

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: December 2, 1997

SUBJECT: Observer Program

ESTIMATED TIME
3 HOURS

ACTION REQUIRED

- (a) Review draft analysis of third party, joint project agreement (JPA) observer program structure.
- (b) Discussion of observer unionization and 1998 fisheries.

BACKGROUND

(a) Third Party/JPA Program

In June, after further researching the 'third party', modified pay-as-you-go observer program alternative, NMFS recommended, and the Council concurred, that further efforts be directed at developing such a program with the Pacific States Marine Fisheries Commission (PSMFC) as the third party entity. At that meeting you also took action to keep the existing observer program structure in place through 1998 to allow time to develop the third party program. Recall that this would establish the PSMFC as the interface between vessels/plants and the observer contracting companies, and industry would now go to, and pay, the PSMFC for their observers.

NMFS would enter into a joint partnership agreement (JPA) with the PSMFC to bring this program on line - PSMFC would in turn contract with independent observer contracting companies to provide observers to the fleet - the fleet would go to the PSMFC to pay for and receive their observer coverage. Within this basic structure there are several potential variations in the respective roles of the PSMFC and the observer contracting companies. Based on Council direction from the June meeting, staff efforts have been concentrated on further development of this program structure with the goal of full implementation beginning in 1999. In your notebooks is the draft EA/RIR, prepared by NMFS and PSMFC, for the third party, JPA observer program structure. While some of the administrative and logistical details of the JPA will remain to be resolved by NMFS and PSMFC, the document describes the main features of the JPA program including: total costs projections; updated projections of relative costs to various industry sectors; respective roles of NMFS, PSMFC, and contracting companies; and, how industry will go about procuring observer services.

While the document contains three alternatives for the JPA structure, and options for assignment of work among the contractors, 'Preferred Alternatives' have been identified for both. The Council's Observer Advisory Committee (OAC) met in September and again in November to review the JPA

program - their report is under Item C-1(a)(1). While the Council has always emphasized that the cost equalization issue would have to be addressed under the JPA structure, the OAC is now specifically recommending re-development of a fee-based funding mechanism, which would begin immediately and dovetail with the JPA structure. NMFS and PSMFC staff will present the EA/RIR, and the JPA alternatives and options, followed by the OAC report from Chair Chris Blackburn.

Recent comments received are under Item C-1(a)(2).

(b) Observer Unionization Efforts and 1998 Fisheries

Since the unionization vote earlier this fall, and with union contract negotiations ongoing, there has been keen interest in the implications of this process for the 1998 fisheries - more specifically, the possibility of an observer strike in 1998 has been raised and industry has sought clarification from NMFS regarding the impacts of an observer strike.

Item C-1(b)(1) is a letter from the attorney for the Alaska Fishermen's Union alerting the Council to the provisions of the National Labor Relations Act, and the potential implications of Council discussions to the collective bargaining process. As of December 2, we have learned that one observer contracting company has reached an agreement with the union. Representatives of the union may be on hand to update the Council on this process.

OBSERVER ADVISORY COMMITTEE

Report to the Council on the Third Party/JPA Observer Program Structure

[November 24, 1997]

Members present: Chris Blackburn (Chair), Michael Lake, Arni Thomson, John Winther, Paul MacGregor, Kim Dietrich, Teresa Turk, Jerry Nelson, Paula Cullenburg, Gary Westman, Lauri Bowen

Agency staff present: Bill Karp, Sue Salvesson, Dave Hanson, Al Didier, Chris Oliver, Earl Krygier, Heather Weikert

Others: Al Burch, Doug Wells, John Gauvin, Dave Fraser, Brent Paine, Bob Mikol, Dave Benson, Steve Drage

Overview

The Committee met on November 24 to review the EA/RIR, prepared by NMFS and PSMFC, for a 'preferred alternative' for the third party (JPA) observer program structure. The OAC had previously reviewed the JPA alternatives in early September (see attached report dated September 8, 1997) and many of the same issues and discussion points were reiterated at our November meeting. However, further refinement of the JPA alternatives and options, coupled with other developments, has allowed the OAC to now make a more specific overall recommendation to the Council. The following motion was adopted by the OAC by an 8-1 vote (5 members were not in attendance).

Motion is to recommend approval and development of JPA Alternative 3, with Option 3 regarding assignment of work, for ASAP implementation for the groundfish fisheries, and that development of a blended fee plan begin concurrently, recognizing that separate approval would be required, and that implementation may not be concurrent. This blended fee plan would be limited to a 2% cap, with supplemental observer coverage being potentially available through the PSMFC for programs such as CDQs, IFQs, or VBAs (this would need to be explicitly defined). Crab fisheries inclusion in the fee plan would be optional, pending implementation of their cost recovery plan. The OAC recommends that a TAC-based cost recovery mechanism (similar to the State's proposed BSAI crab plan) also be explored for groundfish.

The OAC, during discussion of this motion, emphasized that all observer coverage for open access fisheries was intended to be covered under the fee plan. The fee plan was also to cover vessels with individual allocations, as long as the coverage requirements were the same as those in the open access fisheries. Any coverage requirements for individual vessel programs above that required in the open access fishery would be paid by the vessel since the vessel itself was the sole beneficiary of the individual allocation.

During these discussions, the OAC also referred to the fee plan as the 'Modified Research Plan' to signal that the OAC felt that the elements in the earlier plan voted down should be reviewed, and revisions made to eliminate problems found in the first version of the Research Plan.

Renewed support for the fee-based plan is based partly on new, higher costs which are projected for future observer coverage, thereby exacerbating the disproportionately high costs for some operators, particularly those smaller vessels in the 30% coverage category. Overall the OAC feels that a fee-based plan represents the best approach to address major issues of data integrity, cost equalization, and flexibility in placing observer coverage most efficiently. We recognize that such a program cannot be re-developed and implemented in the short time frame facing the Council. Getting the basic JPA structure in place is still an immediate priority, also recognizing that the resulting third party structure is compatible with a future, fee-based funding mechanism.

Specific Discussion Points

Following is a summary of some of the major issues discussed by the OAC at the November 4, 1997 meeting. Many of these are also discussed in the previous minutes dated September 8, 1997.

Disproportionate cost issue - Regarding cost as a percentage of gross, the OAC was presented with updated projections which incorporate new assumptions on observer costs. These projections indicate that the costs as a percentage of gross will be very high for many operations. The OAC would like to see a further break-down by specific fishery (for example June GOA pollock; gulf rockfish; 4th quarter GOA flatfish fishery, etc.). This will allow further resolution of which fisheries (and which fishermen) will be most impacted.

Conflict of interest issue - and whether it would be fully resolved by having the PSMFC as the sole observer source - Response is that (a) PSMFC is not a private, for profit business, (b) there is no optional place for industry to get an observer, so the 'leverage factor' is eliminated and, (c) there's not a negotiation process, it's a bid process.

Observer compensation - the context of this point is how the PSMFC would deal with compensation barring a negotiated settlement, or in the presence of non-union contractors. It is clarified that the Services Contract Act would not apply. Establishing a minimum salary at this time is not envisioned by the PSMFC. Rather, that would be dealt with via the review of bids, stipulations for minimum % of prior observers (time in grade coupled with performance ratings), or other means.

Science vs compliance - The OAC feels that under any program structure an attempt should be made to separate observer compliance monitoring duties from basic scientific information collection. While these are difficult to separate in many cases, such an analysis may help in future determinations of optimal distribution of observer coverage.

Efficient placement of observers under the JPA - consistent with previous minutes, the OAC is still concerned that the JPA arrangement, which will assign modules of observer coverage (by fishery for

example), may not allow for optimum cost efficiency. The current system allows for industry to make efficient use of observers, particularly among 30% vessels. Modules also present issue of overall fixed cost being factored (frontloaded) into bids submitted by contractors. The issue of observer specialization is also integrally related to this issue - cross trained observers would obviously facilitate flexibility and efficiency.

Potential waivers - another issue which generated a lot of discussion is what will happen if PSMFC, as the only source for observers, is unable to provide an observer to a vessel? Will NMFS waive them? Should there be a specified advance notice time? PSMFC should be able to resolve the issue because they have the whole pool of observers to pull from, and likely several contractors to go to. While this situation is not likely, industry wants some assurance they would not be precluded from fishing if the situation does arise.

Criteria for 'grading' observers - the OAC discussions reflect a desire by industry to participate in future development of these criteria. It is recognized by NMFS and the PSMFC that this will need to be resolved in the final details of the JPA arrangement.

OBSERVER ADVISORY COMMITTEE

Report to the Council on the Third Party/JPA Observer Program Structure [September 8, 1997]

Members present: Chris Blackburn, Michael Lake, Kim Dietrich, Teresa Turk, Paula Cullenburg, Mandy Merklein, Lauri Bowen, Nancy Munro, Arni Thompson, Paul MacGregor, Don Goodfellow

Staff: Chris Oliver (NPFMC), Bill Karp, Shannon Fitzgerald, Sue Salvesson, Martin Loefflad, Sarah Gaichas (NMFS), Al Didier, Dave Hanson (PSMFC), Larry Boyle (ADF&G)

Others: Jerry Rubin, Mark Coles, Jill Bowman

Overview

The OAC received reports from NMFS and the PSMFC regarding progress on the Joint Partnership Agreement (JPA) structure for the observer program. The reports included: (1) summary and comparison of 3 optional JPA structures; (2) Summary and comparison of costs associated with each JPA option, and comparison under two observer salary scenarios; (3) overall rating of each JPA option relative to program goals and objectives; and, (4) discussion of options for determining assignment of work - how will the available work be distributed among the observer contracting companies. An updated discussion paper on the issue of groundfish observer costs by sector and vessel size was provided by NMFS, though the OAC did not have time to review or discuss this issue at this meeting. The OAC also received a report from Larry Boyle (ADF&G) regarding status of the State's shellfish observer program.

The role of the OAC in the process was perceived to be one of review and comment, as opposed to trying to choose a particular JPA alternative at this time. The Committee's primary focus was to help define the details of each, alternative JPA structure, with the expectation of a final decision in December. The OAC commends the work developed thus far and unanimously recommends further development of the JPA structure by NMFS and the PSMFC this fall. The JPA structure, in general, appears to be cost effective and provides, under any option, for continuation of existing services to the industry.

Things that are not directly addressed by the JPA at this time, but should be the subject of future discussions include: (1) disproportionate costs , (2) flexibility of putting observers where we need them (state program funding mechanism solves this problem for crab fisheries), (3) how to monitor observer work and overtime hours, (4) efficiency issues, particularly with 30% vessels, (5) specialization by observers, and whether this should be promoted, (6) re-opening of fisheries - short turnaround and high cost, (7) number of field coordinators required, (8) technical criteria for performance evaluations. A critical, and so far unresolved, aspect of the JPA structure is the question of how the PSMFC will distribute the work among the existing, or future, observer contracting companies.

A summary of Committee discussions is provided below:

Optional JPA Structures

The options for JPA structure essentially involve trade-offs regarding the respective roles of the existing contractors and PSMFC. For example, Option 1 leaves the contractor structure intact and PSMFC acts only as the 'arms length' factor, while Option 3 would shift many of the current contractor functions to the PSMFC, and make the contractors more like employment agencies. Option 2 is somewhere in between. It is assumed that observers would remain employees of the contractors under all JPA options, though this issue is listed among the legal questions raised by the OAC.

The OAC's primary discussions centered around the administrative and logistical aspects of the alternative structures; i.e., the specifics of what a vessel/plant would need to do to get their observer, payments for that observer, who they contact in the event of a problem, etc. The particular functions of the PSMFC, the contractors, and NMFS, also need to be clearly specified. Within this general discussion, several specific issues or questions were raised and are summarized below (these may overlap with cost or assignment of work issues discussed later):

- * need for a port coordinator in Kodiak, either in addition to or in lieu of, Dutch Harbor.
- * what is role (necessity) of port coordinator under JPA options 1 and 2? Could it be combined with NMFS field personnel?
- * how does an observer get treated in terms of assignments (specializing in shore plants, or fixed gear vessels, for example). Can NMFS specify, thru the PSMFC, a particular grade of observer for a particular fishery? YES - this flexibility could be written into the JPA if necessary
- * can JPA agreement require a certain percentage of prior observers? Yes, if necessary.
- * To the extent pre-payment is required, how will PSMFC estimate the necessary pre-payment amount? Length of season and other factors would be used to project expected observer costs.

Cost comparisons

Costs were presented from two perspectives: (1) comparisons among the JPA options, and (2) under two observer salary assumptions - the current compensation structure and an assumed increase roughly equivalent to a GS-5. Under the column for the assumed increase, the costs reflect both an increase per day, and a projected increase in the number of days which are paid. Overall cost per observer day does not differ much across the JPA options, nor does it increase with the addition of the third party (PSMFC) in the process. Significant cost increases are associated with an assumed salary increase, independent of any third party/JPA arrangement.

The following issues or questions were raised by the OAC during discussions of program costs:

- * Short notice fishery openings will be another consideration which will impact costs, likely raising projected costs.
- * Cost of air fare in the projections assumes a mix of regular fare and 14 day discount fares, but likely underestimates total travel 'occurrences', thereby likely underestimating overall travel costs.
- * It is understood by the OAC that, in the absence of a union negotiated salary level, the PSMFC can stipulate salary requirements in their contracts with the existing contractor companies.
- * Port coordinator requirements could affect cost projections - for example, necessity for coordinator

in Kodiak, in addition to Dutch Harbor, may increase cost projections. Also, interactions with existing NMFS staff need to be further researched and may impact port coordinator projections.

*Overall cost projections will be affected by how a "cruise" is defined (number of days, when it starts and ends, etc), and the extent to which overtime hours are actually worked. Related issue is how observer work hours will be monitored.

*Regarding the issue of differential pay (incentives) for observers based on experience level- Who would establish those differentials and what would they be? Current projections make an assumed, relatively small differential between experience levels. Resolution of this question does not affect the overall cost *comparisons* among JPA options, because those assume set proportions, but may affect *absolute* cost figures.

*Underlying assumptions for various cost-related projections need to be clearly spelled out and explained in future iterations for OAC and Council review.

*Additional costs associated with coordinator support may need to be factored in, particularly under Option 2, but would increase relative costs of that Option only slightly.

Summary Comparison of JPA options

The OAC reviewed a summary comparison (prepared by staff) of the JPA options, measured against a set of 8 major goals and objectives for an improved observer program. While the OAC found this a useful exercise, we were not yet ready to make a recommendation for a specific JPA Option at this time. The numbers in the comparison sheet are somewhat subjective in nature and are meant to reflect only relative direction. The Committee notes, and the staff concurred, that a 'phase-in' could occur, from Option 1 into Option 2, and even to Option 3, if that is determined to be desirable.

Assignment of Work Options

The OAC received a report from PSMFC regarding options for distributing the workload among the existing contractors, as well as potential additional contractors in the future. This was the most difficult aspect of the proposed new program that the OAC discussed, and it remains largely unresolved. One aspect of the dilemma is how to maintain any competitive aspect of the observer procurement process, within a JPA structure that attempts to address other concerns, such as to minimize the direct relationships between contractors and vessels/plants. Options proposed by PSMFC include basing the work assignments to some extent on the existing percentages held by each contractor, with potential for the remainder to be distributed based on competitive bid, along with various combinations of fixed versus competitive assignments. This will be a critical aspect of the program and will affect, to some extent, the administrative and logistical details for industry, if not costs to industry.

Legal questions were raised relative to this issue, including: (1) Can we, or should we, limit the number of contractors in business; (2) Can we, or should we, maintain a minimum number of contractors in business; (3) Will there be problems charging some vessels more than others for similar observer coverage, if costs are different among the contractors (recall that PSMFC will determine which contractor a vessel receives); (4) To the extent costs per observer day are similar across all contractors, does this 'standardized' pricing create a legal problem?; (5) Have we created a situation where, legally, the observer is now an employee of the contractor and the PSMFC (joint employer)?; and, (6)

Depending on the assignment of work option chosen, contractors could be 'guaranteed' some amount of business - does this raise any legal problems?

The OAC feels that these issues need to be further explored before significant progress on the JPA structure can be realized. In addition to the legal aspects involved, the assignment of work issue generated significant discussion among the OAC members. Some of the issues raised overlap with other concerns raised under the JPA options discussions - for example, the OAC feels that the issue of observer support is a critical consideration. Depending on the JPA option chosen, as well as the assignment of work option chosen, the support infrastructure for observers could be compromised. The contractors provide a network of logistical support for observers, the importance of which should not be overlooked. Related to this was a general observation that maintenance of a professional core of observers, as well as ensuring that a pool of observers is available to the fisheries at any given time, may be dependent on maintenance of a professional core of contracting companies. Other concerns are noted below:

*Under some options (fully competitive), observers could be put in a position of uncertainty, unless observers were 'employees' of all contracting companies at the same time.

*Fishery 'module' concept, as envisioned under the Research Plan, may be applicable here, in terms of rationale blocks of observer coverage to bid on.

*How will this decision ultimately get made? Can, or should, the OAC and Council provide policy guidance on this issue? Is it a NMFS/PSMFC decision? Barring direction, the PSMFC and NMFS will develop a position for OAC and Council review this fall.

*Regarding contractor (de)certification, both NMFS and PSMFC want to maintain NMFS in the certification role.

*A company/vessel may have to deal with multiple contractors, instead of one, under some work assignment options.

*If salaries are standardized, the competitive aspect of contracting comes down (largely) to minimizing overhead, which will tend to decrease the support and service functions of the contracting companies.

*The issue comes down to what the role is, or should be, of the contracting companies. We need to identify those tasks that we want the contractors to maintain.

*Frontloading of costs by contractors - If contractors are guaranteed some level of business, and have to bid on the remainder, then all contractors will tend to frontload their full year's overhead costs into the initial contract. Result is industry paying more than they otherwise would (under a fully competitive process).

*Objective criteria for evaluating contractor performance and PSMFC performance must be specified.

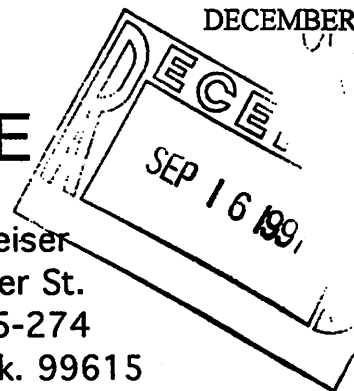
*Maintenance of competition vs. other goals. Technical aspects of the review will be critical in accommodating competition. Need to establish objective criteria to 'grade' contractors for future work allotments

*Sensitivity to disparity of individual industry operators' needs must be considered. Whatever we do must have mechanisms for dealing with grievances by observers, contractors, or industry. Each party needs to know who to contact, and where the resolution lies, in such instances.

F/V HAZEL LORRAINE

Mr. Richard B. Lauber
Chairman NPFMC
605 West 4th Ave. Suite 306
Anchorage, Ak. 99501-2252

Albert Geiser
202 Center St.
Suite 315-274
Kodiak, Ak. 99615



September 9, 1997

Re: Second tier management of the observer program; Pacific States Plan
For the record, 129th Plenary Session NPFMC, Seattle, Washington

Dear Richard,

The June meeting brought many surprises for the trawl industry. Some good and one idea that is very bad, complicated, and unfair with the potential to bring every fishing community in the State of Alaska to a grinding halt. The Advisory Panel (AP) took testimony from industry, environmental groups, the observers trying to form a union, and Mr. Bill Carp who appeared to be facilitating the move towards unionizing the observers. Was it all an attempt to put some distance between vessel owners and plant operators to eliminate conflicts of interest when hiring an observer? From the audiences point of view it looked as if the AP had only one play developed by staff to vote on, i.e., the "Pacific States Plan" using Pacific States Marine Fisheries Commission (PSMFC) as the arms length manager. It appeared NMFS personnel were actively supporting both the unionization of the observer program and the Pacific States Plan.

First, no one from the NPFMC staff or NMFS staff contacted any one from the trawl industry organizations asking for simple solutions to potential conflicts of interest. Observer fees are expensive fixed costs that are shared by all the vessels above 60 feet and by the crew members of those vessels. For your information most vessels pay their crews a share of the vessels net gross earnings after deducting monthly costs such as fuel, filters, ice, food and observers fees. Adding another layer of management will cost more and directly impact the earnings of all the crews on vessels above 60 feet. From the vessel owners point of view, this potential added layer of management will make it more difficult to share observer costs on airfare, debriefing, down days, and to coordinate the transfer of observers in tight seasons to get everyone covered for their days fished.

F/V HAZEL LORRAINE

Page 2

Mr. Richard Lauber

Re: Second tier management of the observer program, Pacific States Plan

This also puts us one more step away from the accounting of the above mentioned costs. Under the present system an observer works for three 30% vessels that may or may not deliver to the same plant. Between the three vessels, which have been grouped together by the observer company, we have to keep track of the number of days each vessel has used the observer (very rarely the same number of days) and then try to track how we each shared in the expenses. This is currently very difficult with plenty of room for error. How do we track the costs if PSMFC is added to the mix?

The simple solution to the problem of conflict of interest is to have the vessels and the plants rotate among the five observer companies. Each quarter we would have to contact another contractor for service and write the contractors name in our log books, the name of the observer, and rotate through all the companies before coming back to the top of the list. This would also cool off the wage cutting among the contractors because they would know that each quarter the phones would continue to ring to satisfy the rotation.

Second, If the observers form a union and strike, NMFS says that the fishing vessels will not be allowed to fish without observers. That would be a socioeconomic disaster for the communities, the vessels, fish plants, slime line workers, landlords, shipping companies, venders of hardware, fuel, etc... in short for every fishing community in Alaska! Alaska has the only vessel funded observer coverage in the nation (guess we are covered by the inverted form of the Fourteenth Amendment). NMFS is trying to facilitate unionization of the observers, we are required to carry by law, and place the contractors in a position where we can not contact them directly. If the observers strike, we have to sit it out or pay their demands. Is this NMFS holding a gun to our heads to fund the observer program at new levels, or is this a "Catch 22" nightmare?

Questions for NOAA general counsel; When has the government of the United States and its officials been authorized to facilitate the discussion of the formation of a union in a public meeting that could adversely affect, through economic impact, members of the public at large?

F/V HAZEL LORRAINE

Page 3

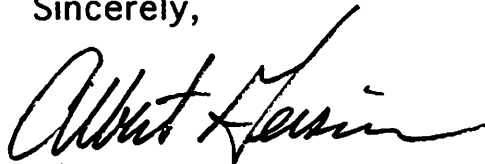
Mr. Richard Lauber

Re: Second tier management of the observer plan, Pacific States Plan

Mr. Carp (for NMFS) has had *ex parte* contact with observers that are attempting to form a union for increased wages and benefits which could ultimately lower the wages of deckhands aboard vessels greater than 60 feet. What recourse can they seek? NMFS has had discussions with PSMFC prior to a decision by NPFMC to adopt a second tier of management which would create an arms length barrier. NMFS has named the plan "Pacific States Plan". PSMFC is a non-profit organization (it will still take money to operate this very complicated scheme, and it will come out of the same hatches). Are there other non-profits, or for profit companies, that could compete for this position if implemented? Is this restraint of trade? No "Requests For Proposal" have been let in the federal trade register. The "Pacific States Plan" is NMFS's favorite. Is this why the AP's scope of options was so short?

The intent of management of our fisheries is to be efficient, fair, and streamlined. Taking the road that could add another layer of management to an already complex system of training, deployment of observers, and training of new second tier management, will spell disaster. You can not legislate honesty among the observers, the vessels, or the plants. A second tier of management will not stop "one time" under the table deals.

Sincerely,



Albert Geiser
Captain/Owner

cc: Mr. Al Burch, Director Alaska Draggers Association
Ms. Melanie Gundersen, Director Peninsula Marketing Association
Mr. Fred Yeck, Midwater Trawlers Cooperative
Ms. Chris Blackburn, Alaska Data Bank
Mr. Dave Hansen, Pacific States Marine Commission
Mr. Steve Penoyer, NMFS Juneau

Albert Geiser
202 Center St. Suite 315-274
Kodiak, AK 99615

Teresa Turk
Association for Prof. Observers
P.O. Box 30167
Seattle, WA 98103

October 4, 1997

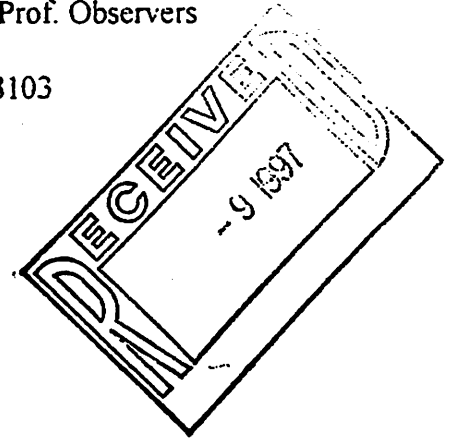
Re: Letter to Rick Lauber dated Sept. 9, 1997

Dear Al,

I was surprised to read the letter you sent to a variety of Council, industry and agency personnel regarding the proposed Joint Partnership Agreement (JPA) between NMFS and the Pacific States Marine Fisheries Commission (PSMFC). You brought up a number of interesting and insightful areas that could be improved upon (e.g. alternative structures for the current observer program, plant/vessels rotating contractors quarterly, lack of communication between industry and the NMFS/PSMFC). However, there are also many misunderstandings and misinformed statements in your letter.

As I exhaustively discussed with you in Kodiak, NMFS has **NOT** been cooperative in supporting observers in the unionization process. In fact, the Association for Professional Observers (APO) is banned from speaking to observers at briefing or training sessions at the NMFS observer facility in Seattle and the Observer Training Center in Anchorage. The APO has made at least 5 FOIA (Freedom of Information Act) requests to NMFS and was charged for this information. Many of our requests were outright denied due to confidentiality requirements. In other cases, NMFS did not track or amass the kinds of information we requested. Bill Karp has **NEVER** endorsed this unionization idea. If you have read any issues of the *Mail Buoy*, the APO's quarterly newsletter, you will find that the APO has been particularly critical of the NMFS observer program from an administrative and structural point of view. The observer office in Kodiak should have copies of the *Mail Buoy* for your perusal. If those are not available, let us know and we will send you some.

