Ecology and Fisheries
Management Division
7600 Sand Point Way NE.
BIN C15700, Building 4
Seattle, WA 98115

December 3, 1992

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

Dear Chris:

This letter provides response to Robert Alverson's letter requesting additional information and comments regarding the EA/RIR for changes to the Domestic Groundfish Observer Plan. In order to respond to a number of the points raised in the letter, the attached table was prepared which provides a means for quick referral to each of the proposals and their alternatives to show the potential costs, changes in data reliability, and resulting incremental increase in the potential fee associated with the North Pacific Fisheries Research Plan if a particular alternative were adopted.

Some of the alternatives listed in the table contain a range of costs. These ranges are composed of the cost estimate as contained in the EA/RIR which is the lower cost and the cost for vessels that fish less than 10 days in a quarter and a 10 day minimum is charged by the contractors. The 10 day minimum assumes that the vessels involved will not be able to share and pool observers to reduce costs. In speaking with a number of the observer contractors, there are several ways in which contractors currently deal with vessels with observer needs like this. I found contractors with cost estimates similar to those contained within the EA/RIR for short trips that do not charge a 10 day minimum and ones who require a 10 day minimum as suggested by Mr. Alverson. In all probability, the true cost will likely lie somewhere within the ranges of costs shown. The EA/RIR does say in a number of places that for some of these alternatives it was not possible to determine the cost or that the cost estimate shown was likely low.

The cost estimate contained within the EA/RIR in section 2.2.2 which lowers the minimum length for 100% vessels from 125 ft. to 115 ft. is correct. Mr. Alverson's comment that the estimate is low by \$70,000 does not consider that the cost per observer month decreases from \$8,680/month to \$7,080/month when a vessel is required to carry an observer 100% of the time as compared to 30% of the time. As a result, there is a cost savings of about \$70,000 for the initial 30% of the time the vessels would carry an observer, if the vessels in question were changed from 30% coverage vessels to 100% vessels.

With respect to the impact of each of the proposals and alternatives on the statistical reliability of the data, it was not possible to provide the detailed information requested for each of the proposals but some information is contained within the EA/RIR while additional information is contained within the EA/RIR for the North Pacific Fisheries Research Plan. For example, for the proposal to reduce the minimum length of vessels required to carry 100% observer coverage, information contained

in the analyses of coverage done for the Research Plan and in the present EA/RIR in the case of pot fishing, shows that there are significant improvements in the estimates of the bycatch rates of all bycatch species for all gear types with increasing levels of coverage. At the 30% level of coverage we are only able to estimate the target catch reliably. The current EA/RIR shows that there is a decrease in reliability with decreased coverage in the pot fishery with respect to halibut and crab bycatch.

Since there has been no observer coverage on vessels less than 60 ft. in length, the only data on which to evaluate levels of coverage within this portion of the fleet are those which were completed for various trawl, longline and pot fisheries from portions of the fleet with coverage as cited above. Any data from vessels less than 60 ft. in length will result in an improvement since there is no data now. The same holds true for changing the observer coverage requirement from fishing trip days to fishing days and the requirements for coverage by quarter. The EA/RIR identifies the large number of cases where there are insufficient or no data from observers to be used in estimating bycatches of prohibited species in trawl and longline fisheries conducted primarily by vessels in the 30% coverage category. For example, the EA/RIR shows that in the 1992 Pacific cod fishery in the Gulf of Alaska, out of 925 data cells used to estimate the bycatches of halibut taken in the fishery there were weekly observer data available for only 77 (8%) data cells. Of the remaining 848 cells, 461 (50%) were filled by averaging three weeks of observer data and the default rate was used for 387 cells (42%) for which neither observer data nor three-week averaged observer data were available. In the Gulf of Alaska sablefish and rockfish fisheries, default rates were used for 66% and 38% of the data cells, respectively in 1992. The proposed changes provide for increased data in areas where data is now lacking.

I will be available at December's meeting to answer any additional questions that arise.

Sincerely,

Russ Nelson
Task Leader
Observer Program

Attachment

Table 1. Summary of estimated changes in program costs, data reliability and potential percent increase in Research Plan fee associated with proposed changes to Observer Plan.¹

<u>Proposal Fee</u>	<u>Alternative/Option</u>	<u>Estimated Cost</u>	<u>Data Reliability</u>	<u>% Inc. in</u>
2.0 Reduce lower length of 100% vessel class from 125 ft. to 115 ft.	2.2.1 (status quo)	\$0.00	no change	0.000%
	2.2.2	\$525,000	improved	+0.06%
3.0 Reduce lower length of 30% vessel class from 60 ft. to either 55 ft. or 57 ft.	3.2.1 (status quo)	\$0.00	no change	0.000%
	3.2.2	\$330,000 -	improved	+0.04%
		\$476,000		+0.05%
	3.2.3	\$260,000 -	improved	+0.03%
		\$367,453		+0.04%
3.2.4	\$225,680 -	improved	+0.02%	
	\$355,893		+0.04%	
3.2.5	\$95,480	no change	+0.01%	

¹ For some alternatives a range of cost and percent increase in Research Plan fees are shown. The lower cost represents numbers contained in the EA/RIR whereas the higher cost represents estimates associated with an assumed minimum cost of 10 days of observer coverage if vessels fish less than 10 days and there is no sharing or pooling of available observer effort and cost.

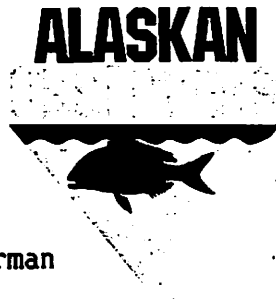
² The base fee rate estimated from 1991 data and program costs is 1.13% of ex-vessel value.

Table 1. Continued.

<u>Proposal</u>	<u>Alternative/ Option</u>	<u>Estimated Cost</u>	<u>Data Reliability</u>	<u>% Inc. in Fee</u>
4.0 Change requirement for observer coverage from fishing trip days to fishing days & define fishing days.	4.2.1 (status quo)	\$0.00	no change	0.000%
	4.2.2	\$0.00	improved	0.000%
5.0 Change 30% coverage requirement by quarter to requirement by month, target fishery or statistical area.	5.2.1 (status quo)	\$0.00	no change	0.000%
	5.2.2 A	\$11,573 - \$57,680	improved	+0.001% +0.006%
	5.2.2 B	\$90,793 - \$572,531	improved	+0.01% +0.06%
	5.2.3 A	\$80,290 - \$378,983	improved	+0.009% +0.04%
	5.2.3 B	\$80,290 - \$378,983	improved	+0.009% +0.04%
	5.2.4	\$80,290 - \$378,983	improved	+0.009% +0.04%
	5.2.5 A 5.2.5 B 5.2.5 C	unknown unknown unknown	improved improved improved	unknown unknown unknown
6.0 Reduce coverage in the pot fishery.	6.2.1 (status quo)	\$0.00	no change	0.000%
	6.2.2	-\$190,950	reduced	-0.02%
	6.2.3	-\$243,000	reduced	-0.027%

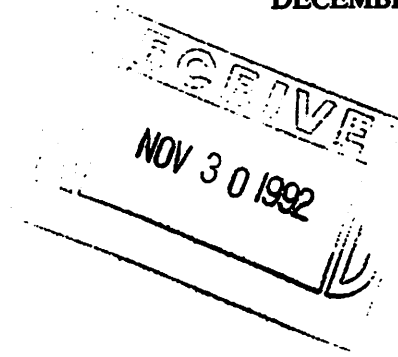
Table 1. Continued

<u>Proposal</u>	<u>Alternative/ Option</u>	<u>Estimated Cost</u>	<u>Data Reliability</u>	<u>% Inc. in Fee</u>
7.0 Revision of observer and contractor conflict of interest standards.	7.1	\$0.00	no change	0.000%
8.0 Require two observers on some mothership or catcher/processor vessels.	8.2.1 (status quo)	\$0.00	no change	0.000%
	8.2.2	\$35,400 - \$63,720	improved	+0.004% +0.007%
	8.2.3	unknown	improved	unknown



24 November 1992

Richard Lauber, Chairman
NPFMC
P.O. Box 103136
Anchorage, AK 99510



Dear Mr. Lauber,

In the October 27, 1992 draft Environmental Assessment/ Regulatory Impact Review (EARIR)/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to the Domestic Groundfish Observer Plan, revised conflict of interest standards for observers and contractors are put forward beginning on page 26. While the effort being made to clarify and strengthen the existing conflict of interest standards is necessary, I question whether some of the suggested revisions are useful and fair.

The revised standards as they appear in the EARIR appear to be more stringent than standards that apply to federal employees. For instance, at the mercy of the revised definitions of "financial or personal interest" and "observed fishery," an observer whose spouse is employed in the sablefish fishery in Southeast Alaska would no longer be able to gather data on pollock catches in the Bering Sea--in effect, this observer would no longer be able to work as an observer, pending his or her divorce.

Faced with the revised conflict of interest standards, observer contractors, unable to risk conflict of interest violations, would expect observers to disclose financial and personal information prior to employment. Having passed the test, observers would eventually learn that their defacto supervisors, the NMFS observer program staff, were not expected to make such revelations or to live up to such standards. It is worth considering whether this situation, in which observers will face conflict of interest standards more stringent than those faced by anyone in the management hierarchy, including NMFS staff and Council members, will be seen by observers as hypocritical.

My point is not that the NMFS observer program staff should be expected to live up to standards similar to those offered in the EARIR, or even that observer standards should be identical to those currently applied to NMFS observer program staff. The position observers occupy is unusual and standards tailored to that position will inevitably differ somewhat from those that apply to federal employees. My point is that the same spirit should inform the conflict of interest standards for both observers and the federal employees for whom they gather data.

The alternatives as presented in the EARIR do not recognize a middle ground that in fact exists. Under these standards, an observer on company X's vessel whose spouse works on a vessel owned by company Y will be viewed in the same light as an observer who works aboard the same vessel on which his or her spouse is a crewmember. It is not unreasonable to point out that these situations are different and can be treated differently.

One alternative not mentioned in the EARIR, then, would prevent an observer from working aboard vessels or in shore-based plants owned by the same company that employs the observer's spouse, or from working aboard motherships or in shore-based plants that take deliveries from a vessel which employs the observer's spouse. (This is not to say that an observer from vessel X would be free to pass data on to his or her spouse simply because that spouse was employed on another vessel owned by another company. Passing data on to anyone other than the NMFS would still be a violation of conflict of interest standards. It should also be pointed out that any observer, married or not, potentially stands to benefit from such behavior. We could solve this problem by prohibiting all people from being observers, a step just a little more unreasonable than some of those under consideration in the EARIR.)

The draft's "restrictions on observers who choose to work in the observed fishery," like the re-definitions of "financial or personal interest" and "observed fishery," also fail to stake out a middle ground. Under these restrictions, an observer on a vessel owned by company X who later moves on to work as a fisher on a vessel owned by company Y faces the same restrictions on her ability to work again as an observer as does an observer on vessel X who later gets a job on that same vessel. A reasonable argument can be made that the actions of these two observers are different and can be treated differently. The implication of the restrictions as they are written is that there is something unethical about working as a fisher, that observers who stoop so low become unclean.

One alternative not offered in the draft would allow an observer to work as a fisher aboard vessels owned by companies on whose vessels she had never observed; she would be allowed to return to work as an observer with the restriction that she could not observe aboard any vessels owned by a company that employed her as a fisher. An observer who found work as a fisher aboard a vessel owned by a company on whose vessels she had observed would face a more drastic work restriction--she would be unable to work as an observer on any vessels for one year following the last day of her employment as a fisher, after which time she could return

to work as an observer aboard vessels owned by companies that had not employed her as a fisher.

I anticipate that someone will point out that the revisions suggested in this letter are more complicated than those that appear in the EARIR. The question arises: Who would verify that observers do not run afoul of them? Pretty clearly that responsibility will fall to the contractors. This would also be the result of the original revisions, since no mention is made as to the NMFS requiring observers to disclose personal and financial information prior to certification. If the observer program isn't going to request conflict of interest information, then contractors will have to (unless someone intends these standards to be for show only). The logistical demands created by the revisions suggested in this letter--the necessity of avoiding placing an observer on a vessel where his or her spouse is employed as a fisher, or the necessity of not placing an observer aboard a vessel where she has worked as a fisher--these demands would be manageable and easily met.

The redefinitions of "financial or personal interest" and "observed fishery" should be broadened enough to head-off problems that either have occurred or might reasonably be expected to occur in the domestic groundfish observer program, but in broadening these definitions we should bear in mind that we will inevitably limit the ability of observers to find work. In writing restrictions that are to apply to observers who choose to work as fishers, the same factor must be considered. Limiting a group's ability to work is a serious matter, particularly when, as is the case with observers, the group is unorganized and goes largely unrepresented in decisions that affect it.

Sincerely,

ALASKAN OBSERVERS, INC.


David Edick
General Manager

Reisa Varon
2321-B Victor St.
Bellingham, WA 98225
November 21, 1992

DEC 1
NOV 30 1992

Richard Lauber, Chairman
North Pacific Fisheries Mgmt. Council
P.O. Box 103136
Anchorage, AK 99510

Dear Mr. Lauber;

I am writing to comment on the proposed revised conflict of interest standards for observers.

Regarding the section addressing the definitions of financial and personal interest, I believe that the proposed wording by NMFS in section 5b1 is far too broad and would result in some observers virtually losing their jobs due to a family member's participation in the fishing industry. I am one of those observers. I have been an observer since 1988. My fiancée is a fisherman on a shoreside delivery pollock boat that also has the capability to bottom trawl and pot-fish. As the proposed wording stands now, I may not have a financial interest in any vessel that harvests fish in the observed fishery. Since "observed fishery" is defined as any groundfish shery, this would mean that I would be in conflict of interest if I were observing on a longliner fishing cod because my husband's boat would be fishing pollock, and both cod and pollock are groundfish. (Indeed, the proposed inclusion of halibut, crab, and herring would mean I would be unable to work as a crab observer as well.) This severe restriction of my ability to work as an observer makes no sense, and illustrates a serious flaw in the proposed new wording.

I would suggest two ways of addressing this problem. One way would be to prohibit observers from serving on board any vessel or plant owned or operated by a company in which a spouse or family member has a financial interest. This would, for example, prohibit me from working on my husband's boat, any boat owned by the company that owns his boat, or the plant to which his boat delivers. The second method would be to restrict the definition of observed fishery to a specific targeted species of groundfish and specific fishing method. This would, for example, prohibit me from working on another shoreside delivery vessel fishing pollock, however, even this is really too broad a restriction. I should not be restricted from working even on a boat in the same fishery if the vessel to which I am assigned has no financial connection to the company for which my husband works, and I certainly should not be restricted from working on an offshore processing vessel (or a vessel in another directed fishery) since any data to which I would have access would be of no use to a shoreside boat.

Regarding this last point, I would also like to comment on the stated need for this revision. It was felt that an observer was in a

position to use observer data to help her husband fish better. Even if this was not a direct conflict of financial interest, it should have been covered under code of conduct standards. All data received by observers from fishing vessels is confidential and must not be divulged to another person outside the observer program. It is simply not possible to prevent an observer from obtaining information which could be misused for personal gain. However, under the code of conduct standards it is illegal and unethical to divulge fishing data to unauthorized persons, and this should have covered that situation. I would also like to point out that debriefers have access to the same information as observers (even more!) and are thus also in a position to use the data for personal profit if a spouse or immediate family member owns or operates a fishing vessel, yet the conflict of interest standards do not include them.

Regarding observers who choose to work in the observed fishery: Observing, like fishing, virtually never offers secure, full-time, year-round employment, and the proposed wording of the revision again too severely restricts an observer's ability to work. As the proposed wording stands now, an observer will essentially not be able to work as an observer on any groundfish fishery for one year after serving as crewmember on any fishing vessel. This means they could not observe on a longliner even if the boat they crewed on was a shoreside delivery pollock boat, and again this makes no sense. I believe that restriction 5a4, with the addition of the 12 month stipulation, is sufficient to prevent conflict of interest. Once again I would like to stress that all observer data collected is confidential, and the misuse of such data should fall under code of conduct standards. Rather than unduly restricting an observer's ability to work in an effort to limit their access to this data, it should be a violation of code of conduct standards and grounds for decertification to use observer collected data for any purpose other than the observer program.

Thank you for considering my comments.

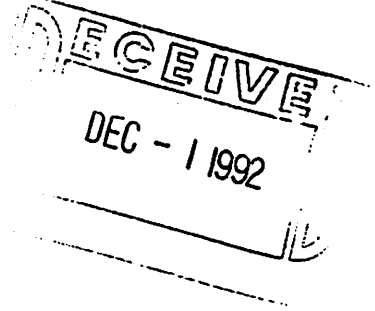
Sincerely,

Reisa Varon
Reisa Varon

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF

■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON



November 30, 1992

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

Dear Mr. Lauber:

Re: Domestic Groundfish Observer Program

The Aleutians East Borough supports preferably Alternative 1, or Alternative 4, of the proposed amendments to lower vessel length limits for groundfish observer coverage. Alternative 1 is the status quo, with no mandatory observer coverage for vessels under 60 feet. Alternative 4 would lower the minimum size limit of vessels required to carry observers 30% of the time from 60 feet to 57 feet, but establish a pilot program for trawl vessels within that range of 57 to 60 feet.

Essentially, we agree with conclusions of the Groundfish Observer Oversight Committee that vessel size and available work space on these small vessels, combined with rough water conditions, will likely preclude observers from being able to perform their jobs in a satisfactory (let alone safe) manner. According to the draft EA/RIR/IRFA, vessels between 57-60 feet account for only about 1% of the total groundfish catch (6% of effort) in the Gulf of Alaska and the Bering Sea/Aleutian Islands. Only half this number are trawl vessels. It does not appear that much concern is warranted for a fleet that captures only one percent of the annual groundfish harvest, particularly at an estimated unit cost (\$12.97/mt) about three times that of the current program (\$3.24-4.69/mt).

We understand that the Council may be concerned about the possible bycatch in specific fisheries, such as the sablefish longline fishery, that are dominated by large numbers of small and unobserved vessels. We are less certain about the need to worry about the bycatch of small trawl vessels that compete in fisheries dominated by large and observed vessels, such as for Pacific cod in the GOA. To address these concerns, Alternative 4 would provide mandatory coverage for about half of the catch taken by vessels between 57-60 feet, and concentrate on the relatively unobserved sablefish longline effort; it would also take a prudent step to test, with a pilot program, whether or not observer coverage of the small trawl fleet is warranted and safe.

CLERK/PLANNER
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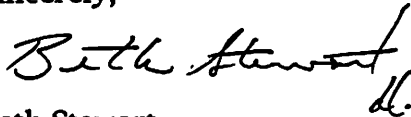
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On a final note, we urge the Council to consider whether or not it wishes to add complications to the existing observer program before it is transformed under the pending North Pacific Fisheries Research Plan. It may be advisable to make a shift to the user-pay program first and then, with the assistance of the Observer Oversight Committee, decide how best to apply available funds to obtain the biggest bang for the buck.

In summary, we recommend that the North Pacific Council maintain the status quo, at least for the time-being. If, however, the Council feels compelled to monitor vessels smaller than 60 feet, then we recommend the caution embodied in a pilot study of the efficacy and safety of placing observers on small trawl vessels. In this last regard, we offer the assistance of the Peninsula Marketing Association and the Aleutians East Borough in designing and implementing such a pilot program.

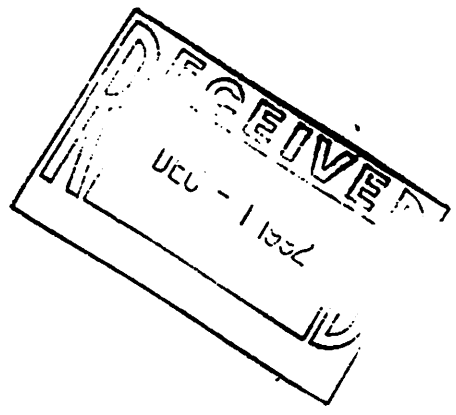
Sincerely,

A handwritten signature in cursive script that reads "Beth Stewart". The signature is written in dark ink and is positioned above the typed name.

Beth Stewart
Director, Natural Resources

Petersburg Vessel Owners Association

P.O. Box 232
Petersburg, Alaska 99833
Phone (907) 772-9323 Voice and Fax



November 30, 1992

Mr. Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99501

Re: Domestic Groundfish Observer Program

Dear Mr. Lauber,

The Petersburg Vessel Owners Association supports Alternative 1, the status quo, when considering a reduction in the lower length limit for the 30% observer coverage requirement.

We are concerned about the lack of adequate and safe work conditions for observers on these smaller vessels, both in the longline and trawl fisheries. We recognize that many of the modern built 58 foot combination vessels may be adequate in size and configuration to carry observers. However, many of the older wooden vessels are quite narrow in beam and hence are lacking in size to provide adequate space and safe work conditions for an observer.

Besides the safety issue, we question whether conditions aboard these vessels provide the opportunity for observers to collect data of adequate quality. These issues have both been raised by the Advisory Panel and the Council.

The EA/RIR points out that under the current Observer Plan requirements, portions of the fleet under 60 feet LOA could be observed by the NMFS Regional Director exercising his authority to require specific individual vessels to carry observers at their own expense. It is also our understanding that the Regional Director has this same authority for vessels over 60 feet.

One major area of concern seems to be the lack of data for the longline sablefish fishery in the Eastern Gulf. If NMFS needs more data for this area, the Regional Director merely needs to require all vessels over 60 feet which are fishing this statistical area to carry observers while operating in these waters. If there is still concern that not enough data may be gathered, specific vessels under 60 feet can then be required to also carry observers. This is one way under the status quo to get additional data for areas and fisheries which may be lacking in observer data.

Obviously the problem with requiring specific vessels less than 60 feet to carry observers is that only those vessels which are selected by the Regional Director would bear the cost of the observers. One way to solve this dilemma would be to give that vessel credit for the expense it incurs carrying an observer when fees are later collected during the North Pacific Fisheries Research Plan.

However, considering that the implementation of the North Pacific Fisheries Research Plan is pending, we recommend that changes in the observer program be delayed until then, when the costs can be distributed among the fleet. At that point, the Council can also determine and specify which fisheries need observer coverage and to what extent.

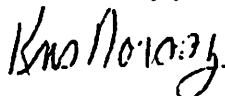
If the Council feels compelled to make changes for the 1993 fishing season, we recommend that you consider Alternative 5, which would establish a pilot program for all vessels 57 to 59 feet LOA (regardless of gear type). A pilot program would allow NMFS to determine if lowering the vessel size limit will provide adequate data in a manner which is safe for both the observers and the vessel's crew.

We recommend that the Council maintain the status quo at least until the North Pacific Fisheries Research Plan is implemented. That appears to us to be the most appropriate time to redesign the observer program. However, if the Council determines that changes need to be made now, we hope that a pilot program can be implemented to provide coverage for vessels under 60 feet so that safety and feasibility can be measured.

This issue is of considerable concern to us and we would like to work closely with NMFS should the Council decide to adopt a pilot program.

Thank you for your consideration.

Sincerely,

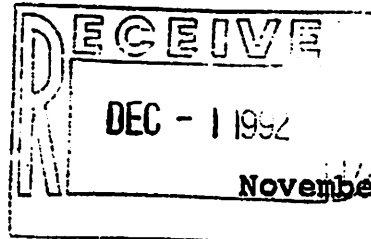


Kris Norosz
Director

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GREENPEACE

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

Dear Mr. Chairman,

On behalf of Greenpeace and its approximately 2 million supporters here in the United States, I would like to comment on the draft Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to the domestic groundfish observer plan for the Gulf of Alaska and the Bering Sea and Aleutian Islands. It is our view that the observer program can be improved and its scope of data collection broadened to provide accurate scientific information on the status of marine fisheries and marine ecosystems.

In order to supplement the amount of data that is needed to further understand marine ecosystems, observer coverage should be expanded to include fisheries which are lacking information. Apparently, there is a considerable amount of "holes" in the data that could be filled by simply modifying the current regulations. Our comments on the proposed alternatives seek address the problem of inadequate observer coverage and furthermore, recommend alternatives that will increase the amount of data collected during actual fishing operations.

PROPOSED ACTIONS AND SUGGESTED ALTERNATIVES

1) Proposed Action:

REDUCE THE LOWER VESSEL LENGTH LIMIT FOR THE 100 PERCENT OBSERVER COVERAGE REQUIREMENT FROM 125 FEET TO 115 FEET LENGTH OVERALL

Greenpeace supports Alternative 2 which would endorse this proposed action. Increased coverage on these vessels would enable the National Marine Fisheries Service (NMFS) to allow for more sampling to improve statistical reliability of these data when used for monitoring bycatch limits. Additionally, as a result of the recent inshore/offshore allocation that guarantees the inshore component 35% of the Pacific cod and pollock quota, a larger percentage of fish will be shifted to shoreside vessels which only require 30% coverage. By including the new category of vessels, coverage on this largely shoreside component of the fleet will be statistically represented.

2) Proposed Action:

REDUCE THE LOWER VESSEL LENGTH LIMIT FOR THE 30 PERCENT OBSERVER COVERAGE REQUIREMENT FROM 60 FEET TO EITHER 55 FEET OR 57 FEET LENGTH OVERALL

Greenpeace supports Alternative 5 which would establish a pilot program for placement of observers on vessels 57 ft. LOA through 59 ft. LOA of all gear types to determine the feasibility of the placement of observers on these vessels on a regular basis.

Because there is an opportunity that data could be collected, albeit limited, we would support the inclusion of these vessels into a pilot observer program that would verify the feasibility of increased coverage on smaller vessels. We recognize that this program may benefit and improve fisheries management and request that the pilot program be established.

3) Proposed Action:

CHANGE THE REQUIREMENT FOR OBSERVER COVERAGE FROM FISHING TRIP DAYS TO FISHING DAYS AND DEFINE FISHING DAYS

Greenpeace supports Alternative 2 which will change the basis of observer coverage to be fishing days. This will not completely solve the problem of high coverage days and low sample days during the time that the observer is deployed on a fishing vessel, but this is a step in the right direction.

The purpose of the observer program is to collect accurate information on the fisheries as they occur. Efforts must be made so that observers can maximize their time at sea by performing their assigned tasks, i.e. sampling. Fishing days must be clearly defined so that the observer coverage is not wasted on transiting days. We urge the Council to take serious steps in defining fishing days.

One quick and simple solution would be to empower the observer with the decision. That is, each day the observer samples is considered a coverage day. This implies that the observer would sample every day that fishing actually occurred. The only disparity between sample days and coverage days would be in the event of illness. On days when the observer is ill, these would be coverage days for the vessel.

