


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: September 20, 1991

SUBJECT: North Pacific Fisheries Research Plan

ACTION REQUIRED

Approve draft preferred alternative for Secretarial review.

BACKGROUND

In August the Council selected a preferred alternative for the observer fee system, and stated their intent to take additional public testimony at this meeting and then final action to send the plan to the Secretary of Commerce. The elements of the plan, as shown in item C-2(a), were circulated to the public in the newsletter following the August session. In the meantime I have been working with NMFS and NOAA GC on a preliminary text that will incorporate the elements of the preferred alternative into the formal research plan which will be submitted to the Secretary for review. This is provided as item C-2(b), and if approved, will serve as the general plan that will need to be implemented by detailed regulations, similar to the approach used for our original observer plan. Having a more general text for the research plan will allow the fee program to be refined using regulatory amendments rather than plan amendments.

A copy of Section 313 from the Magnuson Act is provided as item C-2(c). It prescribes a special schedule for Secretarial action on the plan. The Secretary has 60 days after receipt of the plan to publish proposed regulations or send the plan back to the Council. Then there are 60 days for public comments and a hearing in each State, followed by 45 days of Council and Secretarial consultation leading up to publication of the final rule. Here is how the schedule might play out in terms of the most optimistic dates:

September 23, 1991	Council takes final action
October 31	Submit plan to Secretary; develop proposed regulations
January 3, 1992	Proposed rule published for 60-day comment and three public hearings
March 3	Comment period ends; begin 45-day response to comments and consultation with Council
April 17	Publish final rule
May 17	Implement program

Two major considerations, of course, will be how much time it might take NMFS to get the program up and running, and whether there will be start-up funds. I imagine a more realistic schedule than above is to start the program on October 1, 1992, at the first of the federal fiscal year, or on January 1, 1993. I 'm also not sure how optimistic to be concerning the availability of start-up funds. The latest estimated need was for \$5 million, and there was some optimism expressed in August that we might get it. I am not sure if that optimism still prevails. If no start-up funds are available, the Council will need to state their intention as to the timing of the fee program and its relation to the ongoing observer program with its self-funded approach.

**North Pacific Fisheries Research Plan
DRAFT PREFERRED ALTERNATIVE
(As Recommended by NPFMC 08/16/91)**

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

Key Elements of Proposed User Fee System

1. Plan fisheries initially will include Gulf of Alaska and Bering Sea/Aleutian Islands groundfish and halibut, and BSAI king and Tanner crab fisheries, in both State waters and EEZ areas, and in the donut hole contingent upon federal jurisdiction there.
2. The Plan will be designed to collect fees in a cost effective manner from the participating fisheries to support observers as necessary in those fisheries and incorporate financing of the BSAI crab observer program. It is the intent of the Council that the research plan have standardized data collection procedures for crab and groundfish, standardized observer training for crab and groundfish, and a single infrastructure of administration and that the National Marine Fisheries Service and the State of Alaska together develop the details.
3. The Regional Director, in consultation with the Council, will establish the fee for the fishing year. The fee will be expressed as a percentage, not to exceed 1% of the exvessel value.
4. Although the fees are assessed against all fishing vessels and fish processors, the fees will be collected from all (i.e., onshore and at-sea) processors participating in the plan fisheries. The total fees to be collected from each processor will be the product of the established fee and the estimated exvessel value of fish the processor received from the plan fisheries. In the case of a catcher/processor, fish retained for processing are considered to be received fish. The estimate of exvessel value will be based on the amount of fish by species group received for processing and a fishery-wide estimate of exvessel price by species group. The estimates of exvessel prices will exclude any value added by processing. For the purposes of the user fee system, a fishing operation that delivers fish to a processor outside of the Council's jurisdiction (e.g., Canada, Washington, or Oregon) will be considered to be a processor. Discarded groundfish also will be subject to user fees.

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

The fee levied on catcher/processors shall be equal to the full amount of the percentage applied to the exvessel value of the harvest. The fee for catcher vessels and processors shall be equal to half of the percentage applied to the exvessel value of the harvest for each, respectively.