Observers have overwhelmingly chosen to affiliate with a Union (196 yes vs. 26 no). This wide margin of support is not due to the organizing skills of the APO. This 88% affirmative vote is reflective of a very big problem in the observer program. It is a cry for change, for overhauling the program as it stands now, even though observers will be met with hostility from captains and crew alike during this transition period. If the small boat fleet of Kodiak and other coastal areas had supported the Research Plan two years ago, the need for a Union would not have persisted. The lack of public as well as private support from the small boat fleet contributed to the demise of a fair and equitable program.



Let me remind you of the creation of the third party plan idea. In September, 1995 the JPA was proposed to the Council as an alternative to the Research Plan by a contractor, Nancy Munro, and a member of the fishing industry, Jerry Nelson. At that same meeting, a large group of industry members testified that the RP was too costly and for NMFS to explore this new "umbrella-third party" plan. The result of following industry's direction and intent is the current JPA plan before the Council.

Please pass along to other members of the Kodiak fleet that the Alaska Fisherman's Union (representing observers) is negotiating right now to have an agreement as soon as possible. Observers unionized because all other avenues of repairing the system had been eliminated. Observers believe that the fishing industry and the council process will continue to delay and kill each new observer plan. Observers unionized to increase data quality so that you and your deckhands can harvest this national resource forever.

Finally, while you may not be able to legislate honesty, you can certainly create a system that retains experience and rewards professionalism.

Sincerely,

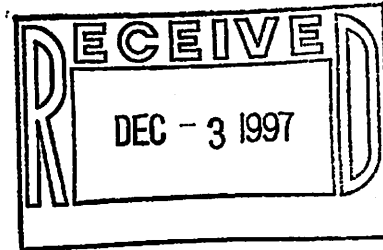


Teresa Turk
Executive Officer
Assoc. for Prof. Observers

cc: ✓ Mr. Rick Lauber, Chair, NPFMC
Mr. Steve Pennoyer, NMFS Juneau
Dr. David Hanson, PSMFC
Mr. Al Burch Alaska Draggers Association
Ms. Melanie Gunderson Peninsula Marketing Association
Mr. Fred Yeck, Midwater Trawlers Cooperative
Ms. Chris Blackburn, Alaska Groundfish Databank

Dec. 1, 1997

Mr. Rick Lauber, Chairman
Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
Post Office Box 103136
Anchorage, Alaska 99510



Re: Observer Plan EA/RIR

Dear Rick,

After attending the OOC meeting in Seattle last week where staff presented the EA/RIR, it is my opinion that the analysis is not ready for public release.

The JPA "Pay-as-You-Go" option (Alt. 3, Option 3) is presented as the preferred alternative, and the EA/RIR concludes, "no reason exists to believe that this option would be more acceptable now than it was in 1995 when the Council voted to repeal it."

Such a conclusion would only be possible after a head to head comparison of the various alternatives, including a fee based program such as the Research Plan, which the analysis fails to provide.

The issue of inequitable cost distribution has been before the Council since the program was adopted in as a stop gap measure in 1989. The industry went to Congress and had the FCMA amended to provide for a program that was based on a fee. This issue is as critical as any other issue relating to the observer program.

The most important decision about the future of the observer program is not whether to use PSMFC as a buffer between industry and contractors. *The most important decision is whether to continue with a Pay-as-You-Go - 0/30/100% coverage program, or to address the specific problems with the Research Plan and implement it.*

What Are the Goals of the Observer Plan?

The goals and objectives for an observer plan go beyond those listed for the JPA. If the only objective was reduction of the conflict of interest, JPA wins out over the current program. However, many of the real goals which have been established by NMFS and the Council have been excluded from this document, and the analysis suffers accordingly.

Section 1.2.2 lists eight objectives of the JPA, within the context of a goal of collecting quality observer data. *Previous work on the observer program identified at least six other objectives of equal or greater importance:*

- Provide *flexibility* to deploy observers in fisheries where they are most needed.
- Provide an *equitable cost distribution* mechanism that recognizes that the benefits of any given vessel carrying an observer do not accrue solely to the observed vessel.
- *Cap total costs* of the observer program funded by industry at the 2% limit authorized by the MS_FCMA.
- Prevent the cost of carrying an observer from being an *allocation* issue, i.e.: the determining factor in who can participate in a fishery.
- Eliminate the ability of an operator in a 30% fishery to *bias the data* by manipulating which trips get coverage.
- Achieve a *unified observer corps* groundfish and crab.

Rating the Alternatives

The Executive Summary indicates staff employed a subjective rating system to "identify the JPA option 3 in Appendix 1 as the option that best meets the goal and objectives for the observer program." *That comparison failed to include the Research Plan.* The following section presents another subjective rating of the alternatives with the addition of a fee based Alternative 4, measured against the eight objectives in the EA and the six objectives outlined above.

	<u>Ratings:</u>			
	<u>Alt. 2</u>	<u>Alt. 3</u>	<u>Alt. 4</u>	
<u>JPA Objectives</u>				
• <i>Conflict of interest</i>	-	+	+	
• <i>Compensation to observers</i>	-	+	+	
• <i>Meet demands for observer services</i>	+	-	-	
• <i>Retain quality observers</i>	-	+	+	
• <i>Cost effective infrastructure</i>	+	-	-	
• <i>Relationship between NMFS & observers</i>	-	~	+	
• <i>Unanticipated events</i>	+	~	~	
• <i>Implement by January 1999</i>	+	+	-	
<u>Observer Plan Objectives</u>				
• <i>Flexibility</i>	-	-	+	
• <i>Equitable cost distribution</i>	-	-	-	+
• <i>Cap total costs</i>	-	-	-	+
• <i>Cost as allocation issue</i>	-	-	-	+
• <i>Unified observer corps</i>	-	-	-	~
• <i>Bias the data</i>	-	-	-	+

Clearly the Research Plan is superior to the Alt. 3 in meeting these last six objectives and equal to the JPA in the meeting the objectives detailed in the analysis.

Why Was the Research Plan Abandoned?

In arguing to resurrect a fee based program it is necessary to address the issues that caused the Research Plan to be repealed.

The single most powerful reason was that it appeared that the overall costs of the program would be significantly higher than status quo as the result of the Service Contract Act requirements to pay observers a better wage. While the issue of observer compensation cries out for resolution, it may be addressed by a union contract even before the Council acts. In any case JPA achieves no savings, nor any benefit, over the Research Plan by maintaining low wages.

Other problems included the plan's failure to:

- define sideboards on supplemental programs,
- resolve unrealistic advance notice requirements,
- define a path to flexible coverage based on data needs,
- obtain government startup funds to even out costs during the transition phase.
- insure that neither ADF&G nor NMFS could exploit the funds collected to pass through costs above minimal administrative costs.

None of these were fatal flaws with the Research Plan, and some were more preception than reality. The absence of positive PR allowed those who wished to obfuscate to do so with a credible case. The problems with the Research Plan were either fixable, or are features which will also be present in JPA.

The JPA Fails to Address Cost Equalization

The EA/RIR makes clear that there are 1000 fold differences in the percentage of ex-vessel revenue paid by various operations under either Alt. 2 or 3.

"The data in Table 10 are based on 1995 assumptions for estimated costs per observer day (\$180- \$198/day) and indicate that vessel and processor observer costs ranged from .02 to 24.8 percent of the operations ex-vessel value of catch."

"The data in Table 11 are based on the Alternative 3 assumption for estimated costs per observer day (\$325/day) and indicate that vessel and process observer costs ranged from .04 percent to 40.7 percent of the operations ex-vessel value of catch."

Even ignoring the outliers, there is still a 20 fold difference. This difference combined with a near doubling of costs means some vessels will not be able to participate in fisheries simply because of the expense of observers, even though <60' vessels will be allowed to fish without observers.

If the Council intent is to foster a fishery made up of only supertrawlers and vessels less than 60', Alt. 3 should be the preferred option. *If there is a desire to retain a diverse fleet including fixed gear vessels, and mid sized shorebased trawlers, the Council must renew it's commitment to timely implementation of a fee based observer program.*

There are a number of practical issues that the EA/RIR does not address on the functioning of the JPA, such as the need for advanced notice on fishing plans and how that will lead all 30% vessels to want their observer at the beginning of the opening. This will inevitably inflate costs beyond the estimates in the document and exacerbate the cost distribution inequities.

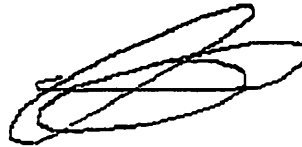
Pursuing cost equalization on a separate track is not acceptable. There is no statutory authority for anything other than a fleetwide fee based program to address this issue.

Conclusion

The industry went to Congress and had the FCMA amended to provide for a program that was based on a fee. This issue is as critical as any other issue relating to the observer program, including the appearance of conflict of interest. The Council must avoid committing to a program that will resolve one issue at the expense of the other.

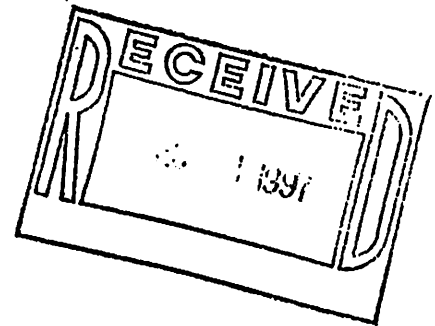
Sincerely yours,

dave fraser



F/V Muir Milach
P.O. Box 771
Port Townsend, Washington 98368

Law Offices
GIBBS HOUSTON PAUW
1111 Third Avenue, Suite 1210
Seattle, WA 98101
(206)682-1080
fax: 689-2270



Robert H. Gibbs
(206)224-8790

November 25, 1997

Mr. Richard Lauber, Chairman
Mr. Clarence G. Pautzke, Executive Director
North Pacific Fishery Management Council
605 W. 4th Ave., Suite 306
Anchorage, AK 99501-2252

Mr. Steve Pennoyer, Regional Director
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802

Ms. Lisa Lindeman
Mr. Jonathan Pollard
NMFS
P.O. Box 21668
Juneau, AK 99802

Dear Sirs and Madam:

I am writing on behalf of the Alaska Fishermen's Union, which represents the fisheries observers in collective bargaining negotiations with the five companies that employ them. I write on their behalf to express our concern about the scope of the agenda item on the upcoming Council meeting entitled "Observer Unionization and 1998 Fisheries Discussion."

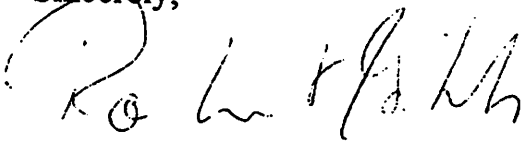
The union is anxious to see the negotiations promptly conclude with a contract that provides some resolution to the issues that led to the overwhelming vote of the observers for union representation. The union is happy to participate in a

discussion with that goal in mind. We would appreciate anything that the Council can do to encourage the companies towards this end in the hope of minimizing any disruption to the industry by the failure of the companies to agree to collective contracts. Under labor law, once the union has been certified as the employee representative, as here, the employer may not legally negotiate individual contracts with employees.

It is important for the Council members to understand that it is the policy of this government for over sixty years to "encourage the practice and procedure of collective bargaining." National Labor Relations Act, 29 U.S.C. §151. Any actions by the Council which are contrary to this governmental policy would be improper for a governmental body such as the council.

Mr. Mark Coles from the AFU will be more than happy to attend your meeting and answer questions. Thank you for your consideration of this letter. Please call me if I can answer any questions for you about the status of the pending negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert H. Gibbs". The signature is written in a cursive style with a large initial "R" and "G".

Robert H. Gibbs
Attorney at Law

cc: Mark Coles

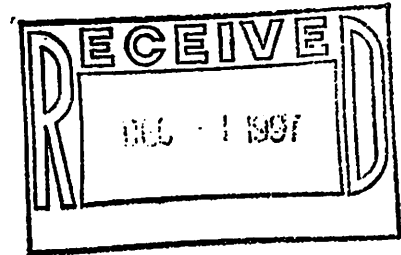


UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 National Marine Fisheries Service
 P.O. Box 21668

DECEMBER 1997
 SUPPLEMENTAL

Juneau, Alaska 99802-1668
 December 1, 1997

Mr. Richard B. Lauber
 Chairman, North Pacific
 Fishery Management Council
 605 West 4th Avenue
 Anchorage, Alaska 99501-2252



Dear Rick:

The final rule implementing a regulatory amendment to extend with some minor revisions the current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) will be published shortly in the Federal Register. This amendment is necessary to assure uninterrupted observer coverage requirements through 1998. This rule also provides notice of changes to observer qualifications and observer training/briefing requirements, which are non-codified elements of the Observer Program.

A proposed rule to implement the interim program was published in the Federal Register on September 19, 1997 (62 FR 49198). The following changes from the proposed rule are made in the final rule:

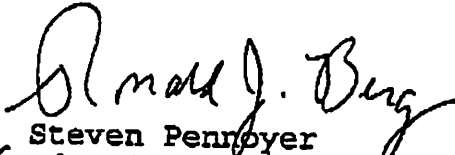
- (1) Proposed regulations at § 679.50(i)(1)(i) exempt observer contractors certified prior to January 1, 1997 from submitting a certification application to NMFS. Comment received on the proposed rule questioned the situation whereby an observer contractor previously certified by NMFS but not actively providing observer services be allowed to perform the duties of an observer contractor without going through the NMFS certification process again. NMFS did not intend for this situation to be allowed and revises the regulation in this rule to indicate that observer contractors certified prior to January 1, 1998 and providing observer services during 1997, are exempt from submitting an application.
- (2) At its June 1997 meeting, the Council recommended an adjustment to the conflict-of-interest standard at § 679.50(h)(2)(i)(A)(4) that prohibits a person from serving as an observer if that person was employed in a North Pacific fishery during the previous 12-month period. The Council recommended a less restrictive standard that would prohibit an observer from working on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer. The proposed regulation at § 679.50(h)(2)(i)(A)(4) is not necessary given that the existing regulation at § 679.50(h)(2)(i)(A)(3) meets the criteria recommended by the Council. Through oversight, NMFS proposed to revise § 679.50(h)(2)(i)(A)(4) when actually, it should



have proposed removing it. NMFS removes this regulation at § 679.50(h)(2)(i)(A)(4) and retains the conflict-of-interest standard at § 679.50(h)(2)(i)(A)(3) that states that observers may not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

Please contact me if you have any comments on these changes to the proposed rule.

Sincerely,

For

Steven Penroyer
Administrator, Alaska Region

DRAFT

**ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
INITIAL REGULATORY FLEXIBILITY ANALYSIS
FOR
AMENDMENT 47 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH
FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA
AND
AMENDMENT 47 TO THE FISHERY MANAGEMENT PLAN FOR GROUND FISH OF THE
GULF OF ALASKA**

**TO IMPLEMENT A
THIRD PARTY OBSERVER PROCUREMENT PROGRAM
FOR THE
NORTH PACIFIC GROUND FISH OBSERVER PROGRAM**

Prepared by

**Staff of the
National Marine Fisheries Service
Pacific States Marine Fisheries Commission
North Pacific Fishery Management Council**

November 18, 1997

Table of Contents

Executive Summary	i
1.0 INTRODUCTION	1
1.1 Background	1
1.1.1 The Alaska groundfish fisheries.	1
1.1.2 The North Pacific Groundfish Observer Program	2
1.2 Purpose of and Need for the Action	3
1.2.1 Options to address Observer Program Issues	5
1.2.2 Goals and objectives of the proposed action	6
1.3 Alternatives Considered	7
1.3.1 Alternative 1: Status quo - No Action	7
1.3.2 Alternative 2:	7
1.3.3 Alternative 3:	7
2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES	9
2.1 Environmental Impacts of the Alternatives	9
2.2 Impacts on Endangered or Threatened Species	10
2.3 Impacts on Marine Mammals	11
2.4 Coastal Zone Management Act	11
2.5 Conclusions or Finding of No Significant Impact	11
3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES	12
3.1 Expected differences among alternatives with respect to observer data integrity	12
3.2 Expected differences among alternatives with respect to total costs of the Observer Program	13
3.2.1 Total Cost per Deployment Day	13
3.2.2 Observer contractor role and associated costs.	15
3.2.3 Observer compensation costs.	16
3.2.4 Costs to address observer non-payment.	17
3.2.5 Differences with respect to total estimated cost.	17
3.3 Expected differences among alternatives with respect to distribution of costs within the industry	18
3.4 Administrative, Enforcement and Information Costs	19
4.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS	19
4.1 Economic Impact on Small Entities	20
5.0 REFERENCES	21
6.0 AGENCIES AND INDIVIDUALS CONSULTED	23
7.0 LIST OF PREPARERS	23
8.0 LIST OF TABLES	23
9.0 LIST OF FIGURES	24
APPENDIX 1 - Level of PSMFC involvement under the JPA.	25
APPENDIX 2 - JPA options for the assignment of work among observer contractor companies	26

Executive Summary

The North Pacific Groundfish Observer Program (NPGOP) is managed by staff at the NMFS Alaska Fishery Science Center in Seattle and provides data for fisheries management and science, and compliance monitoring. Since 1990, the NPGOP has provided between 20,000 and 31,000 observer coverage days each year. In 1996, 380 catcher vessels or catcher/processor vessels participated in the groundfish fisheries and were required to carry observers. Observers collected data from an additional 28 shoreside and floating processors during the same year.

NMFS' ability to assure that quality observer data is collected and the integrity of the data is maintained is constrained by several features of the current program. In particular, allowing fishing companies to negotiate directly with observer companies for observer services creates a serious potential for conflict of interest. As observers assume increased responsibilities for monitoring individual vessel performance and other programs which involve compliance considerations, incentives for industry to manipulate this procurement system to their advantage increase. Contractors are under constant pressure to provide observers who meet their clients' needs and this influences the quality of the observers they hire. Competitive pressure to reduce coverage costs to the industry keeps observer salaries low, further discouraging the best observers from renewing their contracts. Furthermore, instability in the fishing and contracting industries has created situations where observers have not been paid for work performed. These circumstances have undermined observer morale, increased turnover in the observer work force and adversely influenced data quality.

In response to these concerns, the Council adopted and NMFS implemented the North Pacific Fisheries Research Plan (Research Plan) in 1994. The Research Plan required all fishery participants to pay a fee based on the value of their catch. Under this program NMFS would have collected the fee and contracted directly with observer companies, thus removing the direct link between the fishing industry and the observer contracting industry. Over the period that the Research Plan was developed and implemented, industry concerns about the program arose that ultimately resulted in the North Pacific Fishery Management Council (Council) repealing the program at its December 1995 meeting before the Research Plan was fully implemented. At the same meeting, the Council directed NMFS to develop a new plan to address the data integrity issues the Research Plan was intended to address.

Under the new concept endorsed by the Council, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a third party. The third party would enter into subcontracts with observer companies and would direct vessel and processor to specified observer companies for services. Payments received by the third party would be used to pay observer contractors for providing observer services and to cover administrative costs. During the interim period of time that a third party procurement program was developed, the Council adopted rollovers of the existing observer program for 1997 and 1998. The Council currently is scheduled to take final action on the third party program at its February 1998 meeting so that it may be implemented by 1999.

Three alternatives are considered in this analysis:

Alternative 1 - Status Quo: Lacking further action by the Council, the interim 1998 Observer Program would expire at the end of 1998 and no observer coverage would be authorized for the Alaska groundfish fisheries in 1999 and beyond. Although governing statutes (NEPA, RFA) require that a status quo alternative be analyzed, cessation of the NPGOP obviously is not a reasonable alternative given the dependency on the program to manage the North Pacific fishery resources.

Alternative 2: Rollover the 1998 interim observer program as a permanent program: Each vessel or processor owner who is required to obtain observer coverage would continue to negotiate directly with NMFS-certified observer companies for the required observer coverage. Existing regulations governing the NPGOP would be rolled over into 1999 and beyond. These regulations would remain in place until changed by regulatory amendments.

The administrative record developed by the Council and NMFS since 1992 indicate that Alternative 2 would not be acceptable for the long-term because it fails to address the issues that give rise to concerns about the integrity of observer data used to manage the North Pacific groundfish fisheries. Alternative 2 would be acceptable on an interim basis only until a long-term program that addresses the concerns that gave rise to the Research Plan can be implemented.

Alternative 3: Establish a modified "pay-as-you-go" groundfish observer program: This alternative would be developed under a Joint Partnership Agreement (JPA) between NMFS and Pacific States Marine Fisheries Commission (PSMFC) under which PSMFC would serve as the "third party" and arrange for industry observer services and collect payments from vessel and processor owners. The use of a JPA, or memorandum of understanding, between NMFS and PSMFC to jointly work towards the above goal and objectives is predicated on a mutual interest of the two organizations to collect quality observer data.

Under this new plan, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to PSMFC, the organization providing procurement services. The PSMFC would enter into contracts with observer contractor companies to provide observers. PSMFC also would enter into contracts with vessel and processor owners to provide observer services. Vessels and processors would pay PSMFC for these services. Industry payments received by PSMFC would be used to cover administrative costs and pay observer contractors for providing observer services. NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center.

The options for the role of PSMFC under a JPA arrangement (Appendix 1) were rated by staff with respect to the objectives for the JPA and the need to collect quality observer data (Table 1). Although the rating system employed by staff was subjective, it did identify the JPA option 3 in Appendix 1 as the option that best meets the goal and objectives for the observer program.

The total cost of an observer deployment day consists of several components that would differ between Alternatives 2 and 3. For purposes of this analysis, staff assumed a base salary level for observers commensurate with entry level biologists hired by NMFS for similar field work (GS-5, or about \$10.50 per hour, not including overtime). Although observers currently are paid significantly less than this rate, an increase in salary under Alternative 2 could occur given the ongoing negotiations between the union representing observers and existing observer contractor companies. If a negotiated settlement is reached, the resultant salary rate schedule and other compensation factors would be employed by PSMFC as bases for contract stipulations with observer contractor companies or for rating competitive bids received from these companies under Alternative 3. If a salary settlement is not negotiated by the union at the time Alternative 3 would be implemented, PSMFC would work with all parties to strive to ensure adequate observer compensation through contract provisions with observer contractor companies. If union negotiations are successful, the overall costs of observer deployment under Alternatives 2 and 3 would not differ significantly. This similarity is anticipated because procurement and deployment services undertaken by PSMFC could take advantage of economies of scale and eliminate unnecessary redundancy in services currently provided by observer contractor companies. If an increased salary for observers is not assumed under Alternative 2 (average cost per observer day remains at \$216), then Alternative 3 could result in a 1 percent - 50 percent increase in average cost per observer day, depending on

where the actual cost per observer deployment day falls within the \$219 - 325 range presented for Alternative 3 in Table 2.

Based on an assumed average number of observer days equal to 31,297 days (Table 7), and the estimated cost per observer day presented in Table 2, the total estimated industry costs for observer coverage under Alternative 2 could range from \$6.76 million to \$10.08 million, depending on whether or not observer compensation costs are ultimately increased through a union settlement. Under Alternative 3, the estimated total industry cost could range from \$6.85 million to \$10.17 million.

For individual vessels, the impact of observer coverage increases as the percentage of observer costs relative to total exvessel value revenue of catch increases. In 1995, 408 vessels and processors had observer coverage. Of these, 263 were catcher vessels. Based on information presented in Tables 10-11 and Figures 1-10, about 15 catcher vessels, or about 6 percent of the catcher vessels that carried observers, paid observer costs in 1995 that equaled or exceeded 5 percent of the vessels' exvessel value of groundfish. Increases in observer costs under either Alternatives 3 or 2 if a union negotiated observer compensation is assumed could result in about 30 catcher vessels, or 11 percent, paying observer costs equal to or in excess of 5 percent of the vessels' estimated exvessel value of catch. Under Alternative 1, no observer program would exist beyond 1998 and vessels would pay no observer costs.

For catcher processor vessels, motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, 117 catcher processors, 11 motherships and 17 shoreside processors had observer coverage. Within the processing sector, only 5 catcher processors using fixed gear and 1 mothership had estimated observer costs in 1995 that exceeded 5 percent of the vessels' exvessel value of catch. Increases in observer costs under either Alternative 3 or Alternative 2 if a union negotiated observer compensation is assumed could result in about 3 trawl and 13 fixed gear catcher processors and 2 mothership operations having observer costs in excess of 5 percent of the exvessel value of catch.

Relative to Alternative 1 (no observer coverage), both Alternatives 2 and 3 would have an economic impact on a substantial number of small entities, although neither Alternative 2 or 3 would result in a significant economic impact on 20 percent or more of affected vessels and processors. As discussed above, some vessels and processors would pay observer costs that exceed 5 percent of the exvessel value of groundfish catch, but the number of entities affected in this manner is less than 20 percent of either the catcher vessel fleet or groundfish processors. Relative to Alternative 2, Alternative 3 would result in higher costs to all vessels and processors required to obtain observer coverage if the costs for observer coverage under Alternative 2 do not increase due to observer unionization efforts. If unionization efforts increase observer costs under Alternative 2, the expected cost differences between alternatives 2 and 3 would be minimal (Table 2).

Fishing activities conducted under Alternatives 2 and 3 would not affect marine mammals, endangered, or threatened species or critical habitat in any manner not considered in prior consultations on this fishery. However, Alternative 1 would not provide an adequate means to monitor catch, bycatch, or fishery interactions with listed species or marine mammals. Nonetheless, this alternative only is included in this analysis because governing statutes require a status quo alternative. Alternative 2 would maintain the current observer program and the attendant concerns about the quality of observer being collected. Alternative 3 would be expected to best provide for quality observer data upon which the management of the groundfish fisheries are based.

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area (FMPs). Both FMPs were developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and become effective in 1978 and the Bering Sea and Aleutian Islands management area (BSAI) FMP become effective in 1982.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson Act, the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals are also addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 contains the Initial Regulatory Flexibility Analysis (IRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses.

This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) addresses alternatives for a long term Observer Program for the BSAI and GOA groundfish fisheries that could be implemented in a timely manner to address concerns about the quality of observer data currently being collected and upon which management of the Alaska groundfish fisheries are based.

