


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: September 21, 1994

SUBJECT: North Pacific Fisheries Research (Observer) Plan

ESTIMATED TIME
3 HOURS

ACTION REQUIRED

- (a) Receive report of Observer Oversight Committee (OOC).
- (b) Recommend 1995 fee percentage.
- (c) Receive status report on insurance issues.

BACKGROUND

(a) **OOC Report**

The Council's Observer Oversight Committee (OOC) met in Seattle on September 15, 1994 to review information affecting the fee percentage to be levied under the first year of the Plan. These materials included the final rule for the Plan (published on September 6), the proposed rule for the 1995 Plan specifications, projected fish prices and observer costs, a report on coordination between the groundfish and shellfish programs, and finally, recommendations from the agency on the required fee percentage in 1995. A full report from the OOC to the Council is included as Item C-4 (a)(1). OOC Chair Chris Blackburn is available to address the Council on these issues.

As shown in the OOC report, the bottom line is a fee of 1.9% for 1995, which includes a \$1 million contingency cost to account for potentially higher observer costs and lower retained catch. After reviewing the information from the agencies, and taking into account recent developments in the crab fisheries, the OOC is recommending a full 2% fee in 1995.

(b) **1995 fee percentage**

Based on recommendations from the OOC meeting, a revised report titled 'Establishing the Fee Percentage and Standard Exvessel Prices for 1995' was prepared and is included in your notebook as Item C-4 (b)(1). This report outlines the fish prices, observer costs, cash flow, and projected fee percentage necessary for 1995. NMFS staff will present this information to the Council. Also included, as Item C-4 (b)(2), is a series of three diagrams which illustrate the logistics and cash flow involved in the fee assessment/collection under both the first year of the Plan and subsequent years. A copy of the final rule is included under Item C-4 (b)(3).

(c) **Insurance Committee**

Back in June the Council advanced a recommendation from the OOC to establish an Insurance Technical Committee, composed of knowledgeable individuals from the fishing, insurance, and legal fields. That Committee has been formed and a copy of the membership, along with the letter inviting participation, is provided under Item C-4 (c)(1). We will likely be convening the Committee sometime in late October.

MINUTES

OBSERVER OVERSIGHT COMMITTEE

September 15, 1994

The Council's Observer Oversight Committee (OOC) met in Seattle on September 15 to review the following: proposed rule for 1995 North Pacific Fisheries Research Plan (Research Plan) Annual Specifications, information on coordination between the NMFS and ADF&G observer programs, and a NMFS report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995". The following members, support staff, and public were in attendance (* designates committee member):

*Chris Blackburn (Chair)	AGDB
*Steve Davis	UAA Observer Training Center
*Michael Lake	Alaskan Observers
*Mandy Merklein	Observer
*Nancy Munro	Saltwater, Inc.
*Jerry Nelson	Baranof/Courageous
*Arni Thomson	Alaska Crab Coalition
*Gary Westman	MTC (F/V Caravell F/V Rosella)
*John Winther	Prowler/Ocean Prowler
Christian Asay	Tyson Seafoods
Jerry Berger	AFSC Observer Program
Tom Casey	
David Colpo	NMFS/AFSC
Shannon Fitzgerald	NMFS
John Gauvin	AFTA
Ken Griffin	ADF&G/Juneau
Cheri Hanneman	Frank Orth & Associates
Laure Jansen	Arctic Alaska/Tyson Seafoods
Chuck Jensen	East Point Seafoods
Bill Karp	NMFS Observer Program
Steve Kennebeck	Tyson Seafoods
Earl Krygier	ADF&G/Juneau
Paul MacGregor	Amer. Factory Trawlers Assoc.
Bob Maier	AFSC Observer Program
Kim Rivera	NMFS/FM
Sue Salveson	NMFS/FM
Connie Sathre	NOAA General Counsel
Joe Terry	NMFS/AFSC
Janet Wall	NMFS Observer Program
Diane Wright	NWOI

The OOC received an overview of the Research Plan final rule from NMFS staff. This rule reflects changes from the proposed rule resulting from both written and oral public comment and recommendations made by the Council at its June meeting. The most significant change was elimination of the proposed first year rebate program and its replacement with a credit program described elsewhere in this report. The OOC then received a status report on coordination between the NMFS Groundfish Observer Program and the ADF&G Crab Observer Program. Finally, a revised report "Establishing the Fee Percentage and Standard Exvessel Prices for 1995" was provided by NMFS staff. This revision was based on a Council recommendation in June that the standard exvessel prices account for variation due to season, area, gear, and processing sector. The report included the calculation of the 1995 fee percentage necessary to generate sufficient start-up funds for 1996.

I. BOTTOM LINE

The revised estimates of standard exvessel prices and observer coverage costs provided to the OOC by NMFS resulted in a 1995 fee percentage of 1.9%. This incorporated a \$1 million contingency cost to account for potentially higher observer costs and lower retained catch. After reviewing these revised estimates and new information about the king and Tanner crab fisheries (a 1994 Bristol Bay red king crab closure, reduced guideline harvest levels (GHL) for bairdi and opilio), the OOC is recommending a fee percentage of 2% in 1995. More specific discussions and recommendations follow.

II. REVIEW OF FINAL RULE

In response to oral and written comments received on the proposed rule, NMFS revised the final rule to eliminate the first-year rebate program and implement an alternative first-year program, based on the following assumptions and criteria:

1. Sufficient start-up funds must be generated during 1995 to allow full implementation of the Research Plan by January, 1996;
2. NMFS is pursuing continued funding of the observer programs, at least through fiscal year 1996;
3. The first-year program must avoid "double payment" by any component of the Research Plan fisheries for any period of time during 1995; and
4. Actual costs paid by persons for direct observer coverage during 1995 must be fully credited up to their portion of their fee liability.

During 1995, groundfish catcher vessels less than 60 feet LOA are subject to the fee because these vessels are not required to pay for observer coverage. The same is true for the entire halibut fishery. Groundfish catcher vessels that are 60 feet or over LOA and crab catcher vessels that participate in special-use permit crab fisheries also are exempt from the 1995 fee for two reasons. First, because the fees are submitted to NMFS by processors, it would be difficult to provide timely credits for these vessels. Second, as a group these vessel classes will pay observer costs that exceed 1 percent of the exvessel value of their retained catch. Thus, the overall observer costs for these classes of vessels will not change during the start-up year as a result of the fee collection program.

The 1995 credit program is fishery-specific but not billing period-specific. That is, a processor's payments for groundfish observer coverage costs may be claimed as a credit against its fee liability for 1995 groundfish landings and a processor's payments for crab observer coverage costs may be claimed as a credit against its fee liability for 1995 crab landings. For each fishery for the year as a whole, a processor's credit cannot exceed the processor's fee liability. A processor must document the amount claimed as credit

for paid observer coverage costs. Observer contractors will verify this amount received and the NMFS Observer Program will authorize the credit to a processor's account.

III. COORDINATION BETWEEN NMFS AND ADF&G OBSERVER PROGRAMS

NMFS and ADF&G staff provided information as to existing and proposed coordination between the observer programs. Areas include:

- Annual specification process to establish observer coverage requirements for all Research Plan fisheries;
- Development of the Statement of Work that outlines specific requirements of observer contractors who will be providing trained groundfish and crab observers;
- Oversight of observer contractors;
- Sharing of certain Dutch Harbor facilities (ADF&G briefing room, NMFS wet lab);
- Use of ADF&G catch data to bill crab and some groundfish processors.

Both NMFS and ADF&G believe that at the current time distinct groundfish and crab observer training programs need to be maintained.

A lengthy discussion followed as to what coordination and consolidation is possible and its merits and ramifications. OOC members noted their appreciation of the coordination efforts that have occurred thus far.

Recommendation: The OOC recommends continued interaction by the two observer programs, taking into account possible cost-saving efficiencies and improved quality of observer data and how this relates to management of the resource.

IV. EXVESSEL VALUE OF RESEARCH PLAN FISHERIES

1994/95 Crab Fisheries Recent announcements of GHF's indicate major reductions from previous years. Bristol Bay red king crab fishery is closed for 1994 (\$50 million exvessel value reduction), 7.5 million GHF for bairdi (estimated \$13 million exvessel value reduction), and 55 million GHF for opilio (estimated \$57 million exvessel value reduction). Taking into account a projected 50% reduction in crab observer deployment days and the associated reduction in observer costs (decreased by \$400K) along with the \$120 million reduction in exvessel value outlined above, it is estimated that fee collections would be reduced by \$2.4 million from that estimated. This would be somewhat offset by the \$400K reduction in observer costs and by anticipated higher prices for bairdi and opilio (see standard exvessel prices).

NMFS staff noted that if sufficient start-up funds are not generated by January 1, 1996, full implementation of the Research Plan could be delayed. A delay would require sufficient lead time for the necessary rulemaking and for adjustments to contractual arrangements with observer contractors.

V. OBSERVER COVERAGE COSTS/OBSERVER ISSUES

Daily Observer Costs

Based on a NMFS survey of observer contractors that requested daily rates and airline costs, the cost/day for groundfish observers is \$180-188 and \$204/day for crab observers. The cost estimates for crab include the cost the contractors pay for training. The point estimates are lower than those provided in May (\$220-

234 for groundfish observers and \$237 for crab observers). The estimates varied by contractor from 85%-115% of the point estimates given. This same range was applied to the total observer cost for all Research Plan fisheries and the upper end of the range was used for fee calculation purposes.

Observer Issues

Extensive discussion followed the presentation of observer cost information. There was concern that such cost estimates might set a precedent for actual salaries, future contractual arrangements, and negatively impact observer morale, quality of data they collect, and the return rate of experienced observers. NMFS staff noted that there is no intention for price to be the determining factor in the observer contractor bidding process.

Recommendation: OOC recommends that the Council take note of the reduced cost/day estimates from the projections provided in June. Well-trained, experienced observers are necessary if quality data is to be collected and observer salaries should not compromise the quality of the observer program.

VI. STANDARD EXVESSEL PRICES

NMFS staff presented revised standard exvessel prices for 1995 which account for variation due to season, area, gear, and processing sector. Also, fish that are only retained to produce meal would be considered discards and not assessed a fee. NMFS staff pointed out the importance of processor surveys reflecting accurate price information since this information is used in the derivation of projected prices. The OOC examined each of the projected exvessel prices and noted the following:

- * Concern that the State of Alaska may base its landing tax for at-sea processors on these standard exvessel prices.
- * With the closure of the 1994 Bristol Bay red king crab fishery, prices received in other crab fisheries can be expected to increase. Recommend adjustments be made to the bairdi projected price (from \$1.80/lb. to \$2.00/lb.) and the opilio projected price (from \$1.30/lb. to \$1.70/lb.).
- * Review information provided by industry regarding a more appropriate price for Atka mackerel.
- * Reevaluate BSAI longline Pacific cod price and consider using GOA longline price of \$.216.
- * Interest was expressed in setting a \$0.0 price for arrowtooth flounder to encourage utilization of arrowtooth bycatch. NOAA General Counsel noted that adjustment of prices for this purpose was outside the scope of the Research Plan specification process and recommended maintaining a reduced price.