5. Each processor that purchases fish from a plan fishery will calculate the quarterly fee payments based on the amount of fish it received, the fee, and the actual exvessel price paid to the fisherman. Other processors who receive fish from a plan fishery will base payments on the amount of fish it received, the fee, and the NMFS published exvessel prices. The fees will be due within 30 days of the end of the fishing quarter on which the fees are assessed. It is the intent of the Council that processors/buyers of fish from a plan fishery be bonded.
6. After each twelve-month period, the actual fee liability of each processor will be calculated by the NMFS. If a processor's fee liability is greater than the quarterly payments that were received, the processor will be billed for the difference and the bill will be due within 30 days. If the quarterly payments exceed the fee liability, the difference will be used as a credit toward future quarterly payments. It would be a violation to make late or inadequate payments. Fee collections will be administered by the NOAA Office of the Comptroller.
7. All fish processors participating in plan fisheries will be required to have a federal permit. Processors will apply for a federal permit annually. The permits will be issued semi-annually to any processor that is current with respect to its fee payments.
8. Any additional information necessary to implement the Plan will be made available through enhanced reporting requirements.
9. Each operation with an observer requirement will be responsible for obtaining observers from the NMFS. The lead time required to obtain an observer will be specified by the Observer Plan.
10. The Council will appoint an Observer Plan Oversight Committee consisting of nine members. Representatives will include three NPFMC members from the three states represented on the Council and six industry representatives from the following groups: factory/trawler, catcher/trawler, shoreside processor, crabber, freezer longliner, and non-freezer longliner.

NORTH PACIFIC FISHERIES RESEARCH PLAN

(Draft September 20, 1991)

1. INTRODUCTION

Section 313 of the Magnuson Fishery Conservation and Management Act authorizes the North Pacific Fishery Management Council (Council) to prepare, in consultation with the Secretary of Commerce (Secretary), a North Pacific Fisheries Research Plan (plan) for all fisheries under the Council's jurisdiction except salmon. The plan requires observers to be stationed on fishing vessels and on fish processors as appropriate to collect data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction, including halibut, but excluding salmon. The plan also establishes a system of fees to pay for the costs of implementing the plan.

The plan is designed to gather reliable data, be fair and equitable to all vessels and processors, be consistent with applicable provisions of the law, and consider the operating requirements of the fisheries and the safety of observers and fishermen. Fees collected under the plan are limited in amount and their use and must be deposited in the North Pacific Fishery Observer Fund.

The plan also may establish a risk sharing pool to provide coverage for vessels and owners against liability from civil suits by observers. This pool, if proven feasible, must be established unless the Secretary determines that alternative comprehensive commercial insurance is available that will provide greater coverage at a lower cost to each participant.

This plan was developed in 1991 by the Council working closely with industry and the National Marine Fisheries Service (NMFS). It incorporates by reference, provisions of the Observer Plan, developed for the groundfish fisheries in 1989 and implemented for 1990 and 1991, and revised to comply with Section 313. Provisions of the State of Alaska's observer program for crab are also incorporated by reference into this Plan. An observer program for halibut has been deemed unnecessary for safety reasons and because of adequate monitoring dockside.

Provisions of the user fee program were approved by the Council in September 1991, and by the Secretary on _____. (See FR Notice _____) Implementing regulations were published on _____ (FR Notice citation).

2. OBSERVER PROGRAM

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

The 1990 and 1991 Observer Plans required specific levels of observer coverage which varied with size of fishing vessel and quantity of fish processed by floating and shoreside processors. These requirements were established because it was recognized that living marine resources could not be effectively managed without the types of information that were either available only or most efficiently through an observer program.

The Observer Plans required that owners and operators of vessels and shoreside processing facilities participating in the groundfish fishery arrange for and pay for the cost of placing observers aboard their vessels and at their shoreside processing facilities beginning in January, 1990. The observer plans imposed responsibilities on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS-certified contractors who provide observers to groundfish fishing vessels and shoreside processors. The Observer Plans also prescribed observer conduct, conflict of interest standards for observers and contractors, and reasons for revoking contractor or observer certification. The 1991 Observer Plan changed observer requirements for shoreside processing facilities and for mothership processor vessels, authorized the release of observer-estimated bycatch rates as public information, and extended the certification time for observer contractors.