1.1 Background

1.1.1 The Alaska groundfish fisheries.

The groundfish fisheries in the EEZ of the BSAI and GOA harvest nearly 2.3 million metric tons of various groundfish species annually. In 1996 over 1800 vessels of all sizes harvested groundfish in these waters. Although some groundfish harvesting occurs throughout the year, the duration of specific fisheries varies considerably and some major fisheries occur during relatively short seasons. Fishing vessels participating in these fisheries utilize four basic kinds of gear; trawl, hook-and-line, pots, and jig. Vessels using these types of gear can be grouped into two general classes: (1) catcher/processor vessels that have the capacity to catch fish and process their catch and range. These vessels range from about 75 feet to over 500 feet in length, and (2) catcher vessels which must deliver their catch to a fish processor (mothership or shoreside) and are usually less than 150 feet in length. Catcher/processor vessels are capable of remaining at sea for weeks or months, while catcher vessels make trips as short as a few hours or as long as 10 days.

Fish processors within the groundfish fishery include shoreside plants and mothership processing vessels. Shoreside plants usually receive catch from catcher vessels; catches may be sorted or partially sorted at sea or may be delivered unsorted. Mothership processors receive either sorted or unsorted catch (usually by transfer of trawl codends) from catcher vessels.

Detailed descriptions of the BSAI and GOA groundfish fisheries are available in the final 1997 Stock Assessment and Fishery Evaluation (SAFE) reports for these fisheries (NPFMC 1996a, 1996b).

1.1.2 The North Pacific Groundfish Observer Program

The North Pacific Groundfish Observer Program (NPGOP) is responsible for ensuring that mandatory observer coverage requirements established for vessels and plants participating in federal groundfish fisheries off Alaska are met. Observer requirements have been in place since the mid-1970s, when the Magnuson-Stevens Act was implemented and it became necessary for NMFS to monitor foreign groundfish fisheries in the EEZ. By 1990 direct foreign participation in these fisheries had ended and the NPGOP infrastructure was changed so that observer coverage could be provided aboard domestic vessels and at processing plants receiving deliveries from domestic vessels participating in these fisheries.

Action by the Council was required to allow development and approval of this domestic Observer Program in 1989. Implementation occurred through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989). An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and implemented by NOAA (55 FR 4839, February 12, 1990). The Observer Plan established observer coverage requirements which have remained generally unchanged through 1997. These coverage requirements vary with the size of the fishing vessel or quantity of fish processed by floating or on-shore processors. Each vessel with length overall (LOA) of 125 ft or greater which harvests groundfish is required to carry a certified observer for 100% of its fishing days each year. Fishing vessels with LOA 60 ft or greater, but less than 125 ft, are required to carry a certified observer for 30% of their fishing days each calendar quarter during which they participate for more than 3 fishing days in a directed fishery for groundfish.

Coverage requirements also are placed on floating and shoreside processors: processors that process 1,000 metric tons (mt), calculated in round weight equivalents, or more of groundfish during a calendar month have been required to have an observer present during each day they receive or process groundfish. Processors that process 500 mt to 1,000 mt, calculated in round weight equivalents, of groundfish during a calendar month are required to have an observer present at least 30 percent of the days they receive or process groundfish.

Additional coverage requirements are established for specific management programs. For example, regulations require that two certified observers must be present aboard all processing vessels harvesting pollock under Community Development Quota (CDQ) regulations.

Since 1990, the Observer Program has provided between 20,000 and 31,000 observer coverage days each year. In 1996, 380 catcher vessels or catcher/processor vessels participated in the groundfish fisheries and were required to carry observers. Of these, 124 vessels required 100% observer coverage. The remaining approximately 256 vessels required 30% observer coverage. Observers collected data from an additional 28 shoreside and floating processors during the same year.

The NPGOP is managed by staff at the NMFS Alaska Fishery Science Center (AFSC) in Seattle and provides data for fisheries management and science, and compliance monitoring. Observers are trained either at the NMFS Alaska Fisheries Science Center (AFSC) or at the Observer Training Center, University of Alaska, Anchorage. Observers are certified by NMFS upon successful completion of a three-week training program and subsequent hire by one of the five private observer companies (observer contractors) currently certified by NMFS. Observers are recertified after each deployment pending an assessment by NMFS that the observer satisfactorily performed required duties. Vessel and plant owners required to obtain observers may contact the NMFS-certified contractor of their choice and enter into private negotiations for observer services. Observer costs accrue only to those vessels and plants required to obtain observers.

Primary responsibilities of observers include: collection of data on catch quantity and composition for inseason management and estimation of fishing mortality, collection of biological data and samples for size and age composition determination and other scientific studies associated with stock assessment and ecosystem research, and documentation of interactions between fishing operations and marine mammals and birds. Observer data may be used to evaluate compliance with individual vessel performance programs (e.g. Vessel Incentive Program and CDQ program) and is the basis for NMFS's estimates of prohibited species bycatch.

1.2 Purpose of and Need for the Action

NMFS' ability to assure that quality observer data is collected and the integrity of the data is maintained is constrained by several features of the current program. In particular, allowing fishing companies to negotiate directly with observer companies for observer services creates a serious potential for conflict of interest. As observers assume increased responsibilities for monitoring individual vessel performance and other programs which involve compliance considerations, incentives for industry to manipulate this procurement system to their advantage increase. Contractors are under constant pressure to provide observers who meet their clients' needs and this influences the quality of the observers they hire. Competitive pressure to reduce coverage costs to the industry keeps observer salaries low, further discouraging the best observers from renewing their contracts. Furthermore, instability in the fishing and contracting industries has created situations where observers have not been paid for work performed. These circumstances have undermined observer morale, increased turnover in the observer work force and adversely influenced data quality.

Although NMFS certifies observer contractor companies based on an application process designed to gauge how well a company can fulfill the standards and responsibilities set out in regulations for observer contractors, NMFS cannot effectively monitor private company activities and operations to assess actual performance. As a result, companies that actually may not be meeting standards of conduct envisioned for the NPGOP are allowed to continue business without significant risk of being decertified by NMFS. Although NMFS is attempting to develop an improved system for periodic assessment of contractor performance, alternatives for a truly effective assessment likely are not possible without a direct contractual arrangement between observer companies and NMFS or a third party organization providing observer services.

To address these concerns, the North Pacific Fishery Management Council (Council) directed NMFS to develop a new program (the Research Plan) incorporating a concept which would require all fishery participants to pay a fee based on the value of their catch. Collection of this fee was authorized by an amendment to the Magnuson-Stevens Fishery Conservation and Management Act. Under this program NMFS would collect the fee and would contract directly with observer companies, thus removing the direct link between the fishing industry and the observer contracting industry. The Council adopted the Research Plan in 1992 and NMFS approved and implemented this program in 1994. During 1995, over \$5.5 million was collected to capitalize the North Pacific Fisheries Observer Fund.

Over the period that the Research Plan was developed and implemented, industry concerns about the program arose. These issues included:

- Redistribution of costs for observer services that resulted from the collection of fees based on a percentage of exvessel value. Operations with high revenues paid high fees. Conversely, operations with lower revenues paid less for observer services. This effect was an objective of the Research Plan ("equalize" costs for observer services), but was deemed no longer desirable by many industry members providing input to the Council's decision making process.

- The amount of observer coverage that could be funded under the Research Plan fee collection program was limited and could constrain the development of programs under consideration by the Council that would require increased observer coverage, such as the groundfish Community Development Quota program and an individual vessel bycatch accounting program.
- New information became available indicating that the contractual arrangements between NMFS and observer contractors envisioned under the Research Plan would be subject to the Service Contract Act. As a result, the Department of Labor would establish minimum wage provisions for observers that would result in increased salaries for observers and increased costs for observer services. Minimum wage provisions appeared unacceptable to the Council and aggravated concerns about limitations on observer coverage under the Research Plan.

At its December 1995 meeting, the Council voted to repeal the Research Plan and refund the fees collected from the 1995 fisheries. At the same meeting, the Council directed NMFS to develop a new plan to address the data integrity issues the Research Plan was intended to address. Under the new concept endorsed by the Council, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a third party. The third party would enter into subcontracts with observer companies and would direct vessel and processor to specified observer companies for services. Payments received by the third party would be used to pay observer contractors for providing observer services and to cover administrative costs.

At its December 1995 meeting, the Council requested that the above "modified pay-as-you-go" program also address the following issues:

1. Adequate compensation and insurance packages for observers;
2. Consistent mechanisms to provide observers for State of Alaska managed shellfish fisheries to ensure compatibility between the shellfish and groundfish observer programs; and
3. Options to defray costs to vessel owners who are perceived to pay an unreasonably high proportion of their gross catch value for direct observer coverage.

At the April 1996, Council meeting the Observer Advisory Committee (OAC) highlighted that even though observer compensation and certain other costs were not currently quantifiable, the third-party alternative would be more expensive than the observer program prior to the Research Plan (OAC 1996). The Council reviewed a draft analysis of alternatives to the Research Plan (NMFS 1996) and determined that additional cost comparisons of these alternatives must be completed before it adopts an alternative to the Research Plan. Because current observer coverage requirements expired December 31, 1996, the Council adopted an interim groundfish observer program that supersede the Research Plan and authorized mandatory groundfish observer coverage requirements through 1997. The interim groundfish observer program extended 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program through December 31, 1997.

During 1997, NMFS began to develop with Pacific States Marine Fisheries Commission the concept of a joint partnership agreement (JPA) under which PSMFC would provide the third party procurement functions envisioned by the Council. At its June 1997 meeting, the Council endorsed the continued development of a JPA with the goal of taking final action on the third party program early in 1998 so that a new program could be implemented by 1999. Other issues discussed by the Council, which would not directly be addressed by the JPA arrangement, included cost equalization (some vessels pay a proportionally higher cost for observers, relative to their catch and gross revenues from groundfish) and the flexibility to deploy observer where they are needed most efficiently. Once the basic structure of the JPA is in place, the Council expects that options for addressing these concerns will be developed by NMFS, the PSMFC, and the Council's Observer Advisory Committee. Given the fact that the JPA arrangement could not be developed and implemented prior to 1998, the Council also voted to

extend the interim observer program through 1998. NMFS has approved the interim program and anticipates that a final rule implementing it will be published in the Federal Register by December 1997.

Since the repeal of the Research Plan in 1995, observers have organized to bargain for better compensation and working conditions. By an overwhelming vote of endorsement in 1997, observers now are represented by the Alaska Fishermen's Union (AFU). AFU currently is negotiating with the five existing certified observer contractor companies to reach a settlement.

1.2.1 Options to address Observer Program Issues

NMFS has explored several options to respond to issues giving rise to observer data integrity concerns and the challenge by the Council to equalize costs for observer coverage. One of these options, hiring observers through a quasi-governmental organization authorized by legislative statute, would best address concerns about conflict of interest and retaining quality observers. Industry would be billed for observer services and billing would include costs of administrative overhead required to maintain a self-sustaining organization, similar to the U.S. Post Office. However, this option was not pursued because of the required increased federal staffing requirements, contrary to Presidential mandates for government downsizing (observers would be considered government employees). Secondary concerns included the need for an authorizing statute and the fact that this option would eliminate all existing observer companies, an effect that was not supported by the Council during the development of the Research Plan.

Other, more realistic options include the concept of an "Observer Corps", the Council's proposed modified pay-as-you-go program, and a reinstatement of a fee collection program (the Research Plan). The concept of a fee collection program is not developed as an alternative for reasons discussed below. The modified pay-as-you-go program is analyzed as Alternative 3 in this EA/RIR/IRFA. The concept of a NMFS Observer Corps (also discussed below) would be complementary to any long term solution, but is not viewed as a stand alone solution to the issues facing the NPGOP.

From NMFS's perspective, the observer program must be changed to address conflict-of-interest and other concerns which influence data quality. Observer performance cannot be improved simply by developing stricter standards for hiring and retaining observers and certifying contractors, and by increasing participation by enforcement so as to discourage fishing companies, observer companies, and observers from manipulating the system. Improvements are being made in these areas, but they cannot be expected to solve the fundamental problem. Nonetheless, if fishing companies are allowed to negotiate with several contractors for provisions of observer services, conflicts of interest must be expected. NMFS and the Council must be committed to change the NPGOP to address issues giving rise to concerns about the integrity of the data used to monitor the commercial fishing operations off Alaska. NMFS's objectives for this change are as follows:

- ① Minimization of the potential for conflict of interest;
- ② Provision of incentives to observers and contractors for high quality work; and
- ③ Development and maintenance of tools necessary for quality control and field support for observers.

NMFS Observer Corps. The Alaska Region, NMFS, has requested appropriated funds and additional full time equivalent (FTE) employees to provide for an enhanced field presence and to more effectively meet the following objectives:

- Maintain flexibility to assign staff with recent and extensive observer experience to address problems encountered by observers aboard vessels and in plants.
- Supplement observer training and performance monitoring by providing oversight in the field.

- Have the ability to work directly with fishing companies who have sampling problems and/or difficulties working with observers.
- Supplement existing program staff resources by providing assistance with briefing, debriefing, and other program functions in Seattle, or at the program field offices; and
- Provide backup staffing for special projects and when other program staff work as observers or take leaves of absence.

To date, no guarantee exists that requested funds or FTEs necessary to support a NMFS Observer Corps will be provided. The NMFS Alaska Region/AFSC will continue to petition NMFS Headquarters for these resources.

Fee Collection Program (Research Plan): A number of political and economic issues are associated with the fee collection program authorized under section 313 of the Magnuson-Stevens Act. Lacking a change in statute authority to address some of the concerns associated with the Research Plan, no reason exists to believe that this option would be more acceptable now than it was in 1995 when the Council voted to repeal it.

As intended, the Research Plan redistributes costs of the observer program so that all operations proportionately pay the same for observer services, up to 2 percent of the exvessel value of catch. Actual fee payments for large revenue operations, however, can increase several fold relative to existing observer costs, giving rise to a different "non-equity" perspective. A fee based program conceptually enhances NMFS's flexibility in assigning observers so that observer deployments can be adjusted in response to changes in resources or data collection priorities.

The Research Plan adopted by the Council in December 1993 was not scheduled for full implementation until 1996. A two-year period for program development and collection of start-up funding is not unreasonable. If the Council took final action in 1998 to reinstate a fee collection program, full implementation of the Research Plan could not be expected before the year 2000. If a revised fee collection program were contingent on statutory changes, the implementation schedule would be extended accordingly. As a result, the alternative for a fee collection program was not endorsed by the Council at this time. However, the Council did request staff to pursue analyses of alternatives to address cost distribution issues that stem from the fact that low revenue groundfish fishing operations pay relatively more for observer coverage compared to large revenue operations. This issue was intended to be addressed by the Research Plan and NMFS anticipates that alternatives to address the distribution of cost will require a fee collection program as well as changes to the existing statutory authority to collect fees. Pending Council adoption and NMFS approval of the modified pay-as-you-go program, the Council requested staff to develop alternatives to address the cost distribution issue after the modified pay-as-you-go program is in place. As a result, the concept of a fee collection program is not developed further in this analysis.

1.2.2 Goals and objectives of the proposed action

Goals and objectives of the modified pay-as-you-go program are identified as follows:

Goal: Collect quality observer data necessary for the management and conservation of North Pacific fishery resources.

Objectives: Develop a joint partnership agreement (JPA) between NMFS and PSMFC under which PSMFC would arrange for industry observer services and collect payments from vessel and processor owners to:

1. Minimize concerns about conflict of interest when fishing companies enter into private negotiations with observer companies;
2. Provide adequate compensation to observers for services rendered;
3. Meet industry demands for observer services;
4. Retain quality observers within the program;
5. Maintain a cost effective infrastructure for providing observer services to industry;

6. Improve the working relationship between NMFS and NMFS-certified observers;
7. Provide assurance that observer coverage needs could be met in the event the JPA is discontinued due to unanticipated events; and
8. Provide the ability to implement an alternative procurement program for observer services no later than January 1999.

The use of a JPA, or memorandum of understanding, between NMFS and PSMFC to jointly work towards the above goal and objectives is predicated on a mutual interest of the two organizations to collect quality observer data.

1.3 Alternatives Considered

1.3.1 Alternative 1: Status quo - No Action

Lacking further action by the Council, the interim 1998 Observer Program would expire at the end of 1998 and no observer coverage would be authorized for the Alaska groundfish fisheries in 1999 and beyond. Although governing statutes (NEPA, RFA) require that a status quo alternative be analyzed, cessation of the NPGOP obviously is not a reasonable alternative given the dependency on the program to manage the North Pacific fishery resources.

1.3.2 Alternative 2: Rollover the 1998 interim observer program as a permanent program.

Each vessel or processor owner who is required to obtain observer coverage would continue to negotiate directly with NMFS-certified observer companies for the required observer coverage. Existing regulations governing the NPGOP would be rolled over into 1999 and beyond. These regulations would remain in place until changed by regulatory amendments.

The administrative record developed by the Council and NMFS since 1992 indicate that Alternative 2 would not be acceptable for the long-term because it fails to address the issues discussed in Section 1.2, above, that gave rise to concerns about the integrity of observer data used to manage the North Pacific groundfish fisheries. Alternative 2 would be acceptable on an interim basis only until a long-term program that addresses the concerns that gave rise to the Research Plan can be implemented.

1.3.3 Alternative 3: Establish a modified "pay-as-you-go" groundfish observer program.

Under Alternative 3, the observer procurement system would be based on a joint partnership agreement (JPA) between NMFS and the Pacific States Marine Fisheries Commission (PSMFC). PSMFC has expressed an interest to work with NMFS to provide observer procurement services and NMFS and PSMFC staff would jointly develop the JPA. PSMFC would contract with observer companies and direct these companies to deploy certified observers in response to requests from fishing companies. These contracts would stipulate standards of operation and performance for observer companies and would be subject to annual renewal by PSMFC pending acceptable compliance with the terms of the contract. This contractual arrangement would replace the current certification/decertification process currently employed by NMFS for observer companies.

The JPA also would define standards for the quality of observer performance and PSMFC would be responsible for designing a system to ensure that these standards were met. NMFS would continue to monitor observer performance in the field and through debriefing, and provide PSMFC with necessary feedback. PSMFC would invoice fishing companies for direct observer coverage costs as well as administrative costs and PSMFC would be invoiced for coverage services by the contracted observer companies.

Three options were developed by staff for the role of PSMFC in providing procurement services (Appendix 1). Only one of these options (option 3), however, best meets the goal and objectives for the modified as-as-you go program because it effectively reduces the potential for negotiations between observer companies and industry for observer services. Thus, this option best addresses concerns about conflict of interest and the effect of this concern on the quality and integrity of observer data. Under this preferred option, the role of PSMFC to provide procurement services and the associated assignment of work among observer companies would be as follows:

PSMFC Procurement Role

- PSMFC would assume responsibility for all deployment and coordination tasks. Observer contractor companies would only provide observers.
- PSMFC would contract with vessels for observer services.
- PSMFC would contract with observer companies to provide a specified number or range of observer days throughout the year.
- Vessels would contact and coordinate with PSMFC to arrange for deployment and payment guarantee. Once a payment guarantee is established, PSMFC would proceed with the deployment.
- Travel arrangements would be made through a PSMFC contract travel agent at PSMFC negotiated rates. Travel costs would be billed directly to PSMFC, and paid from the vessel advance.
- If the deployment (or return from deployment) occurred through a port at which a PSMFC coordinator was based, the observers would report to the PSMFC coordinator upon arrival. The coordinator would be the principal contact to ensure field communications between vessels, observers, and observer contractors.
- PSMFC would pay the observer contractor from the payment guarantee based on the number of observer days used during the deployment.

Assignment of work among contractor companies:

Given the role of PSMFC, above, in meeting the objectives of the modified pay-as-you-go program, the role of observer companies would be simply to provide trained observers meeting pre-determined standards of skill or experience. Since deployment tasks would be performed by PSMFC, observer contractors would not incur extensive fixed costs for field facilities or deployment coordinators. Assignment of work among competing observer companies would be based on competitive bids for specified numbers and types of observers or observer days (See Assignment of Work Option 3 in Appendix 2). NMFS and PSMFC would project observer needs for a particular fishery or processing operation in the coming year, and divide those projected needs into units or modules for which bids would be requested. If particular blocks of assignments require observers with particular skills or training, these would be specified in the bid solicitation. Once a pool of observers had been assembled for a particular fishery, PSMFC would assign those observers at random to participating vessels or would adjust assignments to minimize travel and make efficient use of available observers. Observer companies would compete among each other based on the efficiency at which they recruit observers and retain persons who possess the needed skills.

Under this alternative the potential for conflict of interest would be reduced and the incentives to recruit and retain high quality observers would increase. NMFS would initiate rulemaking to require that all vessels and processors procure groundfish observers through PSMFC. The JPA between PSMFC and NMFS would address procurement arrangements only for groundfish observers. The Alaska Department of Fish and Game is continuing to pursue

a separate State-funded crab fishery observer program that would address shellfish observer procurement and data integrity issues.

Other PSMFC Responsibilities

In addition to providing procurement services to the industry, the JPA would expect PSMFC to:

- 1) provide NMFS with data of the quality necessary to manage federal groundfish fisheries off Alaska,
- 2) establish a contractual system which will minimize opportunities for conflicts of interest by preventing direct business negotiations between observer contractors and vessel and plant owners required to carry observers,
- 3) provide the fishing industry with observer coverage that is consistent with regulatory requirements and program principles in as efficient and cost effective a manner as possible, and
- 4) assure that observers receive fair and equitable treatment and that adequate compensation (salaries, benefits, and expenses) and insurance coverage is provided.

NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.1 and 1.2, and the list of preparers is in Section 8. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear.

A summary of the effects of the annual groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the final environmental assessment for the annual groundfish total allowable catch specifications (NMFS 1997).

Alternative 1 would not provide for the continued collection of observer data from the Alaska groundfish fisheries. Alternatives 2 and 3 would provide for the continued collection of observer data, but Alternative 3 would best assure the quality of observer data needed to manage the North Pacific fishery resources, including information on the incidental takes of endangered or threatened species under the ESA.

2.2 Impacts on Endangered or Threatened Species

Listed and candidate species that may be present in the GOA and BSAI are discussed in detail in the EA/RIR/Initial Regulatory Flexibility Analysis conducted on the annual total allowable catch specifications. The following species are currently listed under the ESA and could be present in the BSAI and GOA management areas.

Endangered Species

Bowhead whale	<i>Balaena mysticetus</i>
Northern right whale	<i>Balaena glacialis</i>
Sei whale	<i>Balaenoptera borealis</i>
Blue whale	<i>Balaenoptera musculus</i>
Fin whale	<i>Balaenoptera physalus</i>
Humpback whale	<i>Megaptera novaeangliae</i>
Sperm whale	<i>Pyseter macrocephalus</i>
Snake River sockeye salmon	<i>Oncorhynchus nerka</i>
Short-tailed albatross	<i>Diomedea albatrus</i>
Steller sea lion (eastern stock)	<i>Eumetopias jubatus</i>

Threatened Species

Steller sea lion (western stock)	<i>Eumetopias jubatus</i>
Snake River spring/summer/fall chinook salmon	<i>Oncorhynchus tshawytscha</i>
Spectacled eider	<i>Somateria fischeri</i>
Steller's eider	<i>Polysticta stelleri</i>

None of the alternatives would modify the groundfish harvest thresholds that have been established for reinitiating section 7 consultation. However, Alternative 1 would not provide an adequate means to monitor catch, bycatch, or fishery interactions with listed species or marine mammals. Nonetheless, this alternative is included in this analysis because governing statutes require a status quo alternative. Alternative 2 would maintain the current observer program and the attendant concerns about the quality of observer being collected. Alternative 3 would be expected to best provide for quality observer data upon which the management of the groundfish fisheries are based.

Fishing activities conducted under Alternatives 2 and 3 would not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

2.3 Impacts on Marine Mammals

Marine mammals not listed under the Endangered Species Act that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon* spp.)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

A list of marine mammal species and detailed discussion regarding life history and potential impacts of the 1997 groundfish fisheries of the BSAI and GOA on these species can be found in the EA prepared for the 1997 Total Allowable Catch Specifications for Groundfish (NMFS 1997). Alternatives 2 and 3 would not be expected to adversely affect marine mammals. Alternative 3, however, would provide greater assurance that quality observer data on fishery interactions with marine mammals would be collected. Alternative 1 is not a reasonable alternative, but is required to be considered as the status quo alternative.

2.4 Coastal Zone Management Act

Implementation of Alternatives 2 and 3 would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Conclusions or Finding of No Significant Impact

Alternatives 2 and 3 are not likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

Dated

3.0 REGULATORY IMPACT REVIEW: ECONOMIC AND SOCIOECONOMIC IMPACTS OF THE ALTERNATIVES

This section provides information about the economic and socioeconomic impacts of the alternatives including identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade offs between qualitative and quantitative benefits and costs.

The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

This section also addresses the requirements of both E.O. 12866 and the Regulatory Flexibility Act to provide adequate information to determine whether an action is "significant" under E.O. 12866 or will result in "significant" impacts on small entities under the RFA.

E. O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant". A "significant regulatory action" is one that is likely to:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

The analysis of the three alternatives is in terms of the potential impact on: (1) data integrity, (2) Industry costs for observer coverage, (3) the distribution of costs within the industry, and (4) costs to the Federal government.

3.1 Expected differences among alternatives with respect to observer data integrity.

Alternatives to the current NPGOP are being considered by the Council because of concerns about the quality of observer data that is being collected. These concerns instigated the Council's original adoption of the Research

Plan. One of the primary concerns centers around the business relationships between observer contractors and vessel and plant owners and operators. Under Alternative 2, vessel and plant owners and operators would continue to negotiate directly with certified contractors for observer coverage. This gives rise to conflict-of-interest concerns and could result in business practices which could fail to ensure that observers are treated in a fair and equitable manner. This situation jeopardizes the integrity of the data collected by observers. The management of the North Pacific fisheries largely is dependent on observer data. Therefore, recognizing that resolving the conflict-of-interest issue is of fundamental concern, the Council has indicated that any proposed long term change to the NPGOP should create and maintain an "arms-length" relationship between observer contractors and vessel and plant owners and operators.