VII. OTHER ISSUES

Insurance

An Insurance Technical Committee has been selected to consider issues relating to insurance coverage requirements for observers. They will convene sometime in October.

Research Plan Publicity

NMFS staff requested input on how best to get the word out to those who will be affected by the Research Plan. Suggestions were solicited: local media, letters/brochures to accompany groundfish permits and CFEC permits, trade journals, posters at plants.

VIII. INSEASON ADJUSTMENTS

The OOC is concerned that if sufficient funds are not generated during any year that through NMFS' inseason authority to reduce observer coverage, participation in fisheries could be negatively impacted due to the unavailability of observers. Currently, the only mechanism in place to establish prices and the fee percentage is the annual specifications process. In the event of large-scale unanticipated changes in actual prices (increase or decrease) there is no means available to modify the standard exvessel prices or fee percentage. The OOC recommends that the Council consider the development of a regulatory mechanism by which these values could be changed in response to such unforeseen fluctuations. The intent is to assure that these drastic changes do not jeopardize adequate observer coverage.

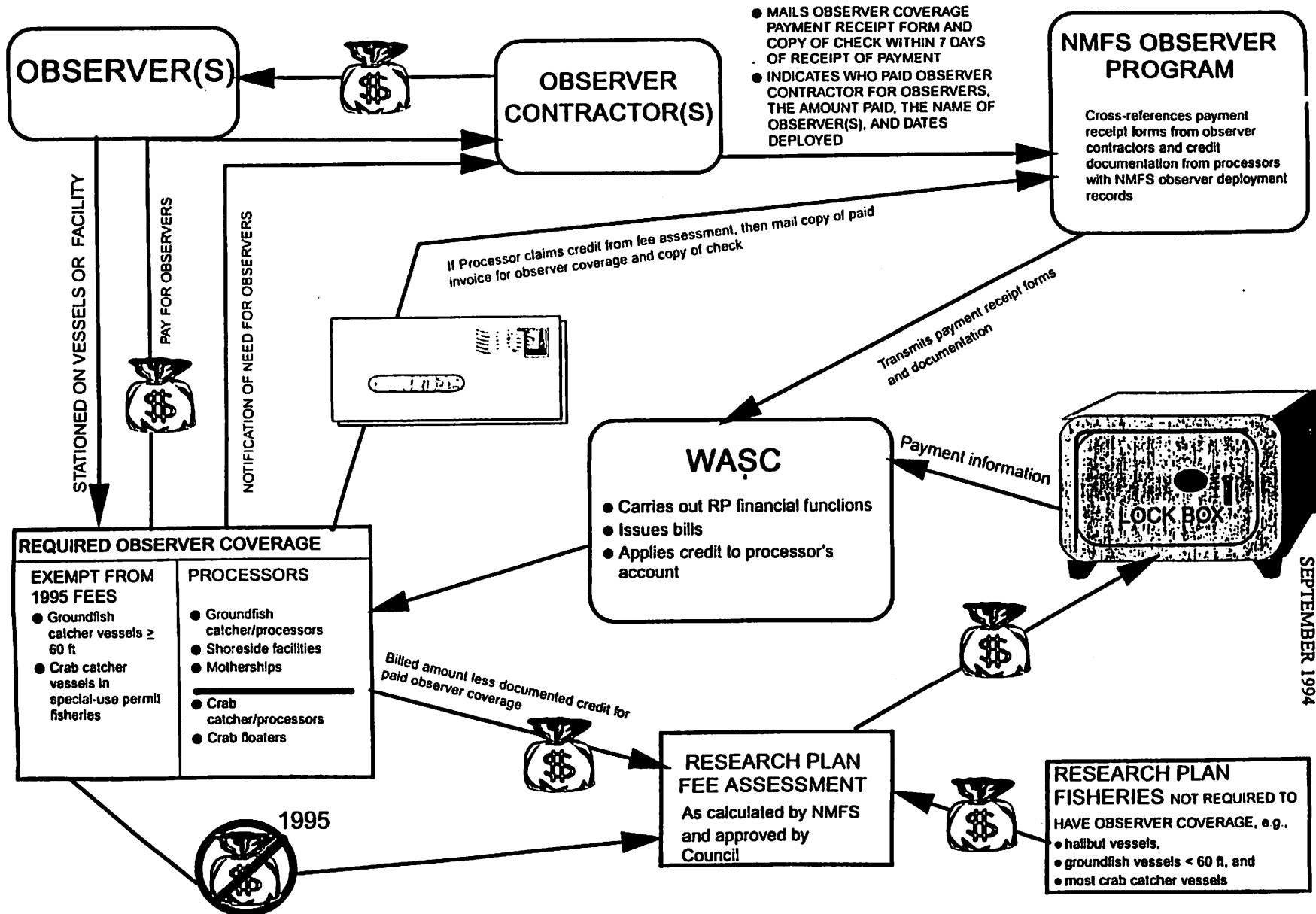
OOC members also noted that drastic exvessel price changes have occurred between years, particularly for pollock and crab. The committee felt there should also be an inseason adjustment procedure to all adjusting the NMFS exvessel price on which the fee collection is based if a drastic exvessel price change occurred.

IX. SUMMARY OF RECOMMENDATIONS

1. Set 1995 fee percentage at 2%.
2. Consider adjusting the exvessel price for Atka Mackerel and Bering Sea longline-caught Pacific cod if NMFS, after reviewing industry data, suggests the change is warranted.
3. Request that a mechanism for adjusting exvessel prices and/or the fee percentage inseason should substantive changes in any exvessel price or tonnage delivered of any species occur. The intent is to protect the integrity of the observer program and avoid using fish prices which are substantively different from actual fish prices.

Establishing the Fee Percentage and Standard Exvessel Prices for 1995

THIS AGENDA ITEM IS BEING COPIED SEPARATELY



- MAILES OBSERVER COVERAGE PAYMENT RECEIPT FORM AND COPY OF CHECK WITHIN 7 DAYS OF RECEIPT OF PAYMENT
- INDICATES WHO PAID OBSERVER CONTRACTOR FOR OBSERVERS, THE AMOUNT PAID, THE NAME OF OBSERVER(S), AND DATES DEPLOYED

If Processor claims credit from fee assessment, then mail copy of paid invoice for observer coverage and copy of check

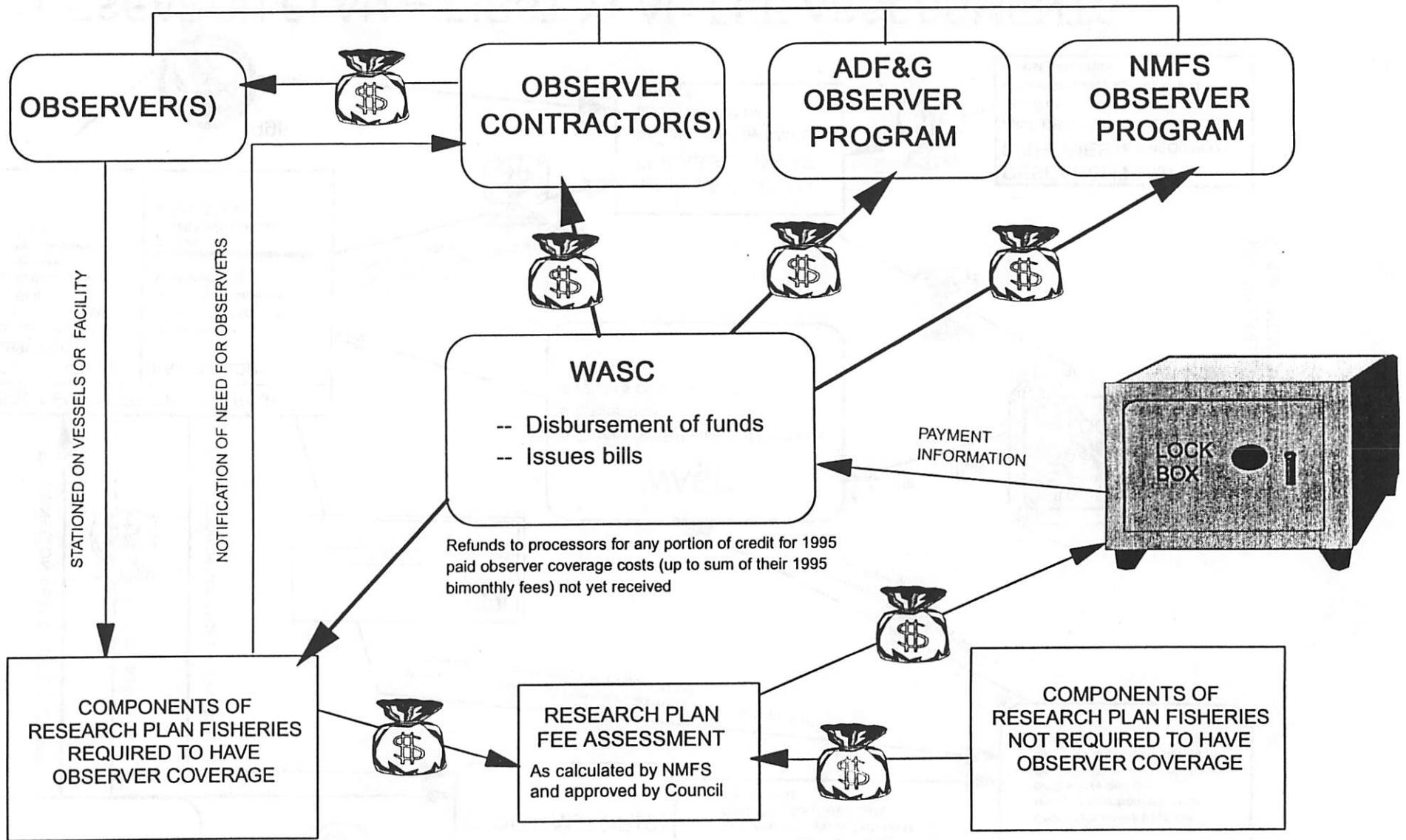
Transmits payment receipt forms and documentation