The 1991 Observer Plan has been amended to be consistent with the goals of the North Pacific Fisheries Research Plan. The amended Observer Plan is incorporated by reference into this section of the North Pacific Fisheries Research Plan. The amended Observer Plan is substantially similar to the 1991 Observer Plan, except for the funding mechanism and NMFS management of the observer program. Each operation with an observer requirement is responsible for obtaining observers from the NMFS. The lead time required to obtain an observer is specified by the amended Observer Plan.

Observer Plan Oversight Committee. A committee of nine members to advise the Council and the Regional Director on provisions of the observer and fee programs. Representatives will include three Council members from the three states represented on the Council and six industry representatives from the following groups: factory/trawler, catcher/trawler, shoreside processor, crabber, freezer longliner, and non-freezer longliner.

3. USER FEE PROGRAM

3.1 Purpose

The Observer Plan for 1990-91 held each vessel or processor, required to have observer coverage, responsible for the cost of obtaining the required observers from a certified contractor. This averaged approximately \$7500 per observer month. Three problems were identified with this method of paying for observer coverage: equitability, limitations on NMFS' ability to effectively manage the observer program, and potential conflicts of interest that jeopardized the credibility of observer data.

The User Fee Program (Program) was developed in response to these concerns, after the Magnuson Act was amended in late 1990 to allow the Council and Secretary to establish such a program. The following sections summarize the elements of the Program within the North Pacific Fisheries Research Plan. Implementing regulations are published at (FR Citation).

3.2 Plan Fisheries

For purposes of the Plan, fisheries under Council jurisdiction are specified to include:

1. Gulf of Alaska groundfish
2. Bering Sea and Aleutian Islands groundfish
3. North Pacific halibut
4. Bering Sea and Aleutian Island king and Tanner crab

These fisheries are as defined by the appropriate fishery management plan or federal regulations and extend to the Bering Sea beyond the U.S. EEZ contingent on federal jurisdiction there.

3.3 Maximum Amount of Fees

The maximum fee that may be collected from the plan fisheries is one percent of the exvessel value of the fish and shellfish of the plan fisheries, before any processing occurs. Discarded groundfish also will be included in estimating total value to the extent practicable and adjusted as appropriate for mortality. Though the potential maximum fee is prescribed by the Magnuson Act, the actual maximum for any given year may be less after determining the cost of the Plan and after deducting funds from other sources, if required. These deductions are discussed below.

3.4 Use of Fees

Fees from the program may only be used to pay for: (1) stationing observers including the direct costs of training, placing, maintaining, and debriefing observers; (2) collecting, verifying and entering collected data (not manipulating data); (3) supporting an insurance risk-sharing pool; and (4) paying the salaries of personnel to perform these tasks. The fees cannot be used to pay administrative overhead or other costs not directly incurred in carrying out the plan, or to offset amounts authorized under other provisions of law.

3.5 Annual Setting of the Fee Percentage

Annually the Regional Director, in consultation with the Council, will establish a fee percentage taking into account the exvessel value of the plan fisheries, the costs of implementing the plan, other sources of funds, and limitations on the total amount that can be collected. This will be done concurrent with Council review of observer needs of the fisheries. This annual process will be completed by the time the fisheries commence. The fee will be expressed as a percentage of the exvessel value of the fisheries.

3.5.1 Exvessel value of plan fisheries

All plan fisheries will contribute to the estimated total exvessel value of the fisheries. NMFS, in consultation with the Council, will use the best information available to project exvessel value of fisheries. The factors that will be taken into account, include but are not limited to, average prices for species or species groups, product forms, discards, and other factors, during the year preceding the year for which the fee is being established, anticipated changes in the coming year, and projected catch based on expected harvest in plan fisheries. These projected values will be subjected to public review.

3.5.2 Costs of implementing plan

NMFS will provide an estimate of the costs of providing required observer coverage for the coming year based on anticipated observer coverage, and the anticipated costs of the activities listed in Section 3.4, including any additional costs of utilizing contractors.