The Council also is concerned with ensuring fair and equitable salaries and working conditions for observers. When one contracting company ceased operations in 1993, many observers were left unpaid. The Council understands the impact of this event on observer morale and data quality and wishes to prevent a reoccurrence. Competition among observer contractor companies has resulted in an overall reduction in observer salaries while the pressure on observers to monitor individual vessel activities has increased. Without prudent measures to remedy these situations, one can expect the quality of observer performance to decrease, thereby negatively impacting data integrity. Data integrity depends on both the quality of the work performed by observers and the "arms-length" relationship between observer contractors and vessel and plant owners and operators.

Under Alternative 3, a single third party organization (PSMFC) would be responsible for assuring that shoreside processors and vessels were provided with the observers necessary to meet mandatory coverage requirements. PSMFC also would receive payments for coverage from industry members and would contract with observer companies who would, in turn, recruit and provide qualified observers as directed. Under this scheme, opportunities for fishing companies to negotiate with observer providers would be reduced and concerns regarding observer salaries, insurance, and working conditions could be addressed through contract stipulations.

The options for the role of PSMFC under a JPA arrangement (Appendix 1) were rated by staff with respect to the objectives for the JPA and the need to collect quality observer data (Table 1). Although the rating system employed by staff was subjective, it did identify the JPA option 3 in Appendix one as the option that best meets the goal and objectives for the observer program.

3.2 Expected differences among alternatives with respect to total costs of the Observer Program.

3.2.1 Total Cost per Deployment Day

The total cost of an observer deployment day consists of several components that would differ between Alternatives 2 and 3. For purposes of this analysis, staff assumed a base salary level for observers commensurate with entry level biologists hired by NMFS for similar field work (GS-5, or about \$10.50 per hour, not including overtime). Although observers currently are paid significantly less than this rate, an increase in salary under Alternative 2 could occur given the ongoing negotiations between the union representing observers and existing observer contractor companies. If a negotiated settlement is reached, the resultant salary rate schedule and other compensation factors would be employed by PSMFC as bases for contract stipulations with observer contractor companies or for rating competitive bids received from these companies under Alternative 3. If a salary settlement is not negotiated by the union at the time Alternative 3 would be implemented, PSMFC would work with all parties to strive to ensure adequate observer compensation through contract provisions with observer contractor companies. Note that if union negotiations are successful, the overall costs of observer deployment under Alternatives 2 and 3 do not differ significantly.

The information used to develop cost estimates under Alternatives 2 and 3 (Table 2) was drawn from a variety of sources, including NMFS observer program data bases, common carrier air fare rates, and information

provided by observer contractors during interviews between them and staff of PSMFC. Two contractors also provided detailed profit and loss balance sheets for their operations. From this information, projected balance sheets for all five existing observer contractors were developed. Overall program cost estimates were generated as the average for the five contractors, weighted by the number of observed days provided by each contractor. For the "Current Observer Salary Rate" scenario, actual data regarding observer compensation and field support were used whenever possible, and default values or estimates were used only when no other information was available. For the "GS-5 based Observer Salary Rate" scenario, observer compensation practices were modified to reflect those shown in Table 6, while other support and indirect cost assumptions were held constant. To examine the impacts of each JPA option described in Appendix 1, direct and indirect expense elements of contractor balance sheets were reduced, eliminated, or transferred to PSMFC, while PSMFC direct costs were added (Tables 3-5).

The NPGOP maintains a record of all observers who were trained/briefed and subsequently deployed. These data were used to provide profiles of observer experience during recent years based on numbers of prior cruises (Table 7). The most recent 3-year average profile was used to represent the current observer pool in order to develop a graduated average observer salary, and to determine the current average training requirements. This profile is intended only as a reflection of current conditions, and may not represent future program goals.

The haul-by-haul observer reports provide a daily record of observer activity during a NMFS-defined cruise (i.e., the period between an observer's briefing and subsequent debriefing). The difference in days between the observer's first and last recorded haul reports is generally equivalent to the number of days the observer was at sea during a deployment or cruise. For purposes of this analysis, this record was used as the number of "observed days", and was used to generate overall estimates for "Observer Salaries" and as the basis for "Cost per Observed Day" estimates. During 1995 and 1996, there was an annual average of 548 individual observer cruises with an average total of 31,297 observed days during each year.

The estimate of salary for "Observed Days" does not include all of the days for which the observer could have received compensation. Estimates for observer compensation for time spent during briefing, debriefing, and transit to and from the vessel were included under "Deployment Costs". For this analysis, the following default values were used: (a) 20% of experienced observers were estimated to require a 4-day briefing, while the remaining 80% were estimated to require a 2-day briefing, making an average of 2.4 days spent during briefing for all experienced observers; (b) data from the 1995 Observer Program (NMFS 1996c) suggested that the average length of a debriefing was 4.68 days (Table 8); and (c) an estimated total of four days was provided for observer travel from the point of origin to the vessel, for residence on the vessel until the first recorded "haul day", and for travel from the vessel after the last recorded "haul day" to the point of debriefing. Not all contractors compensate this time equally; under the "Current Observer Salary Rate" scenario, values reflected those differences to the extent which they could be determined. Deployment Costs also included estimates for observer per diem and lodging during deployment. Observers who were designated as "new" (i.e., with no prior cruises) were assumed to require a 3-week training period in lieu of briefing. Estimates for observer compensation, lodging and medical expenses during this training period were included in the "Other Direct Costs" category.

The contractor direct expense category for "Payroll Taxes and Insurance" includes estimates for Social Security, Workers Compensation, Unemployment, and Commercial General Liability based on estimated observer salaries, deployment compensation, and training compensation. Estimates for similar taxes on shore-based administrative staff salaries were included in the "Indirect Contractor Costs" category. Tax rates, particularly Workers Compensation, for shore-based personnel are substantially lower than for workers whose primary duties are at sea.

Estimates for all other contractor costs are combined under the category "Indirect Contractor Costs". These include contractor administrative employee compensation and payroll taxes, other taxes, professional services, rents, utilities, maintenance, allowances for bad debt, and profit.

Travel cost estimates (Table 9) were based on current common carrier airfare rates, presuming round-trip travel from Seattle to the point of departure. Departure locations were based on Observer Program records of the declarations made by observers during training or briefing regarding their likely port of departure. Points of departure may change on short notice and these declarations are not verified for accuracy, but they represent the best source of available information on observer departure points and travel patterns. Approximately 17% of observers did not declare or did not know their point of departure; Dutch Harbor was the presumed point of departure in those cases because the monthly pattern of deployments was similar. "Fish Fares" are special air fare rates designed for the fishing industry which allow travel from Seattle to specified destinations at the 14-day advance fare rate, regardless of when the ticket was purchased. Since most contractors make use of "Fish Fares" when they are available, these rates were used where appropriate. These travel cost projections probably represent minimum estimates, since they only consider travel from Seattle to the first point of departure. While approximately 43% of observer cruises in 1995 and 1996 involved a single vessel, the remainder involved work onboard more than one vessel (23% on 2 vessels; 14% on 3 vessels; 11% on 4 vessels; 9% on 5 or more vessels). Any air travel costs associated with mid-cruise movements of observers between vessels are not included in these estimates.

3.2.2 Observer contractor role and associated costs.

Under the current a pay-as-you-go system (Alternative 2), competition among contractors and the desire of each vessel or plant to meet its coverage requirement at the lowest cost tend to keep the total observer cost at a minimum. Each contractor has a strong incentive to minimize the cost per observer day to attract business. Therefore, each contractor has a strong incentive to work closely with vessels and plants to schedule observer placement. Similarly, vessels and plants have a strong incentive to work closely with contractors both to ensure that observers will be available to meet the coverage requirements and to reduce the cost per day of deployment. Vessels and plants also have an incentive to minimize the number of observer days. This does not mean that some 30 percent coverage vessels will not pay for more than 30 percent coverage if it is in their interest to do so. For example, to ensure that they have at least 30 percent coverage, they may need to keep observers onboard until the end of a trip even if this results in greater than 30 percent coverage. Similarly, to avoid the cost of interrupting a trip to return an observer to port once the 30 percent coverage is reached, a vessel may choose to pay for the extra observer days. In some cases, the latter may result in vessels choosing to have close to 100 percent coverage.

Under Alternative 3, the PSMFC would assume responsibility for all observer deployment and coordination tasks. Observer companies would just provide observers. PSMFC would contract with observer companies to provide a specified number or range of observer coverage days throughout the year. The cost of PSMFC's services plus the cost of the services provided by the observer contractor companies and observers would be included in the cost per observer deployment day. To a great extent, the PSMFC would perform services that currently are being provided by the observer contractors. To the extent that PSMFC can provide such services at a lower cost, total program costs would be reduced. The cost of services PSMFC would perform that would not be transferred from either NMFS or current contractors could also increase the total cost of the observer program. Table 2 indicates that the administrative costs resulting from PSMFC procurement services are very small relative to the overall cost per observer deployment day (i.e. about 2 percent). The greatest increase in cost per deployment day results from the assumptions for increased observer salaries under either Alternative 2 or 3.

Associated with the change in the distribution of services under Alternatives 2 and 3, are some expected cost savings for the observer contractors that should result from an increased ability to plan for requests for observers

and decreased risk of non-payment or late payment. Although different observer contractors may provide observers at different costs to PSMFC, the competitive bid process responding to PSMFC's solicitations for observers could provide a mechanism for standardizing costs for observer services within a bid module. For example, a bid module could include observers required to monitor individual vessel activities under the CDQ program, or a module could include a specified number or range of observer days and a mix of observer types [quality] that a prospective observer company bids on at a standard price per deployment day. PSMFC would work with observer companies to ensure that an appropriate number of observer coverage days are provided to meet industry requirements. Given that PSMFC would fulfill industry requests for observer services on a first come, first served basis, vessels or processors that contract early for these services likely would receive the cheapest available rate for observer services.

To take full advantage of the economies of scale and specialization under Alternative 3, there could be a decrease in the number of contractors that would be used. This effect, to the extent it occurs, is not expected to significantly decrease the competition and increase costs because the barriers to entry for potential contractors are sufficiently low that the competition would not be decreased substantially.

At this time the function of providing observer safety and sampling gear would remain with NMFS and no additional costs to industry would result from a shift of this responsibility from the agency to observer contractors or PSMFC.

3.2.3 Observer compensation costs.

Under the current pay-as-you-go system (Alternative 2), competition among observer contractors has resulted in observer salaries that range from \$ 70 - 100 per deployment day, with an average salary being about \$94 per day. This relatively low rate of compensation for the responsibilities and long work hours required of observers has decreased the integrity of observer data by making it more difficult to attract and retain highly qualified and motivated observers. Under Alternative 2, observer compensation would continue to be determined by individual observer contracting companies, although the current observer unionization effort is intended to result in enhanced compensation, at least by union companies. However, non union companies could be established and certified by NMFS that would compete with unionized companies and assumedly offer observer services at a reduced cost to industry by again decreasing observer salaries.

Under Alternative 3, observer compensation (salaries, travel, reimbursable expenses, per diem) and insurance provisions would be addressed and adequately provided under contractual arrangements between PSMFC and observer companies (union and non union) under guidance developed by NMFS and PSMFC under the JPA. Compensation provisions established for observers would be based on those negotiated by the union process. If this process has yet to be completed by the time contractual arrangements between PSMFC and observer companies must be finalized under Alternative 3, PSMFC would ensure an enhanced compensation package through alternative contractual arrangements. For example, PSMFC could solicit bids for observer coverage modules comprised of observers of a specified quality and experience. Acceptance of a company's bid would require that the company demonstrate its ability to recruit and retain qualified observers. This likely would be done primarily through a compensation package that is mutually agreed upon by observers and observer companies and that would be available for review by PSMFC. A compensation package could include a combination of an increase in pay per standard deployment day, overtime pay, payment for some non-deployment days (i.e., training, briefing, debriefing, and travel days) and a salary incentive program to retain quality observers. In 1995, there were approximately 36,800 total observer employment days--4300 for training and briefing (11 percent), 30,000 for deployment (82 percent), and 2500 for debriefing (7 percent).

At this time neither NMFS nor PSMFC believe that a stipulation of a minimum salary schedule in contracts between PSMFC and observer companies provisions would meet the long term goals and objectives of the

modified-pay-as-you-go program. Such a stipulation could inappropriately interfere with ongoing observer union negotiations. Furthermore, observer companies may compensate observers by means other than direct salary payments. Thus, contractual stipulations for observer salaries could have a negative impact on a company's willingness or ability to provide an overall acceptable compensation package. Until observer union negotiations are settled, therefore, observer compensation packages presented in competitive bids for observer coverage contract modules will be reviewed and assessed by PSMFC relative to the objectives of the JPA to provide for the collection of quality observer data and the retention of qualified observers.

3.2.4 Costs to address observer non-payment.

In 1993, a number of observers were not paid for their services because their contractor company ceased operation. The Research Plan had addressed the issue of timely fee payments by requiring semi-annual processor permits in order to operate. If processors had not paid their Research Plan fee assessments, they would not be issued a processor permit. Under Alternative 3, the JPA between NMFS and PSMFC would require PSMFC to address the issue of observer non-payment. This could be addressed in numerous ways---prepayment, issuance of bonds, etc. For example, if PSMFC required prepayment for observer services, and if on average this results in payments that are made one month earlier, the cost to vessels and plants is roughly one month's interest on their total payments to PSMFC. With an annual interest rate of 10 percent, the cost would be about 0.8 percent of their total payments. Therefore, this would increase the cost per observer deployment day from about \$1.80 based on the current cost per day of about \$216 to about \$ 2.71 per day based the uppermost range of projected increase in the cost of an observer day under Alternative 3 (\$325/day). Any additional costs to vessels and plants could be offset by cost savings realized by PSMFC. Requiring prepayment or issuance of bonds to address observer non-payment could effectively decrease PSMFC's administrative costs. This cost realization could be passed through to the vessels and plants that pay PSMFC for observer services.

3.2.5 Differences with respect to total estimated cost.

Under Alternatives 2 and 3, the level of required observer coverage established in regulations directly affects costs to industry. Under Alternative 2, the direct business relationship between observer contractor companies and the industry, would continue to drive costs down. The extent to which this has occurred in the past has been to the overall detriment of the NPGOP, as explained above. The ability of contractors companies to continue to decrease costs at the expense of observer compensation would be constrained in the future if current unionization efforts are successful. Under Alternative 3, this competitive mechanism to reduce costs would be dampened, but not eliminated. Overall costs associated with PSMFC and observer contractor company services would be paid by vessel and plant owners required to carry observers. Incentives to reduce observer costs would be incorporated in the contractual arrangement between PSMFC and observer companies and cost-reduction incentives could occur in the PSMFC/observer contractor relationship. An incentive would exist for vessels to reduce their observer coverage days and to cooperate with PSMFC to assure that an adequate number of observers is available at a reasonable cost.

The level of observer coverage under Alternatives 2 and 3 is not limited by funding, and any increase in observer coverage would be borne directly by the vessels or processors required to comply with increased observer coverage requirements. Actual observer coverage requirements would be established in regulations, and regulatory amendments would be required to change these requirements. As a result, the flexibility is limited under these two alternatives to change observer coverage to address management concerns. Although regulatory provisions for interim in-season adjustments to observer coverage could be employed, the in-season notice and comment procedure still could require up to several months to implement.

Based on the data presented in Table 2 and the general assumption for analytical purposes of a GS-5 salary range for observers under Alternatives 2 and 3, the total cost per observer day under Alternative 3, or \$325 maximum,

is about the same as the estimated cost per day under Alternative 2 , or \$322. This similarity is anticipated because procurement and deployment services undertaken by PSMFC could take advantage of economies of scale and eliminate unnecessary redundancy in services currently provided by observer contractor companies. If an increased salary for observers is not assumed under Alternative 2 (cost per observer day remains at \$216), then Alternative 3 could result in a 1 percent - 50 percent increase in cost per observer day, depending on where the actual cost per observer deployment day falls within the \$219-325 range presented for Alternative 3 in Table 2.

Based on an assumed average number of observer days equal to 31,297 days (Table 7), and the estimated cost per observer day presented in Table 2, the total estimated industry costs for observer coverage under Alternative 2 could range from \$ 6.76 million to \$10.08 million, depending on whether or not observer compensation costs are ultimately increased through a union settlement. Under Alternative 3, the estimated total industry cost could range from \$6.85 million to \$ 10.17 million.

3.3 Expected differences among alternatives with respect to distribution of costs within the industry.

The EA/RIR for the Research Plan (NPFMC 1994) addressed the issue of cost distribution within the affected industry. A pay-as-you-go system of funding was viewed by many to be inequitable, because although all participants in the groundfish, halibut, and crab fisheries benefit from the groundfish and crab observer programs, only those with observer coverage requirements bear the cost. Among those that bear this cost, the cost varies substantially in terms of the exvessel value of their catch. Some operations would continue to pay no observer costs whereas some operations, such as small fixed gear catcher vessels, may pay in excess of 10 percent of their exvessel value. The cost paid by an operation is not dependent on either the benefits it receives from the observer coverage or its ability to pay for observer coverage.

After the Research Plan was implemented in 1995 and participants started receiving bills, widespread industry support was lacking for a fee system where large operations were paying higher costs than status quo (as much as 4 to 8 times greater per public testimony), even though for mid-size and small operations the cost was lower. The cost distribution changes resulting from the Research Plan were a fundamental reason the Council voted at its December 1995 meeting to repeal the Research Plan and proceed with the development of a modified pay-as-you-go system.

At its December 1995 meeting, the Council also discussed options to help defray costs to vessel owners who would pay an unreasonably high proportion of their gross catch value for direct observer coverage. Whereas some operations would continue to pay no observer costs, some pay in excess of 10 percent of their exvessel value. Options discussed were: a surcharge for observer coverage paid by some vessels to subsidize coverage for other vessels, observer pooling for vessels, and adjustment of coverage levels for vessels that pay relatively high costs. A surcharge is not authorized under section 313 of the Magnuson-Stevens Act. Understanding the time constraints facing the development and implementation of an alternative fee collection program, the Council did not recommend that NMFS develop this alternative in the analysis for the modified pay-as-you-go program. Similarly, pooling or exemptions from observer coverage pose other concerns about data used to manage the North Pacific fishery resources that cannot be readily addressed within the current analysis given the desire to implement a modified program by 1999. Rather, these options will be considered by an industry/agency work group for future consideration and therefore, are beyond the scope of the current analysis.

Observer Costs vs. Exvessel Value. Under Alternatives 2 and 3, observer costs are based on whether or not an observer is onboard and on overall coverage needs. Higher costs are borne by those vessels and plants that require higher levels of coverage. Tables 10 and 11 summarize costs by groundfish harvesting and processing sector considering observer costs as a fraction of ex-vessel groundfish value alone, and of the sum of ex-vessel values for groundfish and halibut. For most sectors, ranges, averages and medians are similar for both groundfish only and groundfish plus halibut categories. Participation in halibut fisheries occurred in only four of the ten

sectors examined (100 % and 30% fixed-gear catch vessels (CVs), 30 % fixed-gear catcher/processor vessels (CPs), and 30 percent trawlers CVs)(Figures 1 - 14). The data in Table 10 are based on 1995 assumptions for estimated costs per observer day (\$180- \$198/day) and indicate that vessel and processor observer costs ranged from .02 to 24.8 percent of the operations exvessel value of catch. Fixed gear vessels generally experience the highest relative cost for observer coverage (about 3.5 percent of the groundfish exvessel value for catch vessels \geq 125 ft LOA and 2.5 percent for catch vessels $>$ 60 ft and $<$ 125 ft LOA). These relative costs are decreased slightly to 3.4 and 2.0 percent, respectively, if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.5 percent and 1.0 percent, respectively). Note that these relative costs, as far as they portray the current situation under Alternative 2, would increase under Alternative 2 to the extent that observer union negotiations result in increased costs per deployment day.

The data in Table 11 are based on the Alternative 3 assumption for estimated costs per observer day (\$325/day) and indicate that vessel and process observer costs ranged from .04 percent to 40.7 percent of the operations exvessel value of catch. Again, fixed gear vessels generally experience the highest relative cost for observer coverage (about 6.3 percent of the groundfish exvessel value for catch vessels \geq 125 ft LOA and 4.2 percent for catcher/processor vessels \geq 125 ft LOA). The relative costs for catcher vessels is decreased slightly to 6.1 if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.8 percent and 1.7 percent, respectively).

Under both Alternatives 2 and 3, the highest relative costs of observer coverage were correlated with vessel operations that were at the lowest end of the revenue spectrum within each sector examined (Figures 1-14). The fact that fixed gear operations general pay higher relative costs for observer coverage reflects that these operations generally receive less revenue from the groundfish/halibut fisheries compared to trawl operations. The single case where observer costs exceeded 20 percent under alternative 2 and 40 percent under Alternative 3 reflected a single vessel operation that experienced less than \$5,500 in groundfish revenues for 1995.

3.4 Administrative, Enforcement and Information Costs

NMFS would not require additional staff personnel to administer, monitor, and enforce Alternative 3, given that PSMFC would assume some of the tasks currently undertaken by NMFS. These include certification of observer companies and interfacing with these companies on day to day operations. Although Alternative 2 does not represent a change from the interim 1997 and 1998 observer programs, NMFS staff resources to operate the Observer program have been reduced and currently are at levels that jeopardize effective administration of the program. The NPGOP has requested that additional resources be provided, but no guarantee exists that they will be.

If Alternative 3 is adopted with the intent that it be implemented by 1999, PSMFC will require start up funding to hire additional staff and provide for rent and office operations. PSMFC estimates that \$75,000 would be required by late summer of 1998 to ensure that start-up activities are successfully completed by the start of the 1999 fishery. At this time, the assumption is that either a special congressional appropriation or other NMFS funding would be required to provide these start-up funds.

4.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

The objective of the Regulatory Flexibility Act is to require consideration of the capacity of those affected by regulations to bear the direct and indirect costs of regulation. If an action will have a significant impact on a substantial number of small entities an Initial Regulatory Flexibility Analysis (IRFA) must be prepared to identify

the need for the action, alternatives, potential costs and benefits of the action, the distribution of these impacts, and a determination of net benefits.

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

If an action is determined to affect a substantial number of small entities, the analysis must include:

1. a description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
2. analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

4.1 Economic Impact on Small Entities

Most of the catcher vessels participating in the groundfish fisheries off Alaska and required to carry observers (i.e., vessels over 60 ft LOA) meet the definition of a small entity under the RFA. Any increase in the cost of observer coverage under any of the alternatives would affect these catcher vessels. For individual vessels, the impact increases as the percentage of observer costs relative to total exvessel value revenue of catch increases. In 1995, 408 vessels and processors had observer coverage. Of these, 263 were catcher vessels. Based on information presented in Tables 10-11 and Figures 1-10, about 15 catcher vessels, or about 6 percent, paid observer costs in 1995 that equaled or exceeded 5 percent of the vessels' exvessel value of groundfish. Increases in observer costs under either alternative 3 or alternative 2 if a union negotiated observer compensation is assumed could result in about 30 catcher vessels, or 11 percent, paying observer costs equal to or in excess of 5 percent of the vessels' estimated exvessel value of catch. Under alternative 1, no observer program would exist beyond 1998 and vessels would pay no observer costs.

For catcher processor vessels, motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, 117 catcher processors, 11 motherships and 17 shoreside processors had observer coverage. Within the processing sector, only 5 catcher processors using fixed gear and 1 mothership had estimated observer costs in 1995 that exceeded 5 percent of the vessels' exvessel value of catch. Increases in observer costs under either Alternative 3 or Alternative 2 if a union negotiated observer compensation is assumed could result in about 3 trawl and 13 fixed gear catcher processors and 2 mothership operations having observer costs in excess of 5 percent of the exvessel value of catch.

Relative to Alternative 1 (no observer coverage), both Alternatives 2 and 3 would have an economic impact on a substantial number of small entities, although neither Alternative 2 or 3 would result in a significant economic impact on 20 percent or more of affected vessels and processors. As discussed above, some vessels and

processors would pay observer costs that exceed 5 percent of the exvessel value of groundfish catch, but the number of entities affected in this manner is less than 20 percent of either the catcher vessel fleet or groundfish processors. Relative to Alternative 2, Alternative 3 would result in higher costs to all vessels and processors required to obtain observer coverage if the costs for observer coverage under Alternative 2 do not increase due to observer unionization efforts. If unionization efforts increase observer costs under Alternative 2, the expected cost differences between alternatives 2 and 3 would be minimal (i.e., less than 2 percent of the total cost of observer coverage as a result of PSMFC administrative costs).

Efforts to minimize potential economic impacts on small entities include reduced or absent observer coverage requirements on small entities that effectively reduces or removes the cost burden of observer coverage. A fee collection program represents an alternative which could minimize the economic impact on some small entities. However, for reasons explained elsewhere (61 FR 13782, March 28, 1996; 61 FR 36702, July 12, 1996; 61 FR 40380, August 2, 1996), a fee collection program as currently authorized under the Magnuson-Steven's Act is neither the Council's nor a vast majority of the industry's preferred alternative. Alternative 3 represents the least restrictive alternative to small entities that still accomplishes the stated goals and objectives.

5.0 REFERENCES

- North Pacific Fishery Management Council (NPFMC). 1989. Environmental assessment/regulatory impact review/initial regulatory flexibility analysis for Amendment 18 to the FMP for Groundfish of the Gulf of Alaska and Amendment 13 to the FMP for the Groundfish Fishery of the Bering Sea Aleutian Islands Area. July 21, 1989. North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501-2252.
- North Pacific Fishery Management Council (NPFMC). 1994. Environmental assessment/regulatory impact review/final regulatory flexibility analysis for a Regulatory Amendment to the Domestic Groundfish Observer Plan for the Gulf of Alaska and the Bering Sea Aleutian Islands. April 1994. North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501-2252.
- North Pacific Fishery Management Council (NPFMC). 1994. Environmental assessment/regulatory impact review for the North Pacific Fisheries Research Plan, Amendment 27 to the FMP for the Groundfish Fishery of the Bering Sea Aleutian Islands Area, Amendment 30 to the FMP for Groundfish of the Gulf of Alaska, Amendment 3 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area, Regulatory Amendment to the Pacific Halibut Fishery Regulations. August 3, 1994. North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501-2252.
- North Pacific Fishery Management Council (NPFMC). 1996a - Final Stock Assessment and Fisheries Evaluation Report for the Groundfish Resources of the Bering Sea and Aleutian Islands Area as projected for 1997. NPFMC. 605 West 4th Ave., Anchorage Alaska 99510.
- North Pacific Fishery Management Council (NPFMC). 1996b. Final Stock Assessment and Fisheries Evaluation Report for the Groundfish Resources of the Gulf of Alaska as projected for 1997. NPFMC. 605 West 4th Ave., Anchorage Alaska 99510.
- National Marine Fisheries Service (NMFS). 1996c. Draft statement of work for a NMFS contract with an organization to provide specified observer services. March 1996. NMFS - Alaska Fisheries Science Center, Observer Program Office, 7600 Sand Point Way N.E., Seattle, WA 98115-0070.