Payment information

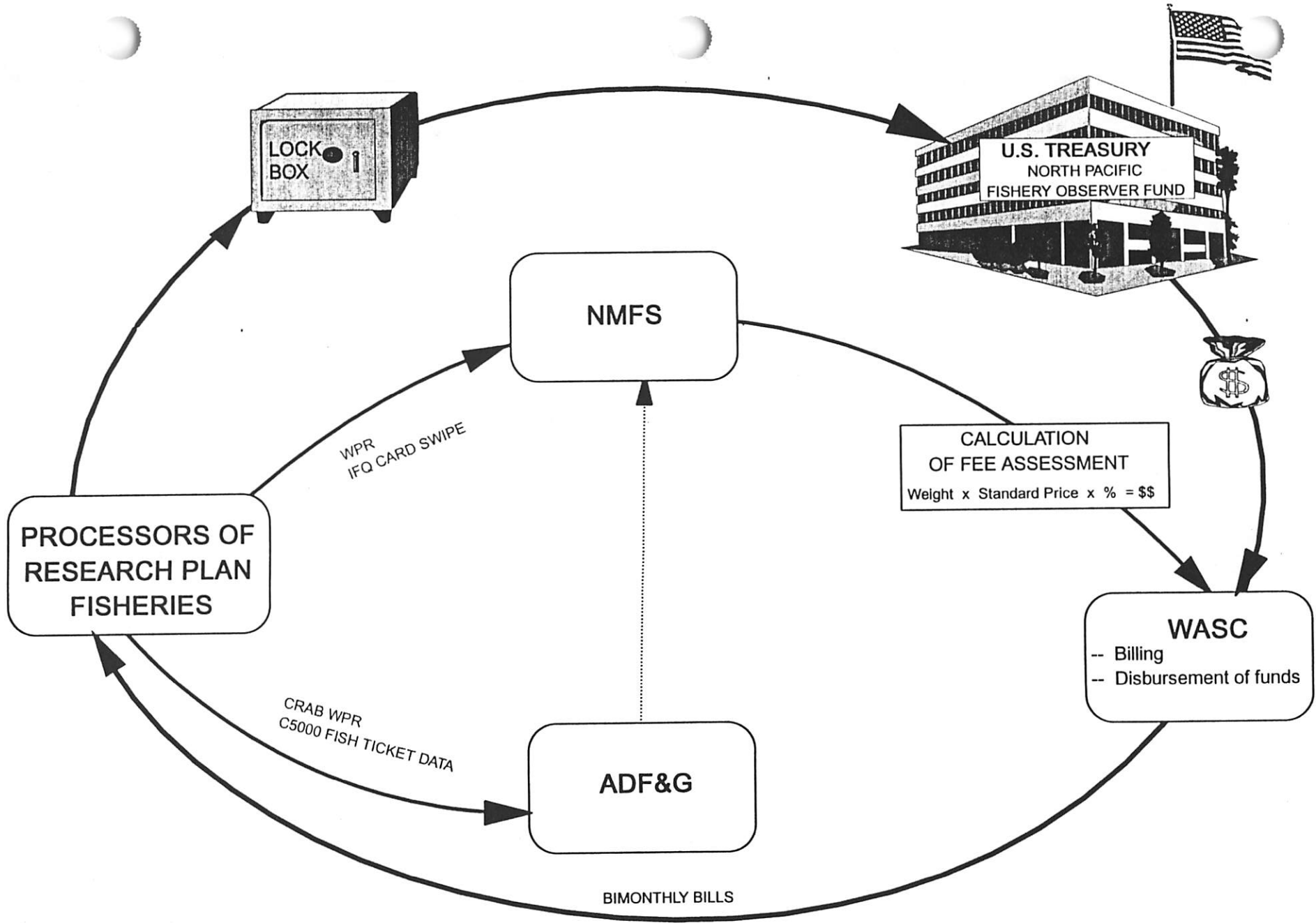
Billed amount less documented credit for paid observer coverage

RESEARCH PLAN -- FIRST YEAR FEE ASSESSMENTS

TRAINING, BRIEFING, DEBRIEFING, DATA COLLECTION AND ENTRY



RESEARCH PLAN -- AFTER FIRST YEAR FLOW OF FUNDS



RESEARCH PLAN -- DATA FLOW FOR BILLING PURPOSES

**Tuesday
September 6, 1994**

Food and Drug Administration

Part V

**Department of
Commerce**

**National Oceanic and Atmospheric
Administration**

**50 CFR Part 204, et al.
North Pacific Fisheries Research Plan;
Final Rule**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204, 301, 671, 672, 675, 676, and 677

[Docket No. 940412-4234; I.D. 033194E]

RIN 0648-AD80

North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement the North Pacific Fisheries Research Plan (Research Plan) for the Gulf of Alaska (GOA) groundfish fishery, Bering Sea and Aleutian Islands (BSAI) management area groundfish fishery, BSAI area king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska. The Research Plan will provide an industry-funded observer program and promote management, conservation, and scientific understanding of groundfish, halibut, and crab resources off Alaska.

EFFECTIVE DATE: October 6, 1994.

ADDRESSES: Individual copies of the Research Plan and the environmental assessment/regulatory impact review may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Susan J. Salvesson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries of the BSAI and GOA in the exclusive economic zone (EEZ) are managed under the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI Area and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act) and are implemented for the U.S. fishery by regulations at 50 CFR parts 620, 672, and 675. The domestic fishery for Pacific halibut off Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773-773k), with implementing regulations at 50 CFR part 301. Regulations implementing individual fishing quota (IFQ) measures for the fixed gear sablefish and halibut fisheries off Alaska are at 50 CFR part 676. The

king and Tanner crab fisheries of the BSAI area are managed under the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI. This FMP delegates management of the crab resources in the BSAI area to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the crab FMP appear at 50 CFR part 671.

Section 313 of the Magnuson Act, as amended by section 404 of the High Seas Driftnet Fisheries Enforcement Act, Pub. L. 102-582, authorizes the Council to prepare, in consultation with the Secretary of Commerce (Secretary), a Research Plan for all fisheries under the Council's jurisdiction, except salmon fisheries.

The Council adopted a draft Research Plan at its June 1992 meeting and later reconsidered and adopted a revised Research Plan at its December 1993 meeting. A proposed rule to implement the Research Plan was published in the Federal Register on May 6, 1994 (59 FR 23664). Comments on the proposed rule were invited through July 5, 1994. Nine letters providing written comment were received within the comment period and one letter supporting the Research Plan was received after the end of the comment period. Oral comment on the Research Plan also was received during the June 1994 meeting of the Council, and during three public hearings conducted by NMFS on the Research Plan in Anchorage, AK (June 7, 1994), Seattle, WA (June 15, 1994) and Portland, OR (June 16, 1994). Written and oral comments on the Research Plan are summarized in the Response to Comments section, below.

Section 313(c)(3) of the Magnuson Act requires that, 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 [the Research Plan]. Consultation with the Council was concluded July 14, 1994, in a teleconference meeting between the Council and NMFS. During this consultation, public comments received by NMFS on the Research Plan were reviewed and alternatives for NMFS' response considered.

The Secretary has approved the Research Plan under section 313(c) of the Magnuson Act. Upon reviewing the Research Plan and the comments on the proposed rule to implement it, NMFS has determined that this final rule is consistent with the Magnuson Act and the Research Plan as adopted by the Council. The Research Plan requires that observers be stationed on certain fishing vessels and U.S. fish processors participating in the BSAI management

area groundfish, GOA groundfish, and BSAI area king and Tanner crab fisheries. These requirements may be extended to the halibut fishery off Alaska. Observers will be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority. The Research Plan also will establish a system of fees to pay for the costs of implementing the Research Plan. The fees will be based on the exvessel value of retained catch in the BSAI management area and GOA groundfish fisheries, the BSAI area king and Tanner crab fisheries, and the Pacific halibut fishery off Alaska (Research Plan fisheries). Future recommendations by the Council to include other fisheries under the Research Plan will require an amendment or amendments to the Research Plan and to the regulations implementing it.

The Research Plan and its implementation are explained further in the preamble to the proposed rule. With the exception of the portion of the final rule implementing the first year of the Research Plan, the measures set out in the final rule do not differ significantly from the proposed rule.

Response to Comments

Nine letters of comments were received within the comment period. NMFS also received oral comments during three public hearings on the Research Plan. A summary of the written and oral comments and NMFS' response follows:

Comment 1. During the current Magnuson Act reauthorization, the Secretary should recommend that the name of the Research Plan be changed to the North Pacific Fisheries Observer Plan to better reflect its intent.

Response. NMFS agrees that the title "North Pacific Fisheries Research Plan" does not accurately reflect the scope of the statutory authority set out at section 313 of the Magnuson Act. Nonetheless, any change to the title would require an amendment to the Magnuson Act. NMFS' ability to include such an amendment in the current reauthorization process is limited. An amendment to the Research Plan as adopted by the Council also would be required. NMFS recommends that the Council consider changing the name of its Research Plan the next time an amendment to the Research Plan is initiated. Until the name of the Research Plan is amended, its implementing regulations will continue to refer to the "Research Plan" to reduce confusion and inconsistency between the Research

Plan as adopted by the Council and its implementing regulations.

Comment 2. The Research Plan could become a model for other user fee programs proposed nationwide. This Research Plan, therefore, must be efficient, equitable, and supported by the industry.

Response. NMFS agrees. The Research Plan must be efficiently administered and equitable to all affected sectors of the industry to ensure its success. NMFS believes that the final rule implementing the Research Plan achieves this goal.

Comment 3. The present Observer Plan is satisfactory and the implementation of the Research Plan should be delayed until a comprehensive rationalization program for the crab and groundfish fisheries is implemented. Concerns about maintaining the integrity of the observer program under the existing Observer Plan can be readily addressed by contracts and penalties without the need to impose a costly new system on the industry.

Response. For reasons outlined in the proposed rule, NMFS, the Council, and many sectors of the affected industry do not believe that the current Observer Plan is satisfactory. Once the Research Plan is fully implemented, the cost of observer coverage would be linked much more closely to both the benefits each participant receives from the observer program and the participant's ability to pay for observer coverage. In attaining a more equitable payment system, the costs for observer coverage will be increased for some operations, decreased for some, and remain unchanged for others.

Delaying Research Plan implementation until a comprehensive rationalization program for groundfish and crab fisheries is implemented would unnecessarily delay a reasonable response to the concerns existing under the current observer programs, including conflict of interest and nonpayment for observer coverage. Under the current observer program, NMFS has limited ability to monitor contracts between vessel and processor owners, observer contractors, and observers. Under the Research Plan, observers will be employees of NMFS contractors and the possibility of conflicts of interest between the observers and the vessels they are observing is greatly reduced.

Furthermore, NMFS will be in a better position to take action on cases of observer nonpayment by contractors.

Comment 4. Catcher/processors will be assessed a fee of up to 2 percent of the exvessel value of their retained

catch. For some processors with 100-percent observer coverage, this will result in a fee that reflects up to an eight-fold increase in costs for observer coverage. An increase of this magnitude is difficult to accept, given that observer coverage on these vessels cannot be any greater than it is now, and many more industry participants will be sharing the costs of the program.

Response. One of the objectives of the Research Plan is to distribute the costs of observer coverage more equitably. Those who have low observer coverage costs relative to the exvessel value of the fish they retain and those who currently have no observer coverage requirements will experience increased costs. Those who have high observer coverage costs relative to the exvessel value of the fish they retain will experience decreased costs. The distribution of costs under the Research Plan will become more equitable, both in terms of the benefits received from the observer program and the ability to pay for observer coverage.

Comment 5. Fishermen should not have to pay costs associated with agency support of the groundfish and crab observer programs under the Research Plan when NMFS and the Alaska Department of Fish and Game (ADF&G) have paid for these costs in the past.