4) Proposed Action:

CHANGE THE 30 PERCENT OBSERVER COVERAGE REQUIREMENT FROM A QUARTERLY REQUIREMENT WITH NO CONNECTION TO TARGET FISHERY TO A MONTHLY REQUIREMENT, A QUARTERLY REQUIREMENT BY TARGET FISHERY, OR A QUARTERLY REQUIREMENT BY STATISTICAL AREA

Greenpeace does not endorse any of the alternatives because these options do not appear to alleviate the problem. Perhaps some sort of random table should be generated for observer coverage that would effectively assign an observer to a fishing vessel. Considerations that need to be made should deal with the amount of actual fishing that is to be covered. If observers were assigned to vessels by the NMFS observer program it would eliminate the current situation where a vessel gets to choose times for observer coverage.

5) Proposed Action:

REDUCE THE LEVEL OF OBSERVER COVERAGE FOR GROUND FISH VESSELS FISHING WITH POTS/TRAPS

In anticipation of increasing participation in the pot fisheries, Greenpeace supports Alternative 1 which would maintain the status quo. The concern here is that if increased levels of the Pacific cod quota are eventually harvested by pot fishers, then these vessels will require coverage comparable to those vessels which currently remove high levels of Pacific cod.

CONCLUSION

In order that the observer program continue to effectively operate in 1993, we support efforts to improve the quality and quantity of data that are collected. By increasing the amount of coverage during actual fishing operations, the reliability of the data will improve. We request that the North Pacific Fishery Management Council (NPFMC) consider these alternatives during its deliberations.

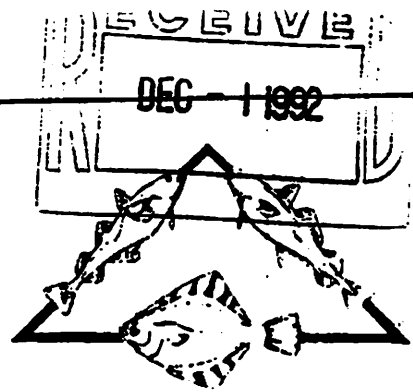
By accepting and supporting the observer program, the NPFMC has made a significant effort to improve the quality of information needed to maintain sustainable marine ecosystems for the long term. By improving the existing program, the NPFMC can improve the information that the observer program provides.

Sincerely,



Penny Pagels
Northwest Fisheries Campaigner

Alaska Groundfish Data Bank



TO: CLARENCE PAUTZKE, EXECUTIVE DIRECTOR
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: COMMENTS ON PROPOSED AMENDMENTS
TO THE DOMESTIC OBSERVER PLAN

DATE: DECEMBER 1, 1992

SENT BY FAX: 2 PP - TO BE FOLLOWED WITH EXPRESS MAIL

RE: EA/RIR/IRFA FOR A REGULATORY AMENDMENT TO THE DOMESTIC
GROUND FISH OBSERVER PLAN FOR THE GULF OF ALASKA AND BERING SEA

IN GENERAL: The objectives of many of the proposed changes in this regulatory amendment are costly and their objectives can be more economically achieved under the Research Plan when NMFS is able to direct the deployment of observers.

We are commenting only on the selected portions of the proposal which affect trawl operations.

1. 100% COVERAGE FOR VESSELS 115- FEET IN LENGTH AND LONGER: While we understand the advantages of increased 100% observer coverage under the current program, the real issue is obtaining adequate data. This proposal is a costly stop-gap measure. The argument that 100% coverage would allow these vessels to be included in the vessel incentive program would have more merit if the vessel incentive program being vigorously applied. Since it appears that four cases a year is all that NMFS can handle, making additional vessels eligible means little.

We prefer Alternative 1: Status quo. The problem of improving coverage can be dealt with more efficiently when the Research plan is in place.

2. REDUCE THE LOWER LIMIT FOR 30% VESSELS TO 55 OR 57- FEET.

We suggest Alternative 5, Establish a Pilot Program for placement of observers on vessels 57-59 feet. Placing observers on small vessels raise safety concerns and working area concerns discussed in the EA/RIR. Before an industry wide program is adopted we feel it is appropriate to run a pilot program in order to address these concerns and make any adjustments in operating methods needed to assure that the observer is able to collect adequate and useful data.

Further, the expense may be a serious problem for small vessels that are often held in port by weather for long spells. Again, waiting for the Research Plan to be implemented makes more sense. Starting a pilot program to assess what is needed for a good small boat program also makes sense.

3. CHANGE THE OBSERVER COVERAGE FROM FISHING TRIP DAYS TO "FISHING DAYS. Originally AGDB members saw no problems with this proposal. However, during discussion several members brought up that this proposal has serious safety implications -- vessels may try to make it back in bad weather to save observer

costs instead of holing up until the weather calms -- or try to keep fishing when they should stop in order to save observer costs.

Because of these safety concerns we suggest status quo, Alternative 1 be adopted.

- 4. REQUIRE TWO OBSERVERS ON SOME MOTHERSHIPS PROCESSOR VESSELS OR CATCHER-PROCESSOR VESSELS. There is merit to this proposal and we feel that if this proposal, Alternative 2, or Alternative 3 is adopted shorebased operations will end up being included.**

Rather than base the decision to place two observers on a vessel or mothership on the number of vessels delivering in a day or tows made in a day, however, we feel the decision should be based on the tonnage processed.

Thank you for the opportunity to comment.

**Chris Blackburn, Director
Alaska Groundfish Data Bank**

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Pamela Gale
200 17th Ave East
Seattle, WA 98112

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

VIA FACSIMILE: (907)271-2817

RE: Draft Regulatory Amendment to the Domestic Groundfish
Observer Plan for the Gulf of Alaska and the Bering Sea and
Aleutian Islands.

I have worked aboard vessels as a National Marine Fisheries Service (NMFS) observer in the North Pacific joint venture and domestic fisheries and currently work as a logistics manager for an observer contractor. I would like to comment on the Draft Regulatory Amendment to the Domestic Groundfish Observer Plan.

The Observer Plan developed and adopted by the North Pacific Fishery Council (Council) in 1989 was modeled after the Observer Plan for the foreign and joint venture fisheries. At the time of implementation, NMFS had limited knowledge of the domestic fleet and could, at best, speculate on problems that might be encountered with this shift from foreign to domestic fishery. Over the past three years the domestic fleet has attained growth well beyond that imagined by NMFS or others of us in the fishery. The council has tried to deal with this unrestrained growth by implementing a number of regulations including; vessel incentive programs, bycatch caps, and the recently approved Amendments 18/23, Inshore/Offshore. Unfortunately, as the constituent parts, fishing effort, and regulations for the fishery have changed the Observer Plan has been immutable. It is now time to amend the Observer Plan so that adequate data collection can be assured.

The proposal to amend the Observer Plan to reduce the lower limit for the 100 percent observer requirement from 125 feet to 115 feet length overall (LOA) would allow data collection from a fraction of the fleet which currently takes 9.3% of the groundfish catch. More than two-thirds of the 33 vessels in the 115-125 feet LOA category participate in the inshore fishery. The recent Inshore/Offshore decision makes it safe to assume that these vessels will be taking increasing percentages of the total catch. NMFS will need to track the changes in catch per unit effort, bycatch composition, and possible localized depletion of stocks that could prevail as the smaller vessels of the inshore fleet concentrate their fishing effort closer to shore. Additionally, the loss of sampling time and data currently obtained from the

offshore vessels, the majority of which have 100% coverage, must be compensated by increased data collection from the vessels in the 115-125 foot LOA category.

The proposal to reduce the lower limit for the 30 percent observer coverage requirement from 60 feet to 55 feet or 57 feet LOA attempts to address the problem of inadequate data for several important fisheries and their associated bycatchs. I fully support expanded data collection programs but, foresee several problems with the inclusion of these vessels in the 30% category. More than 165 vessels will be drawn into the 30% coverage category if the lower limit is set at 55 feet LOA. Because the smaller vessels tend to fish the same fishery openings, many of which are less than 15 days, there would be a dramatic increase in demand for observers several times a year. The burden that would be placed on contractors to fill these positions, the increased demand on NMFS to brief and debrief these people, and the total associated cost could well exceed the benefits.

I would fully support a pilot program for vessels from 55 feet to 59 feet LOA to establish a sampling regimen and to address the concerns for observer safety. However, I would like to see the council exploring other options for placing observers on these vessels. One option might be to develop a lottery for each fishery. Vessels would have to register their intent to fish a particular opening thus entering themselves into the lottery. NMFS would randomly select vessels to carry observers—the total number of observers, vessels, and sampling days would be dependent on the data needs for that fishery.

The current amendments pertaining to observer requirements for vessels in the 30% category have been subjected to extensive manipulation by the vessel operators resulting in data biasing and reduced data collection. There is a preemptory need to follow through on the proposed change to the current definition of fishing days from that which defines coverage as the day the vessel deploys fishing gear through the day of return to port. The latter definition has provided numerous opportunities for vessels to obtain extra days of coverage while the observer is afforded fewer opportunities to sample. The new definition must maximize sampling opportunities for observers by requiring the vessel to deploy minimum amounts of gear to obtain coverage and can no longer include transit days as coverage days. It is ineffectual and morally demeaning to place observers on vessels for data collection only to have their efforts thwarted by the manipulation of regulations.

The current requirement for 30% vessels to carry observers 30% of their fishing days in a quarter has left coverage at the discretion of the vessel. This provision which allows vessels to pick and chose fisheries for which they'll accept coverage creates an element of bias which is contrary to the observer program goals. A requirement to have these vessels carry

3

observers for each month in which they fish and/or by fishery coupled with a three day trigger could help to alleviate some of this manipulation. Unfortunately, a regulation to this effect could also create a logistical nightmare and result in data of reduced value to the NMFS observer program.

There will be months in which vessels will participate in three different fisheries and require observer coverage for a single trip in each fishery. Multiply this scenario by several hundred vessels and contractors will be forced to maintain large numbers of observers at great expense to all. Additionally, the quality of the data which will be obtainable by an observer in a single trip will be greatly reduced. I again suggest a lottery system that takes the option for coverage out of the vessels hands and leaves it at the discretion of NMFS. Observers could be randomly placed on vessels for the duration of a designated fishery or as data needs mandate.

The Observer Plan needs the attention of the Council and amending to allow that the collection of data and the needs of the NMFS management program can be met. There have been and will continue to be manipulations of regulations for the individuals benefit however, the Council can reduce these by providing wording that is less ambiguous. I hope that the Council will move ahead with the Draft to Amend the Observer Plan thus closing some of the gaps that exist in the current data collection process.

Sincerely,

Pamela S. Gale

Pamela S. Gale

To: Richard Lauber
Chairman, NPFMC
(907) 271-2817

From: Vera Hoffmann Obeso
Dutch Harbor Field Coordinator
Alaskan Observers
(907) 581-2907 - fax



About a week ago, David Edick of Alaskan Observers faxed me a copy of proposed revisions to the existing NMFS Conflict of Interest Standards. He was concerned that the first alternative (suggested by NMNFS) would force him to find another field coordinator for his Dutch Harbor office, because I married a Unisea employee whom I met in an Emergency Medical Technician (EMT) class last year.

As Field Coordinator for Alaskan Observers, I am responsible for observers from the time they arrive in Dutch Harbor until they board the Seattle-bound plane at the end of their contract. I make sure they go to a mid-cruise debriefing at the NMFS field office in Dutch Harbor, bring them mail, cash advances, gear, and whatever else they need, transfer them to other vessels, keep track of boat schedules via SSB radio for the Seattle office, etc. I do not review data and do not know exact fishing locations of our boats. Unlike NMFS observers, I am obviously not in a position to be bribed into data falsification to the advantage of the vessel in question.

I do not consider being married to a Unisea employee as holding a financial interest in the fishery -- my husband, who supervises a crab processing line, simply receives a monthly paycheck from Unisea. Alaskan Observers has never tried to acquire contracts with either Unisea or any of their vessels.

My marriage can hardly be construed as personal interest in the fishery, either. As I mentioned already, my husband and I met in an EMT class -- the fact that he works for Unisea and I work for AOI is a coincidence. I feel that it would be unfair to "punish" me by firing me from a job which I enjoy and perform with competence.

In reviewing the existing standards, I agree that they are ambiguous and preclude NMFS from taking effective action against observers with conflicts of interest. The definition of "personal and financial interest" are also somewhat incomplete and contradictory. However, I would like to caution the Council from making observer conflict-of-interest standards so broad and strict that they become unfair and virtually unenforceable, especially since they apply only to observers and observer contractors and not to NMFS employees integral to the observer program.

Respectfully,

Vera Hoffmann Obeso

DRAFT

**ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR A REGULATORY AMENDMENT TO THE
DOMESTIC GROUND FISH OBSERVER PLAN
FOR THE GULF OF ALASKA
AND THE
THE BERING SEA AND ALEUTIAN ISLANDS**

Prepared by

**The Staffs of the:
Alaska Fisheries Science Center
Alaska Region NMFS
North Pacific Fishery Management Council**

October 27, 1992

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ADOPT
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SUMMARY

The North Pacific Fishery Management Council (Council) at its June 1992 meeting approved a North Pacific Fisheries Research Plan which will include observer programs for groundfish, crab, and halibut. If the Research Plan is approved by the Secretary of Commerce (Secretary) it will replace the current groundfish Observer Plan. Although the Research Plan is scheduled to be submitted to the Secretary in November 1992 for approval, it could not be fully implemented until 1994 because start up funds are not presently available. Therefore, the Observer Plan which provides for the current industry funded program would remain in effect during 1993. NMFS staff has encountered several problems with the Observer Plan and met with the Council appointed Industry Oversight Committee on August 13, 1992. Recommended changes to the Observer Plan by the NMFS staff and the Industry Oversight Committee are analyzed in this document.

1.0 PURPOSE AND NEED

The groundfish fisheries in the exclusive economic zone of the Bering Sea/Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) are managed under Fishery Management Plans (FMPs) for the Groundfish Fishery of the Bering Sea/Aleutian Islands and Groundfish of the Gulf of Alaska. These FMPs were developed by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act). They were approved by the Secretary and implemented in 1981 and 1978, respectively.

On November 1, 1989 the Secretary approved Amendment 13 and 18 to the groundfish fishery management plans for the Bering Sea/Aleutian Islands and Gulf of Alaska. The implementing regulations were published as a final rule on December 6, 1989 (54 FR 50386). One measure authorized a comprehensive domestic fishery observer program. An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and implemented by NOAA, effective February 7, 1990 (55 FR 4839, February 12, 1990). In December 1990 the Council recommended changes to the Observer Plan which were approved by the Secretary and published as a final rule on July 8, 1991 (56 FR 30874).

The Observer Plan requires specific levels of observer coverage which vary with size of fishing vessel and quantity of fish processed by floating and shoreside processors. These requirements were established because it was recognized that living marine resources could not be effectively managed without the types of information that were either available only or most efficiently through an observer program.

The Observer Plan requires that owners and operators of vessels and shoreside processing facilities participating in the groundfish fishery arrange for and pay the cost to NMFS certified contractors for placing observers aboard their vessels and at their shoreside processing facilities. The Observer Plan imposes responsibilities on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS certified contractors who provide observers to groundfish fishing vessels and shoreside processors. The Observer Plan also prescribes observer conduct, conflict of interest standards for observers and contractors, and reasons for revoking contractor or observer certification. In 1991 the Observer Plan observer requirements for shoreside processing facilities and for mothership processor vessels were changed. The release of observer-estimated bycatch rates as public information were authorized, and the certification time for observer contractors was extended.

One part of this document is an environmental assessment (EA) that is required by the National Oceanic and Atmospheric Administration (NOAA) to comply with the National Environmental Policy Act of 1969 (NEPA) for purposes of analyzing the impacts of proposed federal actions on the quality

of the human environment. The EA serves as a means of determining if significant environmental impacts could result from a proposed action. If the action is determined not to be significant, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. If the action is determined to be significant, an environmental impact statement (EIS) must be prepared.

An EIS is required if a proposed action may reasonably be expected to: (1) jeopardize the productive capability of the target resource species or any related stocks that may be affected by the action; (2) allow substantial damage to the ocean and coastal habitats; (3) have a substantial adverse impact on public health or safety; (4) affect adversely an endangered or threatened species; (5) result in cumulative effects that could have a substantial adverse effect on the target resource species or any related stocks that may be affected by the action. Following the end of the public review period, the Council could determine that the proposed changes will have significant impacts on the human environment and proceed directly with preparation of an EIS.

Another part of this document is the Regulatory Impact Review (RIR) that is required by the NMFS for all regulatory actions, and Department of Commerce or NOAA policy changes that are of significant public interest. The RIR: (1) provides a comprehensive review of the level and incidence of impacts associated with a proposal or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining whether any proposed regulations are major under criteria provided in Executive Order 12291 and whether or not proposed regulations will have a significant economic impact on a substantial number of small entities in compliance with the Regulatory Flexibility Act (Publ. L. No. 96-354) (RFA). The primary purpose of the RFA is to relieve small businesses, small organizations, and small governmental jurisdictions (collectively, "small entities") of burdensome regulatory and recordkeeping requirements. The RFA requires that if regulatory and recordkeeping requirements are not burdensome, then the head of an agency must certify that the requirement, if promulgated, will not have a significant effect on a substantial number of small entities or provide sufficient justification to receive a waiver. This RIR analyzes the impacts proposed changes to the Observer Plan would have on both the GOA and the BSAI groundfish fisheries. It also provides a description and estimate of the number of vessels (small entities) to which any regulation implementing this regulatory amendment would apply.

This document provides background information and assessments necessary for the Secretary to determine if the Amendment is consistent with the Magnuson Act and other applicable law. It also provides the public with information to assess the alternatives that are being considered and to comment on the alternatives. These comments will enable the Council and Secretary to make more informed decisions concerning the resolution of the management problems being addressed. This document analyzes potential impacts of the following proposed changes to the Observer Plan:

- (1) Reduce the lower vessel length limit for the 100 percent observer coverage requirement from 125 feet to 115 feet length overall.
- (2) Reduce the lower vessel length limit for the 30 percent observer coverage requirement from 60 feet to either 55 feet or 57 feet length overall.

- (3) Change the requirement for observer coverage from fishing trip days to fishing days and define fishing days.
- (4) Change the 30 percent observer coverage requirement from a quarterly requirement with no connection to target fishery to a monthly requirement, or a quarterly requirement by target fishery.
- (5) Reduce the level of observer coverage for groundfish vessels fishing with pots/traps.
- (6) Revise conflict of interest standards.

Description of the Groundfish Fisheries

The most recent description of the groundfish fisheries is contained in the draft SAFE documents for the GOA and BSAI groundfish fisheries for 1992. These documents include information on the catch and value of the fisheries, the numbers and sizes of fishing vessels and processing plants, and other economic variables that describe or affect the performance of the fisheries.

2.0 REDUCE THE LOWER VESSEL LENGTH LIMIT FOR THE 100 PERCENT OBSERVER COVERAGE REQUIREMENT FROM 125 FEET TO 115 FEET LENGTH OVERALL

2.1 Description of and Need for the Proposed Action

The observer coverage requirements for vessels have remained essentially the same for 1990 through 1992. While adequate for some purposes, such as estimating the catch of target species, it is inadequate for other tasks, such as in-season prohibited species cap monitoring and the vessel incentive program for vessels in the 30 percent coverage category.

Vessels 125 feet length overall (LOA) and longer are currently required to carry observers 100% of the time they are operating in the groundfish fishery. This group of vessels accounted for 75% of the total groundfish catch taken in 1991 in the Bering Sea/Aleutian Islands and Gulf of Alaska regions and 39% of the total number of fishing days.

Vessels from 60 feet LOA and less than 125 feet LOA are required to have 30% observer coverage during each quarter in which they fish 10 or more days. The class of vessels from 115 feet LOA but less than 125 feet LOA is currently in the 30% coverage category. In order to provide additional coverage of the fisheries for purposes of monitoring bycatch caps, catches of groundfish and compliance with the individual vessel incentive program, the Council is requested to consider requiring these vessels to be included in the 100% coverage category.

Two alternatives are proposed for Council consideration.

Alternative 1. Maintain the status quo. The lower size limit for the 100% coverage class of vessels would remain at 125 feet LOA.

Alternative 2. Lower the minimum size limit for the 100% coverage class of vessels from 125 feet LOA to 115 feet LOA.

2.2 Analysis of Alternatives

2.2.1 Alternative 1: Status Quo

Maintenance of the status quo would continue to provide for 100% observer coverage of the portion of the groundfish fleet which in 1991 accounted for 75% total catch of groundfish and 39% of the total number of fishing days in the Bering Sea/Aleutian Islands and Gulf of Alaska regions. The status quo would result in the vessels which took 22.4% of the groundfish catch in 1991 and accounted for 38.6% fishing days continuing to have 30% coverage by quarter. The primary benefit from continuing the status quo would be maintaining the current level of industry cost for observer coverage and not increasing the cost as proposed under Alternative 2. Data would continue to be collected and available for use in estimating bycatches of prohibited species, monitoring groundfish catches, and collecting biological data from the fishery.

There are a number of disadvantages to maintaining the status quo. There will continue to be difficulty in applying the individual vessel incentive program to vessels with less than 100% coverage. The ability to choose when and where to take observer coverage and the statistical need for essentially 100% coverage of vessels make it difficult to include vessels in the 30% category in the vessel incentive program. Though data for estimating bycatches of prohibited species would continue to be available if the status quo is maintained, there is often a lack of data by target fishery and area since vessels within the 30% class can carry the observer whenever they choose during a quarter. This often results in the use of default bycatch rates having to be used because of lack of data rather than the actual bycatch rates occurring in the fishery. Finally, with the implementation of Amendments 18/23, Inshore/Offshore, larger portions of the pollock catches in both the Bering Sea/Aleutian Islands and Gulf of Alaska and the Pacific cod catch in the Gulf of Alaska will be taken by catcher vessels delivering to shoreside processing facilities. Elimination of the offshore vessels, the majority of which have 100% observer coverage, will mean a decrease in the sampling and coverage of these fisheries.

It should be noted that some of the problems associated with the continuation of the status quo may be somewhat alleviated by other proposed changes to the Observer Plan. For example, requiring 30% coverage to take place by target fishery by quarter and the changing to the use of fishing day to measure observer coverage may provide better coverage of target fisheries by time and area than under the current program.

2.2.2 Alternative 2: Lower the minimum size limit for the 100% coverage class of vessels from 125 feet LOA to 115 feet LOA

The lowering of the minimum vessel length for inclusion into the 100% observer coverage category would provide 100% coverage of the portion of the fleet which landed 184,302 metric tons or 9.3% of the groundfish catch in 1991 and accounted for 8.3% of the total number of fishing days. According to logbooks submitted in 1991, there were 33 vessels which fished 3,719 days in the size class from 115 - 124 feet LOA. Of these 33 vessels, there were 19 vessels which only fished trawl gear in 1991. One of these vessels was a catcher/processor. Six of the 33 vessels fished only longline gear and 5 of these were catcher processors. Six vessels only fished pot gear and the remaining 2 vessels fished a combination of either trawl and pot gear or longline and pot gear. According to the logbook data, all 33 of the vessels spent some time targeting on Pacific cod while all of the trawlers also targeted on pollock and one longline vessel also targeted on sablefish.

The estimated additional annual cost to these vessels for inclusion into the 100% category would be about \$525,000 (an additional 84 observer months at a cost of \$7,080/month versus the 44 months

at \$8,680/month currently being paid). Under the proposed revision, the cost for observer coverage per ton of groundfish would be \$4.92/ton of groundfish as compared to the current rate of \$2.07/ton of groundfish for vessels 115 - 124 feet LOA. The entire 30% group of vessels average cost for observer coverage per ton of groundfish is \$4.69/ton while vessels currently in the 100% coverage class are paying \$3.24/ton of groundfish.

2.2.3 Physical and Biological Impacts

The alternatives are not expected to have a direct effect on the quality of the human environment. However, Alternative 2 is expected to have a positive effect by increasing the ability of NMFS to manage the resources by providing additional observer coverage by time, area, and target fishery for use in monitoring and estimating bycatch caps for halibut and other prohibited species.

2.2.4 Distribution of Benefits and Costs

Benefits of Alternative 2 include full sampling of a larger portion of the entire groundfish catch and effort. Improved sampling within this class of vessels will result in the inclusion of these vessels within the individual vessel incentive program and the provision of additional observer coverage. All 33 of the vessels within this size category participated in the Pacific cod fisheries in 1991, a fishery for which the monitoring of the bycatch of halibut is extremely important. Inclusion of these vessels within the 100% category will also offset some of the reduced levels of sampling in fisheries where participation by at-sea or offshore processing has been reduced or eliminated as a result of Amendments 18/23.

The primary disadvantage to adoption of Option 2 is the increased cost which this segment of the industry will be required to provide for observer coverage. An increase of about \$525,000 will be experienced as compared to a total cost of about \$382,000 for their current mandatory level of observer coverage. There will also be some disadvantages experienced aboard each of these vessels in having to provide for accommodations for observers 100% of the time as compared to the current 30% requirement.

2.2.5 Impacts on Enforcement

Lowering the minimum size limit for the 100% coverage class of vessels from 125 feet LOA to 115 feet LOA would actually reduce the work load associated with the enforcement of observer coverage requirements. Compliance by vessels in the 100% coverage class to observer coverage requirements is somewhat easier to investigate than vessels in the 30% coverage class. A 100% coverage vessel is expected to have an observer aboard at all times that it is fishing for groundfish, so lack of coverage could be discovered in a routine Coast Guard boarding. Checking compliance after the fact is also easier, as vessel movement reports and weekly production reports are available for all of the catcher/processors for verifying the vessel days from the logbooks. Enforcement personnel are spared having to check whether the vessel doesn't need coverage due to the less than 10 day fishing waiver, and they don't need to calculate the number of days required to have an observer aboard. Thus, by changing some of the vessels from 30% to 100% observer coverage, the enforcement of the observer coverage requirement would be slightly reduced. In 1991, there were 33 vessels in the length range that would be affected by this change.

3.0 REDUCE THE LOWER VESSEL LENGTH LIMIT FOR THE 30 PERCENT OBSERVER COVERAGE REQUIREMENT FROM 60 FEET TO EITHER 55 FEET OR 57 FEET LENGTH OVERALL

3.1 Description of and Need for the Proposed Action

Vessels under 60 feet LOA are not currently required by the Observer Plan (Plan) to meet a specified level of observer coverage, although the Plan provides the NMFS Regional Director the authority to require any vessel or plant owner and operator in the groundfish fishery to carry and pay for an observer. A lower size limit of 55 feet LOA was originally proposed for vessels requiring 30% observer coverage in the draft rules for the Observer Program in 1989 but was revised as a result of public comment in the final rule implementing in the program in 1990. This issue was reviewed again in September, 1990, as a possible change in the Plan for 1991. At the time the Council decided not to change the lower limit from 60 feet LOA to 55 feet LOA.