National Marine Fisheries Service (NMFS). 1997. Final Environmental Assessment for 1997 Groundfish Total Allowable Catch Specifications. NMFS-Alaska Region, P.O. Box 21668, Juneau, Alaska 99802-1668.

National Marine Fisheries Service (NMFS). 1996. Draft EA/RIR/IRFA for Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska; and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area. April 1996. NMFS, Alaska Region, P.O. Box 21668, Juneau AK 99802-1668.

Observer Oversight Committee (OAC), 1996. Minutes of the April 1996 meeting of the OAC. North Pacific Fishery Management Council. 605 West 4th Ave., Anchorage Alaska 99510.

6.0 AGENCIES AND INDIVIDUALS CONSULTED

7.0 LIST OF PREPARERS

Al Didier and Dave Hansen
Pacific States Marine Fisheries Commission
45 S.E. 82nd Drive
Suite 100
Gladstone, OR 97267-2522

Bill Karp
NMFS
Alaska Fisheries Science Center
7600 Sand Point Way N.E.
Seattle, WA 98115-0070

Sue Salveson and Kim Rivera
NMFS
Alaska Region
P.O. Box 21668
Juneau, AK 99802

Chris Oliver
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

8.0 LIST OF TABLES

Table 1. Relative comparison of options for procurement of observer services.

Table 2. Costs per deployed observer day.

Table 3. PSMFC program cost assumptions.

Table 4. Projected annual PSMFC activity levels.

Table 5. Projected annual PSMFC direct costs.

Table 6. GS-5 based observer salary schedule assumptions.

Table 7. Observer deployments by levels of experience.

Table 8. Length of observer debriefings in 1995.

Table 9. Air fares from Anchorage and Seattle to selected points of observer departure.

Table 10. Details of groundfish observer costs in 1995 when expressed as a percentage of ex-vessel value of groundfish and groundfish/halibut combined.

Table 11. Details of potential groundfish observer costs expressed as a percentage of ex-vessel value of groundfish and groundfish/halibut combined given an observer cost of \$325/day.

9.0 LIST OF FIGURES

Figure 1. Groundfish observer costs as a percentage of ex-vessel value for catcher vessel trawlers over 124' LOA in 1995.

Figure 2. Groundfish observer costs as a percentage of ex-vessel value for fixed gear catcher vessel over 124' LOA in 1995.

Figure 3. Groundfish observer costs as a percentage of ex-vessel value for catcher processor trawlers over 124' LOA in 1995.

Figure 4. Groundfish observer costs as a percentage of ex-vessel value for fixed gear catcher processors over 124' LOA in 1995.

Figure 5. Groundfish observer costs as a percentage of ex-vessel value for catcher vessel trawlers 60' to 124' LOA in 1995.

Figure 6. Groundfish observer costs as a percentage of ex-vessel value for fixed gear catcher vessels 60' to 124' LOA in 1995.

Figure 7. Groundfish observer costs as a percentage of ex-vessel value for catcher processor trawlers 60' to 124' LOA in 1995.

Figure 8. Groundfish observer costs as a percentage of ex-vessel value for fixed gear catcher processor 60' to 124' LOA in 1995.

Figure 9. Groundfish observer costs as a percentage of ex-vessel value for shoreplants in 1995.

Figure 10. Groundfish observer costs as a percentage of ex-vessel value for motherships in 1995.

Figure 11. Groundfish observer costs as a percentage of ex-vessel value of groundfish and halibut for fixed gear catcher vessels over 124' LOA in 1995.

Figure 12. Groundfish observer costs as a percentage of ex-vessel value of groundfish and halibut for catcher vessel trawlers 60' to 124' LOA in 1995.

Figure 13. Groundfish observer costs as a percentage of ex-vessel value of groundfish and halibut for fixed gear catcher vessels 60' to 124' LOA in 1995.

Figure 14. Groundfish observer costs as a percentage of ex-vessel value of groundfish and halibut for fixed gear catcher processors 60' to 124' LOA in 1995.

APPENDIX 1

Level of PSMFC involvement under the JPA

JPA OPTION 1

Description (Level of PSMFC Involvement):

PSMFC would provide only the "arms length" relationship between vessels and observer contractors. Vessels with a prior history of participation in the fisheries would be pre-assigned to an observer contractor in advance of the season based on previous fishery participation records. Vessels without such a history would contact PSMFC (at whatever time of the year they decided to participate) and be assigned to an observer contractor for the rest of the year. In either case, PSMFC would establish a contract with the vessel to provide observer services. Assignments/contracts would be for a set length of time, presumably about one year.

Vessels would coordinate directly with observer contractors to arrange for deployments. Before any deployment took place, however, the observer contractor would be required to notify PSMFC of the impending deployment and the vessel would be required to contact PSMFC to arrange for a payment guarantee. Once a payment guarantee is established, PSMFC would notify the observer contractor to proceed with the deployment.

The observer contractor would bill PSMFC for travel costs associated with the deployment and for deployed observer days, and PSMFC would deduct those expenses from the payment guarantee and pay the observer contractor.

PSMFC Costs:

- project manager --- liaison between vessels, contractors, NMFS, and NPFMC (1 person)
- bookkeeper/accounts payable (1 person)
- travel to NPFMC and OAC meetings plus per diem
- telephone/FAX
- office rent
- office supplies and postage
- computers and office furniture
- banking fees and wire transfers
- accounting and audit costs
- liability insurance

PSMFC Fees:

- direct costs for PSMFC employees, travel, office supplies, telephone/FAX, and rent, plus 15% overhead on direct costs.
- 2 % overhead on funds passed through to observer contractors to cover banking fees, accounting and audit costs, and liability insurance.

PRO

- Utilizes existing observer contractor structure
- lowest PSMFC cost add-on
- Could be implemented relatively quickly
- Provides stable environment for contractors
- Could be dropped at a later date and still leave the existing contractor structure intact
- Guarantees payment to observers and

CON

- Numerous contacts needed to deploy each observer
- Mechanism needed to decide which contractor is assigned to a vessel. See Assignment of Work Options.
- Does not consolidate any duplications in the current system (port coordinators, etc.)
- Contractors limited to deploying only their

JPA OPTION 1

observer contractors

own observers, and will not be able to take advantage of the broadest possible option pool.

- Transportation costs (especially for 30% boats) could increase if contractors do not efficiently share observers between vessels. (Note: A maximum on billable travel per vessel quarter could be set to encourage efficiency.)
- Vessels will be required to give more advance notice than they may now provide prior to a deployment.
- NMFS needs to develop management structure to ensure vessel compliance. Waivers of observer requirements must be rare.

JPA OPTION 2

Description (Level of PSMFC Involvement):

PSMFC would provide the same "arms length" relationship as in Option 1, but add an additional level of coordinating support services: e.g., port coordinators (Dutch Harbor and Kodiak), and a blanket travel package that takes advantage of volume to obtain reduced air fares. As in Option 1, PSMFC would contract with vessels for observer services. Vessels with a prior history of participation in the fisheries would be pre-assigned to an observer contractor in advance of the season based on previous fishery participation records while vessels without such a history would contact PSMFC (at whatever time of the year they decided to participate) and be assigned to an observer contractor for the rest of the year. Assignments or contracts would be for a set length of time, presumably about one year.

Vessels would coordinate directly with observer contractors to arrange for deployments. Before any deployment took place, however, the observer contractor would be required to notify PSMFC of the impending deployment and the vessel would be required to contact PSMFC to arrange for a payment guarantee. Once a payment guarantee is established, PSMFC would notify the observer contractor to proceed with the deployment. The observer contractor would make travel arrangements through a PSMFC contract travel agent at PSMFC negotiated rates. Travel costs would be billed directly to PSMFC, and paid from the vessel advance. If the deployment (or return from deployment) occurred through a port at which a PSMFC coordinator was based, the observers would report to the PSMFC coordinator upon arrival. The coordinator would be the principal contact to ensure communications between vessels, observers, and observer contractors in the field.

The observer contractor would bill PSMFC for deployed observer days, and PSMFC would deduct those expenses from the payment guarantee and pay the observer contractor.

PSMFC Costs:

- project manager --- liaison between vessels, contractors, NMFS, and NPFMC (1 person)
- bookkeeper/accounts payable (1 person)
- port coordinator in Dutch Harbor (1 person)
- port coordinator in Kodiak (1 person)
- travel to NPFMC and OAC meetings plus per diem
- travel to Dutch Harbor and Kodiak plus per diem
- telephone/FAX
- office rent
- office supplies and postage
- computers and office furniture
- field office rent, maintenance, utilities, and vehicle
- banking fees and wire transfers
- accounting and audit costs
- liability insurance

PSMFC Fees:

- direct costs for PSMFC employees, travel, office supplies, telephone/FAX, rents, and field office expenses, plus 15% overhead on direct costs.

JPA OPTION 2

- 2 % overhead on funds passed through to observer contractors to cover banking fees, audit costs, and liability insurance.

PRO

- Provides greater efficiency in coordinating observer deployments. Port coordinator could adjust assignments as needed within those contracts assigned a particular observer contractor.
- Increased efficiency would not add substantial costs to vessels, since some existing observer contractor positions would be consolidated. Since not all contractors currently have port coordinators, service to some vessels should be enhanced.
- All travel would be at economical rates negotiated by PSMFC and based on the volume of the entire program.
- Leaves most of the existing contractor infrastructure intact. If the program is terminated at a later date, the existing contractor structure could probably be recovered quickly.
- Guarantees payment to observers and observer contractors

CON

- Potential confusion caused by 2 entities (PSMFC and contractor) directing or involved in deployments.
- Potential confusion for vessel on appropriate contact point (observer contractor vs. PSMFC port coordinator)
- Mechanism needed to assign vessels to contractors. See Assignment of Work Options.
- Transportation costs (especially for 30% boats) could increase if contractors do not efficiently share observers between vessels. (Note: A maximum on billable travel per vessel quarter could be set to encourage efficiency.)
- Contractors limited to deploying only their own observers, and cannot take advantage of entire observer pool to maximize efficiency of all deployments
- Vessels will be required to give more advance notice than they may now provide prior to a deployment.
- NMFS needs to develop management structure to ensure vessel compliance. Waivers of observer requirements must be rare.

JPA OPTION 3

Description (Level of PSMFC Involvement):

PSMFC assumes responsibility for all deployment and coordination tasks. Observer contractors just provide observers. As in Options 1 and 2, PSMFC would contract with vessels for observer services. PSMFC would also contract with observer contractors to provide a specified number of observer days throughout the year.

Vessels would contact and coordinate with PSMFC to arrange for deployment and payment guarantee. Once a payment guarantee is established, PSMFC would proceed with the deployment. Travel arrangements would be made through a PSMFC contract travel agent at PSMFC negotiated rates. Travel costs would be billed directly to PSMFC, and paid from the vessel advance. If the deployment (or return from deployment) occurred through a port at which a PSMFC coordinator was based, the observers would report to the PSMFC coordinator upon arrival. The coordinator would be the principal contact to ensure field communications between vessels, observers, and observer contractors.

PSMFC would pay the observer contractor from the payment guarantee based on the number of observer days used during the deployment.

PSMFC Costs:

- project manager --- liaison between vessels, contractors, NMFS, and NPFMC (1 person)
- bookkeeper/accounts payable (1 person)
- deployment coordinators (2 persons)
- port coordinator in Dutch Harbor (1 person)
- port coordinator in Kodiak (1 person - possibly seasonal)
- travel to NPFMC and OAC meetings plus per diem
- travel to Dutch Harbor plus per diem
- telephone/FAX
- office rent
- office supplies and postage
- computers and office furniture
- field office rent, maintenance, utilities, and vehicle
- banking fees and wire transfers
- accounting and audit costs
- liability insurance

PSMFC Fees:

- direct costs for PSMFC employees, travel, office supplies, telephone/FAX, rents, and field office expenses, plus 15% overhead on direct costs.
- 2 % overhead on funds passed through to observer contractors to cover banking fees, audit costs, and liability insurance.

PRO

- Consolidates most duplicative positions among contractors. Should result in lowest costs of the three JPA options.
- Provides greatest efficiency in coordinating

CON

- Confusion likely in first year of implementation
- Existing contractor infrastructure disappears. Problematic if NPFMC decides

JPA OPTION 3

observer deployments. Port coordinator could adjust assignments without regard to observer contractor vessel assignments.

- Could maximize deployed time for observers
- Provides a single contact point for vessels
- Do not need a mechanism for assigning vessels to contractors
- Closer working relationship with NMFS and observers will allow tighter program control.

to return to the present system

- Need a mechanism for dividing available work among the contractors. See Assignment of Work Options.
- Vessels will be required to give more prior notice of fishing plans than they do at the present time.
- NMFS needs to develop management structure to ensure vessel compliance. Waivers of observer requirements must be rare.

APPENDIX 2

JPA options for the assignment of work among observer contractor companies

Competition has been an important determinant of market share, efficiency, and service for North Pacific observer contractors. Since vessels are free to choose which contractor provides their observer coverage, contractors have been strongly motivated to minimize their operating costs, and to make extraordinary efforts to accommodate the operational needs of their vessel clients. Their ability to accomplish this ultimately influences their market share. With the injection of a third party into the process, many of these incentives are removed. Vessels are no longer free to change observer contractors at will and the third party guarantees payment, so there may be limited incentives to encourage efficiency. All JPA options must face the challenge of assigning market share to existing (or future) contractors, without destroying the efficiencies that have developed under the current system. The following options are among those that could be considered:

ASSIGNMENT OF WORK OPTION 1	
<p>Description: PSMFC could assign projected business annually based solely on past levels of observer days provided by each of the existing observer contractors in a base year (or average of years). Since there would be no competition between contractors, PSMFC would establish the base price per observer day based on established observer compensation levels and a fixed allowance for contractor overhead and profit combined. Observer contractors would be free to maximize profit (within the limits of the allowance) by achieving efficiencies in operations and overhead costs.</p>	
<p>PRO</p> <ul style="list-style-type: none"> • Simplest system to administer • Vessels receive assurance of observer coverage at a specified rate, and all vessels pay the same daily rate for observer coverage. • Contractors are assured a level of business to recover fixed costs 	<p>CON</p> <ul style="list-style-type: none"> • Lack of competition may breed complacency on the part of contractors, and levels of service may suffer. Since contractors will not competitively bid against each other, a vessel cannot go anywhere else, and payment is guaranteed, a contractor has little incentive to minimize costs or go to extraordinary lengths to accommodate a vessel. • Rates authorized by PSMFC may be higher than those possible with competition. • Difficult to allow participation by new contractors. • Difficult to accommodate existing contractors who wish to increase their current market share.

ASSIGNMENT OF WORK OPTION 2

Description:

PSMFC could divide the annual projected business in observer days into an assigned segment and a competitive segment. For example, 60% of annual business could be assigned based on levels of observer days provided during the previous year by each observer contractor, with the remaining 40% of the year based on competitive bid. The proportions assigned to each contractor in successive years would be based on the overall proportion of business (assigned plus competitive) provided during the previous year. PSMFC would establish the base price during the assigned segment of the year, based on established observer compensation levels and an allowance for contractor overhead and profit. Bids in the competitive segment could also serve as a guide for setting the base price in successive years.

PRO

- During the assigned portions of the year, vessels receive assurance of observer coverage at a specified rate, and all vessels pay the same daily rate for observer coverage.
- During the competitive portions of the year, observer rates will probably be lower, as observer contractors will have met their fixed costs and seek to maintain or increase future market share.
- Contractors are assured a portion of their business to recover fixed costs

CON

- More administratively complex than Option 1. Bidding process will increase FAX and telephone costs.
- PSMFC must still determine rates during the assigned portion of the year, and rates authorized by PSMFC may be higher than those possible with competition.
- New contractor participants will be relegated to participation only during the competitive portions of the year.
- New contractors may have performance problems in the start-up phase, increasing uncertainty in the entire program.
- Selection of suitable assigned and competitive portions of the year will be complicated, since some vessels may participate in assigned and competitive portions sequentially. Contracts with vessels and relationships with contractors will be limited to one portion of the year, and the contractor providing coverage could change several times throughout the year. That schedule may not meet the coverage needs of some vessels.
- Vessels fishing side-by-side in the competitive segment of the season may pay different rates for observer coverage.

ASSIGNMENT OF WORK OPTION 3

Description:

PSMFC would assign all business to observer contractors based on competitive bidding, and no contractor would be assured a segment of the business. Vessels would contact PSMFC to arrange observer coverage for any period up to a year in length, and PSMFC would request bids for this coverage on a request-by-request (task order) basis. Several vessels could be grouped into a bid package or modules if there was justification to do so. Contractors would be free to bid on as many (or as few) contracts as desired.

PRO

- Over the long term, competition should insure efficiency and economy
- Arbitrary assignment of market share and pricing by PSMFC would be unnecessary
- Prices later in the season should be lower, as contractors are assured of meeting fixed costs.
- New contractors would be free to enter the market as they were competitively able to do so.

CON

- Most administratively complex of the work assignment options.
- Observer contractors would be unable to plan for fixed costs, or plan investment in new observer training.
- Prices in the beginning of the season will probably be higher as contractors build fixed costs into bids.
- Vessels fishing side-by-side may pay different rates for observer coverage.
- Vessels would not have advance assurance that observer costs were as low as possible. Some might choose to make only short term commitments, hoping to get lower prices later. This could increase the amount of bidding needed.
- New contractors may have performance problems in the start-up phase, increasing uncertainty in the entire program.

TABLES

Table 1. Relative comparison of alternatives and options for procurement of observer services. A rating of '0' indicates an alternative or option does not address a specified criteria, a rating of '5' indicates the criteria is fully addressed.

Criteria	Status quo		JPA			PBO ^a
	current salary (\$94/day)	assumed salary increase (\$156/day)	Opt. 1	Opt. 2	Opt. 3	
1	0	2	3	3	4	5
2	0	4 ^b	5	5	5	5
3 ^c	4	4	4	4	4	4
4	2	3	4	4	4	5
5 ^d	5	5	3	3	4	4
6	3	3	3	4	4	5
7	n/a	n/a	5	4	3	n/a
8	n/a	n/a	5	4	4	0 ^e

Criteria

1. Eliminate concerns about conflict of interest when fishing companies enter into private negotiations with observer companies or observers.
Provide adequate compensation to observers for services rendered.
 3. Meet industry demands for observer services.
 4. Retain quality observers within the program.
 5. Maintain a cost effective infrastructure for providing observer services to industry.
 6. Improve working relationship between NMFS and NMFS-certified observers.
 7. Provide assurance that observer coverage needs could be met in the event the JPA is discontinued due to unanticipated events.
 8. Provide the ability to implement an alternative procurement program for observer services no later than January 1999.
- a. For purposes of comparison, a federal performance-based organization that directly hires observers and manages the deployment and evaluation of observers would provide the best possible observer program from the perspective of ensuring data integrity and quality.
- b. Increased salary under status quo may not occur for non union companies.
- c. Guarantee of meeting industry demand not assured under current program if a vessel delays making arrangements or NMFS unexpectedly opens a fishery for a short period of time.
- d. Cost effective from industry's perspective (i.e., under which option does industry pay the least?), using Table 2 for relative total cost/day estimates.
- e. Would require statute authority and significant FTE increase, both of which are unlikely by 1999.

JPA OPTIONS SUMMARY

Table 2. Costs Per Deployed Observer Day

CURRENT OBSERVER SALARY RATE			GS5 BASED OBSERVER SALARY RATE		
Status Quo			Status Quo		
Direct Contractor Costs			Direct Contractor Costs		
Observer Salaries	\$94	43%	Observer Salaries	\$156	48%
Payroll Taxes & Insurance	\$30	14%	Payroll Taxes & Insurance	\$59	18%
Deployment Costs	\$17	8%	Deployment Costs	\$22	7%
Other Direct Costs	\$6	3%	Other Direct Costs	\$12	4%
Subtotal Contractor Direct Costs	\$147	68%	Subtotal Contractor Direct Costs	\$249	77%
Indirect Contractor Costs	\$45	21%	Indirect Contractor Costs	\$50	16%
Travel Costs	\$23	11%	Travel Costs	\$23	7%
PSMFC Costs			PSMFC Costs		
Direct Costs	\$0	0%	Direct Costs	\$0	0%
Direct Cost Overhead	\$0	0%	Direct Cost Overhead	\$0	0%
Indirect Cost Overhead	\$0	0%	Indirect Cost Overhead	\$0	0%
Total PSMFC Costs	\$0	0%	Total PSMFC Costs	\$0	0%
Total Cost Per Observer Day	\$216		Total Cost Per Observer Day	\$322	
JPA Option 1			JPA Option 1		
Direct Contractor Costs			Direct Contractor Costs		
Observer Salaries	\$94	42%	Observer Salaries	\$156	48%
Payroll Taxes & Insurance	\$30	14%	Payroll Taxes & Insurance	\$59	18%
Deployment Costs	\$17	8%	Deployment Costs	\$22	7%
Other Direct Costs	\$6	3%	Other Direct Costs	\$12	4%
Subtotal Contractor Direct Costs	\$147	66%	Subtotal Contractor Direct Costs	\$249	76%
Indirect Contractor Costs	\$43	19%	Indirect Contractor Costs	\$47	14%
Travel Costs	\$23	10%	Travel Costs	\$23	7%
PSMFC Costs			PSMFC Costs		
Direct Costs	\$5	2%	Direct Costs	\$5	1%
Direct Cost Overhead	\$1	0%	Direct Cost Overhead	\$1	0%
Indirect Cost Overhead	\$4	2%	Indirect Cost Overhead	\$4	1%
Total PSMFC Costs	\$9	4%	Total PSMFC Costs	\$9	3%
Total Cost Per Observer Day	\$223		Total Cost Per Observer Day	\$328	
JPA Option 2			JPA Option 2		
Direct Contractor Costs			Direct Contractor Costs		
Observer Salaries	\$94	42%	Observer Salaries	\$156	47%
Payroll Taxes & Insurance	\$30	14%	Payroll Taxes & Insurance	\$59	18%
Deployment Costs	\$16	7%	Deployment Costs	\$21	6%
Other Direct Costs	\$6	3%	Other Direct Costs	\$12	4%
Subtotal Contractor Direct Costs	\$146	65%	Subtotal Contractor Direct Costs	\$248	75%
Indirect Contractor Costs	\$38	17%	Indirect Contractor Costs	\$42	13%
Travel Costs	\$23	10%	Travel Costs	\$23	7%
PSMFC Costs			PSMFC Costs		
Direct Costs	\$11	5%	Direct Costs	\$11	3%
Direct Cost Overhead	\$2	1%	Direct Cost Overhead	\$2	1%
Indirect Cost Overhead	\$4	2%	Indirect Cost Overhead	\$4	1%
Total PSMFC Costs	\$17	8%	Total PSMFC Costs	\$17	5%
Total Cost Per Observer Day	\$224		Total Cost Per Observer Day	\$329	

JPA OPTIONS SUMMARY

Table 2. Costs Per Deployed Observer Day

CURRENT OBSERVER SALARY RATE			GS5 BASED OBSERVER SALARY RATE		
JPA Option 3			JPA Option 3		
Direct Contractor Costs			Direct Contractor Costs		
Observer Salaries	\$94	43%	Observer Salaries	\$156	48%
Payroll Taxes & Insurance	\$30	14%	Payroll Taxes & Insurance	\$59	18%
Deployment Costs	\$16	7%	Deployment Costs	\$21	6%
Other Direct Costs	\$6	3%	Other Direct Costs	\$12	4%
Subtotal Contractor Direct Costs	\$146	67%	Subtotal Contractor Direct Costs	\$248	76%
Indirect Contractor Costs	\$29	13%	Indirect Contractor Costs	\$33	10%
Travel Costs	\$23	10%	Travel Costs	\$23	7%
PSMFC Costs			PSMFC Costs		
Direct Costs	\$15	7%	Direct Costs	\$15	5%
Direct Cost Overhead	\$2	1%	Direct Cost Overhead	\$2	1%
Indirect Cost Overhead	\$4	2%	Indirect Cost Overhead	\$4	1%
Total PSMFC Costs	\$21	10%	Total PSMFC Costs	\$21	6%
Total Cost Per Observer Day	\$219		Total Cost Per Observer Day	\$325	

NOTES:

- Observer Salaries: Includes observer compensation for days at sea during a deployment.
- Payroll Taxes and Insurance: Includes Social Security, Workers Compensation, Unemployment, and CGL.
- Deployment Costs: Includes observer compensation during briefing, debriefing, and transit; and for observer per diem and lodging during deployment.
- Other Direct Costs: Includes observer compensation, lodging and medical expenses during training.
- Indirect Contractor Costs: Includes contractor administrative employee compensation and payroll taxes, other taxes, professional services, rents, utilities, maintenance, and profit.