Response. Agency costs to administer and operate the groundfish and crab observer programs are authorized recoverable costs under the Research Plan. Nonetheless, NMFS is pursuing continued funding of the observer programs at current levels. If NMFS is successful, the use of the North Pacific Fishery Observer Fund (Observer Fund) to support agency costs of implementing the observer program will be minimized.

Comment 6. The first-year fee collection program should be restructured to avoid the proposed "double payment" program requiring vessels using observers to pay the costs of observer coverage in addition to paying the Research Plan fee, with a later rebate for observer costs. Alternative fee collection programs include crediting billed fee assessments for observer costs, an accelerated rebate of costs for observer coverage over the 2-percent assessment rate, or a system where vessels and processors currently paying for observers would not be required to pay the Research Plan fee.

Response. NMFS agrees and has implemented a revised program for the first year of the Research Plan that allows processors to subtract from their billed fee assessments observer costs incurred by the processor during 1995. Groundfish catcher vessels equal to or greater than 60 ft (18.3 m) length overall

(LOA) and crab catcher vessels required to carry observers while participating in specified crab fisheries will be exempt from fee assessments during 1995 because these two sectors of the Research Plan fisheries currently pay costs for observer coverage that are equal to or greater than amounts they would contribute under the Research Plan fee assessment program.

Comment 7. The proposed rebate program during the first year of the Research Plan constitutes an unfair imposition on the segment of the industry that supposedly has already been unfairly burdened, particularly vessels that currently are required to obtain 100-percent observer coverage. A different approach is recommended under which industry participants who are not now paying any observer costs would pay the 2-percent fee; those who are paying for 30-percent observer coverage would continue to pay for that coverage, without rebate, and would pay 70 percent of the 2-percent fee; and those who are paying for 100-percent observer coverage would continue to pay for that coverage, without rebate, and would not pay any portion of the 2-percent fee. In the second year, all participants would be assessed the same fee percentage under the percentage fee system.

Response. NMFS has revised the first year of the Research Plan to eliminate the proposed rebate program. The final rule exempts from the first-year fee assessment program those operations that currently pay costs for observer coverage that equal or exceed costs that they would pay under the Research Plan once it is fully implemented (see the response to Comment 6). Furthermore, participants in the Research Plan fisheries who currently are not required to obtain observer coverage will pay their full portion of the 1995 fee percentage. Because the fee percentage authorized under the Research Plan is assessed against the exvessel value of retained catch, fee assessments can exceed current costs for observer coverage by vessels and processors required to have 100-percent observer coverage. These operations will be required to pay the difference between the fee assessment and observer costs. Once the Research Plan is fully implemented, all participants in the Research Plan fisheries will contribute equitably to the payment of Research Plan fee assessments based on the annual fee percentage and the exvessel value of retained catch.

Comment 8. If the proposed rule is revised to eliminate the first-year rebate program, concern exists that insufficient start-up funds would be collected to

allow full implementation of the Research Plan by January 1996. This is of particular concern if fees are assessed only against fish harvested and processed by vessels or processors not required to obtain observer coverage.

Response. See the response to Comment 6. The revised program for the first year of the Research Plan will collect fees from all participants in the Research Plan fisheries except from those persons who pay costs for required observer coverage that exceed their fee liability under the Research Plan. Based on the analysis presented in the final environmental assessment/regulatory impact review (EA/RIR) and assuming a 2-percent fee percentage for 1995, the revised program should provide sufficient start-up funds for full implementation of the Research Plan by January 1996.

Comment 9. If a rebate program is implemented for the first year of the Research Plan, rebates should be based on actual costs for observer coverage and not on a "standardized cost of an observer day."

Response. NMFS agrees. Although the final rule implementing the Research Plan does not include a rebate program, a processor can subtract from its portion of a billed fee assessment the actual costs incurred by the processor for observer coverage during 1995.

Comment 10. The Research Plan should include a requirement for an annual audit of the program by an independent (non-government) auditor.

Response. At this time NMFS believes that a regulatory requirement for an annual audit of the Research Plan by an independent (non-government) auditor is unnecessary. Under the Department of Commerce (DOC) Financial Management System (FIMA), annual financial reports that summarize all financial activity within the Observer Fund will be prepared for review by the Council's Observer Oversight Committee (OOC) and the Council.

Special audits by a non-government or independent governmental agency, such as the General Accounting Office (GAO) or the DOC Inspector General, can be solicited by the Council, provided the intended extent of the audit is clearly defined and the audit utilizes generally accepted governmental auditing standards issued by the Comptroller General of the United States. NMFS believes costs associated with a special audit would be recoverable under the Research Plan.

Comment 11. The proposed requirements for 60-day and 10-day advance notice to observer contractors for observer coverage do not pose a problem for those fishing seasons that

are scheduled regularly and well in advance. These requirements will be impossible to meet when inseason changes in season opening dates occur, or when reserves are released. These latter types of announcements are frequently made with notice of a week or less, obviously precluding any ability to arrange for an observer 60, or even 10 days, in advance. The proposed rule should be revised to provide an exception for situations in which advance notice cannot be given due to circumstances outside the control of the vessel owner.

Response. The final rule implementing the Research Plan does not change the proposed criteria for notifying an observer contractor of a vessel's or processor's observer needs. The 60-day and 10-day notification periods are necessary to guarantee the availability of observers to meet observer coverage requirements, particularly if additional observer training classes must be arranged to meet the demand for observer coverage. NMFS agrees that circumstances could occur that would preclude a person from providing a 60-day or 10-day notice to an observer contractor for observer coverage. If this should occur, NMFS cannot guarantee the availability of observers to satisfy observer coverage requirements. NMFS is aware of the logistic and planning problems that can arise when fisheries are opened on short notice and will attempt to provide sufficient advance notice of inseason fishery openings to allow vessels and processors to comply with observer coverage requirements.

Comment 12. Designated observer embarkment/disembarkment locations were proposed for Alaska in the preamble to the proposed rule. Vessels based in Washington State often proceed directly to the fishing grounds and the proposed rule should be revised to add one or two locations for embarkment/disembarkment of observers in Washington.

Response. NMFS considered designating embarkment/disembarkment locations outside Alaska, but due in part to the prohibitive transportation costs, declined to include non-Alaska sites in the list of proposed ports. ADF&G crab managers recommended that crab observer embarkment/disembarkment sites coincide with the observer briefing/debriefing sites in Alaska. The selection of embarkment/disembarkment ports occurs annually as part of the Research Plan specification process with opportunity for Council review and public comment. Embarkment/disembarkment sites

outside of Alaska may be considered, along with the attendant costs, during this annual process.

Comment 13. The proposed rule specified that vessels requiring observer coverage must have passed a Coast Guard safety inspection within the last 2 years. If this requirement is a reference to the fishing-industry-specific inspection requirements contained in 46 U.S.C. Chapter 45, the final rule should be clarified to say so.

Response. The U.S. Coast Guard implemented regulations codified at Titles 33 and 46 CFR, which implemented statutory provisions at 46 U.S.C. Chapter 45. The final rule has been clarified to require that vessels with observer coverage display certification of compliance with certain U.S. Coast Guard regulations codified at Titles 33 and 46 CFR and at 46 U.S.C. 3311. This requirement is intended to provide observers with some assurance that vessels they are stationed on meet specified U.S. Coast Guard safety standards.

Comment 14. Vessels cannot always provide officer's accommodations for observers as would be required by § 677.10(c)(1) of the proposed rule.

Response. Section 677.10(c)(1) has been changed in the final rule to require accommodations and food for observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel. The intent of this regulation is to require a vessel operator to treat the observer with respect. The observer need not be given the captain's quarters, but the observer should not be housed in a room with accommodations less than those provided for management personnel.

Comment 15. If a funding shortfall exists, would NMFS allow overharvesting of a total allowable catch (TAC) to generate additional funding?

Response. NMFS will not authorize an overharvest of a species' TAC to generate additional revenue under the Research Plan.

Comment 16. Catcher vessels should not be liable for delivering fish to an unpermitted processor. The violation should remain with the processor, not the vessel. Some other means besides NMFS' electronic bulletin board should be used to notify the industry of the processors with valid permits.

Response. NMFS believes it is the responsibility of catcher vessel operators to be aware of the permit status of each processor they choose to do business with. A processor will not be issued semiannual processor permits unless its billed fee assessments are paid. The prohibition on delivering fish

to a processor not possessing a current semiannual permit provides additional incentive to the processor to submit timely payments on its billed fee assessment. This is a crucial consideration in achieving the objectives of the Research Plan. NMFS will maintain an updated list of permitted processors on its electronic bulletin board. A vessel operator also can request this information directly from a processor.

Comment 17. Currently, 30-percent observer coverage requirements are strictly adhered to because vessel operators do not want to pay for additional observer coverage. Under the Research Plan, this strong incentive to effectively limit coverage to required levels will be eroded.

Response. NMFS realizes that full implementation of the Research Plan will erode some of the incentive to a vessel operator to disembark an observer as soon as coverage requirements are met. Observer contractors will work with vessel owners to monitor the observer coverage and to see that observers are transferred to other vessels where coverage is needed. NMFS may order a vessel to port to disembark an observer, should that prove necessary.

Comment 18. Concern exists that the Research Plan will ultimately result in reduced observer coverage, because the statutory limit on the annual fee percentage (2 percent) will not allow for the collection of funds sufficient to provide for increased costs of observer coverage, nor for increased administrative costs incurred by NMFS and ADF&G.

Response. NMFS is committed to providing an efficient and effective observer program within the statutory constraints. NMFS will use the best available information to establish the annual fee percentage. If increased Research Plan costs or reduced fee collections due to a reduced exvessel value of Research Plan fisheries create unanticipated shortfalls within any calendar year, a regulatory mechanism exists to decrease observer requirements over the season. Alternatives to reduced observer coverage in both the short and long term also exist in the form of amending the Magnuson Act to allow for a fee percentage greater than 2 percent, or obtaining other sources of funding.

During 1995, the first year of the Research Plan, an annual fee percentage of 2 percent may be necessary to accumulate sufficient start-up funds to support the contracts for observer coverage during the first half of 1996. In succeeding years, the percentage should be lower. In all cases the 2 percent limit

should serve as an incentive to keep down the costs, make the observer programs more efficient, and seriously evaluate the benefits of any proposed increase in observer coverage requirements.

Comment 19. The Council is considering alternative incentive programs to address bycatch waste that would require additional observer coverage for participating vessels. The final rule implementing the Research Plan should not preclude voluntary increases in observer coverage by vessel owners as a prerequisite for participation in these incentive programs.

Response. Observer coverage regulated under the Research Plan is set out under § 677.10 of the final rule. The Research Plan does not preclude observer coverage beyond levels required under the Research Plan by anyone participating in a voluntary incentive program. However, persons who voluntarily obtain observer coverage beyond that required under the Research Plan would incur the costs of the additional coverage. Furthermore, voluntary or mandatory requirements for observer coverage beyond those authorized under the Research Plan would require rulemaking.