Since 1990, increasing proportions of the Pacific cod catch in the Gulf of Alaska have been taken by vessels in the 55 to 59 foot category. It is likely that the catch taken by these vessels will increase as a result of the inshore allocation of 90% of the Pacific cod TAC to vessels delivering to shoreside facilities. There has also been low coverage of the sablefish longline fishery in the eastern Gulf of Alaska over the past three seasons which could be improved by requiring coverage of this group of vessels. As a result, the Council is again asked to consider revision of the lower size limit of the 30% observer coverage category.

Four alternatives are proposed for Council consideration.

Alternative 1. Maintain the status quo. Vessels from 60 feet LOA but less than 125 feet LOA would continue to be required to carry an observer 30% of the fishing trip days in any calendar quarter in which they fish ten or more days.

Alternative 2. Lower the minimum size limit for vessels required to carry an observer 30% of the time from the current minimum size of 60 feet LOA to 55 feet LOA.

Alternative 3. Lower the minimum size limit for vessels required to carry an observer 30% of the time from the current minimum size of 60 feet LOA to 57 feet LOA.

Alternative 4. Lower the minimum size limit for vessels fishing with longline and pot gear to 57 feet LOA from the current minimum size requirement of 60 feet LOA. Vessels using trawl gear would be covered under a pilot program where the NMFS Alaska Regional Director would direct a number of vessels using trawl gear in the 57 - 59 foot LOA class to carry observers.

Alternative 5. Establish a pilot program for placement of observers on vessels 57 ft. LOA through 59 ft. LOA of all gear types to determine the feasibility of the placement of observers on these vessels on a regular basis.

3.2 Analysis of Alternatives

3.2.1 Alternative 1: Status Quo

Maintenance of the status quo would provide for 97.4% of the groundfish catch and 77.9% of the 1991 fishing effort to be subject to observer coverage by vessels currently with mandatory observer coverage requirements. The advantages of maintaining the status quo are the reduced cost to

industry which would range from \$225,680 to \$330,000 for Options 2 through 4. An additional advantage would be a lower chance of injury to an observer or crew on the vessel since many of these vessels have limited working space and accommodations. Under the current Observer Plan requirements, portions of the fleet under 60 feet LOA could be covered by the NMFS Regional Director requiring specific individual vessels to carry observers at their own expense.

The disadvantage of this approach is that only those vessels designated to carry the observers would be subject to the cost. The disadvantages of maintaining the status quo include no coverage of portions of the trawl fleet which are taking increasing levels of the Pacific cod catch in the Gulf of Alaska and an inability to directly estimate their bycatch of halibut and other species. There has also been a lack of coverage in the sablefish longline fleet in the eastern Gulf of Alaska where the fishery is predominated by vessels less than 60 feet LOA. The longline fleet which has been observed since 1990 has had areas of high bycatch of halibut which have resulted in the closure of longline fishing in the Gulf of Alaska in 1990 and 1991 without any data on halibut bycatch from vessels less than 60 feet LOA.

3.2.2 Lower the minimum size limit for vessels required to carry an observer 30% of the time from the current minimum size of 60 feet to 55 feet LOA

The most recent complete year for which data on both catch and fishing effort data are available is 1991. In 1991, there were 165 vessels in the 55 - 59 ft LOA category which submitted logbooks to NMFS. These vessels accounted for 3,065 fishing days or 7.5% of the total number of fishing days in the 1991 groundfish fishery. Of the 165 vessels in this size range, 5 vessels were catcher/processors which accounted for only 75 of the fishing days or 2.4% of the fishing effort. The remaining 97.6% of the effort and 160 vessels were attributed to catcher vessels. Vessels fishing with only hook and line gear (longlines, pots, and jigs) accounted for 75% of the number of fishing days while 25% of the effort was accounted for by vessels permitted as either trawlers or a combination of trawl and hook and line gear.

Review of catch data obtained from ADF&G fish tickets and NMFS weekly processor reports show that vessels in the 55 - 59 ft. LOA category accounted for 24,532 metric tons or 1.23% of the total groundfish catch. Within the 55 - 59 foot class, catcher vessels accounted for 99% of the group's catch and their catch was 3.2% of the total catch taken by all catcher vessels in 1991. Longline vessels accounted for 42% of the catch taken by vessels in this size class while trawl vessels accounted for 45% and pot vessels 13%.

The estimated cost to industry to provide 30% coverage of the fishing effort in the 55 - 59 ft. category would be about \$330,000 per year. The average cost per observer month for shoreside catcher vessels estimated by the Council's Observer Oversight Committee is \$8,680/month. It is estimated that approximately 38 observer months of additional coverage would be required by this alternative. The estimated cost of this coverage expressed as cost per ton of groundfish harvested would be \$13.45/ton of groundfish landed in 1991. The comparative cost for vessels currently in the 30% coverage category is \$4.69/ton of groundfish landed and \$3.24/ton of groundfish landed for vessels required to carry 100% observer coverage.

3.2.3 Lower the minimum size limit for vessels required to carry an observer 30% of the time from the current minimum size of 60 feet to 57 feet LOA

Under this alternative the minimum size of vessel required to carry an observer would be 57 feet LOA. Vessels in the size class 57 - 59 ft LOA accounted for 2,420 fishing days in 1991 or 5.9% of the total groundfish fishing effort in 1991. Within the size range of vessels from 55 - 59 ft LOA, the

vessels from 57 - 59 ft accounted for 70% of the vessel effort. This group of vessels includes the limit seine vessels that are of concern in the Pacific cod and longline fisheries. Within the class of vessels from 57 - 59 ft LOA, 1,686 fishing days or 70% of the days in the 57 - 59 ft LOA were attributed to fixed gear vessels in 1991; 734 days or 30% of the effort were expended by vessels using trawl gear. In terms of groundfish catch, 82% of the groundfish catch taken by vessels 55 - 59 ft LOA was taken by the group of vessels 57 - 59 ft LOA. Within the 57 - 59 ft class, fixed gear vessels accounted for 47% of the catch while trawl vessels accounted for 53% of the catch in 1991. Adoption of this option would cost the industry \$260,000 (30 observer months x \$8,680/month). The cost per ton of groundfish landed is estimated to be \$12.97/ton.

3.2.4 Lower the minimum size limit for vessels fishing with longline and pot gear to 57 feet LOA from the current minimum size requirement of 60 feet LOA. Vessels using trawl gear would be covered under a pilot program where the NMFS Alaska Regional Director would direct a number of vessels using trawl gear in the 57 - 59 ft LOA class to carry observers

This alternative combines parts of Alternatives 1 and 3. Industry representatives at a meeting of the Council's Observer Oversight Committee recommended that an alternative be evaluated which would lower the minimum size limit to 57 ft LOA for longline and pot vessels and require operators of vessels using trawl gear to work with NMFS to develop a pilot program for 1993. The Committee reasoned that longline and pot vessels could safely accommodate the housing and work of observers on the smaller vessels and that data from that portion of the fleet was needed to manage the sablefish hook and line fishery and its bycatch of halibut in the Gulf of Alaska. However, there was concern over adequate and safe work conditions for observers on these smaller vessels using trawl gear. The development of a pilot program using experienced observers was recommended to determine whether it was practical and safe to expand the requirement for specific levels of coverage to all vessels in the 57 - 59 ft range in future years.

Within the size class of vessels from 57 - 59 ft LOA, 1,686 fishing days or 70% of the days in the 57-59 ft LOA were attributed to fixed gear vessels in 1991; 734 days or 30% of the effort were expended by vessels using trawl gear. In terms of groundfish catch, fixed gear vessels accounted for 47% of the catch while trawl vessels accounted for 53% of the catch in 1991.

The estimated cost for observer coverage of the longline/pot fleet would be about \$182,280 (21 months x \$8,680/mo.). The cost for a pilot program on the trawl vessels of 15% coverage of fishing effort would be about \$43,400 (5 months x \$8,680/mo.). The pilot effort would allow for the placement of 2 experienced observers for 2.5 months each during the period of January through March which was the period in 1991 when most of the trawl activity occurred. The estimated cost per ton of groundfish landed for this option is \$11.26/ton.

3.2.5 Establish a pilot program for placement of observers on vessels 57 ft. LOA through 59 ft. LOA of all gear type to determine the feasibility of the placement of observers on these vessels on a regular basis.

This alternative would require the NMFS Alaska Regional Director to utilize existing authority to require a number of vessels in the vessel length size class of 57 ft. LOA through 59 ft. LOA to pay for and carry observers to determine whether vessels of this size could safely carry observers on a regular basis and whether conditions aboard those vessels provide the opportunity for observers to collect data of adequate quality. Based on comments from the Observer Oversight Committee, Alternative 4 was developed and analyzed which called for mandatory 30% coverage of longline and pot vessels 57 ft. LOA through 59 ft. LOA and the development and implementation of a pilot program on trawl vessels of this size. Additional comments raised the Advisory Panel and the Council

questioned whether observers could safely collect adequate data aboard vessels smaller than 60 ft. LOA, regardless of the type of gear used by the vessel.

The cost, advantages, and disadvantages of a pilot program on vessels using trawl gear which are 57 ft. LOA through 59 ft. LOA are described in Alternative 4. The proposal calls for the placement of 2 experienced observers for a total of 5 observer months during the January through March period at a cost of about \$43,400. A pilot program on longline and pot vessels would need to provide observation of fishing which is conducted from March through June. In 1991, 15 vessels using longline or pot gear fished in March and 17 in April within the 57 ft. LOA through 59 ft. LOA class. The fishery expanded in May with the opening of the sablefish fishery. During May, 93 vessels fished while 64 continued into June. Though a large number of vessels in this size class participated in these fisheries, on the average each of the vessels fished less than 10 days per month. A pilot program consisting of one experienced observer during March and April and four experienced observers during the May and June period is proposed. The estimated cost for this program would be about \$52,080. This program would provide an opportunity to observe a minimum of 4 different vessels during the March/April period and 8 different vessels during the May/June period. This should provide sufficient opportunity to evaluate the potential for future mandatory placement of observers aboard these vessels.

The advantages of a pilot program on both trawl and fixed gear vessels include the opportunity to access whether vessels of this size can safely accommodate the placement and work of observers; the collection of some initial data on the catches of target species and bycatch rates of prohibited species aboard these vessels; and, the lower cost to industry for observer coverage (\$95,480 as compared to costs of \$330,000 for Alternative 2, \$260,000 for Alternative 3, and \$225,680 for Alternative 4). The disadvantages include the difficulty in organizing a pilot program and the inequitable sharing of cost if NMFS is unable to work with the fishing associations representing these vessels to organize the program in a way where observers are rotated among the vessels in an efficient and organized way and the vessels are unable to form a large pool of vessels (for example all members in an association) to share the cost. Additionally, though some data would be available on the catch of target species and the bycatch of prohibited species, it may not provide enough data to provide any improvement in the in-season estimates of catches of prohibited species.

3.2.6 Physical and Biological Impacts

The alternatives are not expected to have a direct effect on the quality of the human environment. However, Alternatives 2, 3, and 4 are expected to have a positive effect by increasing the ability of NMFS to manage the resources by providing additional observer coverage by time, area, and target fishery for use in monitoring and estimating bycatch caps for halibut and other prohibited species.

3.2.7 Distribution of Benefits and Costs

The benefit of lowering the minimum size requirement to 55 feet LOA under Alternative 2 would be to provide observer coverage of a portion of the fishing fleet which accounts for important portions of the catches of Pacific cod and sablefish in the Gulf of Alaska and the associated bycatch of halibut in those fisheries. The disadvantages of the lowering of the minimum size requirement include the increased cost to a portion of industry not currently required to carry or pay for observers and the increased risk of injuries or accidents involving observers due to the limited work space and accommodations aboard small vessels.

The primary benefits and disadvantages of Alternative 3 are essentially the same as those from Alternative 2. The primary difference between Alternatives 2 and 3 is fewer vessels will be required

to carry and pay for observers under Alternative 3 thus decreasing the cost to industry and the potential safety and injury problems under this alternative.

The advantages and disadvantages to Alternative 4 for longline and pot gear are the same as those of Alternative 3. For trawl vessels the advantage is that it will allow both the industry and NMFS to evaluate the working conditions on these vessels to determine if accurate data can be collected under safe conditions. The disadvantage is that unless industry cooperates in the formulation and performance of the pilot program, the program will be difficult to implement and the cost will be placed on only those designated by the NMFS Regional Director to carry an observer.

3.2.8 Impacts on Enforcement

The addition of a large number of vessels to those required to meet mandatory levels of observer coverage will add to the difficulty and work load associated with the enforcement of observer coverage requirements. Alternative 2 would add 165 vessels, Alternative 3 would add 127 vessels, and Alternative 4 would add up to 123 vessels to the fleet which would have mandatory levels of observer coverage. Compliance by vessels in the 30% coverage class to observer coverage requirements are the most difficult to investigate since observer data, vessel logbook data and ADF&G fish ticket data all need to be cross-checked to determine the total amount of fishing days which occurred during each quarter by a vessel and then the number of days required to have an observer aboard. In 1991, there were 321 vessels in the 30% category which submitted logbooks. Adoption of one of the Alternatives 2 - 4 would result in a range of about 35% - 50% increase in the number of vessels in the 30% category subject to observer coverage. Other than the status quo, Alternative 1, the adoption of Alternative 5 would have the least impact on enforcement of observer coverage regulations.

4.0 CHANGE THE REQUIREMENT FOR OBSERVER COVERAGE FROM FISHING TRIP DAYS TO FISHING DAYS AND DEFINE FISHING DAYS

4.1 Description of and Need for the Proposed Action

Currently, a fishing trip is defined to start on the day when fishing gear is first deployed and end on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the U.S. EEZ off Alaska and adjacent waters of the state of Alaska. Observer coverage is calculated by dividing the observed fishing trip days by the total fishing trip days for each vessel. At present, vessels may only fish one day during a multiple day fishing trip but get credit for all days in the trip. Reasons at the time justified why the program was set up for doing it this way, but it is shortchanging the NMFS on what is actually needed which is coverage of actual fishing days. A change of definition is not necessarily trivial since it ultimately affects how many days a vessel or plant pays for the cost of an observer. In addition to taking into consideration any economic impacts, whatever measure is used as a basis for observer coverage needs to be able to be determined for each vessel and plant, whether or not an observer is onboard, and should be able to be verified from at least one other source.

Under the current fishing trip definition, a vessel can set gear at 11:55 PM and get observer coverage credit for a whole day and then return a few minutes after midnight and get credit for another whole day. Vessels have also gone out and set gear which was never meant to catch fish but because gear was set, the days counted toward coverage. The new definition of fishing days should indicate that longline and pot gear must be baited and trawl gear must be fished at fishing depth with the cod-end closed. Other stipulations to consider might include a minimum number of hooks/pots; distance from the dock; or time of day by which the gear must be deployed in order to count as a whole day. The determination of whether or not the day is counted must be capable of being made whether or not

an observer was aboard at the time. Regulations should clarify that days in which an observer spends aboard a vessel that delivers unsorted codends to a mothership does not count as observer coverage, unless such coverage is required in a particular specified opening.

Two alternatives are proposed for Council consideration.

Alternative 1. Maintain the status quo. Under this alternative, observer coverage is calculated in terms of fishing trip days, which is defined to start on the day when fishing gear is first deployed and end when the vessel offloads groundfish, returns to an Alaskan port, or leaves the U.S. EEZ off Alaska and adjacent waters of the State of Alaska.

Alternative 2. Change the basis of observer coverage to be fishing days. A fishing day would be defined as a day in which gear is retrieved. Such gear must have been deployed in a manner that is intended to actually catch fish--as a minimum, pots, traps, and longlines must be baited; trawls must have closed cod-ends attached and be set to fishing depth.

The Council may want to consider an additional stipulation that fish actually have to be landed for a day to count as coverage. Days in which an observer spends aboard a vessel that delivers unsorted codends to a mothership do not count as observer coverage, unless such coverage is required in a particular specified opening.

4.2 Analysis of Alternatives

4.2.1 Alternative 1: Status Quo

As there would be no change to the current situation there would be no cost associated with this option. The net loss however would be that the quantity of data obtained by the NMFS would be less than was originally intended under the observer plan.

4.2.2 Alternative 2: Change the basis of observer coverage to be fishing days. A fishing day would be defined as a day in which gear is retrieved. Such gear must have been deployed in a manner that is intended to actually catch fish--as a minimum, pots, traps, and longlines must be baited; trawls must have closed cod-ends attached and be set to fishing depth.

retained The Council may want to consider an additional stipulation that fish actually have to be landed for a day to count as coverage. Days in which an observer spends aboard a vessel that delivers unsorted codends to a mothership do not count as observer coverage, unless such coverage is required in a particular specified opening.

For an analysis of the current problem our efforts here focus on the 1991 data for that set is complete and should best describe the current situation. As the problem is restricted to the 30% coverage class of vessel we have also restricted this analysis to the GOA where the 30% coverage vessels are most prevalent. The problem as described is difficult to quantify as the days where coverage was obtained due to coverage manipulation cannot be readily separated from those that were obtained through actual fishing effort.

A comparison of the actual sampling days that were obtained versus the amount of coverage that was credited during these fishing trips was made. The percentage difference is days in which the observer was aboard but did not, or could not, sample. Generally observers are sampling each day of a trip that fish are brought aboard the vessel. Days not sampled could be due to days running, poor fishing, gear problems, or manipulation of the coverage requirements. Under the present system these days are all counted toward the vessels coverage requirements.

1991

Bottom trawl gear, All vessels, GOA wide
855 sample days, 1159 coverage days
26.2% of the days were unsampled.

Bottom trawl gear, 30% coverage vessels, GOA areas 620, 630.
402 sample days, 591 coverage days
32.0% of the days were unsampled.

Pelagic trawl gear, All vessels, GOA wide
406 sample days, 573 coverage days
29.1% of the days were unsampled

Pelagic trawl gear, 30 % coverage vessels, GOA areas 620, 630.
323 sample days, 419 coverage days
28.1% of the days were unsampled.

Pot gear, All vessels, GOA wide
217 sample days, 285 coverage days
23.9% of the days were unsampled

Longline gear, All vessels, GOA wide
611 sample days, 798 coverage days
23.4% of the days were unsampled.

These large differences between sampled and covered days only tells us that a large number of days are unsampled and that there are differences between gear types and vessel coverage categories. It does not, however, address the reasons for it. These days could as easily be attributed to gear problems as to coverage manipulation by the fleet. To address this question, the coverage data from twelve vessels fishing bottom trawl gear in the GOA areas 630 and 620 were looked at in 1992. Together these vessels obtained 68 observer coverage days 14 of which were attributed to either the setting of a test tow just prior to midnight or to returning to port within one hour after midnight. Each of these results in additional coverage being obtained by the vessel. In this small sample, 20.6% of the coverage obtained was coverage that was not actual effort but appeared to have been intended to obtain additional observer coverage. Of the vessels, 11 of the 12 looked at were obtaining coverage in the manners described. If this sample is indicative of the bottom trawl gear type in the 30% fleet then there is a significant problem which is decreasing the amount of actual data being obtained by the NMFS.

A further problem has been identified with this sample in that 8 of these 12 vessels have been identified in 1992 as inadequately reporting all of their days during fishing trips in their logbooks. As days during fishing trips is the currently accepted definition of days to which coverage requirements are applied, the unreporting of days results in a lower need for observer coverage. As unreported days are lost, the magnitude of this problem can not be identified. That it is a problem seems apparent from this sample. This situation will be corrected by these definition changes where coverage will be based on fishing days as long as the fishing days are accurately reported.

4.2.3 Physical and Biological Impacts

The alternatives are not expected to have a direct effect on the quality of the human environment. However, Alternative 2 is expected to have a positive effect by increasing the amount of data available to NMFS.

4.2.4 Distribution of Benefits and Costs

As the NMFS would be looking at essentially the same coverage of the fishing effort as was outlined in the 1990 observer plan, there would be no increase in cost to those that have been following the letter of the observer plan to date. The days counted toward coverage when an observer is aboard would decrease but the days which need to be counted toward obtaining coverage when an observer is not aboard would also decrease accordingly. The members of the Industry that have utilized the coverage loopholes in existence would see their costs rise to the levels of coverage set in 1990 as these loopholes are closed.

4.2.5 Impacts on Enforcement

Days in which gear is retrieved are required to be documented with catch location and effort data in the vessel logbooks. In order to check the accuracy of the logbooks regarding numbers of days that are fished, various other sources of information would have to be consulted, including ADF&G fish tickets, plant production logs, and observer data. Those same sources of information have to be cross-checked at present in order to determine the number of vessel trip days (from deployment of gear to return to port) that a vessel made in each quarter. At present, approximately 50% of the vessels submitting logbooks neglect to record days in mid-trip that they did not fish due to bad weather, mechanical breakdowns, or other reasons, so it is difficult at present to estimate the total number of vessel trip days for vessels that are in the 30% observer coverage category. If logbooks are accurately filled out with catches on the proper days of retrieval, it would be easier to determine the actual number of fishing days than fishing trip days. It may be more difficult, however, to determine whether a vessel's logbook was accurately filled out with the correct number of fishing days, so the burden of enforcement would probably be about the same if coverage were based on fishing days rather than fishing trip days.

The burden of determining whether or not the gear was deployed in a manner intended to catch fish would fall upon the fishery observer. Only when an observer is aboard are vessel's officers likely to intentionally overestimate the number of fishing days (and hence, observer coverage days). If there was only one gear retrieval on a particular day, the observer should be able to verify that pots, traps, and longlines had been baited, or that closed codends had been attached and set to fishing depth. It should be kept in mind that as data collected by observers would be used to determine the number of coverage days, it is possible that some observers would be subjected to pressure by vessel personnel to count questionable fishing days.

5.0 CHANGE THE 30 PERCENT OBSERVER COVERAGE REQUIREMENT FROM A QUARTERLY REQUIREMENT WITH NO CONNECTION TO TARGET FISHERY TO A MONTHLY REQUIREMENT, A QUARTERLY REQUIREMENT BY TARGET FISHERY, OR A QUARTERLY REQUIREMENT BY STATISTICAL AREA

5.1 Description of and Need for the Proposed Action

At present, vessels in the 30 percent observer coverage category can choose which fishing trips, and hence, target fisheries to have monitored by an observer. There is the potential for the manipulation of observer coverage to avoid having an observer while operating in fisheries/fishing areas with high bycatch of prohibited species. There is the perception that this is in fact happening--that vessels operating in multiple fisheries tend to take their required observer coverage during those fisheries which have relatively low bycatch of prohibited species. By changing the observer coverage to 30 percent by month, by target fishery, or by statistical area, the potential for some of this manipulation

may be reduced. The following alternatives are an attempt to address the problem of getting representative observer data from all of the fisheries.

Another problem is that fisheries openings have been getting progressively shorter. In some instances, a fisheries opening has been only 10 days, thus under the present observer coverage requirements, vessels that participated only in one such fishery in a quarter would have 10 or fewer fishing days, and would thus be exempt from any observer coverage for that quarter. This situation could result in a serious lack of observer data for particular fisheries. Some of the suggested alternatives reduce the 10 fishing day exemption, and others eliminate it entirely. Reduction or modification of the observer coverage trigger would be especially important if the coverage regulation was changed from a quarterly to a monthly basis.

The following alternatives are proposed for Council consideration:

Alternative 1. Maintain the status quo. Vessels 60 feet and over but less than 125 feet in length overall are required to carry a NMFS certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which they fish more than 10 days in the groundfish fishery.

Alternative 2A. Require that vessels 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each month of the year in which they fish more than 3 days in the groundfish fishery.

Alternative 2B. Require that vessels 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each month of the year in which they fish in the groundfish fishery.

ADOPTED
Alternative 3A. Require that vessels 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each calendar quarter in which they fish more than 3 days in the groundfish fishery. Each vessel must meet some of its observer coverage requirements for the quarter by carrying an observer during at least one fishing trip for each target fishery in which the vessel participated. Each fishing trip resulting in retained catch that the vessel makes during the quarter will be designated as having been operated in a particular target fisheries, using the targeting criteria listed below.

The following target criteria would be used to determine the target fishery of each vessel trip. If one species or species group has the largest amount of retained catch, that is the target.

Targets in the Gulf of Alaska are:

- Pollock
- Pacific cod
- Flatfish
- Rockfish
- Sablefish
- Other (everything else)

Targets in the Bering Sea/Aleutian Islands are:

- Pollock
- Atka mackerel
- Pacific cod
- Rockfish
- Flatfish
- Sablefish
- Other (everything else)

Alternative 3B. Require that vessels 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each fishery, in each calendar quarter in which they fish more than 3 days in the groundfish fishery. Each fishing trip resulting in retained catch that the vessel makes during the quarter will be designated as having been operated in a particular target fisheries, using the same criteria listed in Alternative 3A above.

Alternative 4. Require that vessels 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each calendar quarter of the year in which they fish more than 3 days in the groundfish fishery.

Alternative 5A. Require that vessels operating in the longline fishery in the Gulf of Alaska that are 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each regulatory area of the Gulf (Western, Central, Eastern), in each calendar quarter of the year in which they fish more than 3 days in the groundfish fishery.

Alternative 5B. Require that vessels operating in the ^{SBL} longline fishery in the ^E Gulf of Alaska that are 60 feet and over but less than 125 feet in length overall meet some of its observer coverage requirements for the quarter by carrying a NMFS certified observer during at least one fishing trip in each regulatory area ~~of the Gulf (Western, Central, Eastern) in which it fishes.~~

ADOPTED

Alternative 5C. Require that vessels operating in any groundfish fishery in the Gulf of Alaska that are 60 feet and over but less than 125 feet in length overall carry a NMFS certified observer during 30 percent of their days during fishing trips in each regulatory area of the Gulf (Western, Central, Eastern) in each calendar quarter of the year in which they fish more than 3 days in the groundfish fishery.