3.5.3 Other sources of funds

NMFS will provide an estimate of surplus funds in the North Pacific Fishery Observer Fund, and estimate the amounts of funds that may be available from other appropriate sources.

3.5.4 Total amount to be collected

The fees will be set such that the total amount of fees collected ^{will} ~~are not expected to~~ exceed the limitation prescribed by the Magnuson Act.

3.5.5 User fee percentage

The user fee percentage for the coming year will be the total amount to be collected divided by the exvessel value of the plan fisheries multiplied by 100. This fee will be established before the fishing year to which it will apply. It will be subject to Council and public review before being finalized.

3.6 Collection of Fees

Although fees are assessed against all fishing vessels and fish processors, they are collected from all fish processors participating in plan fisheries. Fish processors are as defined in the Magnuson Act, however their operating characteristics fall into one of two categories. Processors are in Category A when they purchase unprocessed fish, that is when there is a documented commercial transaction between independent parties. Processors are in Category B when they obtain fish without such a transaction. For purposes of collecting fees, harvesting vessels are considered Category A processors when they sell directly to any entity other than a federally permitted processor under this plan.

3.6.1 Estimation of exvessel prices and fee liability

Category A Processors: It is assumed that these processors weigh or otherwise directly determine the amount of all fish delivered. Their fee liability is the product of the fee percentage established by NMFS for the fishing year, actual exvessel price paid to the fisherman, and amount of fish received. In addition, fees will be required on discards as described in Section 3.6.2. Fee liability will be divided equally between the processor and fisherman.

Category B Processors: If these processors weigh or otherwise directly determine the amount of their catch, then those documented amounts will be used to estimate fee liability. Otherwise, product recovery rates published by NMFS will be used to estimate retained catch. Their fee liability is the product of the fee percentage established by NMFS for the fishing year, an exvessel price as estimated and published by NMFS, and the estimated retained catch. The price estimates provided by NMFS will be based on price data from Category A processors, taking into consideration the species mix, quarter of year, area, and other appropriate factors. In addition, fees will be required on discards as described in Section 3.6.2.

3.6.2 Discards

For either category of processor, for fees required on groundfish discards, the actual round weight of discards, by species group, adjusted as appropriate by mortality rates and other factors, will be used if provided by a certified observer. Fees on discards then will be based on the observed round weight and a schedule of discard values, by species group, published before the season by NMFS.

For deliveries of sorted fish or when no observer is present, fees required on groundfish discards will be based on estimates of discard round weights provided by NMFS based on observer estimates of discards in appropriate fisheries, adjusted as appropriate by mortality rates and other factors, and a schedule of discard values published before the season by NMFS.

Exvessel values to be applied to the discards and estimated discard rates for various fisheries, as provided by the Regional Director before the season, will be subject to public and Council review.

3.6.3 Schedule of collection and reconciliation

Fee payments will be made quarterly within 30 days of the end of the quarter to the NOAA Office of the Comptroller to be deposited in the North Pacific Fishery Observer Fund within the U.S. Treasury. The fee will be documented in a manner prescribed by NMFS.

When new information becomes available to a processor concerning the exvessel value of fish it received from plan fisheries during previous quarters, it will recalculate its fee liability for those quarters. It will claim any overpayment as a credit on its next quarterly payment and it will add any underpayment to its next quarterly payment.

3.7 Permit and Reporting Requirements

All processors as defined in Section 3.6.1 must have a federal permit to receive fish from plan fisheries. Processors must apply for these permits annually by the deadline prescribed by the Regional Director. Permits will be issued annually, on January 1 and renewed semiannually on July 1, to those processors whose fee payments are current.

3.8 Late Charges

The NOAA Office of the Comptroller shall assess late charges for underpayment or late payments of fees.

3.9 Coordination with Other Programs

The State of Alaska will be reimbursed for the costs of the crab observer program. NMFS and the State of Alaska will jointly develop standardized observer training and data collection procedures for crab and groundfish and a single infrastructure of administration.

4. RISK SHARING POOL FOR INSURANCE PURPOSES

Reserved.