Comment 20. Concern exists about the possibility of new fees being imposed on the fishing industry during the current reauthorization of the Magnuson Act. Because of this concern, a sunset date should be added to the Research Plan that would take effect if and when amendments to the Magnuson Act duplicate fees being charged under the Research Plan. Any new fee imposed under the Magnuson Act should not be in addition to the fees required under the Research Plan.

Response. Changes to regulations normally must be accomplished through rulemaking, rather than being automatically triggered by events, such as passage of legislation. Under the Administrative Procedure Act notice and comment procedures, the public must be given notice of the proposed change and have an opportunity to comment on the proposed change. Should the Council decide that, in the future, the Research Plan should be withdrawn or modified to take into account amendments to the Magnuson Act, or for any other reason, it can recommend that the Secretary do so under normal rulemaking procedures.

Comment 21. Industry members should be allowed to participate in the NMFS/ADF&G work group to oversee agency efforts to streamline the groundfish and crab observer programs and to maximize efficiency of

administration and implementation of these programs.

Response. NMFS disagrees. Industry members have many opportunities to comment on or participate in agency efforts to streamline the groundfish and crab observer programs. These opportunities include the Advisory Panel (AP), the OOC, and public testimony or written comment on the annual Research Plan specification process or other pertinent actions before the Council. The NMFS/ADF&G work group meetings will provide a setting for staff members to address administrative, implementation, and efficiency issues of the observer programs and to respond to issues and concerns raised by the public through the AP, OOC, or testimony before the Council.

Comment 22. Given limited resources and a need to expand overall observer coverage, it is essential that the Research Plan be implemented in such a way as to maximize efficiency and minimize administrative overhead and costs. The first major step in that direction would be to consolidate the crab and groundfish observer programs. In addition to reduced costs, a consolidated program would provide an opportunity to standardize training and qualification requirements for observers, develop more rational deployment schemes, coordinate research and data collection objectives, and move toward the development of a professional, well trained, well qualified observer corps. With this goal in mind, NMFS and ADF&G should prepare budgets and report to the OOC and Council on the feasibility of combining the groundfish and crab observer programs.

Response. NMFS and ADF&G are actively pursuing ways in which the NMFS groundfish and ADF&G crab observer programs can combine tasks and more efficiently utilize resources. Some areas being explored for possible future collaboration are training, briefing, debriefing, and field support. Also, under the Research Plan, an interagency (NMFS and ADF&G) working group will be established to address issues of consolidation and cost efficiency.

Comment 23. Fiscal year (FY) 96 budgets prepared for the crab and groundfish observer programs do not include the costs for shellfish observer training. NMFS has factored the costs of shellfish training into a daily observer cost estimate reported by observer contractors, rather than use training costs incurred by the University of Alaska, which has been bearing these costs. True costs of the crab observer training should be included in the Research Plan budget so that everyone

has an accurate picture of the entire program. Crab fishermen and shellfish observer contractors may claim they are being discriminated against if they will have to pay an additional cost of shellfish training beyond that paid by user fees. Shellfish observer training should not be treated differently from groundfish observer training under the Research Plan.

Response. Specific comments on agency budgets and policy necessary to administer the groundfish and crab observer programs are outside the scope of the final rule to implement the Research Plan. Comments of this sort would best be addressed under the annual specification process set out at § 677.11 of the final rule.

Nonetheless, NMFS agrees the FY96 budgets for the crab and groundfish observer programs do not include the costs for shellfish observer training because neither NMFS nor ADF&G currently train crab observers. NMFS believes it is appropriate to require potential observer contractors to incorporate subcontracted costs for training crab observers in their response to the request for solicitation. NMFS believes that this approach will incorporate all the costs of training crab observers within the Research Plan contracts, thereby avoiding the possibility of crab vessels or observer contractors incurring additional costs.

Under the Research Plan, the NMFS/ADF&G working group will examine differences and similarities between the groundfish and crab observer programs and will consider the potential benefits of training crab observers within the ADF&G observer program or within the NMFS observer program.

Comment 24. Agency budgets should include costs for crab observer training and explicitly identify groundfish and crab observer program costs. NMFS and ADF&G must work towards streamlining programs and reducing costs (e.g., cross-training of observers, sharing field facilities, coordinating briefing and debriefing functions.)

Response. See the responses to Comments 22 and 23.

Comment 25. NMFS staff have expressed the intent to solicit bids for crab observer training, but not the groundfish observer training. Both crab and groundfish training programs should be subject to the bidding process. Not only will this produce the most cost-effective approach to training, but it will assure that the groundfish and crab industry receive similar treatment under the Research Plan.

Response. As mentioned in the responses to Comments 22 and 23, the NMFS/ADF&G working group will be

considering various options for both groundfish and crab training and these options will be discussed before the OOC and the Council as part of the annual specification process.

Comment 26. In-season price adjustments, in-season payment adjustments, or price forecasts should be used, when practicable, to decrease differences between the standard exvessel prices and the actual exvessel price that can result from seasonal or inter-annual price fluctuations.

Response. Early in the development of the fee collection program for the Research Plan, the Council recommended the use of actual exvessel prices and values for processors that purchase fish from fishermen and the use of standard exvessel prices for integrated harvesting and processing operations that do not purchase fish. This recommendation adjusted prices to reflect the actual prices for the former class of processors and post-season price settlements. By 1992, the Council had identified problems with this recommendation and voted to recommend the use of standard exvessel prices for all processors. The problems included the following: (1) The incentive of fishermen and processors to understate actual exvessel prices, (2) the difficulty of verifying that the reported prices were correct, (3) the difficulties of applying post-season adjustments in exvessel prices to the standard exvessel prices used for processors that catch their own fish, and (4) the lack of timely price information from fish tickets. The Council recognized that actual inseason exvessel price data may provide a more equitable basis for fee assessments among processors who purchase fish. However, the Council determined that the potential for more equitable fee assessments was not sufficient to overcome the problems associated with using actual prices.

The Council has recommended that NMFS establish standard prices for 6-month periods. This recommendation should increase the ability of NMFS and the Council to set standard prices that will closely approximate actual prices. This process will be facilitated if the exvessel price information from fish tickets becomes available in a more timely manner.

Fee revenue and actual fee liability would be more uncertain if they were based on inseason price or payment adjustments. If prices increase, processors could have difficulty collecting the additional fees from fishermen, and if prices decrease, processors may not make the appropriate refunds to fishermen. Over time, the unexpected increases and

decreases in exvessel prices are expected to cancel out.

Under the final rule, the standard exvessel prices will be based on: (1) Exvessel price information during the most recent 12-month period for which data are available for different seasons, gear types, management areas, and processing sectors; (2) factors that are expected to change exvessel prices in the upcoming calendar year; and (3) other information that indicates what exvessel prices would be expected to be in the upcoming calendar year. Therefore, to the extent practicable, price forecasts will be used.

Comment 27. When differences in prices by gear, area, mode of operation, and season are real and significant, separate standard prices should be established for each.

Response. NMFS agrees and intends to propose exvessel prices that reasonably accommodate price differences by season, gear, area, and processing sector (inshore and offshore components) (see the response to Comment 26). However, even when real and substantial differences exist in exvessel prices by gear, area, mode of operation, and season, there are justifications for not establishing a separate standard price for each. To the extent that exvessel prices differ due to differences in the services a fishing vessel provides in addition to harvesting raw fish, it may be inappropriate to establish separate standard prices.

Comment 28. It is unfair not to account for differences in prices due to stage of product processing and mode of operation.

Response. As noted in the response to Comment 27, NMFS believes it may be inappropriate to charge different fees per pound of retained catch for different fishermen due to differences in the distribution of services between fishermen and processors or to assess a higher fee per pound for a group of fishermen that perform services that are typically performed by processors.

Comment 29. Prices should be imputed by area when the size of fish differ by area and product prices differ by the size of fish.

Response. The cost of accommodating this suggestion could be justified if large differences exist in product prices by area of catch. The annual processor survey conducted by the State of Alaska does not collect price data for narrowly defined areas. As a result, NMFS would have to use other sources of product price data that would tend to increase information and analytical costs and, perhaps, decrease the quality of the price estimates. In the future, NMFS may consider rulemaking to collect

additional price information if existing sources of data are deemed insufficient.

Comment 30. The method used by NMFS to impute exvessel prices is acceptable, but the product prices and product price to exvessel price conversion factor should be reviewed, a conversion factor of 20-percent should be used, and an industry committee of those familiar with these species should be part of the review process.

Response. The Research Plan specification process set out in the final rule at § 677.11 includes review of the imputed standard exvessel prices by the OOC, AP, Scientific and Statistical Committee (SSC), the public, and the Council before the standard exvessel prices are proposed. The proposed standard exvessel prices will be published in the Federal Register annually, and the data on which they are based will be included in a report available from the Council. Public comments will be requested on both the proposed standard exvessel prices and the data on which they are based. The final standard exvessel prices will be established after further review by the OOC, AP, SSC, and the Council. Therefore, the process for establishing standard exvessel prices allows for as much input and review as the industry is willing to provide. The industry is free to establish a committee to assist in establishing standard exvessel prices.

Comment 31. Actual prices paid to fishermen are recorded on fish tickets and these prices should be used to calculate fee assessments, rather than the proposed method of using standard exvessel prices. If standard exvessel prices are used, NMFS should implement a separate rebate program to reimburse fishermen who were ultimately charged more than 2 percent of the exvessel value in those cases where the standard exvessel price is less than the actual price they received.

Response. See the response to Comments 26 and 27.

Comment 32. Fee assessments should not be assessed on deadloss crab.

Response. Fee assessments will be based on the amount of crab retained by a processor. Crab that is harvested alive but dies enroute to the processor is considered deadloss and is not purchased by the processor or buyer. This crab, therefore, will not be considered retained catch for the purpose of calculating fee assessments.

Comment 33. Under the proposed rule, retained catch for processor vessels would be determined by using standard product recovery rates (PRRs) to calculate round-weight equivalents. Retained catch can be calculated most accurately by actual weights, rather than

by using a derivative system.

Recognizing that not all processor vessels are equipped with scales, a system should be implemented under which a processor could elect to have retained catch calculated by any recognized acceptable means, such as actual weight, volumetric measure, or standard PRRs.

Response. NMFS has prepared a draft analysis for Council consideration that evaluates different alternatives for obtaining accurate catch weight measurements. The Council is scheduled to take final action on a preferred alternative before the end of 1994. Until regulations are implemented that serve as consistent guidelines for obtaining accurate measurements of catch weight, NMFS will continue to rely on PRRs to calculate round-weight equivalents.

Comment 34. NMFS has reported that a 10-20 percent discrepancy exists between observed retained catch estimates and retained catch amounts reported by processor vessels in their weekly production reports. Currently, an easy and precise method to verify the accuracy of reported catch amounts is not available. Given that the projection of groundfish exvessel value was based on projected catch using a blend of observer and vessel data, concern exists that this projection overestimates the fees that will be collected during the start-up year by 10 percent or more. If this is the case, full implementation of the Research Plan may be unnecessarily delayed. A better alternative is to calculate the fee based on retained weight, but incorporate the "blend" method to decrease the problem of under-reporting.