5.2 Analysis of Alternatives

5.2.1 Alternative 1: Status Quo

Maintenance of the status quo would continue to provide for 30% coverage of those vessels 60 to 125 feet in length overall that fish more than 10 days in the groundfish fishery. This requirement has been in effect for nearly three years and there are some indications that observer coverage is not being adequately represented in some fisheries. For example, in the 1992 Gulf of Alaska Pacific cod fishery, out of 925 data cells (a data cell consists of a particular fishery type, week, subarea, and gear type), there were corresponding observer data (incidental catch rates of prohibited species) for only 77 data cells. Of the remaining 848 cells, 461 were able to be filled with rates obtained by averaging three weeks of observer incidental catch rates. Default rates had to be used for 387 data cells (or 42 percent of the total data cells) for which neither corresponding observer data nor three-week averaged observer data were available. In the Gulf of Alaska rockfish and sablefish fisheries, default

rates were used for 66 and 38 percent of the data cells, respectively. In the sablefish longline fishery in the Eastern Gulf, there were corresponding observer data for only 8 of the 121 data cells and default rates had to be used for 40 percent of the data cells. Some of the data cells filled with default rates consisted of fisheries conducted in areas in which only small boats exempted from observer coverage were operating, but that does not account for many of the defaulted data cells. Maintenance of the status quo means that NMFS would have to continue to depend on the voluntary efforts of fishermen to ensure that adequate observer data are obtained for each fishery. Due to the fact that fisheries openings are getting shorter, more vessels are being exempted from observer coverage because the vessels fish only 10 days or less in a quarter. As mentioned previously, this could result in a serious lack of observer data in particular fisheries.

5.2.2 Alternatives 2A and 2B

Both of these alternatives require 30 percent coverage by month, instead of by quarter, as in the status quo. The difference between Alternative 2A and 2B lies in the trigger of the number of fishing days which requires coverage. Alternative 2A releases vessels that fish three or fewer days in the month from having observer coverage, and Alternative 2B requires all vessels that fish any number of days in the month to have observer coverage.

It is thought that requiring observer coverage by month, rather than by quarter would result in better coverage of some of the fisheries that are not being adequately covered now. It would reduce the amount of latitude that a fisherman has in taking the observer any time in the quarter, possibly only during those fisheries which traditionally have low bycatch.

The disadvantages of these two alternatives are that observers would be changing vessels very frequently in order to satisfy each vessel's monthly coverage requirement. Each time an observer boards a new vessel, some efficiency is lost in adapting to the new sampling conditions and new crew, and the quality of the data can suffer. Data can be lost in the rapid transfer from ship to ship, especially if the transfer from one vessel to another means that an observer is prevented from sampling the delivery in certain fisheries in which sampling of the delivery is the best method for obtaining the data. The increase in the number of vessels that an observer boards in a month would also complicate the logistics for vessel owners and observer contractors and increase the bookkeeping needed by NMFS to keep track of the data and reports.

5.2.3 Alternatives 3A and 3B

Both of these alternatives require some coverage by fishery, by quarter, rather than by month as in the preceding two options. They both allow vessels to fish for three days in the quarter before triggering the requirement for observer coverage. The difference between the two alternatives lies in the amount of observer coverage required in each fishery in which the vessel participates. Alternative 3A requires observer coverage for at least one fishing trip for each target fishery, while Alternative 3B requires 30 percent observer coverage for each target fishery. The retained catch for the fishing trip would be used to determine the target in which the vessel participated for that trip. The associated fishing trip days (or fishing days if Item 4.0 is implemented), would be attributed to that target fishery for the purpose of determining observer coverage by fishery.

The benefits of either of these alternatives are that it would result in improved observer coverage of some of the fisheries that are not being adequately covered now. Alternative 3A would assure that each of the fisheries a vessel participated in would receive at least some coverage during the quarter, and hence there would be observer data from a number of vessels for use in estimating bycatch for those fisheries. A fisherman or observer contractor would have to make sure that there was at least

some observer coverage for each fishery that vessel participated in for the quarter, but bookkeeping would be simplified because the observer coverage would not have to be tracked by fishery, only by quarter. Alternative 3B is more stringent than 3A in that it would require that the observer coverage be proportional to the fishing trip days the vessel spent in each fishery. It is likely that this alternative would provide more observer data of certain key fisheries than Alternative 3A because, depending on the length of time each vessel participates in those fisheries, more than one observer trip would be required.

In both Alternatives 3A and 3B, observer coverage is calculated by quarter rather than by month (as in Alternatives 2A and 2B). If a vessel operated only in one fishery over a period of several months, the owner would have the possibility of taking the observer coverage all in one period of time. This would not be possible in Alternatives 2A or 2B, in which it would be hard to avoid taking the observer coverage in three or more separate periods of time. Short, discontinuous observer trips are difficult logistically and are hard for the observer who must adjust to the different situations on each vessel. It may also be difficult for the crew, who might have to adjust to different observers.

Both Alternatives 3A and 3B would implement the reduction of the quarterly 10 fishing day trigger to a quarterly 3 fishing day trigger, which would help to counteract the problems mentioned under Alternative 1 regarding progressively shorter fishing openings.

The disadvantages in either alternative include the difficulties some fishermen may have in making sure that they have adequate observer coverage in each fishery. This would be less difficult under Alternative 3A than in Alternative 3B, where a specified percentage of each target fishery must be observed. The fishermen would have to be aware of the target fishery each trip is planned for and ultimately designated as, and for Alternative 3B, keep track of the exact fishing trip days by fishery. If either alternative is adopted, the cautious fisherman would want to assure that he had observer coverage for the first trip in each fishery, because it is possible that early fishery closures, vessel breakdowns, bad weather, poor market conditions, or other reasons might result in his not making other trips in that fishery during the quarter.

5.2.4 Alternative 4

Alternative 4 represents the status quo in that it would not require observer coverage to be calculated either by month or by target fishery. It differs from the status quo alternative (Alternative 1) in that it does incorporate a reduction of the quarterly 10 fishing day trigger to a quarterly 3 fishing day trigger, which would help to counteract the problems mentioned under Alternative 1 regarding progressively shorter fishing openings. This alternative would require vessels in the 30 percent observer coverage category that have more than 3 fishing days in a quarter to obtain observer coverage.

5.2.5 Alternatives 5A, 5B, and 5C

These alternatives require observer coverage by regulatory area in the Gulf of Alaska. Alternatives 5A and 5B specifically apply only to longline vessels in proposals to address the problem of inadequate observer coverage of the black cod fishery in the Eastern Gulf. Alternative 5A requires 30% coverage by regulatory area in each quarter, while 5B stipulates observer coverage of at least one fishing trip per regulatory area per quarter. Alternative 5C extends the 30% coverage requirement by quarter by regulatory area to all vessels.

It is thought that requiring observer coverage by regulatory area would improve the availability of observer data for the data cells in the Eastern Gulf fisheries, especially the longline fisheries, which

presently does not receive a representative allocation of observer effort.

5.2.6 Physical and Biological Impacts

None of the proposed alternatives would be expected to have a direct effect on the quality of the human environment. Requiring 30% observer coverage on a monthly basis, quarterly by target fishery, or quarterly by regulatory area should remove the potential for the manipulation of observer coverage.

5.2.7 Distribution of Benefits and Costs

In terms of cost to the industry, the maintenance of the status quo regulation would actually result in some decrease in the current cost for observer coverage as fishing openings get shorter and more vessels fall under the 10 fishing day exemption.

Under Alternatives 2A and 2B, it is expected that an unknown amount of additional cost would result to the fishermen because of having to contract observers several different times during a quarter, rather than just once, although many fishermen now contract observers multiple times because they are not certain how many vessel trip days in the quarter they will end up having. It will also be difficult for the vessel owner to obtain exactly the right amount of observer coverage needed each month without cutting a vessel trip short or leaving an observer aboard for additional days at the owner's expense.

The change from the status quo of the 10 fishing day quarterly trigger to a 3 fishing day monthly trigger in Alternative 2A or to no exemption in Alternative 2B will result in additional cost to some fishermen. Some fishermen who have never had to have observers before (because they always had fewer than 10 fishing days in a quarter) will have to obtain observers. The cost to vessel owners of these two alternatives are illustrated in the explanation and table below. The benefits to NMFS of either of these two alternatives are discussed under Alternative 1.

Under Alternative 2A, a vessel would no longer be able to fish 10 days in a quarter without an observer, but it would be able to fish 9 days if the 9 days were spread out with 3 days in each month. In this instance, vessels that typically fished exactly 10 days would have to either fish only 9 days, spread out as noted above, or be forced to take an observer. In 1991, the number of vessels, by quarter that fished exactly 10 days is as follows: Quarter 1, 0 vessels; Quarter 2, 8 vessels; Quarter 3, 5 vessels; and Quarter 4, 7 vessels. If each of these 20 vessels took 2 days of observer coverage during one of the months (to cover 6 or fewer vessel trip days during that month), the overall cost to industry could be calculated as $20 \text{ vessels} \times 2 \text{ days} = 40 \text{ observer days} = 1.33 \text{ observer months} \times \$8680/\text{month} = \$11,573$. The actual cost would probably be more than that unless the contractor is able to arrange the logistics of sharing the observer training costs, travel, overhead, etc. with an optimum number of other vessel owners.

Under Alternative 2B, any vessel in the 30 percent coverage category would be required to take an observer each month in which they fished, regardless of how few days they fished. The following table lists the numbers of vessels which fished 10 days or fewer in any quarter in the 1991 fishery, and corresponding vessel days, which were used to estimate the cost to this portion of the fishing industry if these days were no longer waived from observer coverage. It must be emphasized that this is only an estimate based on the way these vessels were fishing in 1991, and may not reflect what vessels do in the future.

Calculation of cost of Alternative 2B on vessels in 30% category that fished 10 days or less during a 1991 quarter

1991 qtr	no. of vessels	total no. days	30% of days	observer months	cost at \$8680/mo
1	29	140	42.0	1.40	\$12,152
2	73	439	131.7	4.39	38,105
3	55	251	75.3	2.51	\$21,787
4	40	216	64.8	2.16	\$18,749
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		1046	313.8	10.46	\$90,793

Under Alternatives 3A and 3B, the following table lists the numbers of vessels which fished from 4 to 10 days in any quarter in the 1991 fishery, and corresponding vessel days, which were used to estimate the cost to this portion of the fishing industry if these days were no longer waived from observer coverage. It must be emphasized that this is only an estimate based on the way these vessels were fishing in 1991, and may not reflect what vessels do in the future.

Calculation of cost of Alternatives 3A and 3B on vessels in 30% category that fished from 4 to 10 days during a 1991 quarter.

1991 qtr	no. of vessels	total no. days	30% of days	observer months	cost at \$8680/mo
1	17	115	34.5	1.15	\$ 9,982
2	56	407	122.1	4.07	\$35,328
3	30	209	62.7	2.09	\$18,141
4	28	194	58.2	1.94	\$16,839
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		925	277.5	9.25	\$80,290

The benefits of Alternative 4 were discussed in the Alternative 1 discussion, and the costs of this particular variation of the observer coverage trigger are given in the discussion of Alternatives 3A and 3B, including the table just above. The estimated additional cost to industry for the adoption of this Alternative would be \$80,290, based on the 1991 fishing effort.

Under Alternatives 5A, 5B, and 5C, it is expected that an unknown amount of additional cost would result to those fishermen who fish in more than one regulatory area during a quarter because of having to contract observers several different times during a quarter, rather than once, unless they are able to fish in multiple areas on a single observer trip. If Alternatives 5A or 5C are implemented, it will also be difficult for the vessel owner to obtain exactly the right amount of observer coverage needed each quarter without cutting a vessel trip short or leaving an observer aboard for additional days in a regulatory area at the owner's expense.

It is difficult to estimate how many vessel owners would be impacted by the implementation of Alternatives 5A, 5B, or 5C, because changes in seasonal openings which influence fishing habits, vary so much from year to year. Depending on the timing of the openings in the Bering Sea, vessels that normally fish in the Bering Sea may or may not fish in the Gulf of Alaska. According to 1991 data, potentially 193 vessels with longline gear would be affected by the enactment of Alternatives 5A or 5B, or 5C, and 284 groundfish vessels of all gear types would be impacted by the implementation of Alternative 5C.

Included in the benefits of any of the alternatives which would result in a more representative distribution of observer effort would be prohibited species incidence rates that more accurately reflect the fishery and more complete biological data used in estimating the status of the stocks.

5.2.8 Impacts on Enforcement

With the exception of Alternative 4, all of the proposed alternatives in this section would be expected to have a substantial impact on the work load associated with the enforcement of observer coverage requirements. The increase in complexity, causing the need for computer programming changes and the addition of more steps in the procedure for checking coverage varies according to the alternative, and so will be discussed in turn.

Alternatives 2A and 2B (coverage by month) would increase the workload somewhat, but not nearly as much as the alternatives requiring coverage by target fishery (Alternatives 3A and 3B) or by statistical area (Alternatives 5A, 5B, and 5C). The most difficult task at present in determining observer coverage is verifying the fishing trip days from the logbooks and ADF&G fish tickets. This task would not be affected by the implementation of Alternatives 2A and 2B. Some computer programming changes would be required, however, to log the number of days by month rather than by quarter in the logbook inventory files and in the observer coverage files, and there would be additional work involved in calculating and analyzing observer coverage by month. Alternative 2A would require slightly more work than Alternative 2B in order to check that the vessels fished more than 3 days in each month.

Alternatives 3A and 3B (coverage by target fishery), due to their complexity, would require considerably more computer programming changes and man-hours of work collating and checking data from a number of different sources than any other alternative under this Observer Plan item. In order to determine whether each vessel had complied with all of the terms of the alternative, the target fishery for each fishing trip would have to be designated using the fish ticket data, possibly matching that with the logbook data for that trip to determine the number of fishing trip days for that delivery. The observers on those vessels would also have to keep track of the observer coverage days by fishing trip, and indicate the target species for each trip. If a vessel appears to have a coverage problem by target fishery, someone would have to verify that there wasn't a discrepancy between the observer and the fish tickets in the designation of the target fishery for each trip. Of the two alternatives, the implementation of 3B would require a little more effort than Alternative 3A to perform the calculations to check the 30% observer coverage by target fishery.

As mentioned before, Alternative 4 would not be expected to cause any change in the workload because it only changes the quarterly trigger from 10 days to 4. As the fishing trip days have to be determined for all vessels in the 30% coverage category, the waiving of observer coverage for vessels that fished only three days rather than nine should not pose any additional difficulty.

Alternatives 5A, 5B, and 5C would require additional work on the part of the people who inventory the vessel logbook data as well as the staff that analyzes observer coverage. The number of fishing trip days would have to be calculated by statistical area for a varying number of vessels, depending on which alternative is implemented. The adoption of Alternative 5C would result in the most additional effort of the three, and Alternative 5A would require slightly more work than Alternative 5B.

6.0 REDUCE THE LEVEL OF OBSERVER COVERAGE FOR GROUND FISH VESSELS FISHING WITH POTS/TRAPS

6.1 Description of and Need for the Proposed Action

The United Fishermen's Marketing Association, Inc. requested the NMFS to consider reducing the required level of observer coverage of the groundfish pot fleet to 10% of the fishing trip days by quarter. Their reason for requesting the reduction is that the Pacific cod pot fishery is an exceptionally clean fishery from the standpoint of bycatch and that a lower level of observer coverage would be adequate to collect basic data on the activities of this fleet. Vessels using pot gear are currently subject to the same levels of observer coverage as vessels using other gear types. The required level of observer coverage is based on a vessel's overall length. Vessels 125 ft. length overall (LOA) or longer must have 100% observer coverage, vessels from 60 ft. LOA but less than 125 ft. LOA must have 30% coverage by quarter, and vessels less than 60 ft. LOA are not required to meet mandatory levels of observer coverage.

Three alternatives are proposed for Council consideration.

Alternative 1. Maintain the status quo which would continue to require vessels using pot gear to carry an observer 100% of the time if the vessel was 125 ft. LOA or longer and 30% of the time in any calendar quarter in which more than 10 days area fished if the vessel were at least 60 ft. LOA but less than 125 ft. LOA.

Alternative 2. Decrease the required level of observer coverage on vessels using pot gear which are at least equal to the minimum length of a vessel required to carry an observer (currently 60 ft. LOA) but less than 125 ft. LOA to 10% of the fishing trip days during any calendar quarter in which they fish more than 10 days.

Alternative 3. Require 30% observer coverage on ^{grip h} vessels using pot gear which are at least equal to the minimum length of vessel required to carry an observer (currently 60 ft. LOA) during each calendar quarter in which they fish more than 10 days.

6.2 Analysis of Alternatives

6.2.1 Alternative 1

The pot fishery for Pacific cod was a relatively small fishery in 1990, increased in size in 1991 and continues to increase in 1992, especially in the Bering Sea/Aleutian area. The total catch made by pot vessels in 1990 was 8,422 t (1,418 in the Bering Sea/Aleutian area and 7024 t in the Gulf of Alaska). The fishery increased to 14,975 t in 1991 (4,370 t in the Bering Sea/Aleutian area and 10,605 t in the Gulf of Alaska) and through August 23, 1992, has increased further to 20,487 t of groundfish (11,368 t in the Bering Sea/Aleutian area and 9,119 t in the Gulf of Alaska).

During 1990, pot-sets (a group or string of pots set in the same general location) sampled by observers accounted for 20% of the total groundfish taken by pot vessels. By region in 1990, 70% of the catch was sampled in the Bering Sea/Aleutian Islands area and 10% in the Gulf of Alaska area. The corresponding percentages of observer sampling for 1991 were 27% of the overall catch and by region, 69% in the Bering Sea area and 9% in the Gulf of Alaska region. Sets sampled by observers in 1992 accounted for 22% of the total catch. By region in 1992, observer sampling accounted for 32% of the Bering Sea/Aleutian Island area catch and 10% of the Gulf of Alaska catch. The large difference between the Bering Sea/Aleutian Islands area and the Gulf of Alaska area in percent of

the catch observed is due to the greater number of vessels requiring 100% observer coverage in the BSAI fishery as compared to the GOA fishery. The GOA fishery is composed primarily of vessels requiring either 30% coverage or no coverage.

Table 1 shows the estimated catches of prohibited species, the proportion of the total incidental catch of each prohibited species taken by the pot fishery, and average bycatch rates observed from pot vessels in 1990. Except for the estimated bycatch of halibut from 1991, estimates of pot catches of other prohibited species taken in the pot fishery are not yet available. Halibut and crab were taken as bycatch in the Pacific cod pot fishery in both the GOA and BSAI. In 1990, halibut bycatch by pot vessels accounted for 0.3% of the BSAI halibut bycatch and 1.1% of the GOA halibut mortality. In 1990, 90% - 94% of the halibut observed were in excellent condition at the time of release. The 1991 observer data indicated that 96% - 97% of the halibut released were in excellent condition.

The pot fishery accounted for larger portions of the crab bycatch in 1990. The 1990 BSAI pot fishery accounted for 7.7% of the red king crab catch, 1.1% of the C. bairdi tanner crab catch and 8.4% of the catch of other tanner crab. The 1990 GOA pot fishery accounted for 91% of the red king crab bycatch, 51.8% of the C. bairdi bycatch, and 25.8% of the other tanner crab bycatch. Data collected by observers on the condition of crab at time of release showed that over 95% of all crab were released in excellent condition.

A statistical review of observer data collected from the pot fishery is provided in Appendix 1. The study shows that the catch and proportion of catch of Pacific cod can be estimated with relatively high precision at low levels of observer coverage (10% coverage of pot sets) but that high levels (80% coverage of pot sets or higher) of observer coverage are required to estimate the catch and catch rates of species which occur infrequently in the catch such as Pacific halibut, Tanner crab and king crab. These results are similar to those obtained in analyses on observer data collected from other target fisheries and gear types.

Maintenance of the status quo would continue to provide basic data on the catch and bycatch of the pot fishery for Pacific cod. This is a fishery which is still developing and growing, especially in the Bering Sea/Aleutian Islands area. Current data can provide precise estimates of the catch of the target species but imprecise estimates of the bycatches of other species such as Pacific halibut, king crab and Tanner crab.

Table 1. Estimated catches of prohibited species taken by vessels using pot gear in 1990, the proportion of the total prohibited species catch taken by all gears accounted for by pot vessels, and the average bycatch rate observed on pot vessels for each prohibited species for the Bering Sea/Aleutian area and the Gulf of Alaska area.

A. Bering Sea/Aleutian Area - 1990

Prohibited Species Group	Estimated Pot Vessel Catch	Proportion of Total Prohib. Catch	Ave. Bycatch Rate
Pacific halibut	21.5 t	0.3%	15.2 kg/t
Red king crab	8,262 crab	7.7%	5.8 crab/t
Other king crab	39 crab	0.2%	0.03 crab/t
C. bairdi tanner c.	20,003 crab	1.1%	14.1 crab/t
Other tanner c.	255,767 crab	8.4%	180.4 crab/t
Salmon	0 fish	0.0%	0.0 fish/t

B. Gulf of Alaska - 1990

Prohibited Species Group	Estimated Pot Vessel Catch	Proportion of Total Prohib. Catch	Ave. Bycatch Rate
Pacific halibut ¹	34.7 t	1.1%	6.2 kg/t
Red king crab	6,295 crab	91.1%	1.1 crab/t
Other king crab	0 crab	0.0%	0.0 crab/t
C. bairdi tanner c.	102,717 crab	51.8%	18.2 crab/t
Other tanner c.	1,674 crab	25.8%	0.3 crab/t
Salmon	0 fish	0.0%	0.0 fish/t

¹ In the Gulf of Alaska, Pacific halibut bycatch is measured in terms of halibut mortality. The estimated catch, proportion of total halibut catch and catch rate for the Gulf of Alaska shown in Table 1 are for halibut mortality. Halibut bycatch in the Bering Sea/Aleutian area is not managed in terms of halibut mortality but by total halibut catch.

6.2.2 Alternative 2

Alternative 2 would reduce the level of required observer coverage on vessels using pot gear which are at least equal to the minimum length of a vessel required to carry an observer (currently 60 ft. LOA) but less than 125 ft. LOA to 10% of the fishing trip days during any calendar quarter in which more than 10 days are fished. The impact of this alternative would be to reduce the coverage of the pot fisheries for Pacific cod below those levels cited above for 1990, 1991, and 1992. In the Gulf of Alaska, the level of observer coverage in terms of proportion of the catch observed has been about 10% of the fishery over the past three years. Reduction of the coverage requirement in the Gulf of Alaska would result in less than 10% of the actual catch being observed. In the Bering Sea/Aleutian Islands area observer coverage of the pot fishery was about 70% in 1990 and 1991 but has decreased to 32% in 1992. The pot fishery in the BSAI area has increased substantially in 1992 and is expected to continue to increase in size. The decrease in 1992 in the level of actual observer coverage of the catch is due to an increase in participation in the fishery of the number of smaller vessels requiring 30% coverage as compared to vessels requiring 100% coverage.

The disadvantages of adopting Alternative 2 include a further reduction in data from the pot fishery, especially in the Gulf of Alaska. Current coverage levels in the Gulf of Alaska are essentially already at the 10% level when viewed in terms of the percent of the catch sampled. The level of observer coverage in the Bering Sea/Aleutian Islands area has decreased in 1992 as the pot fishery has grown in that area. The statistical analysis included in Appendix 1 shows that current levels do not provide good estimates of bycatches of prohibited species and lower levels of coverage would provide even poorer estimates. The decreases in observer coverage resulting from selection of this alternative would be offset by recommendation and approval of other proposed changes to the Observer Plan. Reduction of the minimum length of a vessels required to carry observers to either 55 ft. LOA or 57 ft. LOA would provide additional coverage of vessels not currently covered by observers. Additionally, the change from observer coverage defined as a percentage of vessel trip days to a percentage of fishing days would also provide additional observation of fishing days in the fishery.

6.2.3 Alternative 3

Alternative 3 would require that all vessels using pot gear which meet the minimum vessel length requirement for mandatory observer coverage carry an observer 30% of the vessel trip days during each calendar quarter in which they fish more than 10 days. This alternative would maintain the status quo for observer coverage requirements for vessels currently required to carry observers 30% of the time but would reduce the coverage of vessels 125 ft. LOA or longer from 100% to 30% coverage. This alternative was recommended for analysis by the Council's Observer Oversight Committee at their meeting on August 13, 1992 and was intended to be an alternative if the minimum vessel size limit for vessels requiring 100% observer coverage was reduced from 125 ft. LOA to 115 ft. LOA. The intent is to reward the use of gear with low bycatch rates and mortality of prohibited species through a reduction in the cost of observer coverage.

Adoption of Alternative 3 would not improve estimates of the bycatch of halibut and other prohibited species since overall coverage in the Bering Sea/Aleutian Islands area would be reduced and coverage in the Gulf of Alaska would essentially remain unchanged. As with Alternative 2, the decrease in coverage under Option 3 would be compensated to some extent by increases in the number of fishing days observed if proposed changes are made to use fishing days to measure observer coverage and the lower size limit of vessels required to carry observers 30% of the time is decreased to either 55 ft. LOA or 57 ft. LOA.

6.2.4 Physical and Biological Impacts

The alternatives are not expected to have a direct effect on the quality of the human environment.

6.2.5 Distribution of Benefits and Costs

The estimated cost of observer coverage in 1991 paid for by industry was about \$285,000. This cost was shared by 35 different vessels which carried observers in 1991 which resulted in an average cost of about \$8,140 per vessel for the year. Disadvantages of maintenance of the status quo include continued cost of observer coverage to industry. This cost is most likely higher in 1992 because of the growth in the catch and effort in the pot fishery. Maintenance of the status quo may also indicate to fishermen that development of fisheries using gear that results in low bycatches and mortality of prohibited species are not rewarded with reduced costs for observers and fisheries management.

Adoption of this Alternative 2 would be beneficial to the industry by reducing the costs for those now required to carry observers 30% of the time by about 67%. This reduction would have the greatest impact on vessels fishing in the Gulf of Alaska since the majority of these vessels are less than 125 ft. LOA which requires 100% observer coverage. There would be less impact on vessels fishing in the Bering Sea/Aleutian Islands area since many of these vessels are 125 ft. LOA or longer and would continue to be required to have 100% observer coverage. Adoption of this option would also, to some extent, reward those fisheries using a gear which results in low bycatches and mortalities of prohibited species.

With respect to the cost of coverage, a reduction in the required coverage to 10% may result in an increased cost per observer month for these vessels thus reducing the net savings to this portion of the fleet. The cost per observer month would most likely increase as a result of greater logistical costs for placement of observers on vessels for shorter periods of time and unit increases in the fixed costs for such things as travel. There are fewer observer days over which to spread the fixed cost of training and preparing observers and the travel associated with getting the observer to and from the port of vessel operation.