PSMFC ASSUMPTIONS

Table 3. PSMFC Program Cost Assumptions

Personnel	Location	Range	Monthly Rate	Monthly Benefits	Monthly Salary
Project manager	Seattle / Portland	GS-13	\$4,511	\$1,669	\$6,180
Bookkeeper/accounts payable	Seattle / Portland	GS-10	\$2,881	\$1,066	\$3,947
Port coordinator	Dutch Harbor	GS-11	\$3,728	\$1,379	\$5,107
Port coordinator	Kodiak	GS-11	\$3,728	\$1,379	\$5,107
Deployment coordinator #1	Seattle / Portland	GS-11	\$3,165	\$1,171	\$4,336
Deployment coordinator #2	Seattle / Portland	GS-11	\$3,165	\$1,171	\$4,336

Travel	Rate
Airfares - Portland/Anchorage	\$680
Airfares - Portland/Dutch Harbor	\$1,444
Airfares - Portland/Kodiak	\$714
Per diem days - Anchorage	\$217

Telephone/FAX	Rate Basis	Rate
Local per line	Monthly	\$25.77
Long Distance WA	Minute	\$0.13
Long Distance AK	Minute	\$0.17
800 Number fee	Monthly	\$5.00

Rentals	Space per Office	Rate per Square Foot	Monthly Rate
Office rent - Gladstone	120	\$1.82	\$218.75
Seattle office rent			\$0.00
Field Office rent			\$1,800
Field Office vehicle rent			\$500

Supplies	Monthly Rate
Office supplies - unit cost per person per month	\$50
Postage - per month	\$300
Field office utilities	\$500
Field office maintenance	\$100

Equipment	Expected Life (mo.)	Base Price	Monthly Rate
Computers	36	\$2,000	\$56
Computer printer	36	\$800	\$22
Desk, chair, filing cabinet	60	\$2,000	\$33

PSMFC Direct Cost Overhead Rate	15%
PSMFC Indirect Cost Overhead Rate	2%

Banking fees	Covered by 2% fee on contractor payments
Accounting/audit	Covered by 2% fee on contractor payments
Liability insurance	Covered by 2% fee on contractor payments

PSMFC USAGE

Table 4. Projected Annual PSMFC Activity Levels

	Status			
	Quo	Option 1	Option 2	Option 3
Personnel Months				
Project manager		12	12	12
Bookkeeper/accounts payable		12	12	12
Port coordinator - Dutch Harbor			12	12
Port coordinator - Kodiak			12	12
Deployment coordinator #1				12
Deployment coordinator #2				12
Travel				
Airfares - Portland/Anchorage	0	6	6	8
Airfares - Portland/Dutch Harbor	0	0	2	2
Airfares - Portland/Kodiak	0	0	2	2
Per diem days - Anchorage	0	18	20	26
Telephone/FAX				
Local lines - number needed	0	1	3	4
Long Distance WA minutes per month	0	400	400	800
Long Distance AK minutes per month	0	600	1400	3400
800 Number - number needed	0	0	0	1
Rentals				
Gladstone - number of office months	0	12	12	12
Seattle - number of office months	0	12	12	36
Field Office - number of office months	0	0	24	24
Field Office vehicle - number of vehicle months	0	0	24	24
Supplies				
Office supplies - number of units	0	2	4	6
Postage	0	1	1	1
Field office utilities - months	0	0	24	24
Field office maintenance - months	0	0	24	24
Equipment				
Computers - number needed	0	2	4	6
Computer printer	0	1	2	3
Desks, chairs, filing cabinets	0	2	4	6
PSMFC Direct Cost Overhead	0	1	1	1
PSMFC Indirect Cost Overhead				
Banking fees	0	1	1	1
Accounting/audit	0	1	1	1
Liability insurance	0	1	1	1

PSMFC DIRECT COST

Table 5. Projected Annual PSMFC Direct Costs

	Status			
Personnel	Quo	Option 1	Option 2	Option 3
Project manager	\$0	\$74,161	\$74,161	\$74,161
Bookkeeper/accounts payable	\$0	\$47,364	\$47,364	\$47,364
Port coordinator - Dutch Harbor	\$0	\$0	\$61,288	\$61,288
Port coordinator - Kodiak	\$0	\$0	\$61,288	\$61,288
Deployment coordinator #1	\$0	\$0	\$0	\$52,033
Deployment coordinator #2	\$0	\$0	\$0	\$52,033
Travel				
Airfares - Portland/Anchorage	\$0	\$4,080	\$4,080	\$5,440
Airfares - Portland/Dutch Harbor	\$0	\$0	\$2,888	\$2,888
Airfares - Portland/Kodiak	\$0	\$0	\$1,428	\$1,428
Per diem days - Anchorage	\$0	\$3,906	\$4,340	\$5,642
Telephone/FAX				
Local lines	\$0	\$309	\$928	\$1,237
Long Distance WA	\$0	\$612	\$612	\$1,224
Long Distance AK	\$0	\$1,224	\$2,856	\$6,936
800 Number	\$0	\$0	\$0	\$60
Rentals				
Office rent - Gladstone	\$0	\$2,625	\$2,625	\$2,625
Seattle office rent	\$0	\$0	\$0	\$0
Field Office rent	\$0	\$0	\$43,200	\$43,200
Field Office vehicle rent	\$0	\$0	\$12,000	\$12,000
Supplies				
Office supplies	\$0	\$1,200	\$2,400	\$3,600
Postage	\$0	\$3,600	\$3,600	\$3,600
Field office utilities	\$0	\$0	\$12,000	\$12,000
Field office maintenance	\$0	\$0	\$2,400	\$2,400
Equipment				
Computers	\$0	\$1,333	\$2,667	\$4,000
Computer printer	\$0	\$267	\$533	\$800
Desks, chairs, filing cabinets	\$0	\$800	\$1,600	\$2,400
Subtotal PSMFC Direct Costs	\$0	\$141,481	\$344,258	\$459,646
PSMFC Direct Cost Overhead	\$0	\$21,222	\$51,639	\$68,947
Total PSMFC Direct & Overhead Cost	\$0	\$162,703	\$395,897	\$528,593

WAGES

Table 6. GS5-Based Observer Salary Schedule Assumptions

Observer Experience	Assumed Observer Profile	GS Ranking	Hourly Rate	Hourly Overtime Rate	Regular Week Daily Wage	Regular Week Wages	Regular Week Overtime Wages	Weekend Wages	Average Daily Wage Including Overtime
New	39%	GS5-1	\$9.96	\$14.94	\$79.68	\$398	\$299	\$359	\$150.82
1-2 Cruises	29%	GS5-2	\$10.29	\$15.44	\$82.32	\$412	\$309	\$370	\$155.82
2-5 Cruises	19%	GS5-3	\$10.62	\$15.93	\$84.96	\$425	\$319	\$382	\$160.82
>5 Cruises	14%	GS5-4	\$10.95	\$16.43	\$87.60	\$438	\$329	\$394	\$165.81
Weighted Average					\$82.52				\$156.19

Assumes:

1. Work week = 84 hours (12 hours x 7 days) during deployment
2. Overtime rate = 1.5 x regular hourly rate
3. Regular Week Wage = 40 hours (8 hours x 5 days x hourly regular rate)
4. Regular Week Overtime Wage = 20 hours (4 hours x 5 days x hourly overtime rate)
5. Weekend Wage = (12 hours x 2 days x hourly overtime rate)
6. In the GS5 scenario, observers are paid 12 hours per day while deployed (Average Daily Wage Including Overtime), and 8 hours per day during briefing, debriefing, transit and training (Regular Week Daily Wage).

OBSERVER EXPERIENCE

Table 7. Observer Deployments by Levels of Experience

Year	1990	1991	1992	1993	1994	1995	1996
Percentage by Year							
New	77%	52%	37%	24%	40%	40%	36%
1-2 Cruises	23%	40%	40%	35%	24%	32%	30%
2-5 Cruises	0%	9%	22%	32%	24%	14%	19%
>5 Cruises	0%	0%	2%	9%	12%	15%	15%
Averages							
	7-Year	6-Year	5-Year	4-Year	3-Year	2-Year	Last Year
New	44%	38%	36%	35%	39%	38%	36%
1-2 Cruises	32%	33%	32%	30%	29%	31%	30%
2-5 Cruises	17%	20%	22%	22%	19%	16%	19%
>5 Cruises	7%	9%	10%	13%	14%	15%	15%

The assumed observer experience profile used in related sheets is :

- 3-Year**
- 39% New
- 29% 1-2 Cruises
- 19% 2-5 Cruises
- 14% >5 Cruises

Number of Observed Days	1995	1996	Average
	31,163	31,430	31,297

DEBRIEFING

Table 8. Length of observer debriefings in 1995
(Based on April 1996 Draft SOW)

Days	Debriefings		Total Observer Days
	Dutch Harbor and Kodiak	Seattle	
1	8	114	122
2	1	43	88
3	6	69	225
4	0	31	124
5	3	38	205
6	1	61	372
7	3	53	392
8		46	368
9		17	153
10		11	110
11		7	77
12		5	60
13		2	26
14		3	42
15		4	60
16		1	16
17		0	0
18		2	36
Total	22	507	2,476

Average length (in days) of an observer debriefing = 4.68

AIR FARES

Table 9. Air fares from Anchorage and Seattle to selected points of observer departure. All fares are round trip, at corporate rates. Rates are those in effect 8/26/97.

Destination	Seattle to	Seattle to	Anchorage	Anchorage	Seattle to	Anchorage to
	Destination	Destination	to	to	Destination	Destination
	Regular	14-day	Destination	14-day	14-day	14-day
	Fare	Advance	Regular	Advance	Advance	Advance
		Fare	Fare	Fare	Discount	Discount
AKUTAN	\$2,084	\$1,008	\$1,020	\$870	-52%	-15%
COLD BAY	\$2,072	\$1,040	\$812	\$690	-50%	-15%
CORDOVA	\$1,420	\$594	\$276	\$172	-58%	-38%
DUTCH HARBOR	\$2,190	\$1,444	\$1,034	\$710	-34%	-31%
HOMER	\$1,394	\$648	\$364	\$134	-54%	-63%
KENAI	\$1,348	\$602	\$364	\$134	-55%	-63%
KETCHIKAN	\$656	\$396	\$620	\$442	-40%	-29%
KING COVE	\$1,976	\$1,145	\$932	\$810	-42%	-13%
KODIAK	\$1,460	\$714	\$458	\$275	-51%	-40%
PELICAN	\$978	\$459	\$664	\$520	-53%	-22%
PETERSBURG	\$736	\$426	\$596	\$418	-42%	-30%
PRINCE RUPERT	\$706	\$446	\$670	\$492	-37%	-27%
SAND PT	\$2,072	\$1,074	\$812	\$560	-48%	-31%
SEATTLE			\$1,260	\$514		-59%
SEWARD	\$1,398	\$652	\$288	\$138	-53%	-52%
SITKA	\$716	\$416	\$502	\$352	-42%	-30%
YAKUTAT	\$816	\$464	\$356	\$246	-43%	-31%

Port of Departure	Deployments			Total Estimated Travel Costs		
	1995	1996	FISH FARE?	1995	1996	Average
AKUTAN	18	6	Yes	\$18,144	\$6,048	\$12,096
COLD BAY	1	0	Yes	\$1,040	\$0	\$520
CORDOVA	3	0		\$4,260	\$0	\$2,130
DUTCH HARBOR	365	294	Yes	\$527,060	\$424,536	\$475,798
HOMER	1	3		\$1,394	\$4,182	\$2,788
KENAI	1	1		\$1,348	\$1,348	\$1,348
KETCHIKAN	0	1		\$0	\$656	\$328
KING COVE	5	9		\$9,880	\$17,784	\$13,832
KODIAK	80	52	Yes	\$57,120	\$37,128	\$47,124
PELICAN	2	0		\$1,956	\$0	\$978
PETERSBURG	0	2		\$0	\$1,472	\$736
PRINCE RUPERT	0	1		\$0	\$706	\$353
SAND POINT	9	3	Yes	\$9,666	\$3,222	\$6,444
SEATTLE	7	15		\$0	\$0	\$0
SEWARD	9	6		\$12,582	\$8,388	\$10,485
SITKA	3	3		\$2,148	\$2,148	\$2,148
YAKUTAT	3	2		\$2,448	\$1,632	\$2,040
UNKNOWN	2	1	Yes	\$2,888	\$1,444	\$2,166
Not Listed	54	135	Yes	\$77,976	\$194,940	\$136,458
TOTAL				\$729,910	\$705,634	\$717,772
Total Observed Days				31,163	31,430	31,297
Cost Per Observed Day				\$23.42	\$22.45	\$22.93

Assumes: All travel based on the Seattle to destination rate.
 Unknown or Not Listed ports of departure used the Dutch Harbor rate.
 Fish fares use 14-day advance rate; all other at regular fare rate

Table 10. Details of groundfish observer costs in 1995 when expressed as a percentage of ex-vessel value of groundfish and groundfish/halibut combined¹.

	Groundfish		Groundfish + Halibut			
	Range	Ave.	Median	Range	Ave.	Median
100% CV TRWL	0.5 - 2.4	1.3	1.3	0.5 - 2.4	1.3	1.3
100% CV FIXED	1.9 - 9.1	3.5	2.7	1.7 - 9.1	3.4	2.7
100% CP TRWL	0.3 - 2.5	1.0	0.9	0.3 - 2.5	1.0	0.9
100% CP FIXED	1.3 - 6.1	2.4	1.9	1.3 - 6.1	2.4	1.9
30% CV TRWL	0.02 - 9.6	1.5	1.2	0.02 - 9.6	1.4	1.2
30% CV FIXED	0.3 - 24.8	2.5	1.4	0.2 - 24.8	2.0	0.9
30% CP TRWL	1.0 - 3.5	2.2	2.4	1.0 - 3.5	2.2	2.4
30% CP FIXED	0.4 - 7.4	2.3	1.6	0.4 - 7.4	2.1	1.4
Shoreplants	0.1 - 0.9	0.5	0.5	0.1 - 0.9	0.5	0.5
Motherships	0.3 - 7.4	1.8	1.1	0.3 - 7.4	1.8	1.1
Total	0.02 - 24.8	1.9	1.3	0.02 - 24.8	1.7	1.2

¹ BSAI = Bering Sea/Aleutian Islands; GOA = Gulf of Alaska; 100% = Vessels > 124 ft.; 30% = Vessels > 60 ft. and < 125 ft.; CV = Catcher Vessel; CP = Catcher Processor; TRWL = Trawler; FIXED = Fixed Gear (Longline & Pot)

Table 11. Details of potential groundfish observer costs expressed as a percentage of ex-vessel value of groundfish and groundfish/halibut combined given an observer cost of \$325 / day for all sectors¹.

	Groundfish		Groundfish + Halibut			
	Range	Ave.	Median	Range	Ave.	Median
100% CV TRWL	0.9 - 4.2	2.3	2.3	0.9 - 4.2	2.3	2.3
100% CV FIXED	3.5 - 16.4	6.3	4.8	3.0 - 16.4	6.1	4.8
100% CP TRWL	0.6 - 4.3	1.7	1.6	0.6 - 4.3	1.7	1.6
100% CP FIXED	2.3 - 11.0	4.2	3.4	2.3 - 11.0	4.2	3.4
30% CV TRWL	0.04 - 16.5	2.5	2.0	0.04 - 16.5	2.3	2.0
30% CV FIXED	0.5 - 40.7	4.1	2.4	0.4 - 40.7	3.2	1.5
30% CP TRWL	1.6 - 5.9	3.8	4.0	1.6 - 5.9	3.8	4.0
30% CP FIXED	0.7 - 12.8	3.9	2.7	0.7 - 12.8	3.6	2.3
Shoreplants	0.1 - 1.5	0.8	0.9	0.1 - 1.5	0.8	0.9
Motherships	0.5 - 13.1	3.1	1.9	0.5 - 13.1	3.1	1.9
Total	0.04 - 40.7	3.2	2.2	0.04 - 40.7	2.9	2.0

¹ BSAI = Bering Sea/Aleutian Islands; GOA = Gulf of Alaska; 100% = Vessels > 124 ft.; 30% = Vessels > 60 ft. and < 125 ft.; CV = Catcher Vessel; CP = Catcher Processor; TRWL = Trawler; FIXED = Fixed Gear (Longline & Pot)

FIGURES

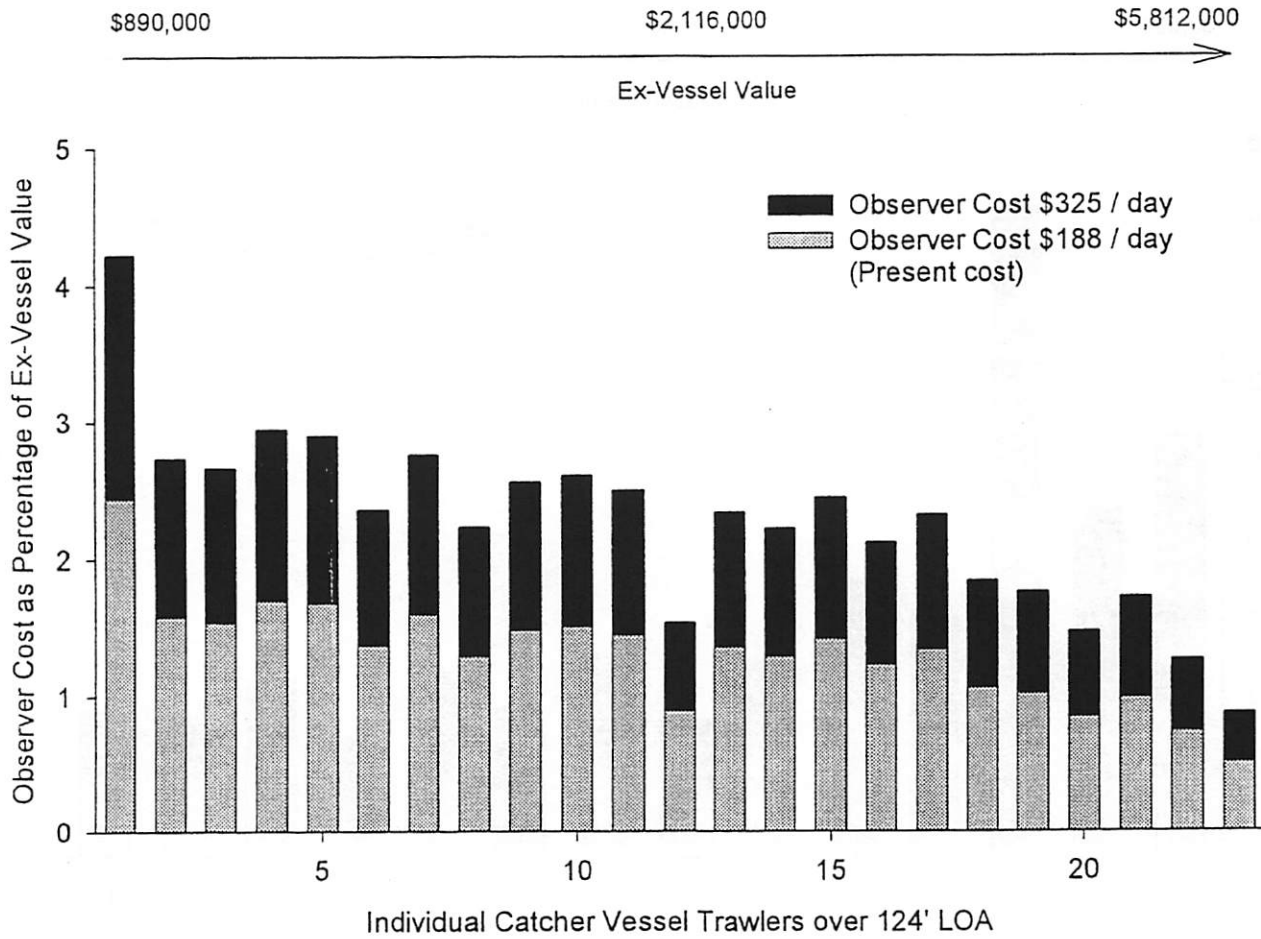


Figure 1. Groundfish observer cost as a percentage of ex-vessel value for catcher vessel trawlers over 124' LOA in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

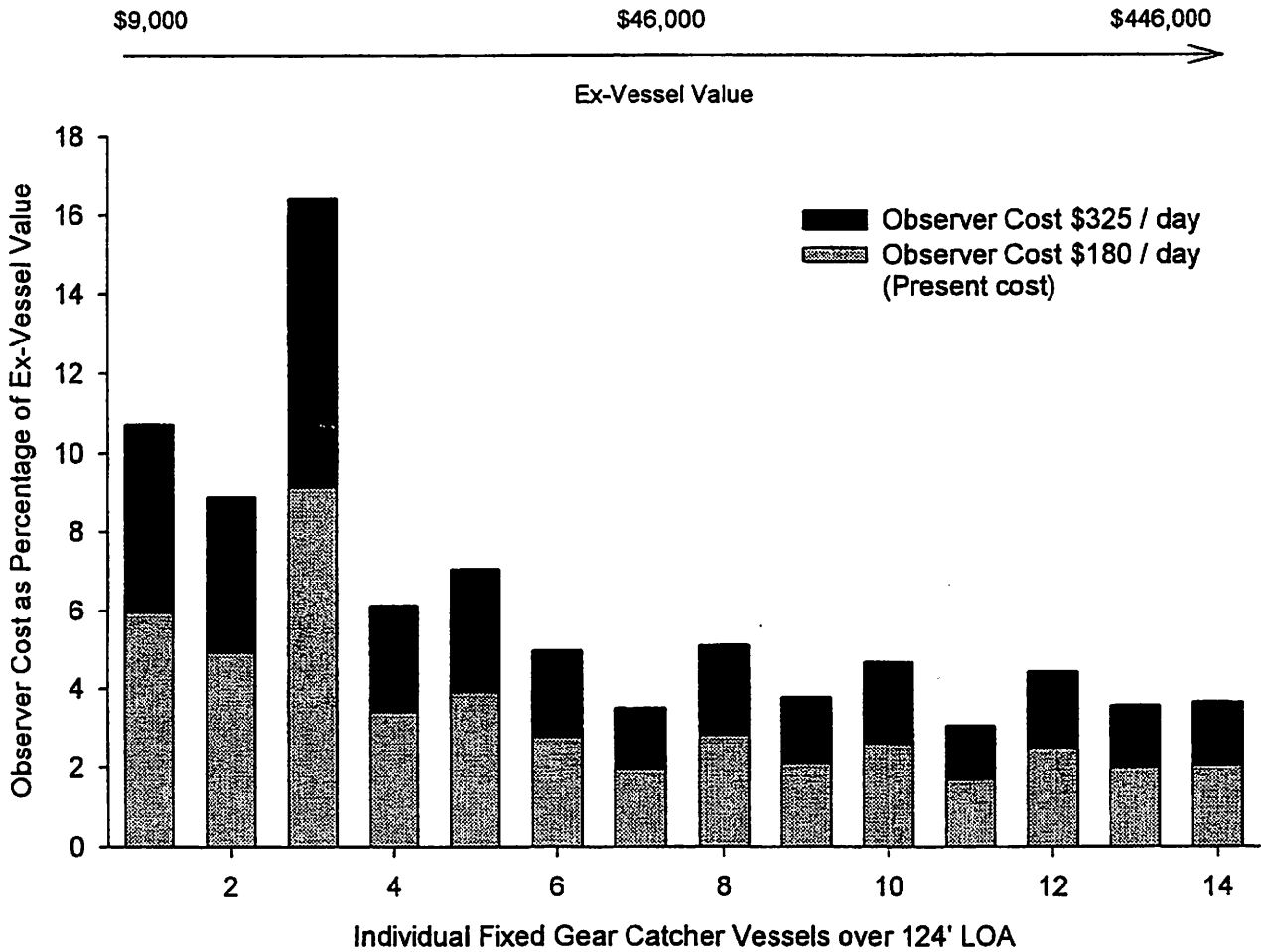


Figure 2. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher vessels over 124' LOA in 1995. Ex-vessel value includes groundfish and halibut landings combined, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

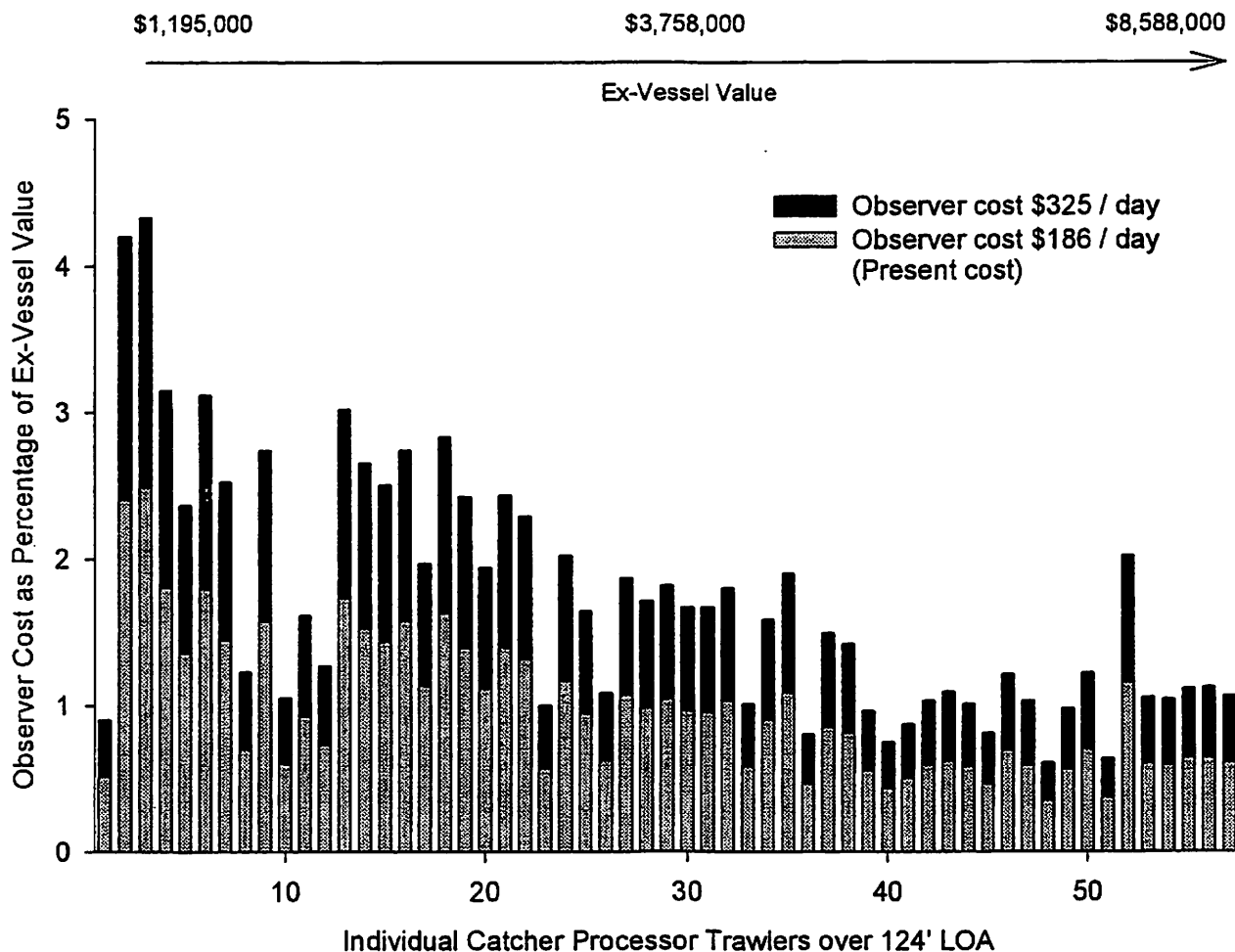


Figure 3. Groundfish observer cost as a percentage of ex-vessel value for catcher processor trawlers over 124' LOA in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