Response. Retained catch amounts used to project exvessel value of groundfish for purposes of the Research Plan were based on data submitted by the industry on weekly production reports and ADF&G fish tickets. These data, not blend data, were used to project exvessel value of retained catch and provide the best information available on which to base projected revenues under the Research Plan.

Comment 35. The use of PRRs to calculate round weight of retained catch is problematic for several reasons. First, a sizeable disparity exists within the industry regarding the PRRs of various products. Second, the current rates being used by NMFS are not necessarily based on scientific or statistically defensible data. If PRRs must be used, they must be based on the best available scientific evidence.

Response. NMFS has determined that the standard PRRs that it will use to calculate round-weight equivalents of

retained catch by at-sea processors represent the best available scientific information about product recoveries being achieved by the processing industry. NMFS has invited public comment on the standard PRRs it will use and will soon publish them in a final rule. NMFS will continue to review information about product recoveries and will propose regulations to revise any particular standard PRR, if necessary. See also the Response to comment 33.

Comment 36. Under the proposed Research Plan, vessels are charged a fee based on the round-weight of retained fish. As a result, a large incentive will exist to not make products such as fish meal or process small fish or male flatfish, which may be perfectly fit for human consumption but have a lower market value. A better method would be for each vessel to pay for what it catches, whether or not the fish are retained for processing. If vessels were assessed a fee based on the weight of fish caught, there would be an economic incentive to reduce bycatch and other fish waste, as well as an incentive to collect and report the best possible data.

Response. NMFS has revised the final rule to exempt from bimonthly fee assessments the exvessel value of whole fish that are processed into meal. This action is intended to address concerns that the imposition of Research Plan fees on the exvessel value of retained catch may create an incentive for processors to discard low value fish that otherwise may have been retained.

Section 313 of the Magnuson Act authorizes the assessment of fees on both retained and discarded catch. Given this authority and the Council's desire to encourage retention of catch under the Research Plan, the Council has asked the OOC to explore options for assessing fees on discarded catch. Any future recommendation by the Council to implement a fee assessment program for discarded catch will require rulemaking and likely would not be implemented before 1996.

Comment 37. Insurance coverage requirements should be established for observers.

Response. At its June 1994 meeting, the Council indicated that it will appoint a technical committee to address the issue of standard insurance coverage for observers.

Comment 38. The concept of a risk-sharing pool for observer insurance is not acceptable because the pool concept undermines the competitive process for insurance.

Response. Section 313(e) of the Magnuson Act requires the Secretary to review the feasibility of establishing a

risk-sharing pool to provide insurance coverage for vessels and owners against liability from civil suits by observers. This feasibility study will include a cost analysis and a review of potential impact on vessel owners, observer contractors, and observers. The Secretary will not establish a risk-sharing pool if his review shows that comprehensive commercial insurance currently is available for all fishing vessels and processors required to have observers, and such insurance will provide a greater measure of coverage at a lower cost to each participant.

As noted in the response to Comment 37, the Council took action at its June 1994 meeting to establish a technical committee to address this issue.

Comment 39. Identification should be required for observers at shoreside plants (e.g., vest, tag, ID card), to facilitate their access to confidential information (fish tickets, data on plant production, etc.).

Response. NMFS agrees and presently is investigating the feasibility of supplying observers with an ID card that would either replace, or be in addition to, the present letter of certification.

Comment 40. NMFS should be more effective in dealing with observer harassment issues as reported by observer contractors.

Response. Contractors currently have the ability to deny observer coverage to vessels that have had continuing problems with harassment of observers. Under the fully implemented Research Plan, vessel or processor owners no longer will be the clients of the contractors and NMFS will have greater ability to ensure that harassment situations are handled in an appropriate manner. NMFS Enforcement will continue to investigate reported instances of observer harassment and will take action where warranted.

Comment 41. Observer duties should remain unchanged under the Research Plan and should not become more enforcement oriented.

Response. Existing observer duties will be unchanged under the Research Plan.

Comment 42. NMFS should assess an observer's performance through survey information collected from the industry.

Response. At present, members of the fishing industry can and do comment on an observer's performance by calling or writing to the NMFS Observer Program office. NMFS recognizes the need for a more formalized process for providing feedback, and is in the process of designing a questionnaire. Such questionnaires would need to be approved by the Office of Management and Budget (OMB) under the Paperwork

Reduction Act, even though responses would be voluntary.

Comment 43. The Research Plan must be implemented to provide for greater NMFS oversight over the relationships between observers, observer contractors, and fishing interests. Currently, these relationships are compromised and NMFS and the Council have failed to oversee properly the integrity of these relationships. Instead, observer contractors continually exhibit interest in profits before either data quality or observer security. This situation reduces the collection of scientific data by observers to a vendor activity, jeopardizes the safety and well-being of observers, and undermines the credibility of the scientific data collected by observers.

Response. The expected change in the relationships between observers, observer contractors, and fishing interests with the full implementation of the Research Plan is one of the most important reasons for implementing it. Under the Research Plan, money for observer coverage will be distributed through NMFS, and NMFS will exercise more oversight through contractual relationships with the observer contractors.

Comment 44. NMFS and the Council should analyze the usefulness and economic efficiency of observer contractors. These individuals serve as a third-party conduit of financial payment for observer coverage and the financial resources distributed to them could be more constructively channeled.

Response. Under the Research Plan, NMFS could fund Federal employees to serve as observers. NMFS is presently evaluating the feasibility of having Federal observers serve at least some of the observer needs. However, many obstacles exist to implement such a proposition, notably the present effort to reduce the Federal work force.

Comment 45. Nonpayment of contractors and observers has been a problem since 1991. NMFS' inaction in not decertifying contractors who do not pay their observers allows these contractors to essentially loan observer coverage to the fishing industry. This situation seriously undermines the credibility of the observer program and requires greater oversight by NMFS.

Response. Under current regulations, vessel and processor owners contract with observer contractors to provide observer coverage. NMFS is not a party to those contracts, so has limited ability to enforce contracts between vessel and processor owners, observer contractors, and observers. Under full implementation of the Research Plan,

contractors will be paid from the Observer Fund and NMFS will be in a much better position to investigate and act on cases of observer nonpayment by contractors.

Changes in the Final Rule From the Proposed Rule

This final rule has been revised from the proposed rule to address public comment on the first year of the Research Plan. Neither the Council nor the general public supported the proposed first-year program that would have provided rebates to vessel and processor owners for observer costs, because (1) persons would have experienced delays from the time they paid for observer coverage until they were reimbursed for these costs, and (2) rebates would have been based on standardized costs per observer day. This final rule implements an alternative program for the first year of the Research Plan that addresses these concerns based on the following assumptions and criteria:

a. The first year of the Research Plan will generate sufficient start-up funds during 1995 to allow full implementation of the Research Plan by January, 1996;

b. NMFS will seek funding for the financial support of the observer programs, at least through fiscal year 1996;

c. The first year of the Research Plan will not require "double payment" by any participant in the Research Plan fisheries for any period of time during 1995; and

d. The first year of the Research Plan will credit actual costs paid by a participant in the Research Plan fisheries for observer coverage during 1995 up to the limit of the participant's fee liability.

The revised program for the first year of the Research Plan is set out in this final rule at § 677.6 and is further discussed in the final EA/RIR prepared for this action (see ADDRESSES). In summary, this final rule exempts owners of groundfish catcher vessels equal to or greater than 60 ft (18.3 m) LOA from payment of fee assessments during 1995 because, as a group, this vessel size class currently pays observer costs that exceed 1 percent of the exvessel value of their catch. Crab catcher vessels participating in fisheries for *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, or *Lithodes cousei* king crab are required to carry observers under Alaska State regulations at 5 AAC 34.082 and 5 AAC 35.082. Vessel costs for this observer coverage equal or exceed the vessels' expected fee liability for the retained catch of these

species. As a result, these catcher vessels also are exempt from contributing to the portion of the 1995 fee assessment based on the exvessel value of retained catch of these specific Tanner and king crab species.

Under the final rule, groundfish mothership processor vessels and shoreside processors will be billed for their portion of the 1995 fee assessment (i.e., a fee assessment based on one-half of the annual fee percentage multiplied by the exvessel value of retained catch) plus one-half of the fee assessment calculated for the exvessel value of retained catch delivered by vessels less than 60 ft (18.3 m) LOA. Each of these processors may subtract its observer coverage costs from the processor's portion of the bimonthly bill. With the exception of processors retaining *C. tanneri*, *C. angulatus*, or *L. cousei*, who will be billed one half the fee percentage for these species, groundfish catcher/processors, crab catcher/processors, crab shoreside processors, crab floating processors, and halibut processors will be billed the full fee percentage. Groundfish catcher/processors, crab catcher/processors, and crab floating processors may subtract their groundfish and crab observer coverage costs, respectively, from their bimonthly fee assessment for retained catch of groundfish and crab. The annual deduction for observer costs is limited to the actual cost paid for observer coverage during 1995 or the 1995 fee liability, whichever is less.

Several changes from the proposed rule have resulted from the revised program for the first year of the Research Plan. In addition, other changes have been made to respond to more specific public comments on the proposed rule and to improve the clarity and consistency of regulations. Significant changes are as follows.

1. The OMB control numbers for approved information collection requirements have been added to 50 CFR part 204 to comply with requirements of the Paperwork Reduction Act.

2. Figure 1 of 50 CFR part 677, the Federal Processing Permit Application (Form FPP-1), has been revised to combine existing permitting requirements under § 672.4 and § 675.4 to reduce the reporting burden on processors and to facilitate administrative efficiency in issuing permits. Form FPP-1 also has been changed to more clearly identify persons who qualify as "processors" for purposes of the Research Plan.

3. Figure 2 of 50 CFR part 677, the Observer Coverage Payment Receipt Form (Form FPP-2), has been revised to

collect information on payments to an observer contractor by a processor for observer coverage during 1995. NMFS will use this information to audit the observer coverage costs subtracted by a processor from its billed fee assessments.

4. In § 677.2, the definitions of the terms "Bimonthly", "Catcher vessel", "Fishing trip", "Mothership processor vessel", "Processor", "Retained catch", and "Shoreside processor or shoreside processing facility" have been changed; the definitions of the terms "At-sea processor", "Standard observer day", and "Standardized cost of an observer day" have been removed; and a definition of the term "Fishermen" has been added.

The definition of "Bimonthly" has been revised to coincide with calendar months, rather than weekly reporting periods. This change is necessary to allow greater consistency between ADF&G and NMFS data collected from the industry that is used to calculate processor fee assessments.

The definition of "Catcher vessel" has been revised to clarify that a catcher vessel is used for catching fish, but does not process fish.