There would be no benefit in the adoption of Alternative 3 to vessels which are currently required to have 30% observer coverage. This means that the status quo would be maintained in the Gulf of Alaska pot fishery since most of the vessels in that area are below the length current requirement for 100% observer coverage. There would be a benefit to vessels large enough to require 100% coverage which are primarily vessels in the Bering Sea/Aleutian Islands pot fishery. In 1991, there were 5 vessels 125 ft. LOA or longer with groundfish permits for the pot fishery. There were an additional 4 vessels which had permits for multiple gear types including pots. These 19 vessels would have required 54 months of observer coverage in 1991 assuming that all of the days expended by vessels with permits for multiple gears were only counted as pot fishing days. This provides an overestimate of cost and cost savings since some of these vessels did fish other gears during the year. The estimated cost for 54 months of observer coverage is about \$384,000. If the coverage requirement were reduced to 30%, the estimated cost would be about \$141,000 resulting in a savings of \$243,000.

6.2.6 Impacts on Enforcement

The adoption of either Alternative 2 or 3 would be expected to increase the complexity of the observer coverage requirements, and hence, the amount of work required to determine whether the observer coverage requirements were met. One of the complications lies in the fact that the majority of the pot vessels are multigear vessels, and thus may engage in other types of groundfish fishing

which would require a different coverage level. In 1991, 14 of the 19 pot vessels in the 100% category, and 68 of the 87 pot vessels in the 30% category were permitted for multiple gear types. If the coverage requirements for either category of these vessels were to change from the present level, then for those vessels affected, vessel trip days, observer coverage days, and observer coverage would have to be calculated separately for each type of gear deployment.

As the adoption of Alternative 2 would involve the greater number of vessels, it is expected that the burden of keeping track of coverage by gear deployed would be greater. Alternative 3 would not involve as many vessels as Alternative 2, but there would be the additional increase in workload caused by the change in the coverage requirements from 100% (which is relatively easy to enforce) to 30% for the one class of vessels.

7.0 REVISE CONFLICT OF INTEREST STANDARDS

7.1 Description of and Need for the Proposed Action

The existing conflict of interest standards for observers and contractors are incomplete and contradictory. These standards appear on pages 4, 5, and 7 of the Observer Plan (Plan), and Attachments 3 and 4 to the Plan. The changes would include: (1) clearing up inconsistencies and ambiguities surrounding the definitions of "financial and personal interest"; (2) defining "observed fishery"; (3) placing restrictions on observers who choose to work in the observed fishery after serving as observers; and (4) prohibiting observer contractors from assigning observers in response to requests for or against a specific individual or specific gender, race, creed or age of individual.

Problem 1: Incomplete and contradictory definitions of "financial and personal interest"

This problem came to light during a proposed decertification proceeding against an observer stationed at a shoreside plant. This observer's husband operated a groundfish fishing vessel in state and federal waters at the same time that she served as a certified observer. It was felt that she and her husband were in a position to use observer fishery data for personal profit, thus constituting an impermissible "financial interest in the observed fishery" under the Plan's conflict of interest standards. However, closer examination revealed that the Plan defines a "financial interest" as "payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest or business relationship in that vessel or shorebased facility." This narrow definition swallows the seemingly broader prohibition on conflicts in the "observed fishery." Under the narrow definition, the observer had no conflict; indeed, she could have had a conflict only if she had a property interest in, or a business relationship with, the plant at which she was stationed.

This same definition of "financial interest" applies in the conflict of interest standards for contractors. In addition, since "contractor" is not defined, it would be possible under current wording, for even the CEO or president of an observer contracting company to own a commercial groundfish vessel. Therefore, this loophole is closed through a wording change which includes any "employee" of a contractor (refer to suggested wording change below). Still other inconsistencies in the conflict of interest standards exist and have been clarified under the suggested wording changes. For example, although an observer may not have a "personal interest" in the vessel to which she is assigned, under current wording, it would be permissible to have a personal interest in the shorebased facility being observed.

Alternative 1 (NMFS Suggestion):

5. ~~Conflict of Interest Standards for NMFS Certified Observers and Contractors~~

a. ~~Conflict of interest standards for certified observers.~~

A certified NMFS observer --

2. ~~may not have a financial or personal interest in the observed fishery, specifically including any financial or personal interest in the vessel or shorebased facility to which he or she is assigned;~~

3. ~~may not have a personal interest in the vessel to which he or she is assigned;~~

b. ~~Conflict of interest standards for certified observer contractors.~~ A certified observer contractor --

1. ~~and any employee of a certified observer contractor~~ may not be an individual, partnership or corporation with a ~~have a~~ financial or personal interest in the observed fishery, specifically including any financial or personal interest in any vessels or shoreside facilities that harvest or process fish in the observed fishery, other than the provision of observers;

c. ~~In this section --~~

~~A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest or business relationship in that vessel or shorebased facility. A financial or personal interest means any source of income to, or capital investment or other interest is defined as an interest or involvement held by, an individual, partnership, or corporation or an individual's spouse, the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit.~~

Advantages: Corrects contradictory wording and clarifies ambiguities. Enables the intent of the conflict of interest provisions to be enforced. Closes up an existing loop hole which allows a non-observer employee of a contractor (including the president or CEO of the company), to become financially involved in the observed fishery.

Disadvantages: From NMFS point of view, there are none. However, if a contractor, contractor employee, or observer, currently had a financial interest in the observed fishery, they would find this change to be a disadvantage, because they would no longer be exempt from having a conflict of interest. Contractors also might complain because it would mean that they would be in a conflict of interest if their spouse, immediate family member or parent, had a financial interest in the observed fishery.

Costs: None, except for the contractor, contractor employee, or observer that is considered to have a conflict of interest.

Alternative 2a (Observer Oversight Committee (Committee) Suggestion):

5. ~~Conflict of Interest Standards for NMFS Certified Observers and Contractors~~

b. ~~Conflict of interest standards for certified observer contractors.~~ A certified observer contractor --

1. ~~and any employee of a certified observer contractor~~ may not be an individual, partnership or corporation with a ~~have a financial or personal interest in the observed fishery, specifically including~~ any financial or personal interest in any vessels or shoreside facilities ~~that harvests or processes fish in the observed fishery,~~ other than the provision of observers;

~~In this section:~~

~~A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest or business relationship in that vessel or shorebased facility. A financial or personal interest means any source of income to, or capital investment or other interest is defined as an interest or involvement held by an individual, partnership, or corporation or an individual's spouse, the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit.~~

Advantages: None, from NMFS point of view. From the contractors point of view, it would allow them or their employees to become financially involved in the observed fishery in other ways besides through the provision of observers, which would enable them to become more diversified and financially stable. It would also not put a contractor under a conflict of interest when an immediate family member or parent was financially involved in the fishing industry. As an example, it would enable a contractor to supply observers for a fishing vessel that was owned by an immediate family member (brother, sister), or parent.

Disadvantages: None, from the contractors point of view. From NMFS point of view however, it weakens the existing conflict of interest language as applies to contractors. Under the wording suggested by the Committee, a contractor or employee of a contractor would have to own a vessel or shoreside facility or receive crew-shares from a vessel in order to be in a conflict of interest. If they received a portion of the profit from a fishing company through stock holdings or were a salaried employee of a fishing company, or were on contract with a fishing company to provide other services, they would not be in conflict of interest. In addition, under the wording suggested by the Committee, for instance, it would not be considered a conflict of interest if a contractor provided observers for a vessel that was owned by the contractor's immediate family member or parent.

Costs: None

Alternative 2b (Committee Suggestion):

In this section

~~A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest or business relationship in that vessel or shorebased facility. A financial or personal interest means any source of income, to, or capital investment or other interest is defined as an interest or involvement held by an individual, partnership, or corporation or an individual's spouse, the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit.~~

Advantages, Disadvantages, Costs:

The only difference between alternative 2a and 2b, is that alternative 2b further weakens the existing conflict of interest standards, because it eliminates an individual's spouse from the wording under the "financial and personal interest" definition. Therefore, as an example, it would not be considered a conflict of interest if a contractor supplied observers for a vessel owned by their spouse. On the other hand, it could be considered a conflict of interest, under a strict interpretation of the NMFS suggested definition of "financial and personal interest", if a contractor's spouse worked as a secretary in the office of a fishing company.

Alternative 3: Status Quo, Retain Current Wording

Advantages: None

Disadvantages: Contradictory and ambiguous wording would still exist which would not allow for the decertification of observers, contractors or contractor employees who have personal or financial conflicts of interest.

Problem 2: Defining "Observed Fishery"

Since the term "observed fishery" is used extensively throughout the existing conflict of interest section of the Plan, it was considered prudent to define this term so that questions of interpretation would not arise. The term "observed fishery" is most commonly interpreted as the groundfish fishery, but questions arise such as, "Does that include state as well as federal waters?", or "Should it be interpreted to include other fisheries managed by the North Pacific Fisheries Management Council, such as halibut, crab and herring?".

Alternative 1 (NMFS Suggestion):

In this section

~~2. "observed fishery" means the fishery for groundfish (as that term is defined at 50 C.F.R. §§ 672.2 and 675.2) in waters of Alaska and the exclusive economic zone off Alaska, and any other fishery managed by the North Pacific Fisheries Management Council.~~

Advantages: It clarifies what "observed fishery" means, and it further protects the integrity of the Observer Program by eliminating a potential conflict of interest. For example, it is arguable that a contractor or observer would be in conflict of interest if they had a financial interest in the halibut fishery. Especially since so many groundfish fisheries are under an incentive plan to restrict the bycatch of halibut and because many groundfish allocations have halibut cap limits. An observer who is also a commercial halibut fisher for instance, may be biased in his reporting of halibut bycatch in the groundfish fishery.

Disadvantages: None, from NMFS point of view. From the contractor's or observer's point of view, it would eliminate their ability to become financially involved in some fisheries, thus limiting their sources of income.

Costs: There would be a cost to contractors and observers in that their ability to diversify their financial interests would be curtailed.

Alternative 2 (Committee Suggestion):

c. In this section --

2. "observed fishery" means the fishery for groundfish (as that term is defined at 50 C.F.R. §§ 672.2 and 675.2) in waters of Alaska and the exclusive economic zone off Alaska, and any other fishery managed by the North Pacific Fisheries Management Council.

Advantages: It still defines "observed fishery" in the terms that were originally intended in the Plan, and it eliminates a stretching of the definition to include fisheries which arguably, are not "observed".

Disadvantages: It would allow a contractor or observer to have a financial interest in the halibut, crab or herring fisheries and not be under a conflict of interest.

Costs: None

Alternative 3: Status Quo, do not Define "Observed Fishery" or Replace it with "Groundfish Fishery"

Advantages: None

Disadvantages: The term "observed fishery" would remain subject to interpretation and even if it were replaced with "groundfish fishery", you would still need to define "groundfish fishery" to include state and federal waters. Substituting the word "groundfish" for "observed" does nothing to solve the problem.

Costs: None

Problem 3a: Placing Restrictions on Observers who choose to work in the observed fishery:

Some observers are currently alternating between working as commercial fishers and observers. This situation leaves open the possibility that these observers may compromise their professional observer standards in order to gain favor of the vessel captain and crew to secure employment on the vessel. In addition, as a crew member a prior observer could misuse fishing information gained while acting as an observer on another vessel.

Alternative 1 (NMFS Suggestion):

- a. ~~Conflict of interest standards for certified observers.~~
A certified NMFS observer --

~~may not serve as an observer for twelve consecutive months after the last day of employment as a paid crew member or employee in the observed fishery.~~

Advantages: This would help to solve a problem which is now occurring quite frequently. It would not forbid observers from gaining employment in the observed fishery after working as an observer, but it would curtail them from jumping between dual professions (i.e. as crew and as NMFS observers on fishing vessels). In addition, it should be noted that similar changes to the shellfish observer program's conflict of interest standards are being considered by ADF&G.

Disadvantages: From the NMFS point of view, there are none. From the observer's point of view it limits their ability to quickly alternate between employment as fisheries observers and employment as crew on fishing vessels.

Costs: Possible costs to the observer who cannot immediately switch between types of employment.

Alternative 1a (Committee Suggestion): Change the period of time in option one from 12 months to 6 months.

The advantages, disadvantages and costs are the same as for alternative one. However, it is an arguable point that a six month delay between working for the fishing industry and working as a NMFS observer is not sufficiently long enough to curtail the activity of those observers who alternate between these two forms of employment.

Alternative 2: Status Quo (Committee Suggestion): There are currently no restrictions of this type placed on observers.

Advantages: From NMFS point of view, there are none. From the observers point of view, it would allow them more job opportunities.

Disadvantages: From the observers point of view, there are none. From NMFS point of view, this kind of conflict of interest would be allowed to go on.

Costs: There would only be costs to the observer who wants to have access to both types of professions at the same time. There might possibly be costs to the fishing vessel owners who want to employ observers on a part-time basis.

Problem 3b: Further Restrictions on Observers who choose to work in the observed fishery:

In addition to the restrictions outlined under problem 3a above, NMFS and the Committee feel that a more obvious case of conflict of interest occurs when an individual works as an observer on a vessel or at a shoreside plant which is owned or operated by a person who formerly employed that observer. This situation is already listed as a conflict of interest under the standards of conduct for ADF&G shellfish observers. The only difference between the NMFS suggested wording for this standard and the Committee's suggested wording is that the Committee wanted to put a time limit of 6 or 12 months in the restriction.

Alternative 1 (NMFS Suggestion):

- a. ~~Conflict of interest standards for certified observers.~~
A certified NMFS observer --

~~4. may not serve as an observer on any vessel or at any shorebased facility owned or operated by a person (as that term is defined at 50 C.F.R. § 620.2) who formerly employed the observer.~~

Advantages: Does not allow a person to alternately work for a fishing company as both an employee of the company and as their observer. This would be a much clearer case of conflict of interest and thus by not allowing it, the integrity of the Observer Program would be protected. This situation is currently not allowed in the ADF&G shellfish observer program.

Disadvantages: None, especially since the observer is permitted to work at other assignments.

Costs: None, except for the observer who wants to alternately work for a fishing company as both an employee of the company and as their observer.

Alternative 2 (Committee Suggestion):

- a. ~~Conflict of interest standards for certified observers.~~
A certified NMFS observer --

~~4. may not serve as an observer on any vessel or at any shorebased facility owned or operated by a person (as that term is defined at 50 C.F.R. § 620.2) who formerly employed the observer, for a period of 12 months after being employed by that person.~~

Advantages: From NMFS point of view, there are none, because if a 12 month time limit is put in place under item 5.a.5. as NMFS suggested, then limiting the conflict of interest under item 5.a.4. to 12 months, would be redundant and not needed. However the conflict of interest items 5.a.5. and 5.a.4. are ultimately worded, item 5.a.4. should be more restrictive than item 5.a.5. From the Committee's point of view, they feel that having no time limit on this conflict of interest is too restrictive.

Disadvantages: The disadvantage from NMFS view point is explained in the paragraph above. By putting the same time limit on this restriction, as the restriction in item 5.a.5., it makes the restriction redundant.

Costs: None, except for the observer who wants to alternately work for a fishing company as both an employee of the company and as their observer.

Problem 4: Prohibiting Observer Contractors From Assigning Observers in Response to Requests For or Against a Specific Individual or Specific Gender, Race, Creed or Age of Individual:

The current language of the Plan prohibits contractors from responding to requests from vessel or shoreside facility owners and operators for specific individuals. However, it does not prohibit contractors from responding to requests for a specific gender, race, creed or age of individual. In

addition, it does not prohibit contractors from responding to requests against a specific individual or specific gender, race, creed or age of individual. Both NMFS and the Committee felt that this sort of manipulation of the contractor by a vessel or shoreside facility owner or operator constitutes a conflict of interest and should not be allowed. This sort of problem has occurred in examples where a vessel operator will reject an observer at the dock before she gets on the vessel, simply because the observer is a women or of a particular race, or the operator will insist that the contractor replace their observer with someone who does not cause "trouble", when later it has been discovered that "trouble" meant reporting too many halibut in the catch.

Alternative 1 (NMFS Suggestion):

b. ~~Conflict of interest standards for certified observer contractors.~~ A certified observer contractor --

2. shall assign observers ~~without regard to any preference by representatives of~~ vessels and shoreside facilities ~~without regard to requests from vessel owners or operators for~~ or against a specific individual ~~observer.~~

3. ~~shall assign observers without regard to any preference by representatives of~~ vessels and shorebased facilities ~~for or against any classification of observers~~ based on race, gender, age or religion.

Advantages: Further strengthens an already existing conflict of interest standard for contractors, by not allowing them to replace an observer through requests by the vessel or shoreside facility owner or operator alone. They currently are required through NMFS policy to get permission from NMFS before replacing an observer after being requested to do so by an owner or operator. This would simply put this policy which is already in practice, into the conflict of interest standards for contractors.

Disadvantages: None, from NMFS point of view. However, some owners and operators of vessels or shoreside facilities may feel that it limits their ability to get rid of an observer who is not doing their job or acting in a manner which has a detrimental affect on the vessels operations. It is worthy of note, however, that this argument was not expressed by members of the Committee. In addition, the argument is somewhat weak, because a vessel owner or operator can always take complaints about observers directly to the NMFS Observer Program, and these complaints will be treated seriously and will be investigated in an expedient manner.

Costs: None

Complete Text of NMFS Suggested Wording Changes to Conflict of Interest Standards in the Observer Plan:

5. ~~Conflict of Interest Standards for NMFS Certified Observers and Contractors~~

a. ~~Conflict of interest standards for certified observers.~~
A certified NMFS observer --

1. must be employed by an independent contracting agent certified by NMFS to provide observer services to the industry;

- not limited to*
2. may not have a financial ~~or personal~~ interest in the observed fishery, specifically including any financial or personal interest in the vessel or shorebased facility to which he or she is assigned;
 - ~~2. may not have a financial interest in the observed fishery;~~
 - ~~3. may not have a personal interest in the vessel to which he or she is assigned;~~
 3. may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form that is a benefit to the observer, under circumstances in which it could be reasonably inferred that the gift is intended to influence the performance of official duties, actions or judgment;
 - ~~4. may not serve as an observer on any vessel or at any shorebased facility owned or operated by a person (as that term is defined at 50 C.F.R. § 620.2) who formerly employed the observer;~~
 - ~~5. may not serve as an observer for twelve consecutive months after the last day of employment as a paid crew member or employee in the observed fishery.~~

b. ~~Conflict of interest standards for certified observer contractors.~~ A certified observer contractor --

1. ~~and any employee of a certified observer contractor may not be an individual, partnership or corporation with a~~ have a financial or personal interest in the observed fishery, specifically including any financial or personal interest in any vessels or shoreside facilities that harvests or processes fish in the observed fishery, other than the provision of observers;
2. shall assign observers ~~without regard to any preference by representatives of~~ vessels and shoreside facilities ~~without regard to requests from vessel owners or operators for or against a specific individual observer;~~
3. shall assign observers ~~without regard to any preference by representatives of vessels and shorebased facilities for or against any classification of observers based on race, gender, age or religion.~~

c. ~~In this section --~~

1. ~~A direct "financial or personal interest" is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased facility being observed that results from a property interest or business relationship in that vessel or shorebased facility means any source of income to, or capital investment or other~~ A personal interest is defined as an interest or involvement held by, the contractor or observer, or the contractor's or observer's ~~an individual, partnership, or corporation or an individual's spouse, immediate family member or parent from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit;~~

significant other.

2. "observed fishery" means the fishery for groundfish (as that term is defined at 50 C.F.R. §§ 672.2 and 675.2) in waters of Alaska and the exclusive economic zone off Alaska, and any other fishery managed by the North Pacific Fisheries Management Council.

7.2 Impacts on Enforcement

The adoption of any or all of the alternatives regarding the conflict of interest standards for NMFS certified observers and contractors would not be expected to result in any change in enforcement workload.

8.0 **REQUIRE TWO OBSERVERS ON SOME MOTHERSHIP PROCESSOR VESSELS OR CATCHER-PROCESSOR VESSELS.**

8.1 Description of and Need for the Proposed Action

Observers have had problems keeping up with the workload on some motherships and catcher-processors because of large numbers of deliveries or tows. All observers are required to follow a random sampling table which was designed to meet statistical sampling requirements. As the number of deliveries or tows increases, it becomes more difficult for the observer to meet these sampling requirements. Also, on motherships, observers are required to collect fishing effort information from the catcher boats that are delivering their codends to the mothership. Therefore, as the number of deliveries increases, the observer has a more difficult time collecting the necessary fishing effort information. These problems also exist to some extent at shoreside processing plants, but because of the daily variability in numbers of deliveries received by shoreside plants, it is not possible to specify conditions which exist for continuing periods where the cost of multiple observers can be justified. As a result, the use of multiple observers at shoreside plants is only considered under Alternative 3.

The following alternatives are proposed for Council consideration:

Alternative 1. Maintain the status quo. Only one observer per catcher vessel or catcher-processor vessel would be needed to meet the coverage requirements of vessels 125 ft. LOA or greater and mothership processor vessels that process 1,000 mt or more in a calendar month.

Alternative 2. Require two observers on motherships that receive over (8, 9, or 10) deliveries per day on average, in a calendar month and on catcher-processor trawlers that retrieve over (8, 9, or 10) tows per day on average, in a calendar month.

Alternative 3. Relegate authority to the Regional Director to require multiple observers on certain vessels or plants.

8.2 Analysis of Alternatives

8.2.1 Alternative 1: Status Quo

Observers normally cannot sample every delivery or tow. This in reality causes the observer sampling coverage to be less than 100% on most catcher and processor vessels. The percentage of hauls and tonnage sampled by observers on vessels greater than 124 ft. LOA in 1990 and 1991 for the BSAI and GOA, by vessel type and gear type, is shown in Tables 2 and 3 below. Except for mothership

fisheries with pelagic trawl gear in 1991, sampling coverage consistently remained above 40% on all vessel and gear types. In general, the sampling coverage was lower on motherships and catcher-processors using trawl gear. However, the sampling coverage was above that of any vessels less than 125 ft. LOA. This is because even though a vessel under 125 ft. LOA may have all of its hauls sampled while an observer is onboard, the observer is onboard only 30% of a vessel's fishing days.

The benefits of maintaining the status quo are that the current system of coverage is easily understood by the fishing industry and since it is based exclusively on vessel length, it is easily monitored by NMFS enforcement. It is also arguable that it maintains an acceptable level of sampling coverage.

The disadvantage of maintaining the status quo is that cases will continue to occur where one observer cannot fulfill the sampling requirements of the random sampling table, or they will collect incomplete fishing effort data from catcher boats delivering to motherships because there are too many deliveries to keep up with. However, most of this lower sampling coverage occurs in the pelagic pollock fishery where bycatch levels are usually low and it is debatable that additional coverage is not needed in this fishery.

8.2.2 Alternative 2. Require two observers on motherships that receive over (8, 9 or 10) deliveries per day on average, in a calendar month and on catcher-processor trawlers that retrieve over (8, 9, or 10) tows per day on average, in a calendar month.

This option closely targets the problem, which is too many deliveries or tows for one observer to sample. The number of deliveries or tows that triggers the need for two observers is very important in this option. The observer database was queried to determine how many vessels exceeded an average of 8, 9, and 10 hauls per month in 1990 and 1991, and what months this occurred. The data shows that if the trigger were set at an average of 10 or more tows per day, there would have been only one mothership that would have required two observers and that mothership would have needed two observers for seven months in 1990 and five months in 1991 for an additional cost of about \$49,560 and \$35,400 dollars respectively. If the trigger were set at 9 or more tows per day, the same mothership would have needed an extra observer for eight months in 1990 (\$56,640) and six months in 1991 (\$42,480). Additionally, two different catcher-processors would have required a second observer for one month each, causing them an additional observer cost of \$7,080 each. The total cost would have been \$70,800 for 1990. Finally, if the trigger were set at 8 or more tows per day, the mothership spoken of previously would have needed an extra observer for nine months in 1990 and six months in 1991 for an additional yearly cost of \$63,720 and \$42,480 respectively. In addition, a second mothership showed an average of 8 or more deliveries in one month in 1991 (\$7,080) and three different catcher-processors would have required an additional observer for one month a piece in 1990 (\$21,240). Also, two different catcher-processors would have required an additional observer for only one month each in 1991 (\$14,160). The total cost would have been \$84,960 for 1990 and \$63,720 for 1991.

The benefits of an alternative like this are that it closely targets the real problem, which is too many deliveries or tows for one observer to sample and that it is an arguably fair system because of that. It will only require a second observer where they are truly needed and it will allow for a higher percentage of the catch to be sampled. Although the opposing argument is that since most of the lower sampling coverage occurs in the pelagic pollock fishery (refer to Table 2) where bycatch levels are usually low, why is the extra observer coverage needed?

**TABLE 2: PERCENTAGE OF OBSERVER SAMPLED HAULS AND TONNAGE
BY VESSEL TYPE AND GEAR TYPE
FOR BSAI 100% COVERAGE CLASS VESSELS (≥ 125 LOA)
IN 1990 AND 1991**

Vessel Type	Gear Type	% Sampled Hauls		% Sampled Tonnage	
		1990	1991	1990	1991
Catch/Proc	Bottom Trawl	43.45%	48.23%	50.96%	54.95%
Catch/Proc	Pelagic Trawl	52.31%	52.26%	55.32%	55.68%
Catch/Proc	Pots <u>1</u> /	42.86%	64.26%	43.16%	68.62%
Catch/Proc	Longline <u>1</u> /	74.43%	79.86%	83.56%	85.46%
Mothership	Bottom Trawl	46.91%	48.95%	49.97%	48.60%
Mothership	Pelagic Trawl	42.09%	33.29%	42.59%	32.54%
Shore/Catch	Bottom Trawl	67.01%	59.92%	71.17%	64.32%
Shore/Catch	Pelagic Trawl	82.44%	67.47%	91.15%	74.06%

**TABLE 3: PERCENTAGE OF OBSERVER SAMPLED HAULS AND TONNAGE
BY VESSEL TYPE AND GEAR TYPE
FOR GOA 100% COVERAGE CLASS VESSELS (≥ 125 LOA)
IN 1990 AND 1991**

Vessel Type	Gear Type	% Sampled Hauls		% Sampled Tonnage	
		1990	1991	1990	1991
Catch/Proc	Bottom Trawl	43.65%	44.65%	52.95%	52.91%
Catch/Proc	Pelagic Trawl	49.29%	47.14%	57.90%	50.59%
Catch/Proc	Pots <u>1</u> /	60.00%	95.35%	66.42%	95.91%
Catch/Proc	Longline <u>1</u> /	71.33%	62.10%	74.96%	64.55%
Mothership	Bottom Trawl	57.88%	64.62%	60.01%	65.55%
Mothership	Pelagic Trawl	52.38%	60.87%	65.46%	63.91%
Shore/Catch	Bottom Trawl	54.58%	67.61%	65.89%	70.93%
Shore/Catch	Pelagic Trawl	86.05%	77.53%	95.03%	74.13%
Shore/Catch	Pots <u>1</u> /	71.92%	---	80.48%	---

1/ For pots and longline gear sampling is expressed as a percentage of longline sets or pot sets sampled.