16 U.S.C. 1861

99-659

(f) **DEFINITIONS.**--For purposes of this section--

(1) The term "provisions of this Act" includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201(b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term "violation of any provision of this Act" includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

101-627

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN

16 U.S.C. 1862

(a) **IN GENERAL.**--The North Pacific Fishery Management Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which--

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

(b) **STANDARDS.**--(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to--

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

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

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

- (C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;
- (D) not be used to offset amounts authorized under other provisions of law;
- (E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
- (F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;
- (G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;
- (H) provide that fees collected will only be used for implementing the plan established under this section; and
- (I) meet the requirements of section 9701(b) of title 31, United States Code.

(c) ACTION BY SECRETARY.--(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

(d) FISHERY OBSERVER FUND.--There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(e) SPECIAL PROVISIONS REGARDING OBSERVERS.--(1) The Secretary shall review--
(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of his section, to provide coverage for vessels and owners against liability from civil suits by observers, and
(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

Russ Nelson

ESTIMATED BUDGET FOR 1992 DOMESTIC GROUND FISH OBSERVER PROGRAM

A. NMFS OPERATIONAL BUDGET FOR TRAINING, DBRIEFING AND DATA MANAGEMENT

OBJECT CLASS	\$1,000'S
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DIRECT LABOR	\$795.9
OTHER LABOR (COLA+OVERTIME)	63.6
PERSONNEL BENEFITS	135.2
TRAVEL	20.0
TRANSPORTATION	5.0
RENTS, COMMUN., UTILITIES	50.0
PRINTING/REPRODUCTION	15.0
CONTRACT/SERVICES	170.0
SUPPLIES/MATERIALS	125.0
EQUIPMENT	30.0
TOTAL	\$1,410.0

B. DIRECT COST OF HIRING AND PLACEMENT OF OBSERVERS

ESTIMATED REQUIRED OBSERVER EFFORT (BASED ON 1990 LOG BOOK DATA):

A. 100% VESSELS, MOTHERSHIPS, & PROCESSORS:	775 MONTHS
B. 30% VESSELS, MOTHERSHIPS, & PROCESSORS:	215 MONTHS
C. TOTAL ESTIMATED EFFORT NEEDED:	990 MONTHS

ESTIMATED COST PER OBSERVER MONTH (SEE ATTACHED TABLE FOR DETAILS):

A. 100% COVERAGE:	775 MO. X \$7,080/MO. = \$5,487,000
B. 30% COVERAGE:	215 MO. X \$8,388/MO. = \$1,803,420
C. TOTAL ESTIMATED COST:	\$7,290,420

C. OTHER NMFS OBSERVER PROGRAM COSTS

A. NMFS ALASKA REGION
B. NOAA COMPTROLLER

D. TOTAL ESTIMATED COST OF 1992 PROGRAM: \$8,700,420



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box - 21109
Juneau, Alaska 99802-1109
Telephone (907) 586-7414

Supplemental

DATE: September 20, 1991
MEMORANDUM FOR: NPFMC - Clarence Pautzke
FROM: GCAK - Lisa Lindeman *Lisa Lindeman*
SUBJECT: North Pacific Fisheries Research Plan

I have reviewed your memo of September 12, 1991, and want to clarify the position of GCAK regarding the standards set forth in section 313 of the Magnuson Fishery Conservation and Management Act (Magnuson Act) (16 U.S.C. 1862(b)(1)(A)) regarding the North Pacific Fisheries Research Plan (Plan).

In your memo you state your understanding of General Counsel's (GCAK's) position is that the existing record is insufficient to meet the standards of section 313 of the Magnuson Act, and that a new analysis is required. This is not GCAK's position. As of the teleconference on September 6, 1991, this office had not yet had an opportunity to review the materials you provided. We therefore took no position on whether the administrative record for the existing Observer Program was sufficient to meet the standards set out in section 313.

Since then, we have reviewed the February 12, 1990, Federal Register notice and Chapter 8 from the analysis for the Observer Program (Amendments 13/18). These materials were the only documents we received in response to our request for a copy of the administrative record for the existing Observer Plan so we could determine what, if any, additional analysis would be required to satisfy the section 313 requirements for reliable data.