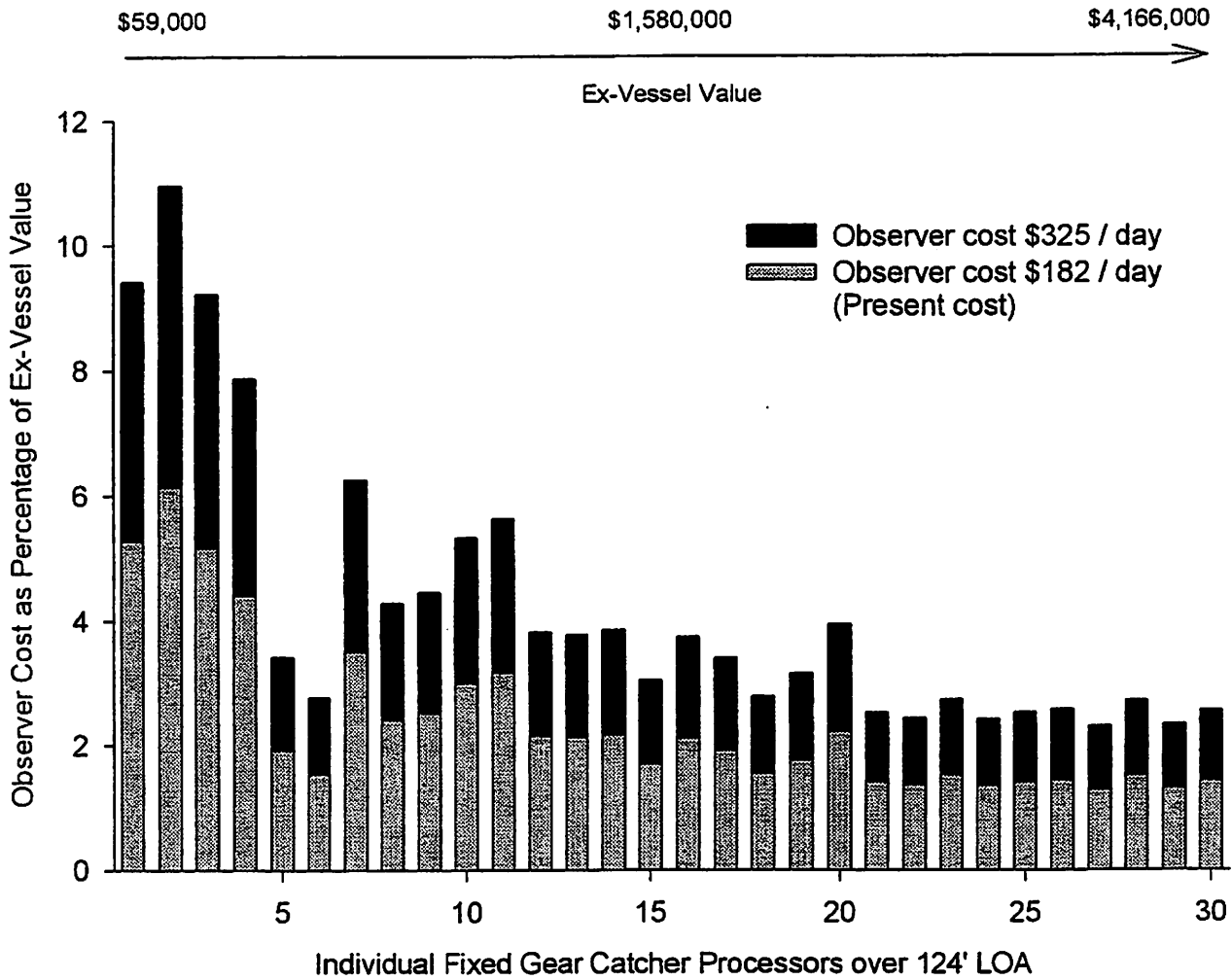


Figure 4. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher processors over 124' LOA in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

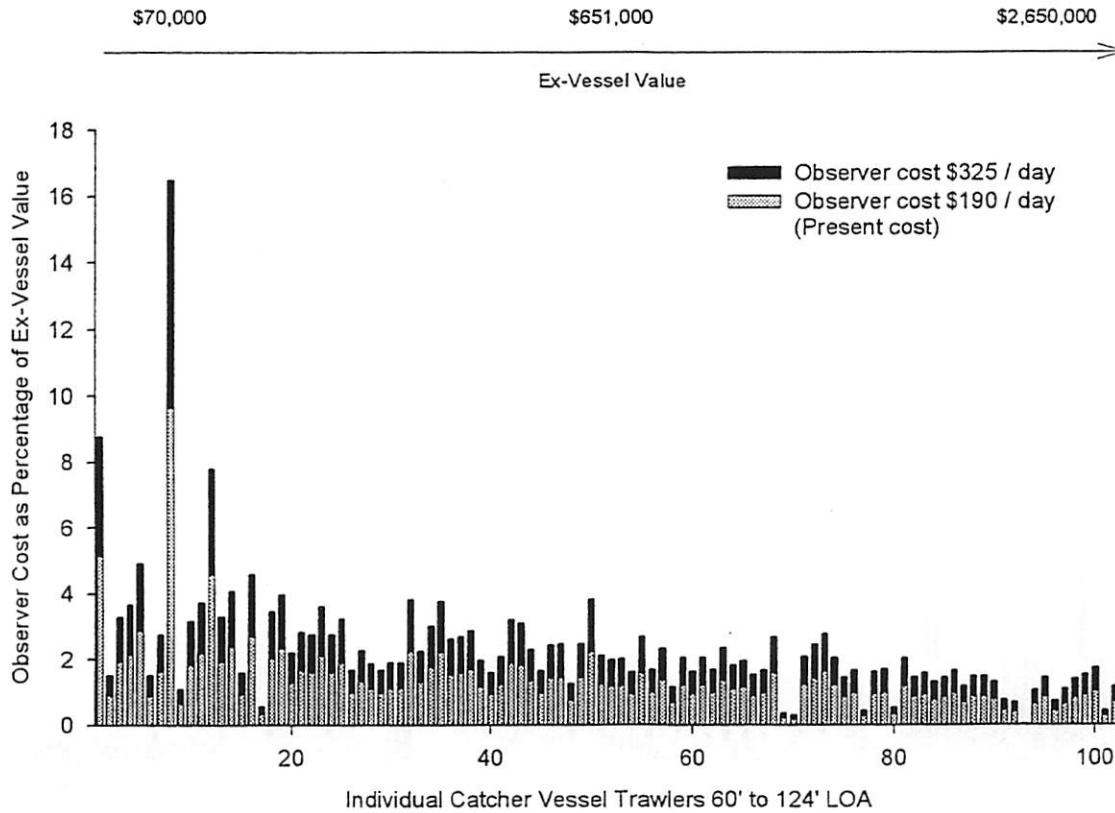


Figure 5. Groundfish observer cost as a percentage of ex-vessel value for catcher vessel trawlers 60' to 124' LOA in 1995. Ex-vessel value includes groundfish and halibut landings combined, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

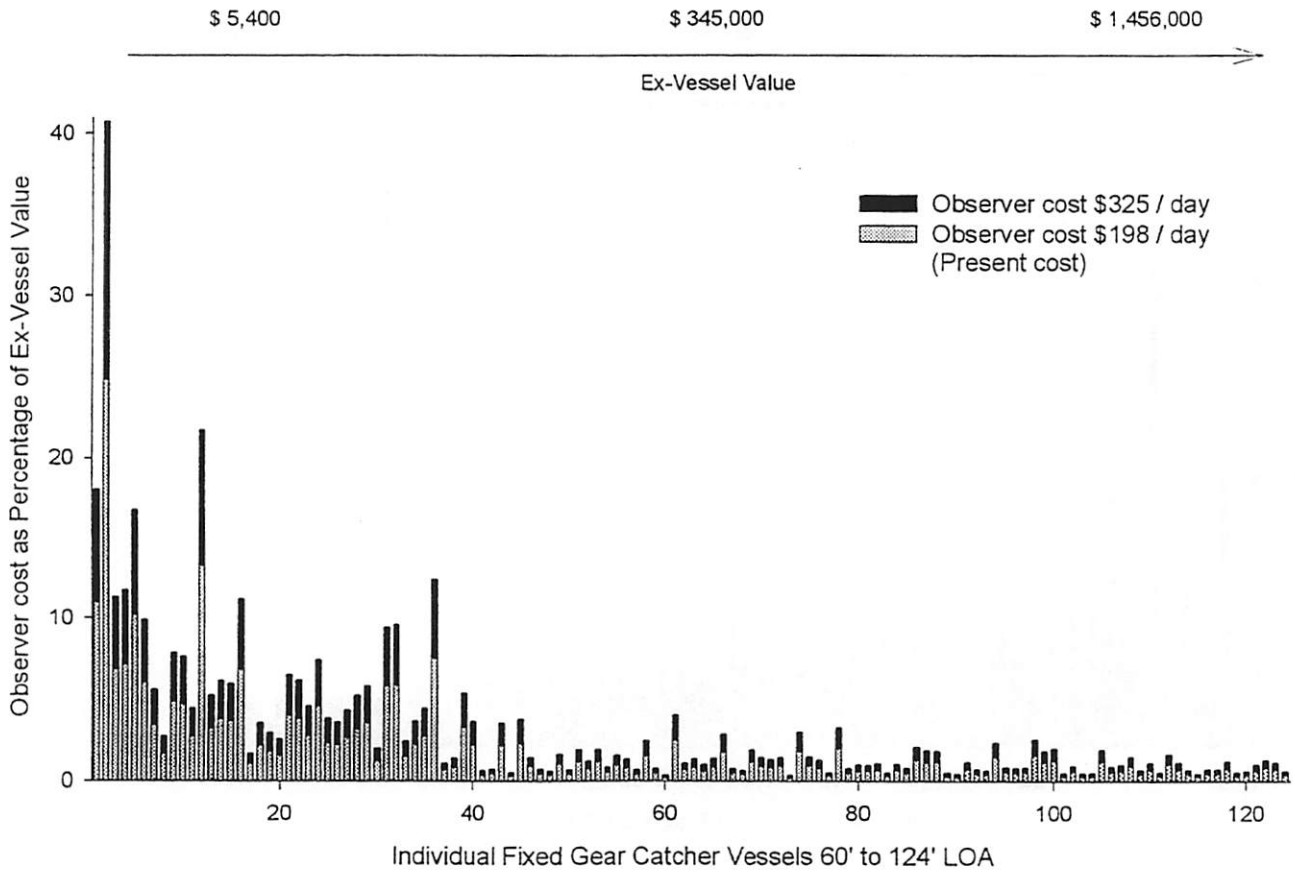


Figure 6. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher vessels 60' to 124' LOA in 1995. Ex-vessel value includes groundfish and halibut landings combined, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

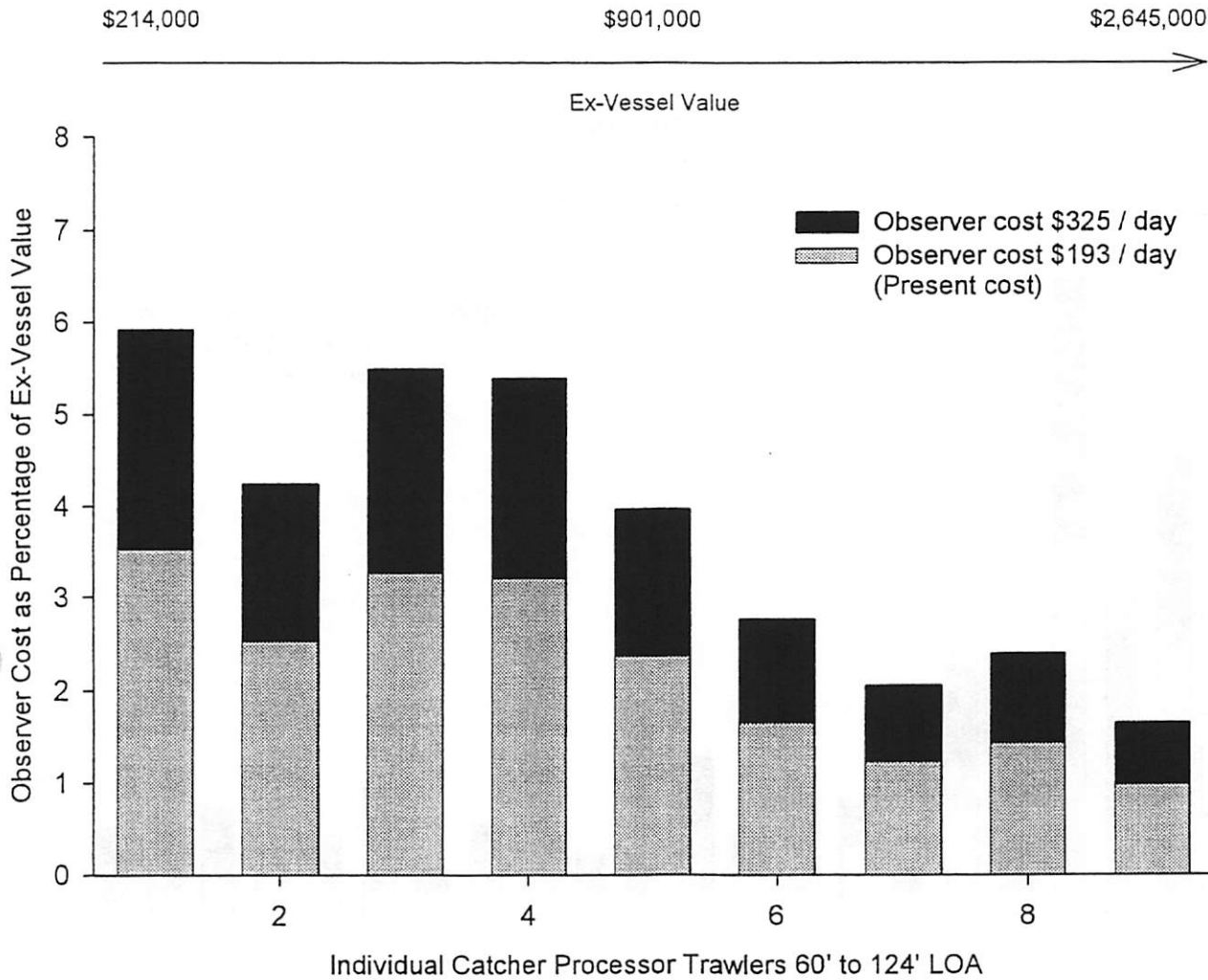


Figure 7. Groundfish observer cost as a percentage of ex-vessel value for catcher processor trawlers 60' to 124' LOA in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

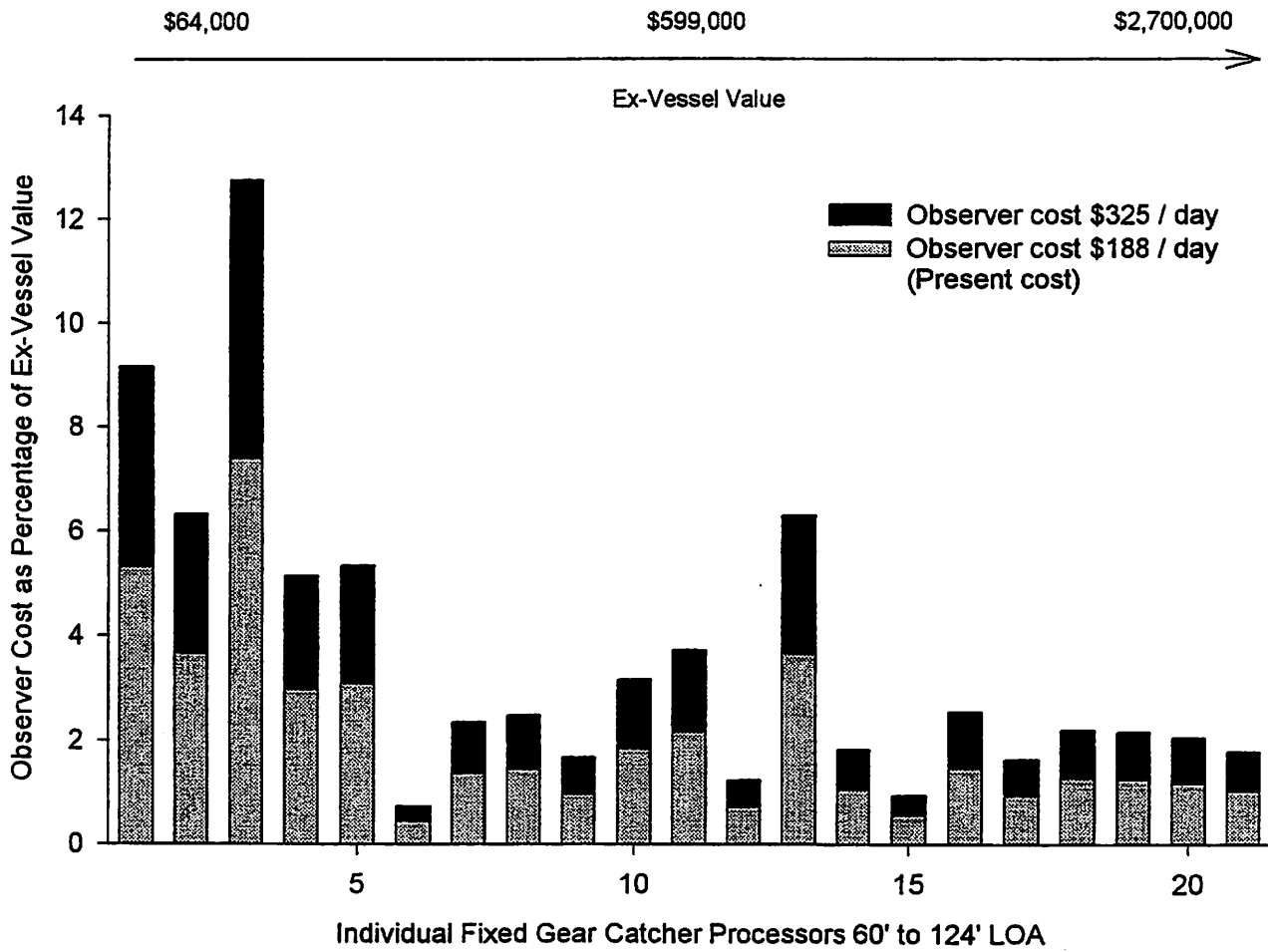


Figure 8. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher processors 60' to 124' LOA in 1995. Ex-vessel value includes groundfish and halibut landings combined, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

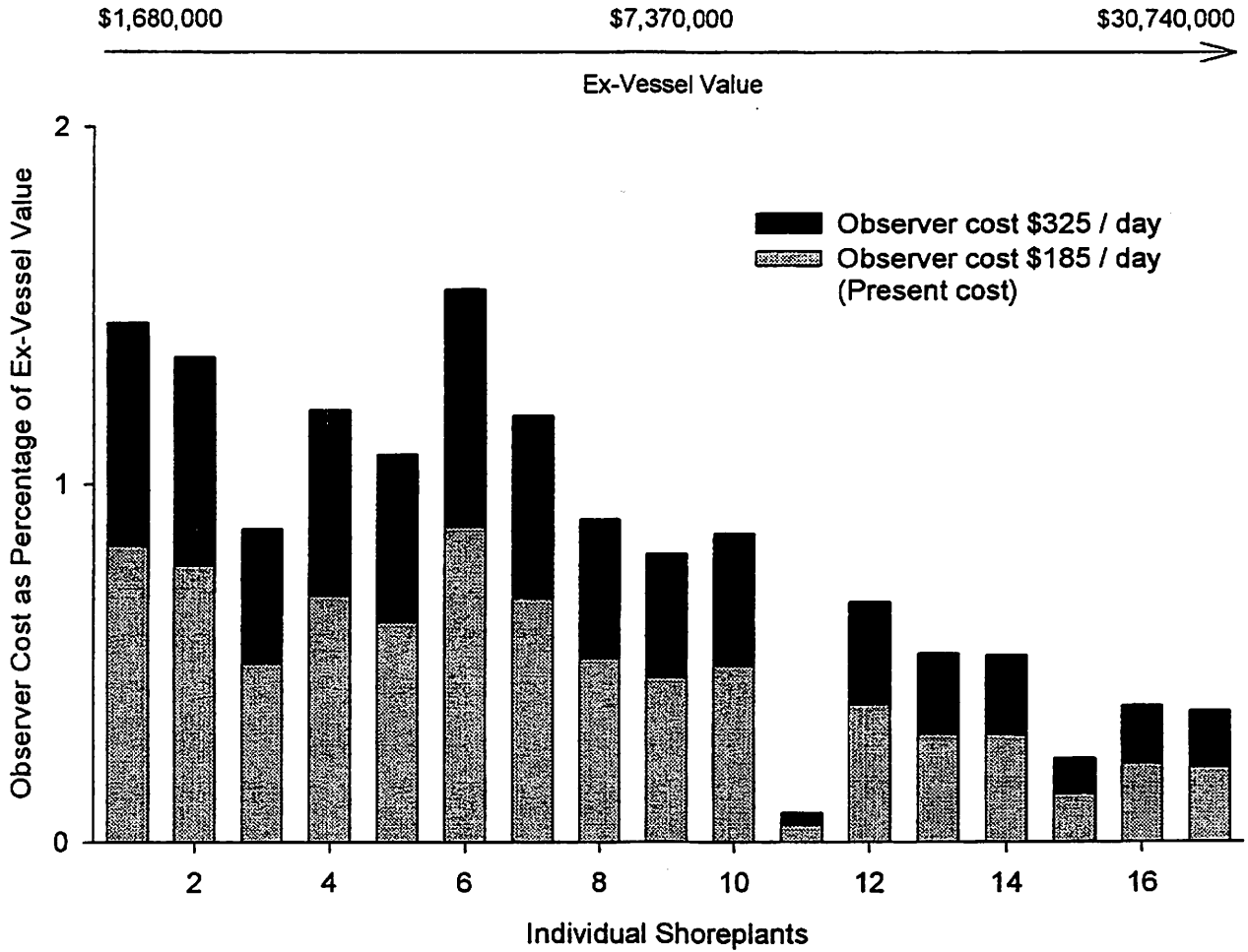


Figure 9. Groundfish observer cost as a percentage of ex-vessel value for shoreplants in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

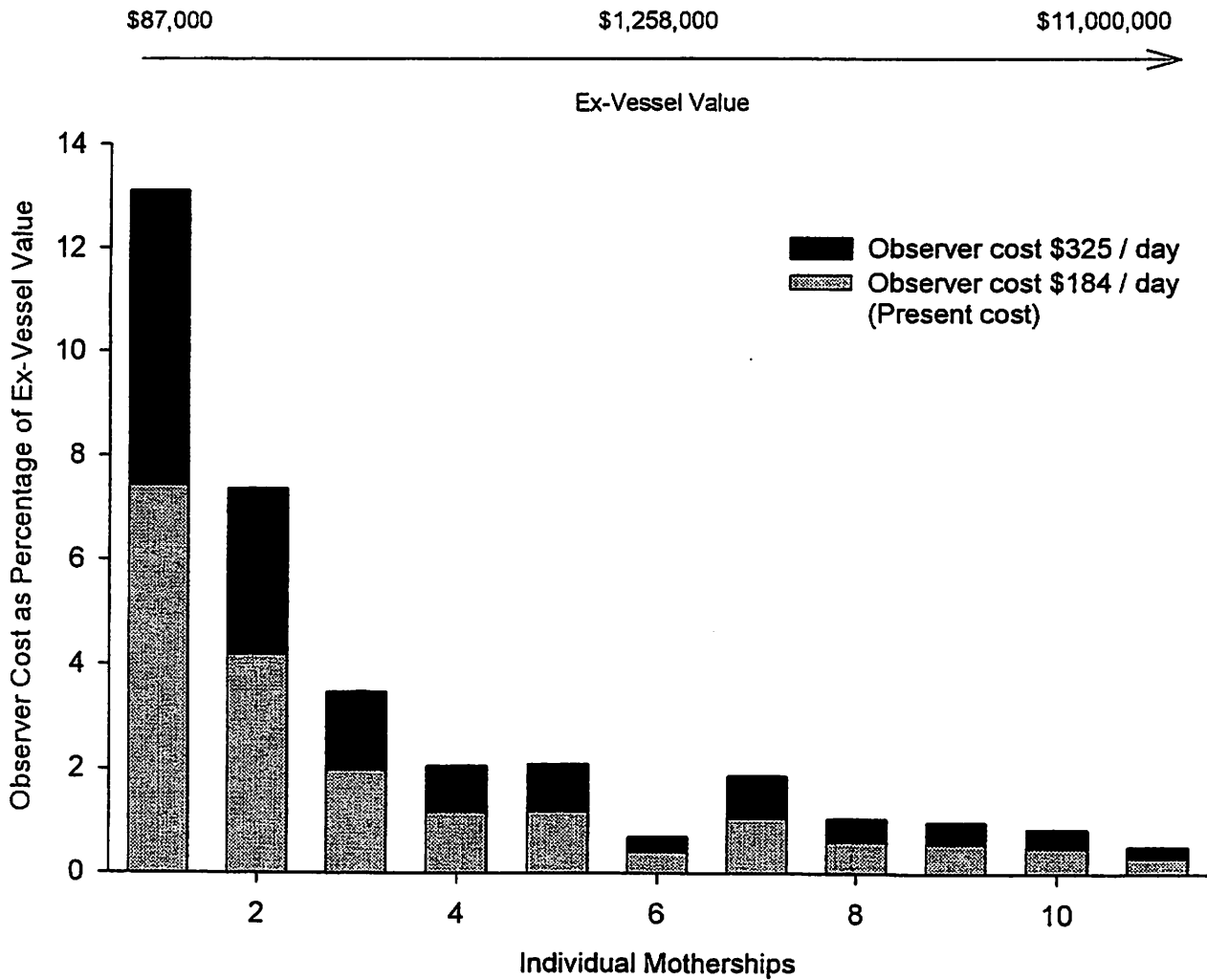


Figure 10. Groundfish observer cost as a percentage of ex-vessel value for motherships in 1995. Ex-vessel value includes groundfish landings only, and increases along the x-axis as indicated by the scale at the top. Black bars indicate potential increase in observer cost associated with increased observer salaries and JPA option 3.