There are a couple of disadvantages to this alternative. One problem would be that some vessels will not exceed the (8, 9, or 10) delivery or (8, 9, or 10) tow per day average for every month that they fish. This kind of coverage inconsistency will cause logistics problems for the vessel companies, contractors and observers. Another problem is that it will be difficult for some vessels to estimate the number of deliveries they will receive or tows they will make. However, this sort of problem is similar to the one faced by vessels under 125 ft. as they try to project their 30% coverage needs.

8.2.3 Alternative 3. Relegate authority to the Regional Director to require multiple observers on certain vessels or plants.

This option would give NMFS the flexibility to correct problems as they arose. For instance, Table 4 in the analysis section of alternative 2, shows that there is only one mothership that consistently exceeds a level of deliveries which is too much for one observer to handle. It would then make sense for the Regional Director to require two observers for this mothership. In another example, there may be special incentive program fisheries where extraordinarily high bycatch levels may prompt the fishing industry and NMFS into considering the need for absolute, 100% coverage in which every haul is sampled. This may require additional observers. Still another example, and one that has already arisen, is when a shoreside processing facility has multiple buying or processing locations. This happens when fish tender vessels are involved in buying fish at sea and transporting them to shore for processing or when fish are taken to different locations for processing after being off-loaded from dockside vessels. Two observers are definitely needed in a situations like these.

TABLE 4. THE NUMBER OF CATCHER-PROCESSORS (CP) AND MOTHERSHIPS (MS) (≥ 125 ft. LOA) THAT EXCEEDED AN AVERAGE OF 8, 9 AND 10 TOWS PER DAY PER MONTH FOR 1990 AND 1992, IN THE BSAI AND GOA

	> 8 TOWS/DAY		> 9 TOWS/DAY		> 10 TOWS/DAY	
	1990	1991	1990	1991	1990	1991
JAN	CP1	MS1		MS1		
FEB	MS1	CP4 MS1		MS1		MS1
MAR	MS1		MS1		MS1	
APR	MS1		MS1		MS1	
MAY	CP2 MS1	CP5	CP2 MS1		MS1	
JUN	MS1	MS1	MS1	MS1	MS1	MS1
JUL	MS1	MS2 MS1	MS1	MS1	MS1	MS1
AUG	CP3 MS1	MS1	CP3 MS1	MS1	MS1	MS1
SEP	MS1	MS1	MS1	MS1	MS1	MS1
OCT	MS1		MS1			
NOV						
DEC						
COSTS	\$ 84,960	\$ 63,720	\$ 70,800	\$ 42,480	\$ 49,560	\$ 35,400

There may be some reluctance to agree to this alternative, because of a feeling that the placement of dual observers would be discretionary, and could become very costly. If this level of discretionary authority is too much for some to accept, a possible solution would be consideration of a sub-alternative where NMFS pays the costs of any additional observers, if NMFS funding were available. An alternative like this, would also enable NMFS to place additional observers on vessels for special project duties such as exploring new sampling methods or testing and developing standard densities and product recovery rates. It could also enable NMFS to develop a program where first-time observers are supervised by trained, prior observers during their first trip at sea.

The additional cost for this alternative is not possible to estimate because the number of supplementary observer months is not known. However, NMFS calculates that the average cost of placing one observer on one vessel for 30 days is \$7,080.

The strongest benefit of alternative 3 is that it would allow the flexibility to place additional observers where and when they are needed. With the dynamic nature of the groundfish fishery, this sort of efficient adaptability makes sense. However, it is also the source of its biggest disadvantage which is placing discretionary authority with the Regional Director without knowing the costs involved.

8.2.4 Physical and Biological Impacts

None of the proposed alternatives would be expected to have a direct effect on the quality of the human environment.

8.2.5 Distribution of Benefits and Costs

A discussion of the distribution of benefits and costs for each alternative has already been given in the preceding analysis of each alternative.

8.2.6 Impact on Enforcement

Alternative 2 would have to be enforced after-the-fact and would involve analyzing information from the fishing logbooks and observer data. Both information sources contain the number and dates of tows or deliveries. Therefore, monitoring for compliance to a regulation such as this, would be possible.

Alternative 3 would be easily enforced since the Regional Director is instructing individual vessels or plants to carry multiple observers.

9.0 CONSISTENCY WITH OTHER APPLICABLE LAW

9.1 Effects of Endangered Species and Marine Mammals

None of the alternatives would constitute actions that would effect endangered species or their habitat within the meaning of regulations implementing Section 7 of the Endangered Species Act of 1973. Thus, consultation procedures under Section 7 on the final actions and their alternatives will not be necessary. None of the alternatives is expected to have effects on marine mammals occurring in the waters off Alaska.

9.2 Coastal Zone Management Act

Each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 307(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

9.3 Executive Order 12291

Executive Order 12291 requires that the following three issues be considered:

- (a) Will the proposed changes have an annual effect on the economy of \$100 million or more?
- (b) Will the proposed changes lead to an increase in the costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions?
- (c) Will the proposed changes have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign enterprises in domestic or export markets?

Regulations do commonly impose costs and cause redistribution of costs and benefits. If the proposed regulations are implemented to the extent anticipated, these costs are not expected to be significant relative to total operational costs.

The proposed changes to the Observer Plan will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign enterprises in domestic and export markets. The proposed changes should not lead to a substantial increase in the price paid by consumers, local governments, or geographic regions since no significant quantity changes are expected in the seafood markets resulting from implementation of the above alternatives.

9.4 Regulatory Flexibility Act

The Regulatory Flexibility Act requires that impacts of regulatory measures imposed on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources) be examined to determine whether a substantial number of small entities will be significantly impacted by the proposed measures. Fishing vessels are considered to be small businesses, and processors may fit into this category as well. More than 2,000 vessels may fish for groundfish off Alaska in 1992 and beyond. While these numbers of vessels are considered substantial, the regulatory measures are designed to result in only insignificant impacts.

9.5 Finding of No Significant Impacts

For the reasons discussed above, neither implementation of the status quo nor any of the alternatives would significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by Section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Assistant Administrator for Fisheries

Date

APPENDIX 1

**Analysis of Observer Coverage levels for
Bering Sea and Gulf of Alaska Pot Fisheries**



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

Alaska Fisheries Science Center
Resource Ecology and Fisheries Management Division
7600 Sand Point Way Northeast
Bin C15700, Building 4
Seattle, Washington 98115-0070

September 8, 1992 F/AKC2:MWD

MEMORANDUM FOR: Russ Nelson

FROM: Martin Dorn

SUBJECT: Analysis of observer coverage levels for
Bering Sea and Gulf of Alaska pot fisheries

Ren Narita and I have put together an analysis of Bering Sea and Gulf of Alaska pot fisheries using the procedures described in the document "An evaluation of observer coverage levels in Alaska groundfish fisheries," submitted to the North Pacific Fishery Management Council in April 1992. Although the analytical methods in that paper were developed for examining observer coverage levels in trawl fisheries, by treating the sample data from a set of pots as analogous to the data from a sampled groundfish haul, the same methods can be used with pot fisheries. The attached figures and tables describe the effect of changes in the percent observer coverage on confidence intervals for the species composition of the catch for a simulated fishery using weekly blocks of observer data by vessel.

A. Bering Sea pot fishery.

1. Data set.

The data set used in the analysis was 84 observer vessel-weeks (primary sampling units) during weeks 26-50 of 1991. The total reported catch during this period for these vessels was 4,281.49 mt. 66.4 percent of all sets made during this period were sampled (1111 out of 1672). For unsampled sets the average number of pots per set was 23.3, while sampled sets averaged 27.4 pots per set.

2. Results.

Estimates of the total catch, and species composition for pollock, Pacific cod, the red rockfish species group, halibut, tanner crab, and king crab were investigated (Table 1, Figures 1-7).

The total estimated catch is based on expansions using the ratio of total sets to sampled sets within a vessel week and the ratio of total vessel-weeks to sampled vessel-weeks. Although the reported total catch is below the 90 percent confidence interval at 95 and 100 percent observer



coverage (Figure 1), this is not necessarily evidence of underlogging the catch of unsampled sets, since average number of pots per set is higher in the sampled sets.

The proportion of Pacific cod is high (94 percent) and is estimated with relatively high precision even at low levels of observer coverage. The other species examined were much rarer in the catch, and were not estimated with as much precision. At 30 percent observer coverage the average CV (coefficient of variation), excluding Pacific Cod was 0.51. King Crab had the highest CV (0.801), and pollock had the lowest (0.354).

B. Gulf of Alaska pot fishery.

1. Data set.

The data set used in the analysis was 84 observer vessel-weeks during weeks 2-16 of 1991 and 5-13 of 1992. The total reported catch during this period for these vessels was 1608.21 mt. 66.6 percent of the sets were sampled (989 out of 1484). For unsampled sets the average number of pots per set was 16.9, while sampled sets averaged 21.1 pots per set.

2. Results.

Estimates of the total catch, and species composition for pollock, Pacific cod, pelagic shelf rockfish, halibut, tanner crab, and king crab were investigated (Table 2, Figures 8-14). At 30 percent observer coverage the average CV, excluding Pacific Cod was 0.42. King Crab again had the highest CV (0.921), and tanner crab had the lowest (0.246). The estimates of species composition show the same general characteristic as the Bering Sea data: precise estimates of species composition for Pacific cod at all levels of observer coverage, but for the relatively rare and irregularly distributed bycatch species and nontarget allocated species the estimates of species composition were relatively imprecise. Reductions can be made in error levels by increasing the level of observer coverage, but increases in precision have to weighed against the cost of achieving that precision.

Table 1. Species composition and bootstrap estimates of 90 percent confidence intervals for the Bering Sea pot fishery for different levels of observer coverage. The coefficient of variation is the standard deviation divided by estimate. The percent error of the 90% confidence interval is calculated by $1/2(90\% \text{ upper } b. - 90\% \text{ lower } b.)/(est.prop.) \times 100$.

A. Pollock (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	90% CI Lower	90% CI Upper	Pcnt. error
10	0.00042	0.00045	0.758	0.00003	0.00098	114.5
20	0.00025	0.00026	0.515	0.00009	0.00051	82.4
30	0.00031	0.00032	0.354	0.00016	0.00052	58.4
40	0.00019	0.00019	0.328	0.00010	0.00030	53.0
50	0.00010	0.00010	0.296	0.00005	0.00015	47.4
60	0.00012	0.00012	0.239	0.00008	0.00018	39.9
70	0.00021	0.00021	0.191	0.00015	0.00028	31.1
80	0.00021	0.00021	0.149	0.00016	0.00026	24.1
90	0.00017	0.00017	0.127	0.00014	0.00021	20.5
100	0.00018	0.00018	0.075	0.00016	0.00020	12.2

B. Pacific cod (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	90% CI Lower	90% CI Upper	Pcnt. error
10	0.950	0.949	0.020	0.912	0.974	3.2
20	0.923	0.921	0.023	0.881	0.949	3.7
30	0.919	0.919	0.016	0.893	0.942	2.7
40	0.951	0.943	0.011	0.925	0.959	1.7
50	0.939	0.933	0.007	0.921	0.943	1.1
60	0.952	0.946	0.005	0.938	0.953	0.8
70	0.936	0.936	0.005	0.928	0.943	0.8
80	0.932	0.932	0.004	0.926	0.937	0.6
90	0.941	0.936	0.004	0.929	0.942	0.7
100	0.942	0.937	0.005	0.929	0.944	0.8

C. Red rockfish (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	0.00005	0.00005	0.634	0.00001	0.00010	103.2
20	0.00019	0.00020	0.617	0.00005	0.00043	99.6
30	0.00010	0.00010	0.462	0.00004	0.00018	74.7
40	0.00012	0.00012	0.422	0.00005	0.00021	68.2
50	0.00008	0.00008	0.277	0.00005	0.00012	44.7
60	0.00013	0.00013	0.249	0.00008	0.00019	40.3
70	0.00009	0.00009	0.224	0.00006	0.00012	37.1
80	0.00014	0.00014	0.172	0.00010	0.00018	28.2
90	0.00014	0.00014	0.148	0.00011	0.00018	24.6
100	0.00014	0.00014	0.112	0.00011	0.00016	18.2

D. Halibut (kg per metric ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	11.1	11.4	0.559	4.0	22.9	85.8
20	3.6	3.7	0.307	2.1	5.8	50.5
30	10.9	10.9	0.451	4.6	20.2	71.4
40	7.8	7.8	0.342	4.1	12.8	55.9
50	10.8	10.9	0.256	6.6	15.8	42.4
60	10.9	10.8	0.194	7.6	14.4	31.4
70	10.4	10.4	0.166	7.7	13.4	27.3
80	10.3	10.3	0.124	8.4	12.4	19.6
90	9.2	9.2	0.095	7.7	10.6	15.6
100	8.7	8.7	0.034	8.2	9.2	5.6

E. King crab (all species) (numbers per ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	0.00	0.00	---	0.00	0.00	---
20	5.02	5.26	0.788	0.71	12.52	117.7
30	2.71	2.80	0.801	0.39	6.92	120.5
40	2.17	2.20	0.699	0.51	5.21	108.3
50	1.95	1.95	0.512	0.73	3.96	82.6
60	0.20	0.20	0.591	0.07	0.42	86.6
70	1.40	1.40	0.408	0.70	2.45	62.3
80	1.32	1.31	0.331	0.77	2.17	53.0
90	1.16	1.15	0.271	0.78	1.74	41.6
100	1.12	1.12	0.146	0.85	1.39	24.1

F. Tanner crab (all species) (numbers per ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	11.5	12.3	0.930	0.7	32.2	136.3
20	29.8	31.8	0.562	9.5	62.3	88.6
30	24.9	25.6	0.482	8.7	47.7	78.4
40	18.5	18.8	0.367	9.3	30.7	57.9
50	9.4	9.3	0.348	4.7	15.6	57.7
60	13.3	13.3	0.311	7.3	20.8	50.7
70	10.7	10.8	0.234	7.1	15.0	36.8
80	11.6	11.7	0.164	8.8	15.0	27.0
90	13.5	13.4	0.131	10.9	16.7	21.4
100	12.9	12.8	0.060	11.6	14.1	9.7

Table 2. Species composition and bootstrap estimates of 90 percent confidence intervals for the Gulf of Alaska pot fishery for different levels of observer coverage. The coefficient of variation is the standard deviation divided by estimate. The percent error of the 90% confidence interval is calculated by $1/2(90\% \text{ upper } b. - 90\% \text{ lower } b.) / (\text{est. prop.}) \times 100$.

A. Pollock (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	90% CI Lower	90% CI Upper	Pcnt. error
10	0.0017	0.0018	0.714	0.0003	0.0041	111.8
20	0.0003	0.0003	0.375	0.0001	0.0005	61.3
30	0.0006	0.0006	0.264	0.0004	0.0009	43.0
40	0.0026	0.0026	0.554	0.0010	0.0053	84.0
50	0.0006	0.0006	0.166	0.0005	0.0008	27.3
60	0.0025	0.0025	0.358	0.0013	0.0042	58.1
70	0.0018	0.0019	0.342	0.0011	0.0030	52.6
80	0.0013	0.0013	0.311	0.0008	0.0021	48.1
90	0.0017	0.0017	0.161	0.0013	0.0021	25.8
100	0.0016	0.0015	0.044	0.0014	0.0017	7.3

B. Pacific cod (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	90% CI Lower	90% CI Upper	Pcnt. error
10	0.940	0.939	0.011	0.920	0.954	1.8
20	0.944	0.945	0.010	0.930	0.961	1.6
30	0.939	0.939	0.011	0.921	0.956	1.8
40	0.949	0.949	0.007	0.938	0.959	1.1
50	0.955	0.955	0.004	0.948	0.961	0.7
60	0.949	0.949	0.004	0.943	0.955	0.6
70	0.952	0.952	0.003	0.947	0.957	0.5
80	0.949	0.949	0.003	0.945	0.954	0.5
90	0.950	0.950	0.002	0.947	0.953	0.3
100	0.949	0.949	0.001	0.947	0.950	0.2

C. Pelagic shelf rockfish (proportion by weight)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	0.00003	0.00003	0.609	0.00001	0.00007	96.7
20	0.00006	0.00006	0.543	0.00001	0.00011	90.3
30	0.00009	0.00010	0.394	0.00004	0.00016	64.1
40	0.00011	0.00011	0.318	0.00006	0.00017	50.9
50	0.00010	0.00010	0.232	0.00007	0.00014	37.1
60	0.00010	0.00010	0.240	0.00006	0.00014	39.1
70	0.00009	0.00009	0.192	0.00006	0.00012	31.4
80	0.00009	0.00009	0.173	0.00007	0.00011	27.7
90	0.00009	0.00009	0.146	0.00007	0.00011	23.3
100	0.00009	0.00008	0.112	0.00007	0.00010	17.6

D. Halibut (kg per metric ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	8.24	8.04	0.374	2.99	13.07	61.2
20	6.72	6.63	0.366	3.26	11.05	58.0
30	5.03	4.92	0.291	2.78	7.54	47.3
40	3.43	3.44	0.165	2.51	4.40	27.5
50	4.63	4.63	0.230	3.17	6.61	37.1
60	3.59	3.60	0.156	2.81	4.60	25.0
70	3.70	3.70	0.119	3.04	4.45	19.1
80	5.45	5.42	0.104	4.55	6.47	17.7
90	4.12	4.12	0.076	3.66	4.67	12.3
100	4.88	4.87	0.057	4.42	5.35	9.5

E. King crab (all species) (numbers per ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	0.0000	0.0000	---	0.0000	0.0000	---
20	0.0044	0.0044	0.912	0.0003	0.0118	131.1
30	0.0027	0.0027	0.921	0.0003	0.0077	136.4
40	0.0000	0.0000	---	0.0000	0.0000	---
50	0.0102	0.0100	0.414	0.0038	0.0179	68.9
60	0.0000	0.0000	---	0.0000	0.0000	---
70	0.0076	0.0077	0.360	0.0038	0.0129	59.3
80	0.0031	0.0030	0.365	0.0016	0.0052	58.5
90	0.0053	0.0054	0.249	0.0035	0.0078	40.6
100	0.0048	0.0048	0.157	0.0036	0.0061	26.2

F. Tanner crab (all species) (numbers per ton of groundfish catch)

Percent of vessels	Estimate	Bootstrap mean	CV	Lower	90% CI Upper	Pcnt. error
10	5.25	5.68	0.568	1.84	11.53	92.3
20	1.63	1.67	0.325	0.90	2.60	52.5
30	2.72	2.77	0.246	1.76	3.97	40.6
40	1.49	1.50	0.175	1.09	1.95	28.8
50	2.67	2.68	0.215	1.88	3.70	34.2
60	3.10	3.11	0.226	2.14	4.45	37.2
70	2.68	2.68	0.141	2.14	3.38	23.1
80	2.23	2.24	0.114	1.89	2.69	18.0
90	2.76	2.76	0.105	2.37	3.29	16.6
100	2.60	2.59	0.067	2.31	2.87	10.8