Amendment 13/18 was a Fishery Management Plan amendment. As such, it was required to comply with the national standards at 16 U.S.C. 1851, which, among other things, require the "best scientific information available." The Research Plan is not a Fishery Management Plan. It is subject to a separate set of

You provided a revised research plan incorporating Council decisions in August; an extract from newsletter from August meeting; copy of my memo of August 19, 1991; a February 12, 1990, Federal Register notice of the Observer Program; and chapter 8 of the analysis for amendment 13/18 which established the Observer Program.



-2-

standards set forth in section 313. The record used to justify Amendment 13/18, therefore, does not "automatically" justify the Research Plan.

Section 313 requires that any Plan or amendment to such a Plan must be reasonably calculated to, among other things, gather reliable data necessary for the conservation, management and scientific understanding of the fisheries covered by the Plan. Means of gathering reliable data are either by (a) stationing observers on all the fishing vessels and United States fish processors included in the Plan, or (b) stationing observers on a statistically reliable sample of such vessels and processors. The record will need to show that the level of observer coverage recommended by the Council -- whether 100% coverage or a statistically reliable sample of less than 100% coverage -- is reasonably calculated to result in the gathering of reliable data.

We are not suggesting that the existing Observer Program is not gathering reliable data or that the observers are not stationed on a statistically reliable sample of vessels and processors. We also are not suggesting that the Council and NMFS conduct unnecessary analysis or "rejustify the scientific and statistical validity of the current observer programs." Satisfaction of the section 313 standards, however, requires more than an unsupported assertion in the record that the existing Observer Program gathers reliable data, ergo, section 313 is satisfied.

Chapter 8 of the analysis for amendment 13/18 discusses some of the variables that should be considered when developing a statistically reliable sampling program. The discussion may satisfy section 313, in part. On page 166, however, the document states

The level of first year coverage is somewhat arbitrary under this alternative [the framework program that was adopted by the Council and the Secretary]. (emphasis added)

The analysis also points out that observer coverage of less than 100% may produce biased results if vessel operators engage in strategic behavior to compensate for the presence of an observer.

If the level of observer coverage under the existing Observer Plan (30% and 100%) is adopted by the Council as the recommended level under the Research plan, the Council must provide a rationale and explanation of why 30% coverage is

reasonably calculated to gather reliable (statistically valid) data.

We will continue to work with the Council to develop a Research Plan that meets the standards of the Magnuson Act.

cc: Steve Penoyer
Rich Morasco
Russ Nelson



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

AGENDA C-2

SEPT 1991

SUPPLEMENTAL

September 19, 1991

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

Dear Clarence,

The Council voted at the August 1991 meeting for NMFS to do its best to include discards in the fee system for the North Pacific Fishery Research Plan.

We see several problems with including discards in the fee system at this time. How would we value discards if there is no payment received? Are discards worth as much as fish that are processed? If we apply the exvessel value derived for the particular species, would that stand the test of reasonableness for discard due to high parasite levels, or small size?

Another problem is how would we be able to assess the discards at sea by catcher boats, i.e., not delivered to anyone, when the Act says "value of fish received?" None of the discards would be received. Also, it would be difficult to determine the amount of discards in split codends. "Fair and equitable" may rule the entire concept out, if we charge a fee to some for handling discards, but do not charge a fee to others.

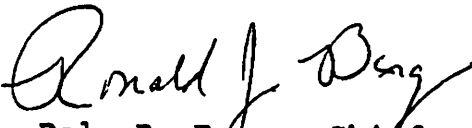
Charging a fee for discards would create a disincentive to report discards. We presently depend on discard reports by processors for the data we receive. The fee collection system as contemplated now depends upon processors making quarterly reports (submitting the 1 percent fee), and NMFS having the ability to audit records. It will be some time before we figure out how to get observer reports on discards, in addition to the other observer data now of higher priority.

I agree we should, at some point, include discards in the accounting system, like so many of the measures we are struggling with now, we have the option of disabling the program by



encumbering it with more problems than we can initially solve. The Research Plan can be implemented and function without inclusion of discards in the fee system. Accounting for discards can be added by amendment when we figure out how to do it.

Sincerely,


for Dale R. Evans, Chief
Fisheries Management Division