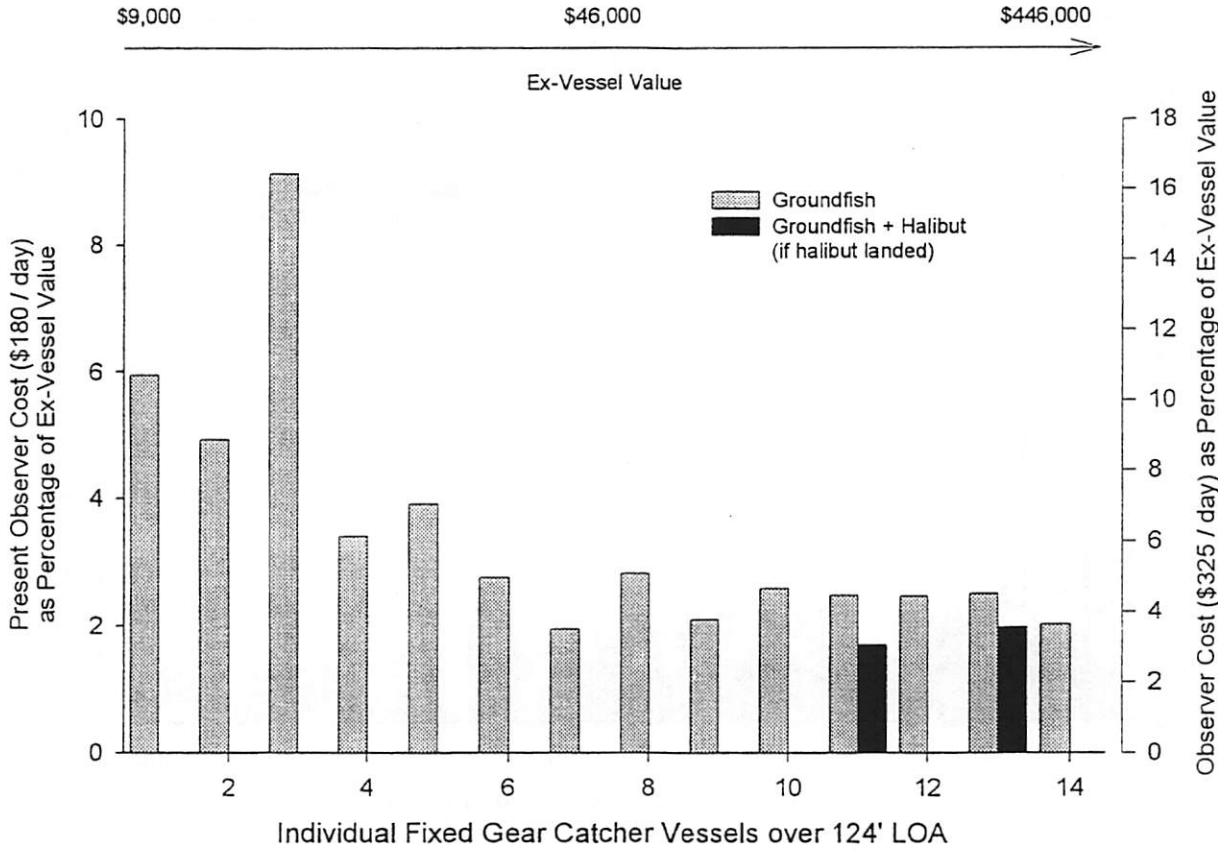


Figure 11. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher vessels over 124' LOA in 1995. Ex-vessel value increases along the x-axis as indicated by the scale at the top. The right y-axis indicates potential increase in observer cost associated with increased observer salaries and JPA option 3.

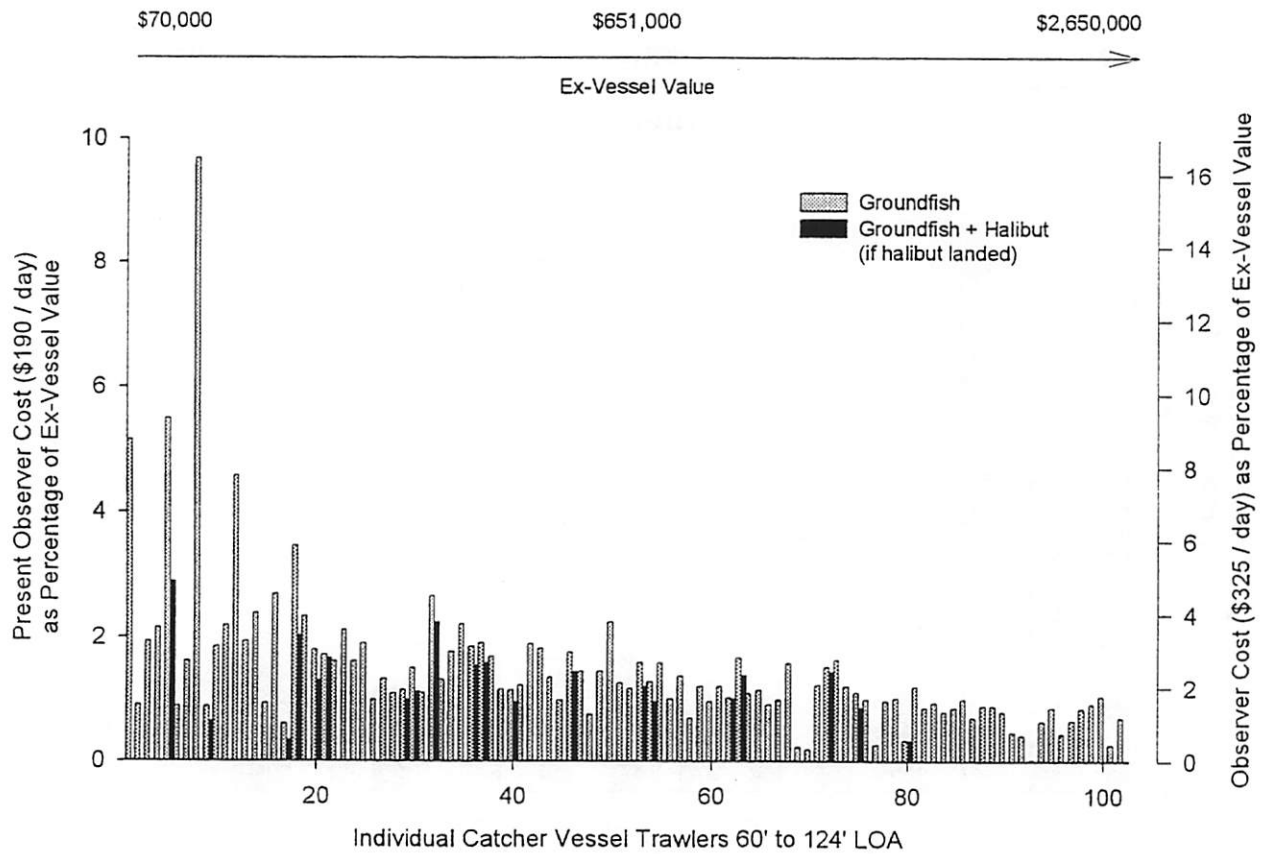


Figure 12. Groundfish observer cost as a percentage of ex-vessel value for catcher vessel trawlers 64' to 124' LOA in 1995. Ex-vessel value increases along the x-axis as indicated by the scale at the top. The right y-axis indicates potential increase in observer cost associated with increased observer salaries and JPA option 3.

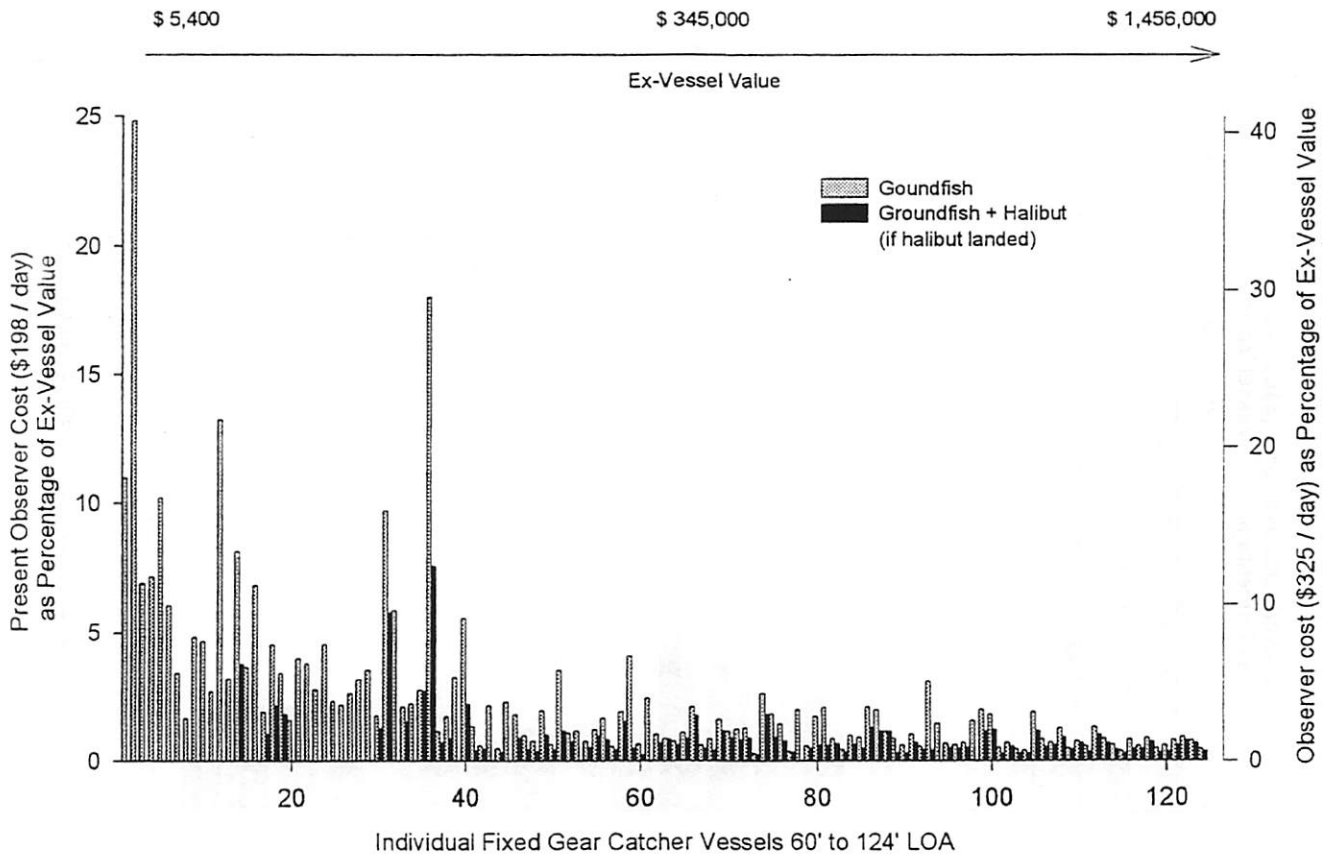


Figure 13. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher vessels 64' to 124' LOA in 1995. Ex-vessel value increases along the x-axis as indicated by the scale at the top. The right y-axis indicates potential increase in observer cost associated with increased observer salaries and JPA option 3.

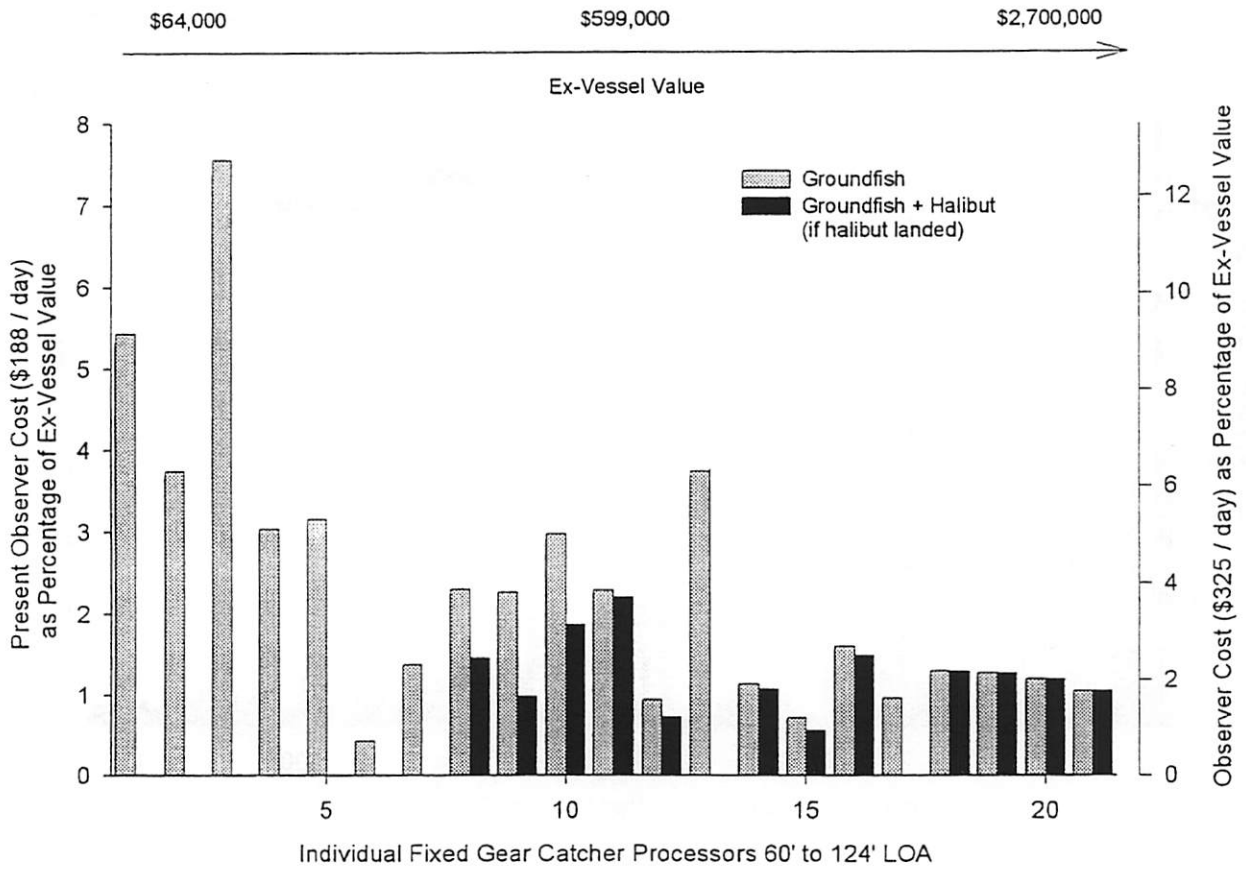
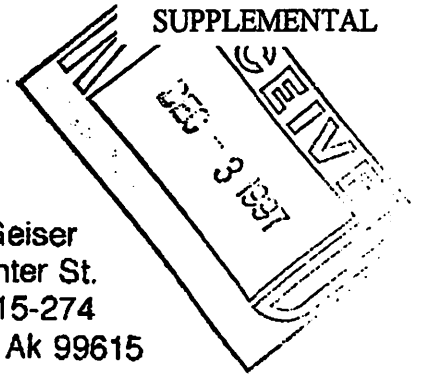


Figure 14. Groundfish observer cost as a percentage of ex-vessel value for fixed gear catcher processors 64' to 124' LOA in 1995. Ex-vessel value increases along the x-axis as indicated by the scale at the top. The right y-axis indicates potential increase in observer cost associated with increased observer salaries and

F/V HAZEL LORRAINE

Mr. Richard Lauber
Chairman, NPFMC
605 West 4th Avenue
Anchorage, Ak 99501-2252

Albert Geiser
202 Center St.
Suite 315-274
Kodiak, Ak 99615



December 3, 1997

Re: **The hidden price of observer coverage**

Dear Richard,

The industry buzz is that the cost of observer coverage is going to increase dramatically for the vessels in the 60 foot and above class very shortly. Coupled with a price increase, we are also going to be placed at arms length from the observer companies. This will make it next to impossible for us to negotiate before the season starts. There will be tremendous pressure from the **all weather class** (125' and above) of vessels to settle at **any cost** to insure no lost time at the beginning of pollock "A" roe season. A potential strike by unionized observers would be too costly for this class. The higher cost to an all weather class vessel may be disagreeable, but to the smaller class vessels this will create higher impacts on the wages of the crew members/captains and effect fishing strategies.

The increased price of observer coverage will be felt most by the **fish plants and the communities of the GOA** in the fourth quarter sole fishery. October and November, in the "gulf", are not known for smooth sailing.... five bad weather days in a row or more are not uncommon. Under the present system observers are paid a *stand-by* wage by the observer company (covered by the boats) and provided a room ashore for bad weather days. If the demands of the unionized observers are met, they will receive a *full* wage in a room ashore as we wait for good weather. Observer fees are taken off the top of the gross stock of my vessel (and many others), directly impacting the wages of the crew. The cost of feeding the observers is also shared by the crew. If the cost of observers out weighs the marginal returns that most vessels expect in those months, I believe many vessels will quit the fishery at the first sign of extended bad weather. The canneries, their workers and the communities will then discover for themselves the **true cost** of the observer program.

The dual paradox of this situation is that unionized workers may adversely impact the wages of crewman who work for a "share" supplying the raw materials for non-unionized plant workers. If the "share" workers feel that their wages will be too low after many bad weather days (observer weather days) they will also "go on strike" or quit the vessels which would stop the flow of fish for the plant workers.

The demands that are filtering down to the fleet level are that the unionized observers want to be paid a full wage for training, briefing, deployment, weather days, observed days (of course), return flight days, debriefing, health insurance, airfare, room, board, rain gear allowance, and taxi fare. Aboard the vessels we provide them room and board for their working environment at cost to the crew and owners. This would make them the only class of workers in the fishing industry with guaranteed

F/V HAZEL LORRAINE

Page 2

Mr. Richard Lauber

The hidden price of observer coverage

wages and benefits when they leave home for work.

As you can imagine this is hard to swallow when all crew members and plant workers pay for their transportation, food, rain gear, gloves, training (on the vessels you start at half share), and lodging when traveling or with sweat on the vessel in the form of maintenance. My crew members are required to learn a higher number of "skill sets" and have to work on demand in all weather conditions with inherent levels of danger for many of their tasks.

The observer programs were supported by the fisherman from the beginning, twenty years ago, with two things in mind; the program would provide much needed data and it would be fair. The data has streamed in over the years providing a corner stone of information to manage the fisheries and make many of the gear improvements to reduce by-catch. For twenty years the observer program has provided jobs and training for students of biology, marine biology, and fisheries. Many have returned for two or three years while some made it a once in a life time adventure. These "summer jobs" have provided wages between **\$2,900-3,200 per month** with all expenses paid. They are now asking for **\$4,900-6,000 per month** and that does not include **46% overhead to the observer contractor**. This program was never conceived as a career choice with wages in the 40-60k category with **all expenses paid**. When I hire a journeyman carpenter, I negotiate a contract, pay \$20 an hour if the person has one year or twenty years of experience (some have degrees) and the clock starts when they arrive at the job. The skill sets for observing have not changed; slitting bellies, sexing, marking a card for length frequency, solving the same math problems and reporting (debriefing is where they correct the math). My personal experience tells me first year observers show a lot more enthusiasm for their work and the end result. Why else would NMFS be adding two extra briefing days....is it because the returning "prior's" are failing the species identifications tests?

If I were a cynic my first thought would be that people involved in the observer business have figured out fishing vessels are trapped in a regulatory box with absolutely no effective way to negotiate in a timely fashion. There is no one that will be verifying a vote for unionization (a card not returned is not counted as a no vote) so a very thin veneer can still cast a very large shadow.

If, as an observer, your first year as a union member is free....and you are not planning to return to make this a career, the industry could experience an endless supply of first year observers with HIGH wages....no risk, and all expenses paid. This opens the doors for the contractors who provide the observers....what incentive is there to negotiate in good faith? This move is driven by greed. That is the down and dirty negative side of this equation as succinctly as I can put it.

Richard, I'm asking you, the council, and NMFS to look at this problem from every angle to include socioeconomic impacts to the communities if the vessels decide not to fish openings because the costs are too high. Verify the vote for unionization.

FV HAZEL LORRAINE

Page 3

Mr. Richard Lauber

The hidden price of observer coverage

The vote was taken while the majority of the observers were at sea. Were there inactive observers included in the vote?

The system has been very carefully designed to govern the vessels and their activities (amendment #47) right down to the meals and accommodation for observers. Please show me where NMFS has written laws of equal protection for the fishing vessels, crews, and owners. A board of grievances does not exist that we can take our complaints to if our mandatory contractors use unethical conduct or charge us excessive fees. There is no peer review and no code of conduct, only certification by NMFS. Please show me a copy of the test each contractor took and their licenses.

The vessels in both inshore and offshore fisheries vary in size and earning potential and you know that the observer costs are not shared equally throughout the fleet. A 60 foot vessel will have to pay the same costs for 30% coverage as a 120 foot vessel. Observers fees are a form of **tax** and **one size fee does not fit all**. The observer fee is a very large burden which is not shared by all vessels in the groundfish fishery who are managed in part by the data that is paid for by others. The Research Plan was thrown out because the burden would have continued to penalize high producing vessels in both the inshore and offshore fleets.

I believe the only way out of the current observer pay problem is to revive the Research Plan, but **with a ceiling** on the amount each class vessel (number of classes?) is required to pay into the plan. This would bring those vessels under 60 foot into sharing the burden at a rate that they can afford and make a sliding ceiling for the those vessel over 60 feet. The ceiling will protect vessels from paying more than their fair share of the cost to observe the groundfish fishery.

The Council and NMFS do not have powers over unions, but they do control the observer contractors. It is there conduct, in the up coming negotiations with labor, that will shape the future of how contentious the relationship between NMFS, the vessels, and the observers will be in the 1998 season. It is my hope that NMFS examines the good faith bargaining practices of all the observer contractors.

Sincerely,

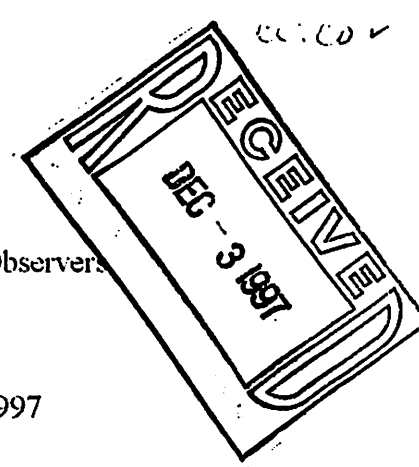


Albert Geiser

cc: Mr. Al Burch, Alaska Draggers
Mr. Steven Penoyer, NMFS Juneau
Ms. Melanie Gunderson, Peninsula Marketing Association
Mr. Fred Reck, Midwater Trawlers Cooperative
Ms. Chris Black burn, Alaska Groundfish Data bank

Alaska Fishermen's Union
2512 2nd Ave.
Seattle, WA 98121

Association for Professional Observers
P.O. Box 30167
Seattle, WA 98103



December 3, 1997

Dear Members of the North Pacific Fisheries Management Council:

The Alaska Fishermen's Union (AFU) and the Association for Professional Observers (APO) wish to inform you that we have reached an agreement with **Alaskan Observers Inc. (AOI)** for a 3 year period. Details of this contract will be made available at the Council meeting next week.

Negotiations are ongoing with the remaining 4 certified contractors but, in general, are progressing slowly. Since the final vote tally for the Saltwater election of September 15, the AFU has been trying to meet with all the contractors and reach an agreement. Only Alaskan Observers has demonstrated a commitment to reach agreement in a timely manner. The other contractors have exhibited many delay and stall tactics. This is not conducive to achieving an agreement for the 1998 fishing season.

As a result of the contractors choosing not to negotiate as one unit, the contracts are not going to be identical. We've received a full counter offer from **Frank Orth & Associates (FOA)**. We are not satisfied with the economics and several other conditions contained within FOA's proposal. However, we are continuing to actively negotiate. Further details may be provided at the Council meeting.

Negotiations on language with **NWO** are more or less complete, we are waiting on an economic proposal and hope to receive this by the end of the week. NWO has agreed to include shellfish observers. The biggest difference in language from the above contractors is that NWO wouldn't agree to hiring all priors equally. They want to hire NWO priors first, then other priors who will still need to go through a probationary period of one contract, then new trainees. We've agreed to these terms although one of the APO's overall goals was to give all priors hiring priority throughout the program.

Negotiations on language with **Saltwater and Data Contractors (SWI/DCI)** are still moving slowly and we still have not received an economic proposal. We will hopefully receive one next week. Nancy Munro at SWI and Roger Woods at DCI are the negotiators.

We implore the Council to encourage contractors to come to the table ready to submit to a fair agreement for observer compensation and treatment for the 1998 season. As soon as all contractors have an agreement with the AFU, the sooner we can rest easy for the 1998 season.