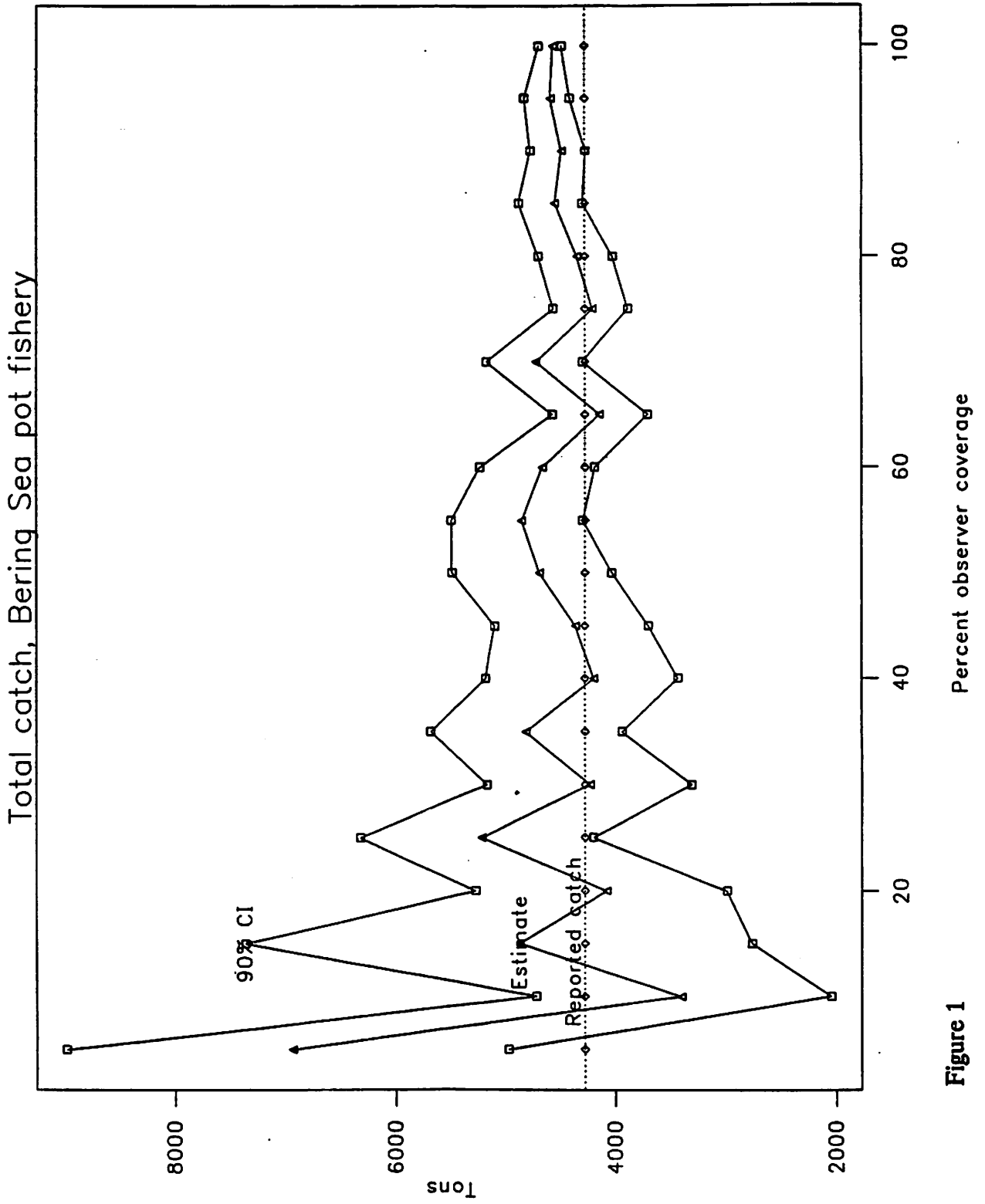


Figure 1

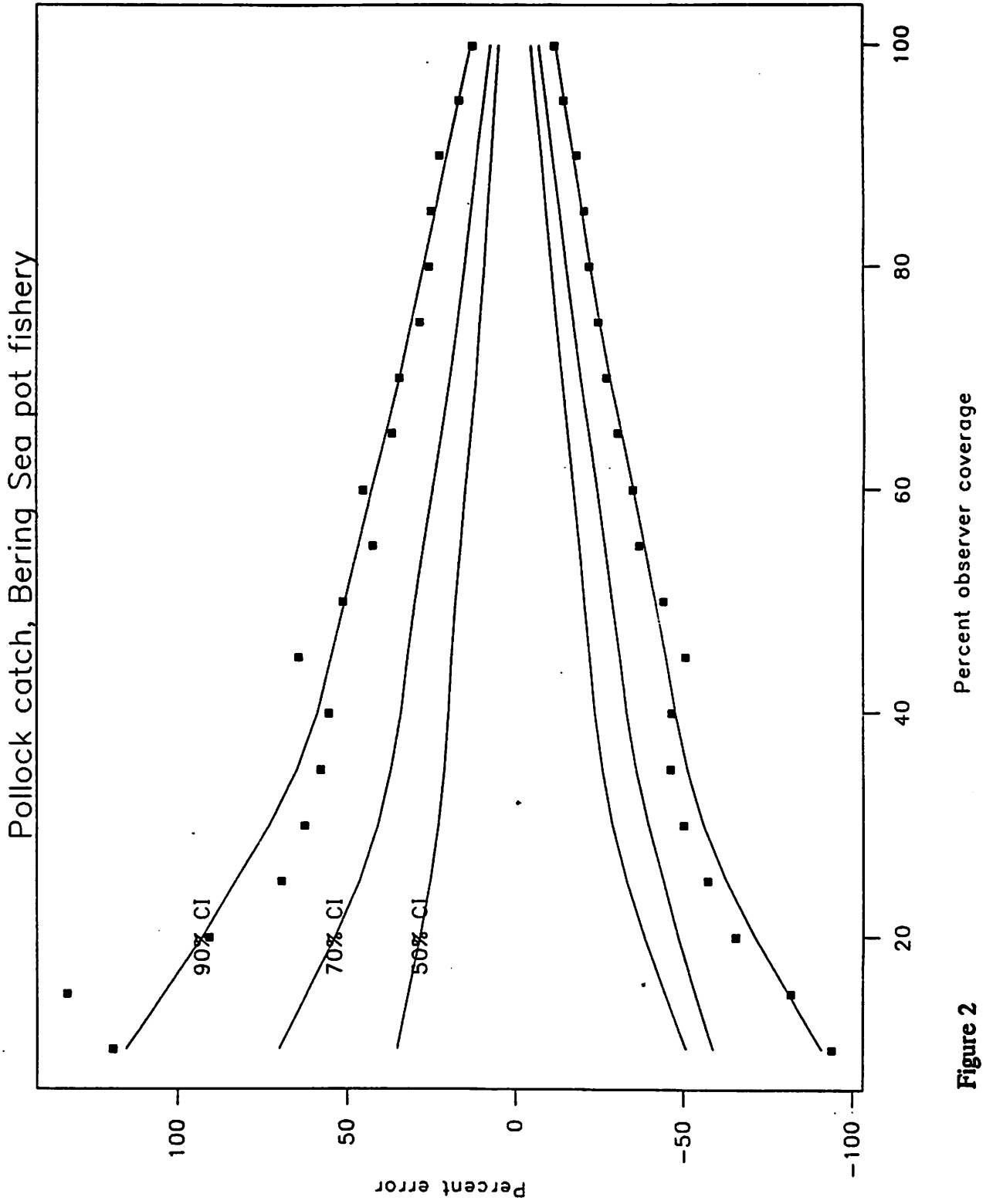


Figure 2

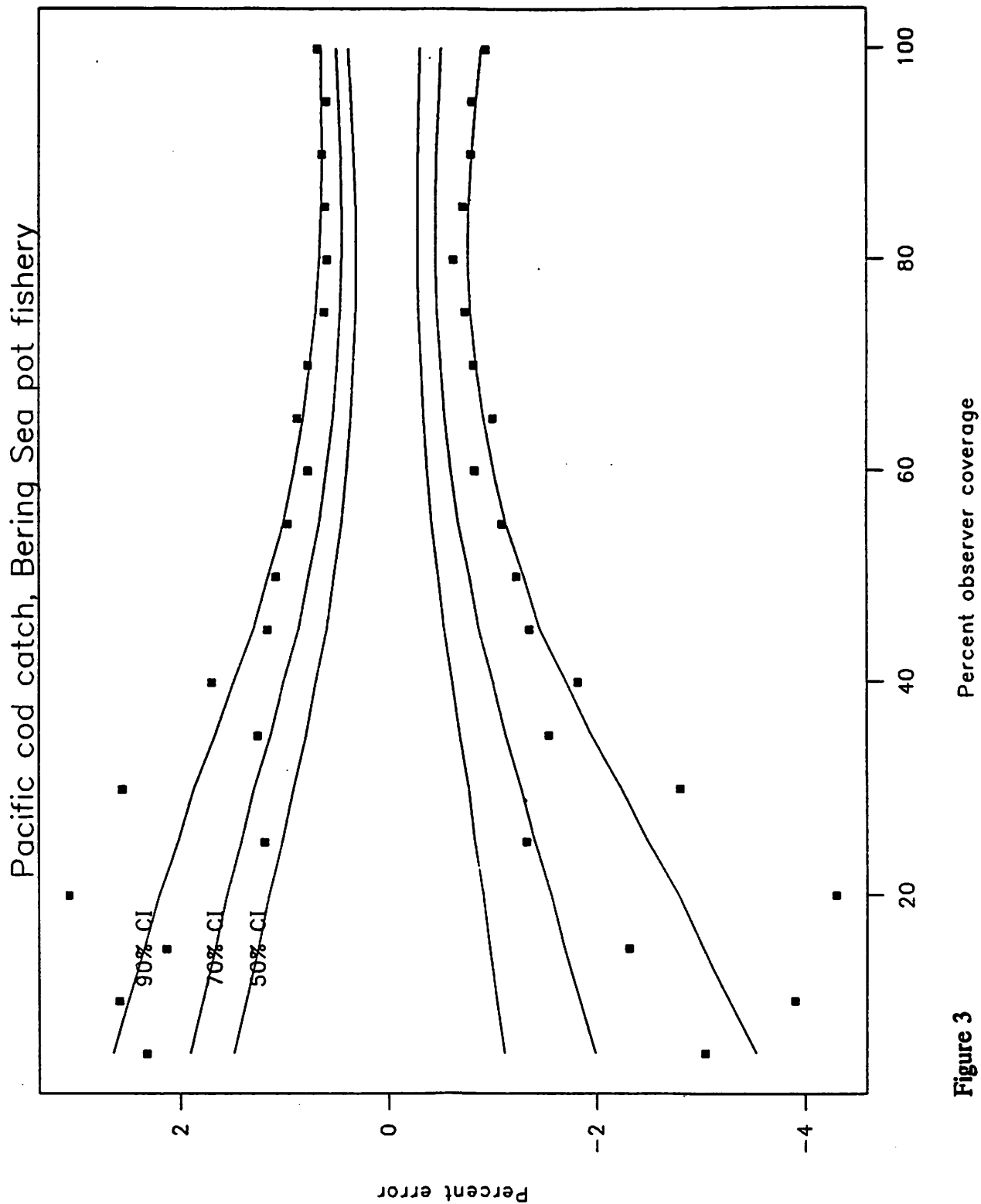


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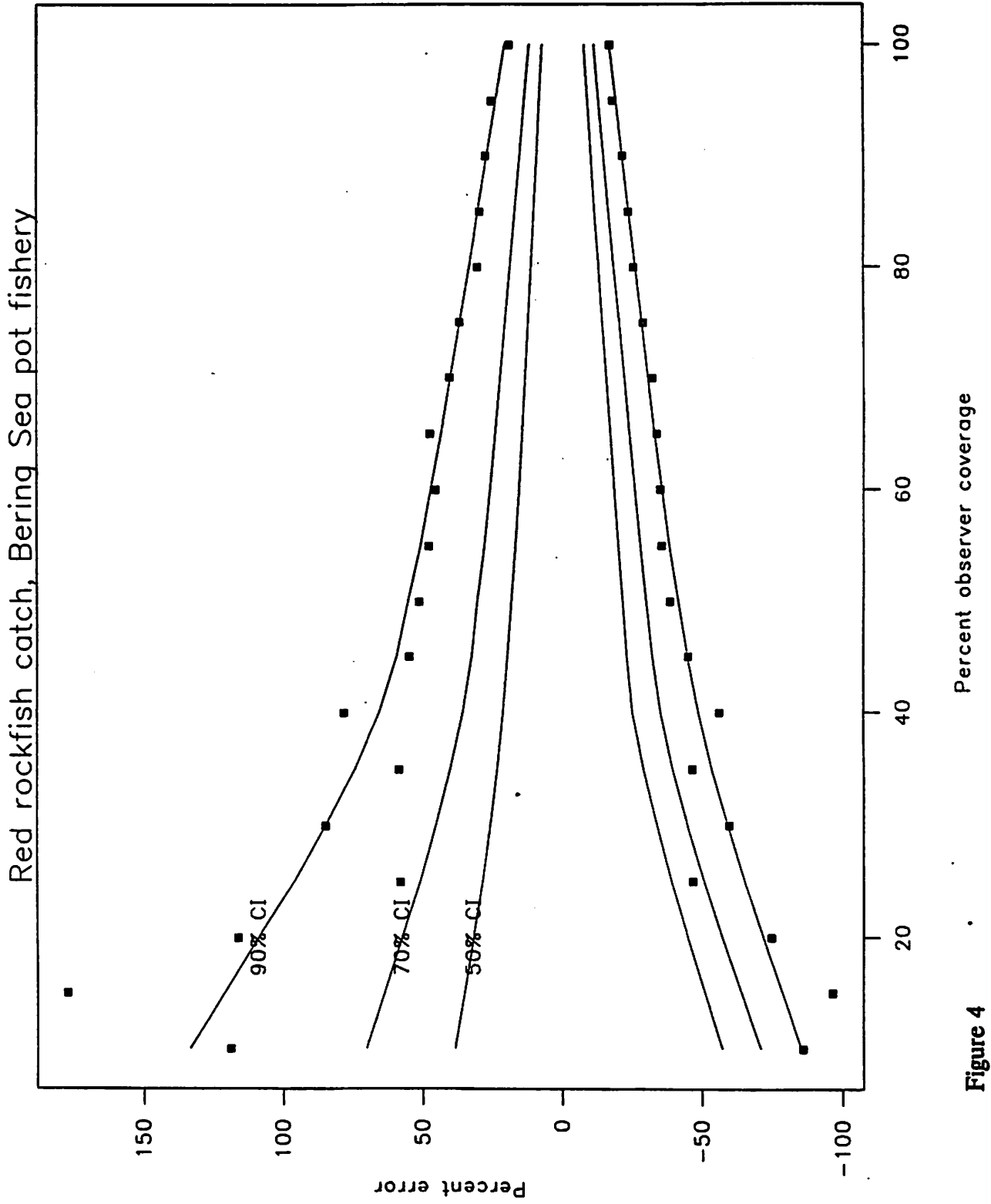