The definition of "Fishing trip" has been changed to more clearly implement NMFS' intent for observer coverage requirements set out at § 677.10(a)(1) for catcher vessels delivering groundfish to shoreside processing facilities. A catcher vessel required to carry a NMFS-certified observer during at least 30 percent of its fishing days in a calendar quarter under § 677.10(a)(1) also must carry an observer during at least one fishing trip during the calendar quarter for each of six different groundfish fishery categories defined at § 677.10(a)(1)(ii) in which it participates. In the proposed rule, these fishery definitions were based on a vessel's retained catch composition of groundfish during a weekly reporting period. However, retained catch information for catcher vessels delivering groundfish to shoreside processors is recorded on ADF&G fish tickets that summarize catch retained during a fishing trip, not a weekly reporting period. To resolve this discrepancy, the definition of "Fishing trip" at § 677.2 and of fishery categories at § 677.10(a)(1)(ii) have been clarified to allow the use of ADF&G fish tickets completed at the end of a fishing trip to assign catcher vessels to fisheries.

The definition of "Mothership processor vessel" has been revised to clarify that a mothership processor is not used for, or equipped to be used for, catching fish.

The definition of "Processor" has been revised to include those fishermen who deliver fish directly to restaurants. This change is necessary because information on retained catch is not obtained from restaurants under the recordkeeping and reporting requirements set out under § 672.5 and § 675.5.

The definition of "Retained catch" has been revised to more clearly apply to all processors defined at § 677.2.

The definition of "Shoreside processor or shoreside processing facility" has been changed to more clearly separate this type of processing operation from other types of processors (e.g., catcher/processors, mothership processor vessels, or fishermen who sell fish to restaurants or to another person for use as bait or personal consumption).

The definition of "Fishermen" has been added to clarify reference to this term under the definition of "Processor."

In § 677.2, the term "At-sea processor" has been removed because this term is not referred to in regulations. The terms "Standardized cost of an observer day" and "Standard observer day" have been removed because these terms no longer are applicable.

5. In § 677.6, the following changes have been made.

a. Paragraph (b) has been revised and a new paragraph (d) is added to implement a credit program rather than a rebate program during the first year of the Research Plan. In paragraphs (b)(1) and (b)(2), regulatory language has been added to exempt the exvessel value of whole fish that is processed into meal from bimonthly fee assessments. This change addresses concerns that the imposition of Research Plan fees on the exvessel value of retained catch may create a greater incentive for processors to discard fish that otherwise may have been processed.

b. Old paragraph (d) has been redesignated paragraph (e) and revised to authorize NMFS to charge late fees for the balance of a bimonthly fee assessment in the event the Director, Alaska Region, NMFS, determines that a billing error has not occurred in response to a billing dispute initiated by a processor. The authority to charge a late fee is necessary to discourage a person from using the process set out for disputing a bimonthly fee assessment bill only as a means to delay payment of the bill.

c. Old paragraph (e) has been redesignated paragraph (f) and revised to encourage the timely payment of a billed fee assessment by providing

NMFS the authority to assess a penalty fee in the event payment is not received after 90 days from the due date.

d. Paragraph (f), which would have implemented the proposed rebate program, has been removed.

6. In § 677.7, paragraph (g) has been changed to refer to the revised program for the first year of the Research Plan instead of the proposed rebate program.

7. In § 677.10 the following changes have been made in addition to those referred to under item 4.

a. Paragraph (a)(3) has been changed to include references to Alaska State observer coverage requirements at 5 AAC 34.035, 34.082, and 35.082.

b. Paragraph (c) has been revised to remove the reference to required compliance with U.S. Coast Guard vessel safety requirements. This requirement was moved to a new paragraph (g).

c. Paragraph (c)(1) has been revised to remove a proposed requirement that vessel operators provide accommodations for observers that are equivalent to those provided for officers of the vessel. The regulatory language has been clarified to implement the intent of the proposed rule to require a vessel operator to treat the observer with respect and not provide the observer with accommodations reflective of the lowest level crew onboard the vessel.

d. Paragraph (e) has been revised to clarify that if contractors for observer coverage are not notified within specified time periods, the availability of an observer to meet observer coverage requirements will not be guaranteed.

e. Paragraph (f) has been revised to reflect recent rulemaking that authorized the release of specified observer data on prohibited species bycatch (59 FR 18757, April 20, 1994).

f. Paragraph (g) has been added to clarify a requirement formerly at paragraph (c) that vessels required to carry observers must pass a U.S. Coast Guard safety inspection. Safety requirements for all vessels are clarified. Observers will not be stationed aboard vessels not meeting safety requirements.

8. In § 677.11, regulatory language has been added that would authorize the annual specification of standard exvessel prices by season, area, gear, and processing sector. Reference to the annual specification of "standardized cost(s) of an observer day" also has been removed because this term no longer is applicable.

Classification

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. Public reporting burden for each year of this

collection is estimated to average 0.33 hour per response for completing the semiannual FPP-1, 0.25 hour per response for notifying contractors of needs for observers, and 1.0 hour per response to provide information to document claims of disputed bills. For the first year of the Research Plan, completion of FPP-2 by observer contractors for payment of observer coverage by processor vessels and shoreside processing facilities is estimated to average 0.16 hours per response. All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The collection of information has been approved by the Office of Management and Budget, OMB control numbers 0648-0206 (Processor Permit Application) and 0648-0280 (North Pacific Fisheries Research Plan).

The Council, NMFS, and the Alaska Department of Fish and Game prepared a final Regulatory Flexibility Analysis as part of the Regulatory Impact Review. A copy of this analysis is available from the Council at (See ADDRESSES).

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects

50 CFR Part 204

Reporting and recordkeeping requirements.

50 CFR Parts 301, 671, 672, 675, 676, and 677

Fisheries, Reporting and recordkeeping requirements.

Dated: August 25, 1994.

Charles Karnella,
*Acting Program Management Officer,
National Marine Fisheries Service.*

For the reasons set out in the preamble, title 50 CFR Chapters II, III, and VI are amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. The table in § 204.1(b) is amended by adding in the left-hand column, in numerical order, the entries "677.4, 677.5", "677.6", and "677.10"; and adding in the right-hand column, in corresponding positions, the entry ["- 0280"].

PART 301—PACIFIC HALIBUT FISHERIES

3. The authority citation for part 301 continues to read as follows:

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

4. Section 301.23 is added to read as follows:

§ 301.23 North Pacific Fisheries Research Plan.

Permit requirements, observer requirements, and fee assessments for the Northern Pacific halibut fishery under the North Pacific Fisheries Research Plan are contained in part 677 of this title.

PART 671—KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

5. The authority citation for part 671 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

6. A new § 671.4 is added to subpart A to read as follows:

§ 671.4 Permits.

All processors of Bering Sea and Aleutian Islands area king and Tanner crab must comply with permit requirements contained in § 677.4 of this chapter.

7. A new § 671.21 is added to subpart B to read as follows:

§ 671.21 Observer requirements.

Bering Sea and Aleutian Islands area king and Tanner crab observer requirements are contained in part 677 of this chapter.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

8. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

9. In § 672.4, paragraphs (b)(1) through (b)(10) are redesignated paragraphs (b)(1)(i) through (b)(1)(x), respectively; introductory text of paragraph (b) is redesignated as introductory text of paragraph (b)(1); and a new paragraph (b)(2) is added to read as follows:

§ 672.4 Permits.

* * * * *

(b) * * *
(2) All processors of Gulf of Alaska groundfish must comply with permit requirements contained in § 677.4 of this chapter, in addition to any applicable requirements of this § 672.4.

* * * * *

10. Section 672.27 is revised to read as follows:

§ 672.27 Observer requirements.

Gulf of Alaska groundfish observer requirements are contained in part 677 of this chapter.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

11. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

12. In § 675.4, paragraphs (b)(1) through (b)(10) are redesignated paragraphs (b)(1)(i) through (b)(1)(x), respectively; introductory text of paragraph (b) is redesignated as introductory text of paragraph (b)(1); and a new paragraph (b)(2) is added to read as follows:

§ 675.4 Permits.

* * * *

(b) * * *
(2) All processors of Bering Sea and Aleutian Islands management area groundfish must comply with permit requirements contained in § 677.4 of this chapter, in addition to any applicable requirements of this § 675.4.

* * * *

13. Section 675.25 is revised to read as follows:

Note: This revision supersedes the amendments to § 675.25 published in the emergency interim rule at 59 FR 35479, July 12, 1994:

§ 675.25 Observer requirements.

Bering Sea and Aleutian Islands management area groundfish observer requirements are contained in part 677 of this chapter.

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF ALASKA

14. The authority citation for part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

15. In § 676.13, paragraph (a)(1) introductory text is revised to read as follows:

§ 676.13 Permits.

(a) * * *
(1) In addition to the permit and licensing requirements prescribed at 50 CFR parts 301 of this title, and 672, 675, and 677 of this chapter, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have onboard:

* * * *

16. In § 676.16, paragraph (q) is redesignated paragraph (r) and a new paragraph (q) is added to read as follows:

§ 676.16 General prohibitions.

* * * *

(q) Any person who is issued a registered buyer permit under § 676.13(a)(2) and who also is required to obtain a Federal processing permit under § 677.4 of this chapter may not transfer or receive sablefish harvested in Federal waters or halibut, unless the person possesses a valid permit issued under § 677.4 of this chapter.

17. Part 677 is added to read as follows:

PART 677—NORTH PACIFIC FISHERIES RESEARCH PLAN

Subpart A—General Provisions of the North Pacific Fisheries Research Plan

Sec.

- 677.1 Purpose and scope.
- 677.2 Definitions.
- 677.3 Relation to other laws.
- 677.4 Permits.
- 677.5 Recordkeeping and reporting.
- 677.6 Research Plan fee.
- 677.7 General prohibitions.
- 677.8 Facilitation of enforcement.
- 677.9 Penalties.
- 677.10 General requirements.
- 677.11 Annual Research Plan specifications.
- 677.12 Compliance.

Subpart B—General Provisions of Risk-Sharing Pool for Insurance Purposes [Reserved]

Figures—Part 677

- Figure 1—Federal Processing Permit Application (Form FPP-1).
- Figure 2—Observer Coverage Payment Receipt (Form FPP-2).

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions of the North Pacific Fisheries Research Plan

§ 677.1 Purpose and scope.

(a) These regulations implement the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations in this part govern elements of the Research Plan for the following fisheries under the Council's authority: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, and Bering Sea and Aleutian Islands area king and Tanner crab in the exclusive economic zone; and halibut from convention waters off Alaska.

§ 677.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Bering Sea and Aleutian Islands area is defined at § 671.2 of this chapter.

Bering Sea and Aleutian Islands management area is defined at § 675.2 of this chapter.

Bimonthly refers to a time period equal to 2 calendar months. Six consecutive bimonthly periods are established each year, as follows: January 1–February 29; March 1–April 30; May 1–June 30; July 1–August 31; September 1–October 31; and November 1–December 31.

Catcher/processor means a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel means a vessel that is used for catching fish and does not process fish on board.

Commissioner of ADF&G means the principal executive officer of ADF&G.

Convention waters off Alaska means all waters off Alaska in halibut regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E as defined in part 301 of this title.

Exvessel price means the price in dollars received by a harvester for fish from Research Plan fisheries. Exvessel price excludes any value added by processing.

