MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: September 10, 1996

ESTIMATED TIME

1 HOUR

SUBJECT: Observer Program

ACTION REQUIRED

(a) Receive status report on modified pay-as-you-go observer program.

(b) Initial review of regulatory amendment to require additional observer coverage on shore plants and motherships during pollock 'A' season. withdrawn

BACKGROUND

(a) Modified pay-as-you-go Observer Program

In December of 1995 the Council voted to repeal the North Pacific Fisheries Research Plan (fee plan) and pursue development of a modified pay-as-you-go observer program, which would utilize a third party contractor as an interface between fishing operations and observer contracting companies. Included in the Council's action was the desire to examine alternatives which could alleviate the disproportionate cost burden to vessels in the 30% coverage category which occurs under the pay-as-you-go system. In April 1996 the Council reviewed an initial analysis of the modified, third party program, but did not take action on this program due to continuing uncertainties over the overall potential costs of that program; rather, the Council voted to keep in place, through 1997, the existing observer program. Following the April meeting, NMFS also put on hold development of a Request for Proposals (RFP) to solicit third party bids.

At that time staff identified costs as being considerably higher than the current program, likely at the same overall level as under the fee plan (though the distribution of those costs differs significantly between the two programs). However, there was still uncertainty over a few key aspects of the cost equation, particularly the issue of observer salaries and overhead costs of the third party (Prime) contractor. NMFS also advised the Council that provisions of the Services Contract Act (SCA) could be invoked if the agency enters into a contractual arrangement with a third party. Item C-3(a)(1) is a letter from NMFS which describes the SCA determinations received thus far, and how these determinations might affect development of the modified program. Due to these uncertainties, it was felt that the most prudent course of action would be to attempt to further define the cost parameters of the modified pay-as-you-go alternative, prior to final action by the Council.

It is expected that a more detailed analysis will be available for initial review by the Council in December, with final action possible in February of 1997. If approved by the Council, NMFS would re-initiate the RFP process for selection of a third party contractor. Under this schedule, the new system could be implemented sometime

in 1998. An additional amendment may be required to extend the existing observer requirements beyond the end of 1997 in this case.

Part of the Council's discussions back in April included further potential consideration of some type of fee system, perhaps 'blended' in some manner with a basic pay-as-you-go program. While that type of program may ultimately be the desire of the industry and Council, it would likely require Magnuson Act amendment and would likely be subject to some of the same cost uncertainties identified above. Such an alternative will not be included in the analyses planned for review in December 1996, but would have to be further developed subsequent to that meeting, if the Council elects not to go forward with the modified pay-as-you-go program.

The Council may wish to provide further direction to staff at this meeting regarding (1) the expectations for the December meeting, and (2) the role of the Observer Advisory Committee (OAC) between now and the December meeting. We would expect at least one meeting of the OAC prior to the December meeting to review the new analyses of the modified pay-as-you-go program, prior to Council review.

(b) Regulatory amendment for additional observer during pollock 'A' season

A draft analysis (EA/RIR) was mailed to you on August 30 for a regulatory amendment which would require additional observer coverage on motherships and some shore plants during the BSAI pollock 'A' season. NMFS staff are available at this time to summarize that analysis, and the perceived necessity of that additional coverage. Though this item is scheduled for initial review at this meeting, final action will likely be required at this time in order to have the regulatory amendment in place in time for the 1997 'A' season.

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

September 10, 1996

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

Dear Rick,

We wish to inform the North Pacific Fishery Management Council (Council) on progress that has been made regarding the cost analysis of an alternative to the North Pacific Fisheries Research Plan (Research Plan). The specific alternative to the Research Plan requested by the Council for analysis would involve a contractual arrangement with a third party (or prime contractor) who would serve as a liaison between persons requiring observer services and companies providing those services.

At its April 1996 meeting, the Council requested NMFS to repeal the Research Plan and begin to examine the prime contractor alternative. A proposed rule to implement the Council's recommendation for repeal, as well as implement an interim observer program for 1997, has been published in the Federal Register. Public comments are invited through September 16, 1996. On August 19, 1996, we also conducted a public hearing via teleconference on the proposed repeal of the Research Plan. We anticipate that a final rule implementing 1997 observer coverage requirements will be effective later this year.

An outstanding issue relative to the cost analysis of the prime contractor alternative or any other alternative to the Research Plan that involves contractual arrangements between NMFS and outside organizations, is applicability of the McNamara-O'Hara Service Contract Act (SCA). The SCA could require the Department of Labor (DOL) to establish a minimum salary for observers. Following the April 1996 Council meeting, we submitted a request to the DOL for determination of SCA applicability. On August 20, 1996, we received a response which indicated that the SCA would apply to observer services procured under a Government contract, including the type of contract envisioned under the third party alternative. We have requested a wage rate determination from DOL but have not received a response. When we do receive a response, it will be used to establish a minimum observer wage requirement in procurement actions taken by NMFS to provide observer services for the North Pacific groundfish fisheries.

We anticipate that this determination will reflect wage rates in excess of those currently paid to observers and would likely be similar to those paid by NMFS to entry-level biologists hired to conduct routine resource assessments and other field work. Currently, this wage is equivalent to about $10 per hour. Because observers typically work 12-hour days in the field, we should expect a substantial increase in the salaries paid to observers. In addition to this increased cost, the third-party contract arrangement also would pass on to the industry the administrative overhead costs of the third party organization and the subcontractors who provide observer services. Although we cannot ascertain what these overhead costs would be prior to receiving bids for solicitation, overhead costs are reasonably assumed to be 10 - 20 percent, or more, at each level of contracting.

We are continuing to obtain information and determinations that will enable us to present a more complete cost assessment of alterative programs to replace the Research Plan. Given the determinations received to date, however, the Council should anticipate that substantial increases in cost of observer coverage would result if a third party contractual system is established. We anticipate the Council's Observer Advisory Committee will be convened to review the cost analysis once it is completed.

Sincerely,

for Steven Pennoyer
Administrator, Alaska Region