Figure 4

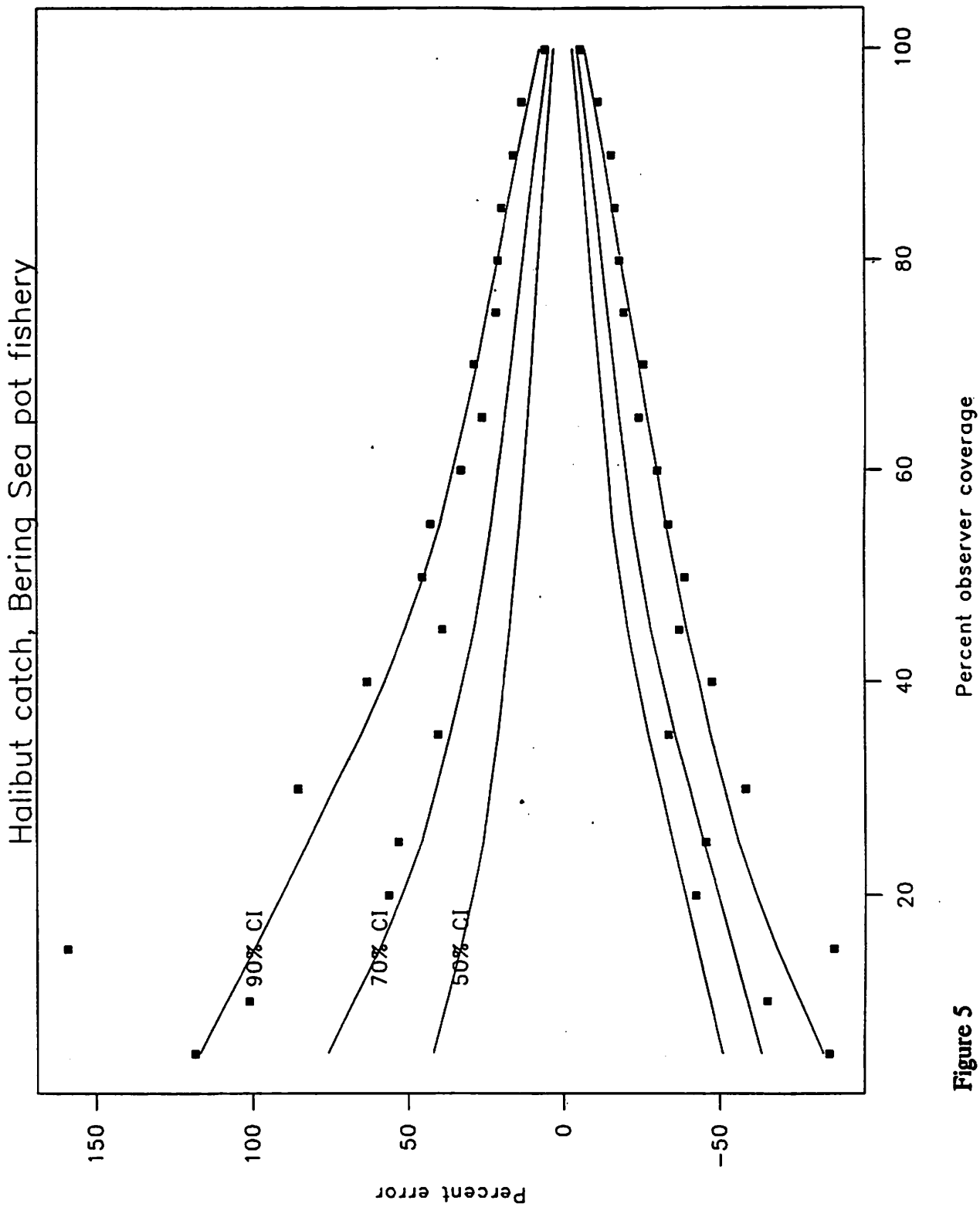


Figure 5

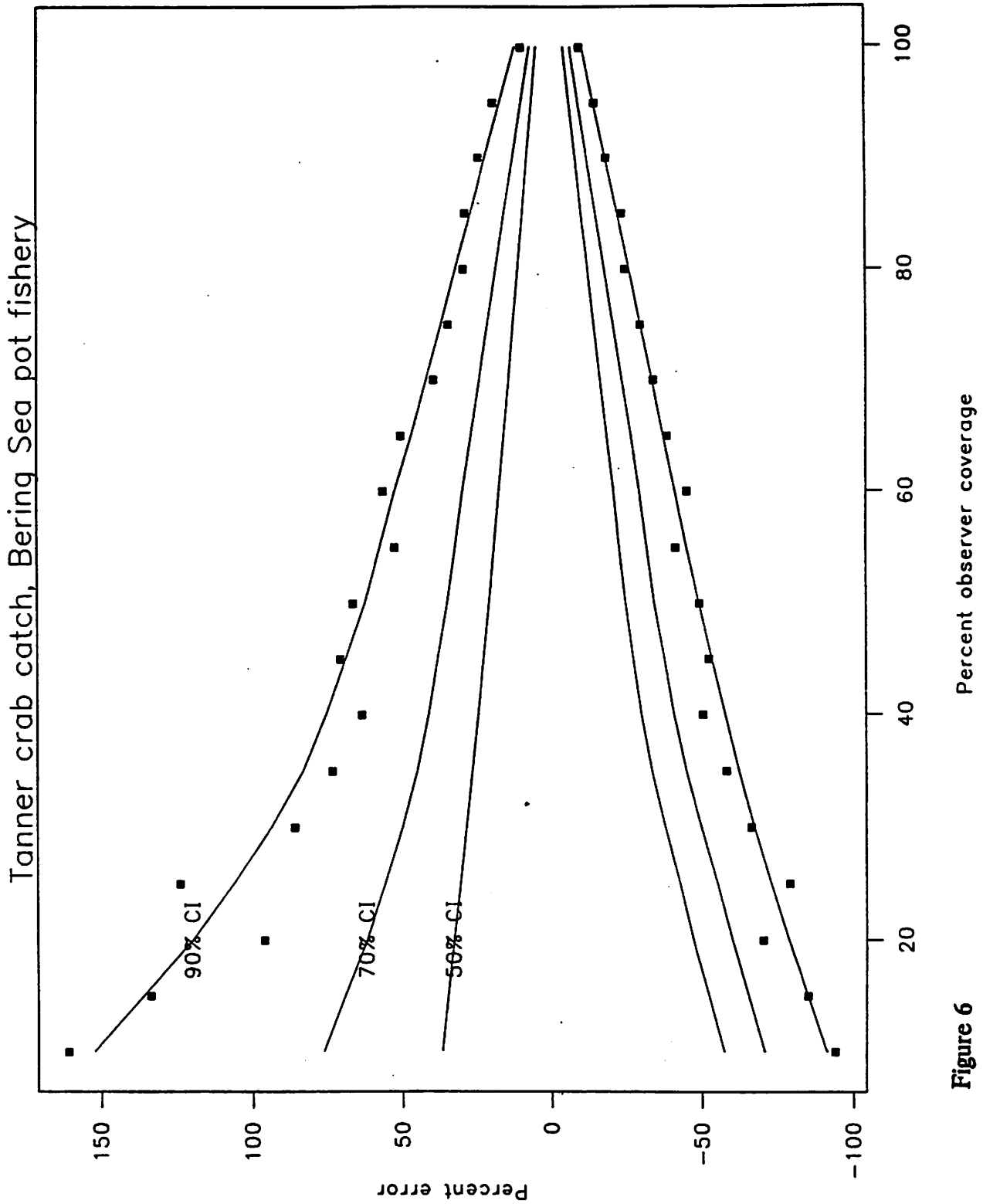


Figure 6

King crab catch, Bering Sea pot fishery

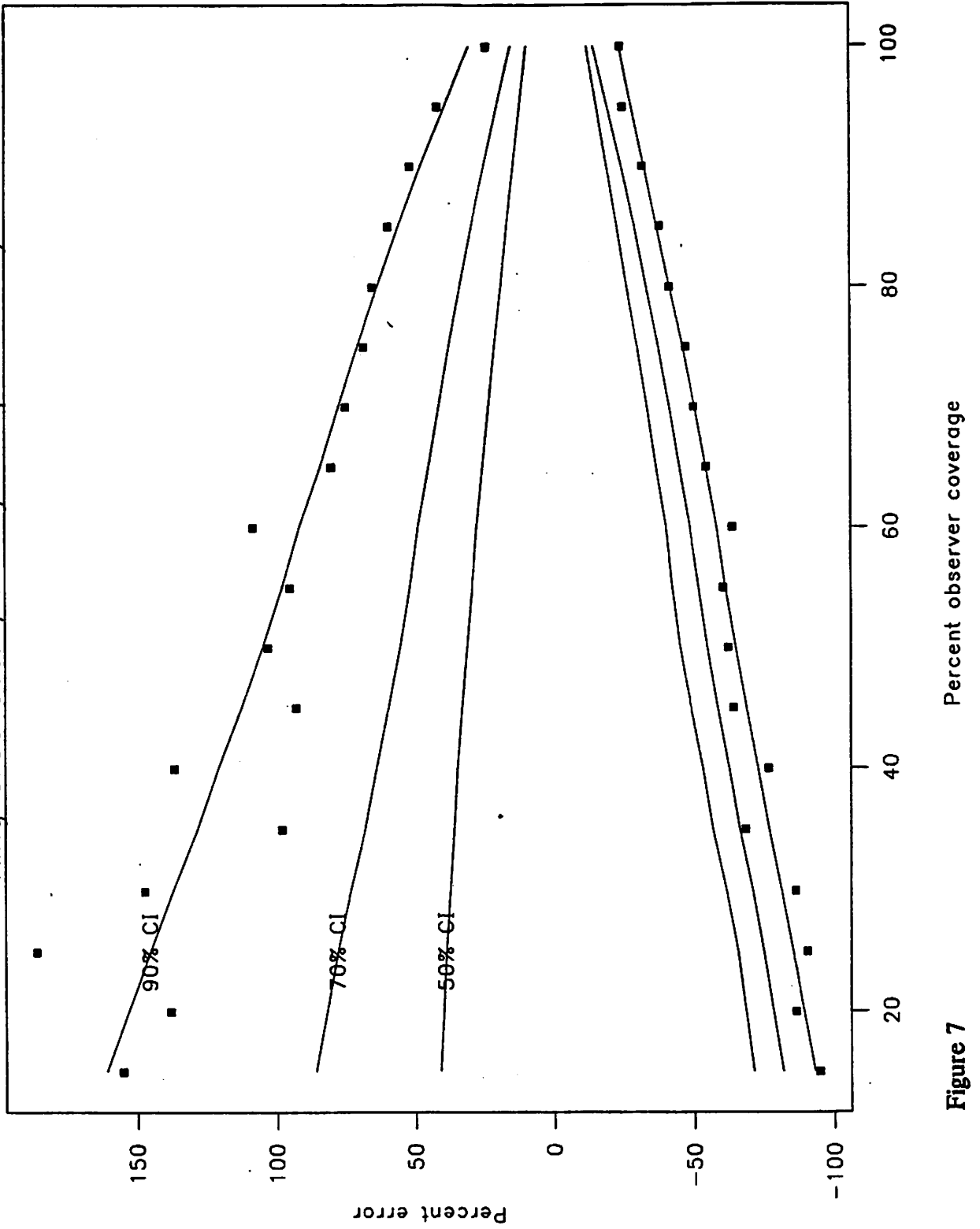


Figure 7

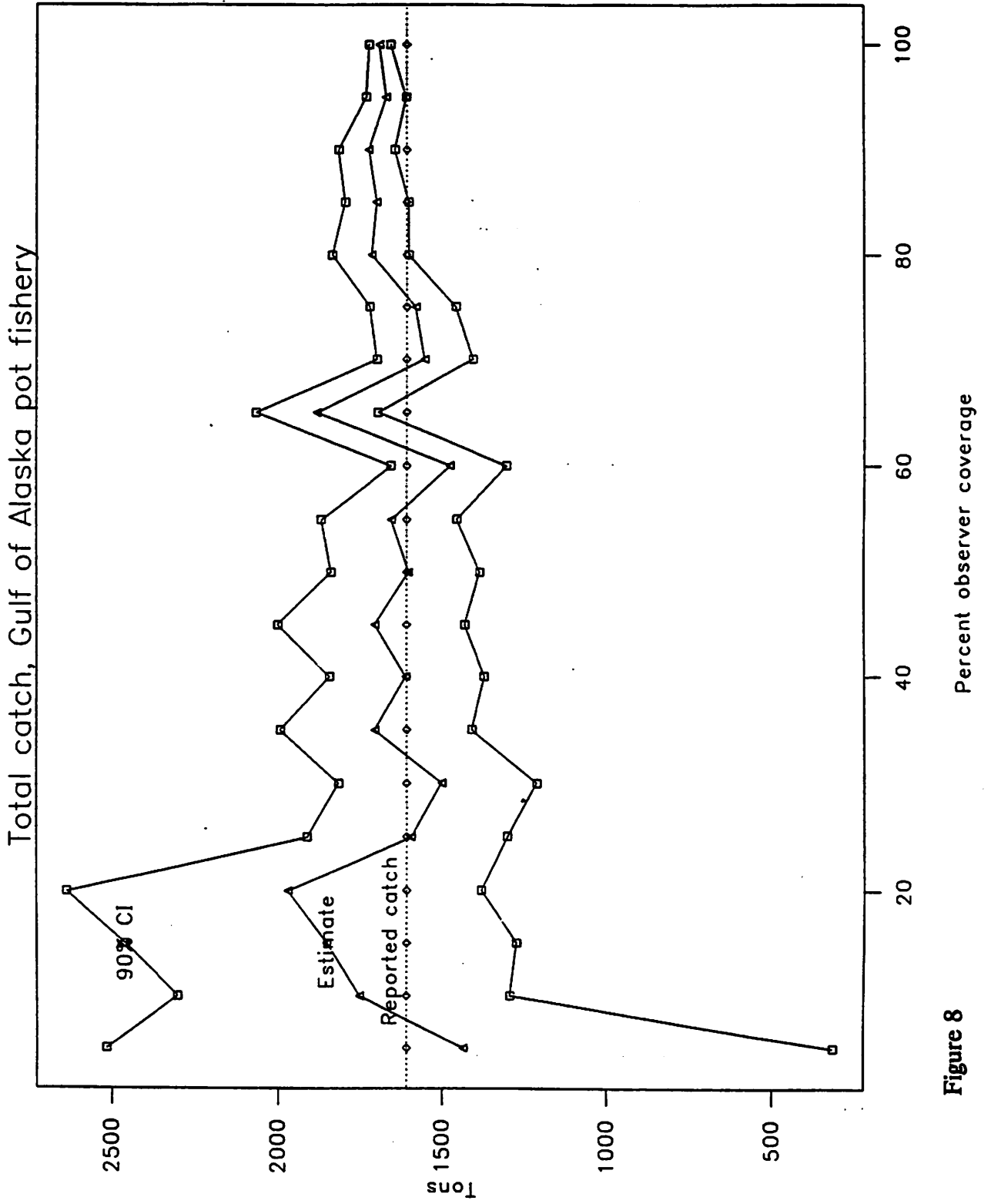


Figure 8

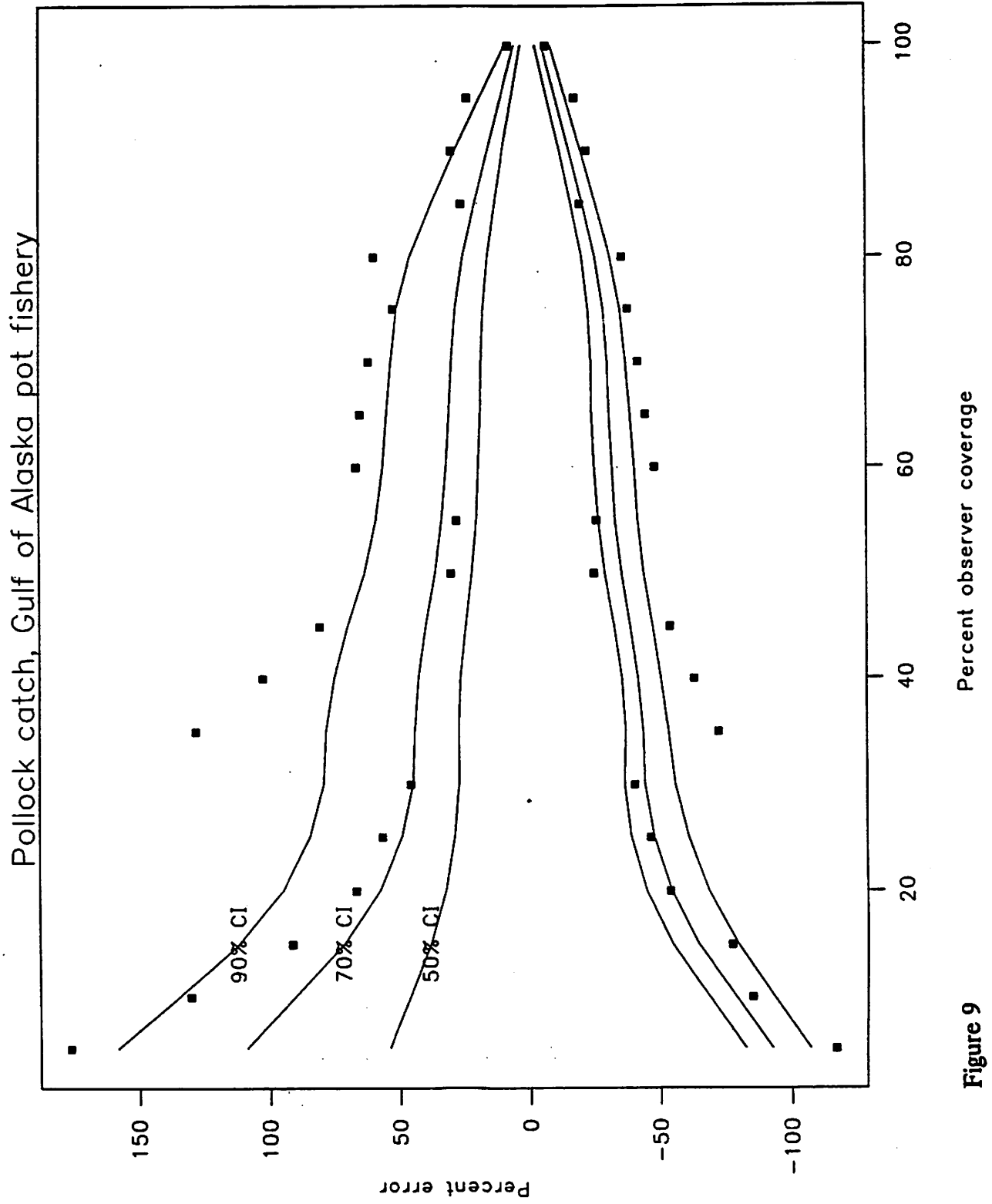


Figure 9

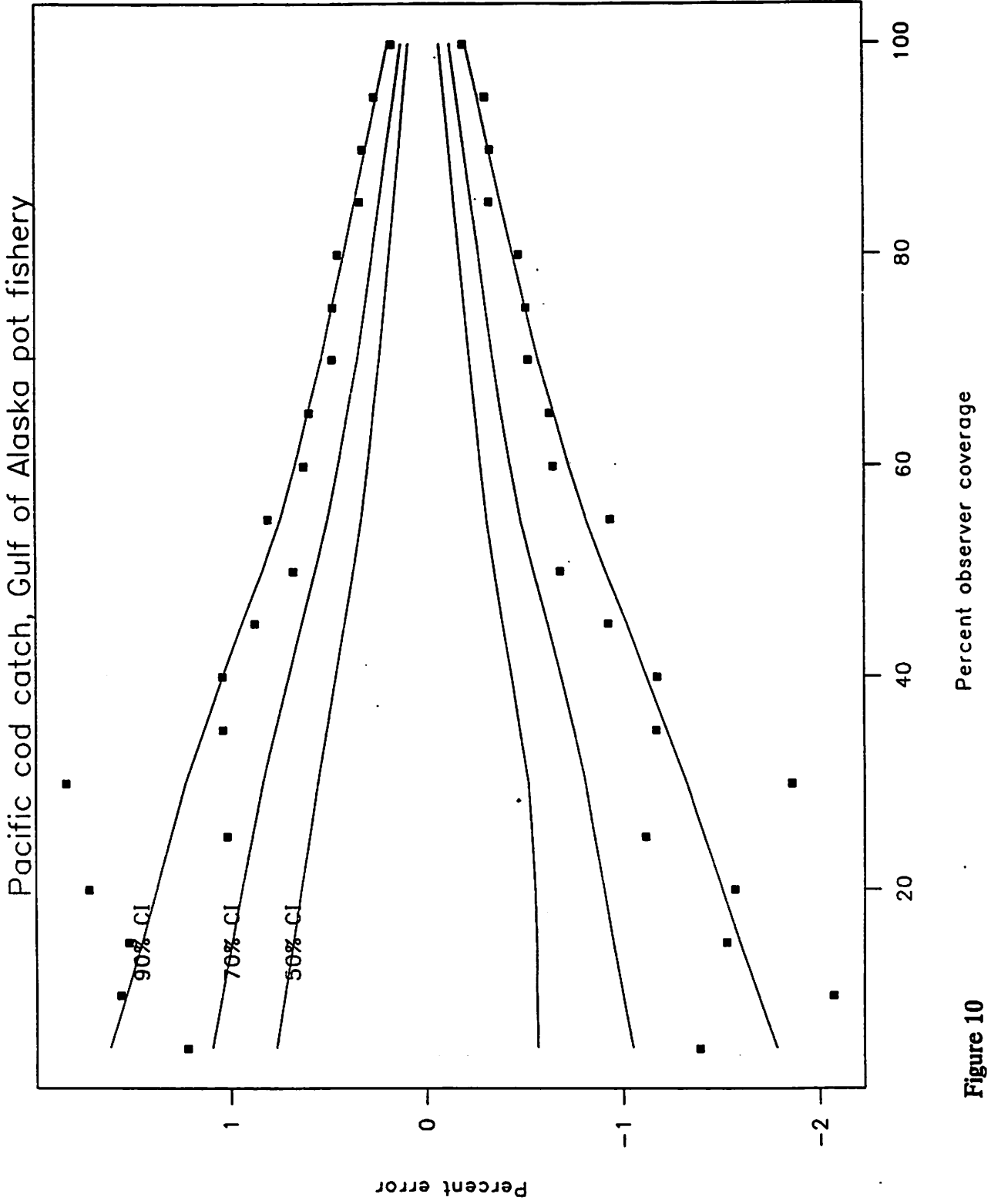


Figure 10

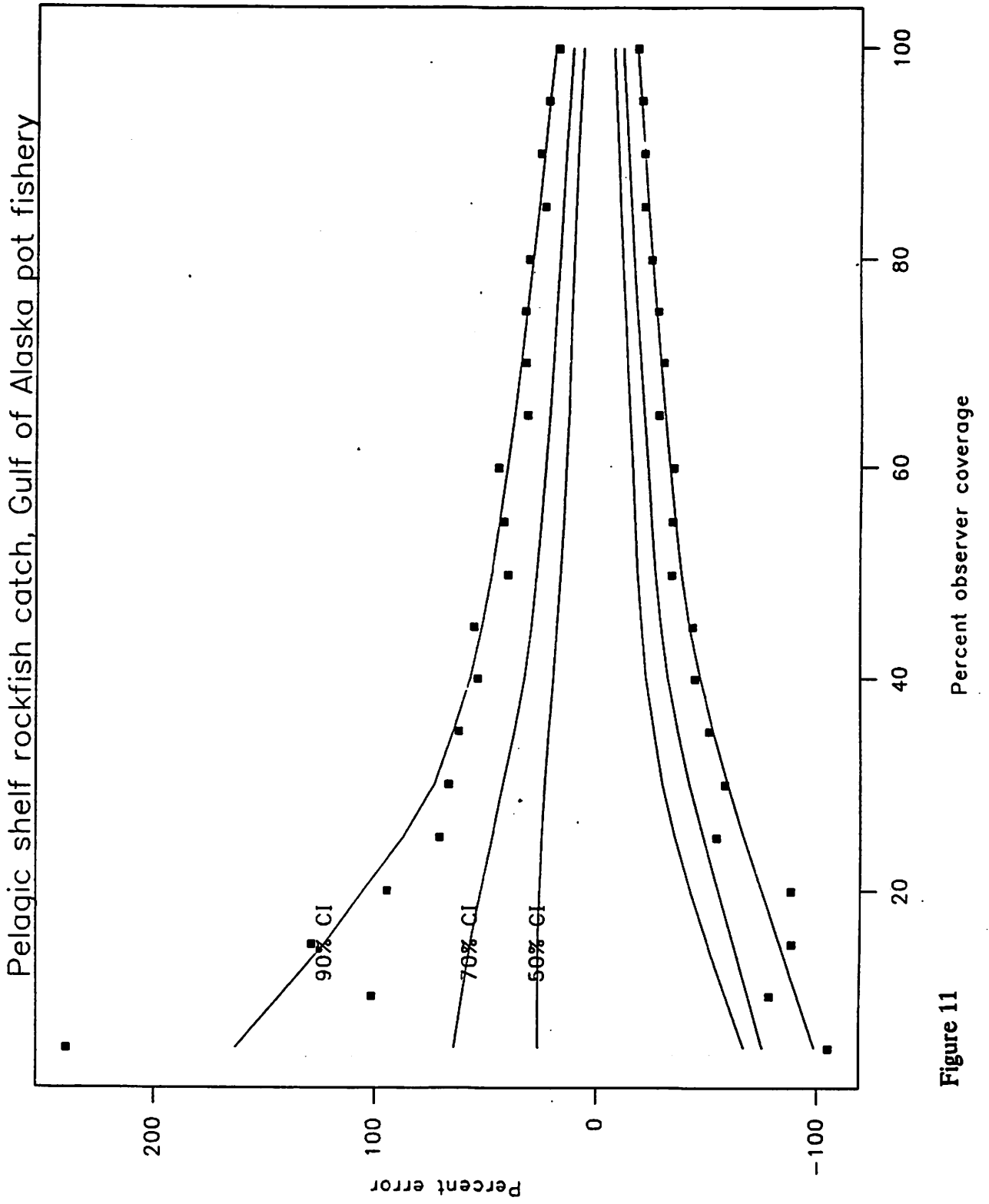


Figure 11

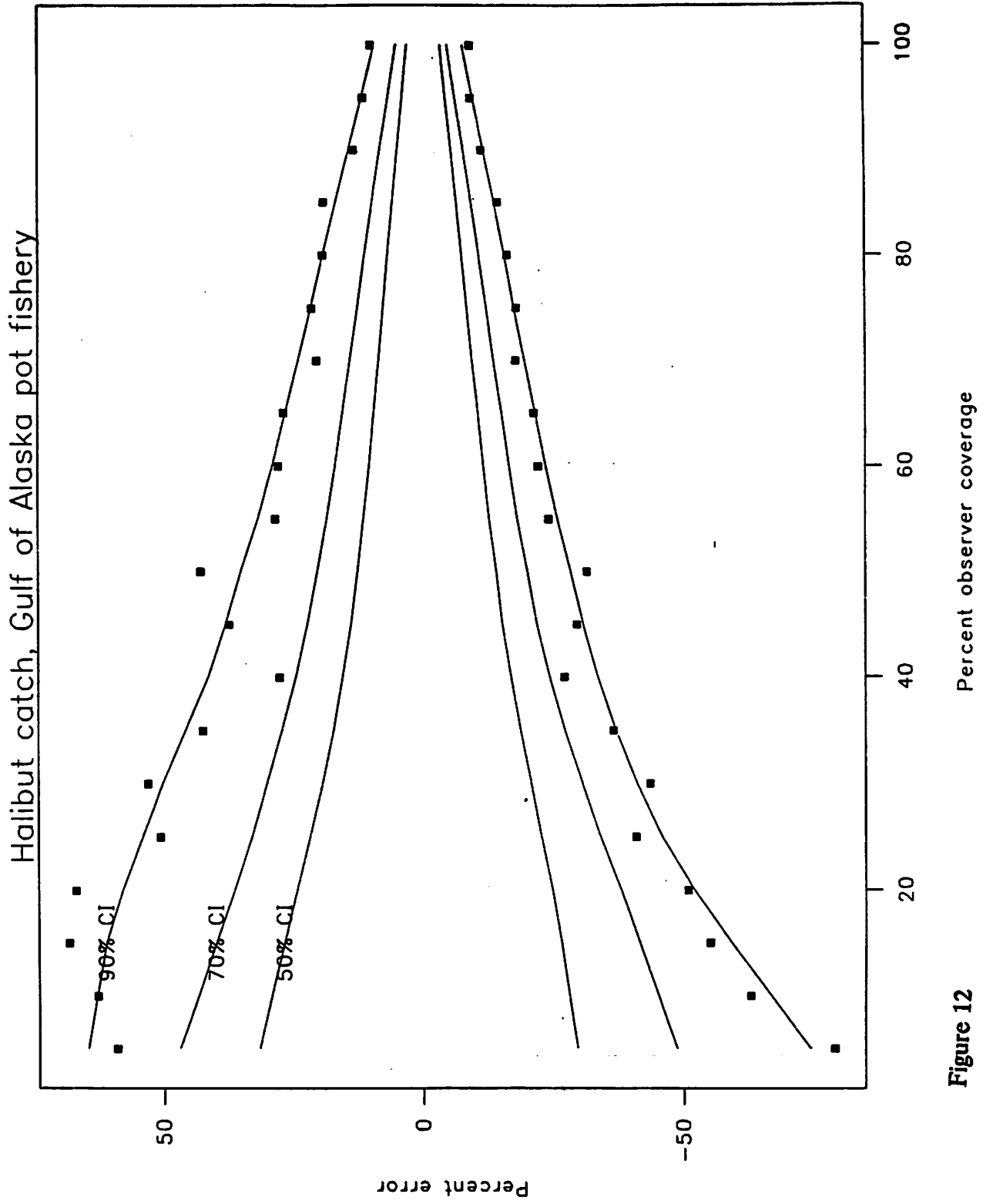


Figure 12

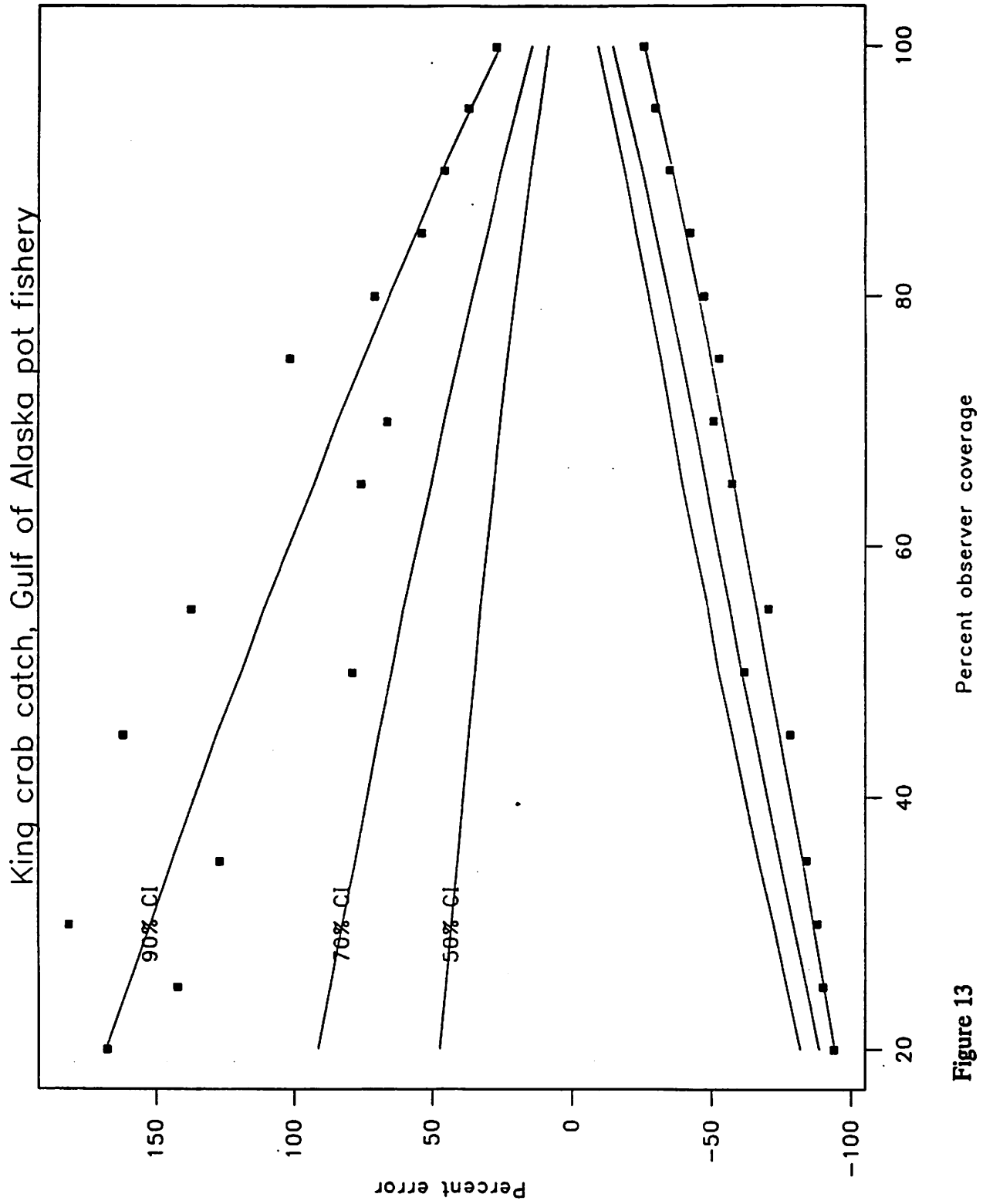


Figure 13

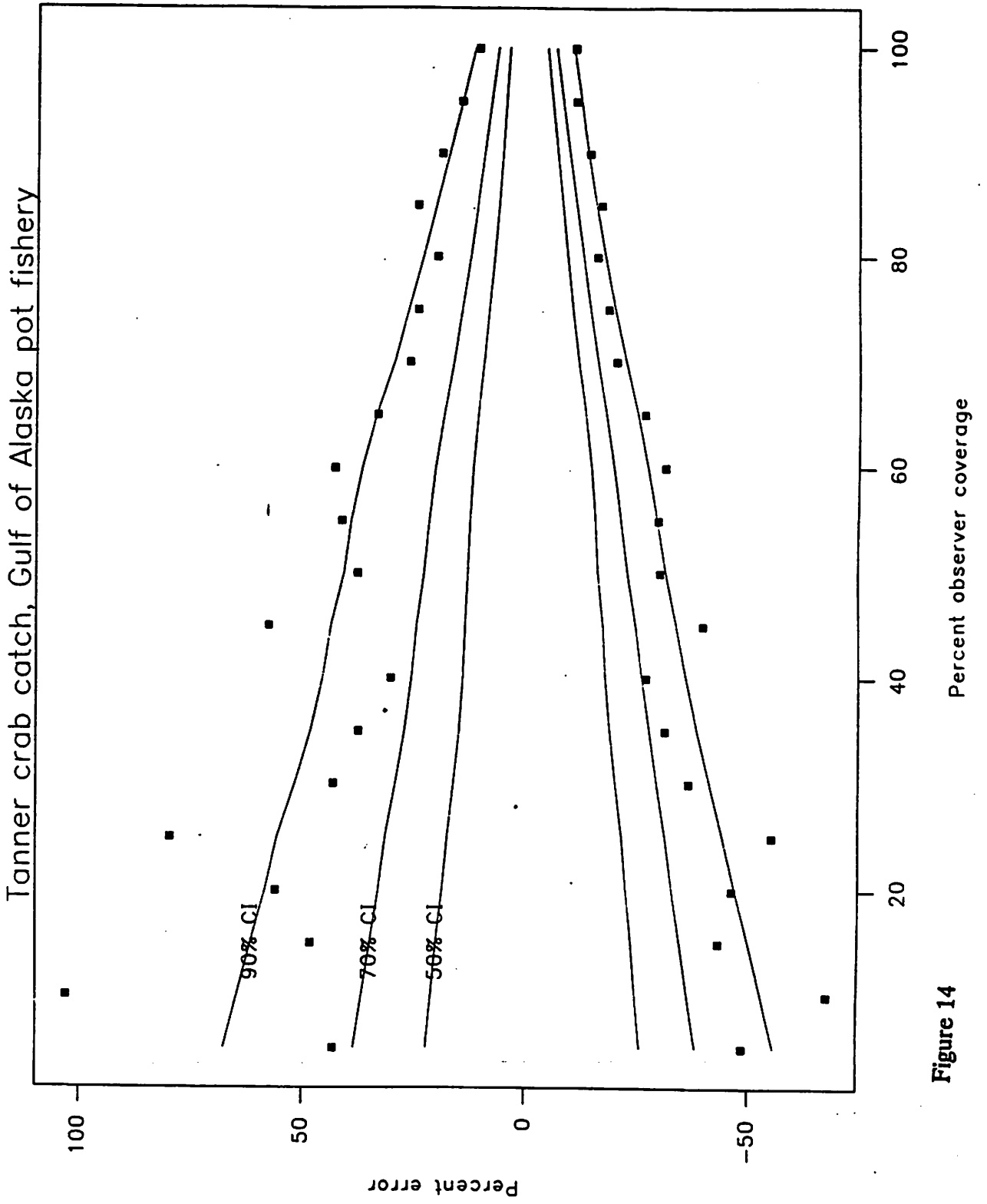


Figure 14



UNIVERSITY OF ALASKA ANCHORAGE

211 West 7th Avenue
Anchorage, Alaska 99501
(907) 272-2704
FAX: (907) 272-5269

North Pacific Fisheries
OBSERVER TRAINING PROGRAM
COLLEGE OF COMMUNITY AND
CONTINUING EDUCATION
Division of Military Education
and Education Programs

8 December 1992

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

Council Members:

I want to address two issues, regarding the proposed changes to the observer program for 1993:

First, let me speak generally about the proposed changes to observer coverage levels, redefining "fishing day," and reducing the lower length limit for 100 percent and 30 percent observer coverage. I was disappointed yesterday to hear deliberations in the Advisory Panel meeting about the relative value of additional observer data which could be collected if changes were made to coverage levels, etc. Concern was voiced that the data would not be used, not be analyzed. Possibly some of the members of the AP do not understand that beyond inseason management, the true value of the observer database is its consistency over time, and our ability to refer back to data collected in prior years. Although observer data may not be input or analyzed immediately, the staff and scientists of the National Marine Fisheries Service, and the Council staff do use the information in following years. However, the sampling opportunities we bypass and the data we choose not to collect this year can obviously never be recovered. For this reason, I urge the Council to be conservative with the marine resources of Alaska and I urge you to take every reasonable step to maximize the quantity and improve the quality and veracity of the data collected by the observer program.

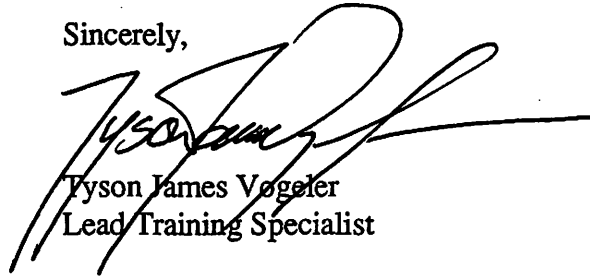
I would also like to address the proposed changes to the conflict of interest standards for contractors and observers. While I agree that the existing conflict of interest standards are vague and incomplete, I find the changes proposed by the National Marine Fisheries Service to be unduly restrictive on observers and the employees of contracting companies. If you refer to the August 13th report of the Observer Oversight Committee, you will find that the other members of the Committee also felt the proposed standards were too restrictive. There is a potential for conflict of interest problems with the observer program, but I think it is far more of a perceived problem than a real one. True, observers have access to fishing information which is confidential, and there is the possibility of manipulation or falsification of data, but the potential for misuse of observer data due to a conflict of interest is minimal.

As an instructor of observers for the University of Alaska, I have the opportunity to meet or train many observers each year, and I am always impressed by the caliber of people the observer programs attract. Some of these observers are our future resource managers and scientists, and it is beneficial for them to experience all segments of the fishing industry they will someday manage. I agree with the Committee; I think we should be making the job of an observer as attractive as possible so that good observers are retained in the program.

I encourage you to adopt the conflict of interest standards proposed by the Observer Oversight Committee. Further, I encourage the Council and the National Marine Fisheries Service to formalize the code of ethics and standards of conduct for observers, and require that observers sign a statement that binds them to these professional standards and discloses any personal conflict of interest. Only if we treat these people as professionals can we expect professional behavior and performance from them.

Thank you for the opportunity to present these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tyson James Vogeler', written over a printed name and title.

Tyson James Vogeler
Lead Training Specialist



ALASKA CRAB COALITION

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

DATE: December 7, 1992

TO: Rick Lauber, Chairman
NPFMC
P.O. Box 103136
Anchorage, AK 99510

FROM: Arni Thomson, Executive Director *Arni Thomson*

RE: COMMENT ON DRAFT EA/RIR PROPOSED AMENDMENT TO GOA/
BSAI DOMESTIC OBSERVER PLAN (AGENDA C-1(b))

The ACC has reviewed the above EA/RIR and wishes to focus on the proposed changes in observer coverage for groundfish vessels fishing with pots in the Bering Sea/Aleutian Islands.

RECOMMENDATIONS:

1. ~~ACC can support Alternative 2, decreasing the required level of observer coverage on pot vessels less than 125 feet in length, from 30% to 10% coverage, if the NPFMC finds this reduced level of coverage will provide a satisfactory level of catch and bycatch data for this fishery. Observer data to date demonstrates that this gear type and fishery produces very low levels of halibut catch and mortality and very low levels of king and bairdi crab mortality. (EA/RIR p. 22 and correspondence, Russ Nelson, NMFS, Sept. 16, 1992)~~

2. ACC's ~~second~~ priority is for the Observer Committee recommended option for analysis, Alternative 3, which would require mandatory observer coverage at the 30% level for all groundfish vessels using pot gear. This alternative would maintain status quo for observer coverage requirements for vessels currently required to carry observers 30% of the time, but would reduce the coverage of vessels 125 ft. LOA or longer from 100% to 30% coverage.

The Observer Committee intended this to be an alternative if the minimum vessel size limit for vessels requiring 100% observer coverage was reduced from 125 ft. LOA to 115 ft. LOA. The intent is to reward the use of gear with low bycatch rates and mortality of prohibited species through a reduction in the cost of observer coverage.

As with Alternative 2, the decrease in coverage under Option 3 would be compensated to some extent by increases in the number of fishing days observed if proposed changes are made to use fishing days to measure observer coverage and the lower size limit of vessels required to carry observers 30% of the time is decreased to either 55 ft. LOA or 57 ft. LOA. In the event of this decision occurring, observer coverage would stabilize and be no less than the 30% level in both the Bering Sea and the Gulf of Alaska.

The Distribution of Benefits and Costs section of the EA/RIR (p. 25) clearly shows a negative impact in terms of management policy, if the Council adopts Alternative 1, status quo. Maintenance of the status quo could indicate to fishermen that development of fisheries using gear that results in low bycatches and mortality of prohibited species are not rewarded with reduced costs for observers and fisheries management.

Adoption of Alternative 3, reducing coverage to 30% across the board for groundfish vessels fishing with pots, would result in an approximate savings of \$243,000 on observer costs.

Conversely, if the Council adopts Alternative 1, status quo, while lowering the minimum vessel LOA requirement for 100% observer coverage to 115 ft. LOA, this would be an economic disincentive to the majority of Bering Sea pot catcher vessels delivering to shorebased plants. This action would make these already marginally profitable operations, in some cases unprofitable.



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

September 16, 1992

Mr. Arni Thomson
 Alaska Crab Coalition
 3901 Leary Way NW, Suite 6
 Seattle, WA 98107

Dear Arni:

This letter is in response to your request for an estimate of the bycatch of king and Tanner crab taken in the 1992 Pacific cod pot fishery. NMFS does not estimate these catches for pot vessels in-season so I cannot provide estimates of bycatch made using the same procedures used to estimate bycatches of halibut and other prohibited species which are listed on the NMFS Management Bulletin Board. I can provide you a very preliminary estimate of the bycatch rates of crab from the observer data which can then be multiplied by the groundfish catch taken by the pot fishery to date. The preliminary estimates of overall bycatch rates are shown below. The reported groundfish catch taken by pot vessels through August 23rd were 11,368 t in the Bering Sea/Aleutian area and 9,119 t in the Gulf of Alaska area.

Bering Sea/Aleutian Islands area bycatch rates:

C. bairdi Tanner crab	10.375 crab/t
Other Tanner crab	4.316 crab/t
Red king crab	0.054 crab/t
Other king crab	0.743 crab/t

Gulf of Alaska area bycatch rates:

C. bairdi Tanner crab	1.835 crab/t
Other Tanner crab	0.005 crab/t
Red king crab	0.004 crab/t
Other king crab	0.000 crab/t

If you have any questions on the above data, please give me a call.

Sincerely,

Russ Nelson
 Russ Nelson
 Task Leader
 Observer Program