Fee percentage means the annually calculated assessment rate, in percent of exvessel value of Research Plan fisheries, used to determine fee assessments under the Research Plan.

Fishermen means persons who catch, take, or harvest fish.

Fishing day means a 24-hour period, from 0001 A.l.t. through 2400 A.l.t., in which fishing gear is retrieved and groundfish, halibut, or king or Tanner crab are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Fishing trip means one of the following time periods:

(1) *For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership processor vessel*—a weekly reporting period, as defined at § 672.2 or § 675.2 of this chapter, during which one or more fishing days occur.

(2) *For a catcher vessel used to deliver fish to other than a mothership processor vessel*—the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel: Offloads groundfish, halibut, or king or Tanner crab; returns to an Alaskan port; or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

Groundfish is defined at § 672.2 or § 675.2 of this chapter.

Gulf of Alaska is defined at § 672.2 of this chapter.

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

King crab means red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Landing is defined at § 672.2 of this chapter.

Length overall (LOA) is defined at § 672.2 of this chapter.

Mothership processor vessel means a processor vessel that receives and processes fish from other vessels and is not used for, or equipped to be used for, catching fish.

Processing or to process means the preparation of fish to render it suitable for human consumption, industrial uses, or long term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor means any facility or vessel that processes fish for commercial use or consumption, any person except a restaurant who receives fish from fishermen for commercial purposes, and fishermen who sell fish directly to a restaurant or to another individual for use as bait or personal consumption.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

Research Plan means the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

Research Plan fisheries means the following fisheries: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, Bering Sea and Aleutian Islands area king and Tanner crab, and halibut from convention waters off Alaska.

Retained catch means the catch retained by a processor, in round weight or round-weight equivalents, from Research Plan fisheries.

Round weight or round-weight equivalent means:

(1) *For groundfish or halibut*—the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

(2) *For Bering Sea and Aleutian Islands area crab processed by catcher/processors*—scale weight of a subsample multiplied by the number of subsamples comprising the retained catch.

(3) *For Bering Sea and Aleutian Islands area crab processed by mothership processor vessels or shoreside processors*—scale weights of retained catches.

Shoreside processor or shoreside processing facility means any person that receives unprocessed fish, except catcher/processors, mothership processor vessels, restaurants, or persons receiving fish for use as bait or personal consumption.

Standard exvessel price means the exvessel price for species harvested in Research Plan fisheries, calculated annually by NMFS for each species or species group, from exvessel price information for all product forms, used in determining fee assessments.

Tanner crab means *Chionoecetes* species or hybrids of these species.

§ 677.3. Relation to other laws.

(a) The relation of this part to other laws is set forth in § 620.3 of this chapter and paragraphs (b) through (c) of this section.

(b) *Domestic fishing for groundfish.* Regulations governing the conservation and management of groundfish in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area are set forth at parts 672 and 675 of this chapter, respectively. The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by Alaska Administrative Code at 5 AAC Chapter 28 and Alaska Statute at A.S. 16.

(c) *King and Tanner crab fishing.* The conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands area are governed by Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39; and at part 671 of this chapter.

§ 677.4 Permits.

(a) *General.* In addition to the permit and licensing requirements at § 301.3 of this title and 672.4, 675.4, and 676.13 of this chapter, all processors of fish from Research Plan fisheries must have a Federal Processor Permit issued by the Regional Director under this section. Such permits shall be issued without charge.

(b) *Application.* The permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a completed Federal Processor Permit Application (Form FPP-1; see figure 1 to part 677) containing the following information:

(1) The semiannual period for which the permit is requested.

(2) The Research Plan fishery or fisheries for which the permit is requested.

(3) If the application is for an amended permit, the current Federal Processor Permit number and an indication of the information that is being amended.

(4) The processor owner's name or names, business mailing address, telephone number, and FAX number.

(5) If the processor is a shoreside processor, the plant's name, business mailing address, ADF&G Processor Code, telephone number, and FAX number.

(6) If the processor is a vessel, the vessel's name, home port, net tonnage, length overall, U.S. Coast Guard number, telephone number, FAX number, INMARSAT (satellite communications) number, and ADF&G number.

(7) The applicant's name, signature, and date.

(c) *Issuance.* (1) Permits required under this section will be issued semiannually by the Regional Director.

(2) The Regional Director will issue a permit required under paragraph (a) of this section upon receipt of a complete application, if all Research Plan fees due are paid. Upon receipt of an incomplete or improperly completed application, or if Research Plan fees are not paid, the Regional Director will notify the applicant of the deficiency. No permit will be issued to an applicant until a complete application is submitted and all fees are paid.

(d) *Notification of change.* Any person who has applied for and received a permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (b) of this section within 10 days of the date of that change.

(e) *Duration.* The permit issued by the Regional Director will continue in full force and effect for the period January 1 through June 30, or July 1 through December 31, of the year for which it is issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) of this chapter.

(f) *Alteration.* No person may alter, erase, or mutilate any permit issued under this section. Any permit that has been intentionally altered, erased, or mutilated is invalid.

(g) *Transfer.* Permits issued under this section are not transferable or assignable. Each permit is valid only for the processor for which it is issued. The Regional Director must be notified of a change in ownership, pursuant to paragraph (d) of this section.

(b) *Inspection.* The permit issued under this section must be maintained on the processor vessel or at the shoreside processor. The permit must be available for inspection upon request by an authorized officer or any employee of NMFS, ADF&G, or the Alaska Department of Public Safety designated by the Regional Director, Commissioner of ADF&G, or Commissioner of the Alaska Department of Public Safety.

(i) *Sanctions.* Procedures governing permit sanctions are found at subpart D of 15 CFR part 904.

(j) *Disclosure.* NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

§ 677.5 Recordkeeping and reporting.

(a) *Applicability.* Any processor that retains fish from a Research Plan fishery is responsible for compliance with the applicable recordkeeping and reporting requirements of this part.

(b) *General requirements.* Any form, record, or report that is required to be submitted or provided to the Regional Director must be addressed or delivered to the National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Submissions must be complete, legible, and in English.

§ 677.6 Research Plan fee.

(a) *Fee percentage.* The fee percentage will be set annually under procedures at § 677.11, such that the total fees equal the lesser of the following:

(1) The cost of implementing the Research Plan, including nonpayments, minus any other Federal funds that support the Research Plan and any existing surplus in the North Pacific Fishery Observer Fund; or

(2) Two percent of the exvessel value of all Research Plan fisheries.

(b) *Fee assessment—(1) Fee assessments applicable from January 1, 1995, through December 31, 1995.* (i)

NMFS will calculate bimonthly fee assessments for each processor of Research Plan fisheries based on the best available information received by the Regional Director since the last bimonthly billing period on the amount of fish retained by the processor from Research Plan fisheries. Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(ii) The bimonthly fee assessment calculated by NMFS for each shoreside processor or mothership processor vessel retaining groundfish shall equal the sum of:

(A) The round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels equal to and greater than 60 ft

(18.3 m) LOA determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to § 677.11 for the calendar year; plus

(B) The round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels less than 60 ft (18.3 m) LOA determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by the fee percentage established pursuant to § 677.11 for the calendar year.

(iii) The bimonthly fee assessment calculated by NMFS for each processor retaining king or Tanner crab shall equal the sum of:

(A) The round weight or round-weight equivalent of retained catch of *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, and *Lithodes cousei* king crab determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to § 677.11 for the calendar year; plus

(B) The round weight or round-weight equivalent of retained catch of king or Tanner crab, except for those species listed under paragraph (b)(1)(iii)(A) of this section, determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by the fee percentage established pursuant to § 677.11 for the calendar year.

(iv) Except as provided in paragraph (b)(1)(ii) of this section, the bimonthly fee assessment calculated by NMFS for each processor that retains groundfish or halibut is the round weight or round-weight equivalent of retained catch of these species determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by the fee percentage established pursuant to § 677.11 for the calendar year.

(2) *Fee assessments applicable after December 31, 1995.* The bimonthly fee

assessment calculated by NMFS for each processor of Research Plan fisheries is the round weight or round-weight equivalent of retained catch for each species from Research Plan fisheries determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to § 677.11 for the calendar year, multiplied by the fee percentage established pursuant to § 677.11 for the calendar year. Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(c) *Fee assessment payments.* NMFS will bill each processor of Research Plan fisheries for bimonthly fee assessments calculated under paragraph (b) of this section. Each processor must collect and pay the bimonthly fee assessments. Bimonthly fee assessment payments must be in the form of certified check, draft, or money order payable in U.S. currency to "The Department of Commerce/NOAA." Except as provided in paragraphs (d) and (e) of this section, payment in full must be received by the financial institution authorized by the U.S. Treasury to receive these funds within 30 calendar days from the date of issuance of each bimonthly fee assessment bill. Payments will be deposited in the North Pacific Fishery Observer Fund within the U.S. Treasury.

(d) *Credit for observer coverage costs incurred from January 1, 1995, through December 31, 1995—(1) General.* Subject to the limitations set out in paragraph (d)(2) of this section, each processor may subtract from its portion of the processor's billed fee assessment the cost of observer coverage paid by the processor to an observer contractor(s) for the processor's compliance with observer coverage requirements at § 677.10(a).

(2) *Limitations.* (i) Only those payments to observer contractors for observer coverage required under § 677.10(a) of this part that are received by observer contractors prior to April 1, 1996, will be credited against a processor's billed fee assessment under this paragraph (d).

(ii) The amount that may be subtracted from a catcher/processor's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under § 677.10(a) of this part up to an amount equal to the fee assessment calculated under paragraph (b)(1)(iv) of this section.

(iii) The amount that may be subtracted from a shoreside processor's

or mothership processor vessel's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under § 677.10(a) of this part up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(ii)(A) of this section plus one-half the fee assessment calculated under paragraph (b)(1)(ii)(B) of this section.

(iv) The amount that may be subtracted from a catch/processor or mothership processor vessel's billed fee assessment for retained catch of king or Tanner crab is limited to the actual cost of observer coverage required under § 677.10(a) of this part up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(iii)(A) of this section plus one-half the fee assessment calculated under paragraph (b)(1)(iii)(B) of this section.

(3) *Processor Account Status*—(i) *Credit applied by NMFS to bimonthly fee assessments.* If a processor's cost for observer coverage required under § 677.10(a) during a bimonthly period exceeds the calculated fee assessment for that period, the Regional Director will credit the processor's next bimonthly fee assessment up to an amount equal to the remaining observer coverage costs as reported to the Regional Director under paragraph (d)(4) of this section, or the bimonthly fee assessment, whichever is less.

(ii) *Refunds.* As soon as practicable after April 1, 1996, NMFS will issue a refund to a processor for any portion of the processor's costs for observer coverage required under § 677.10(a) and reported to the Regional Director under paragraph (d)(4) of this section up to an amount equal to the sum of the bimonthly fee assessments paid by the processor for retained catch during 1995, provided that:

(A) These observer coverage costs previously have not been subtracted from the processor's billed fee assessment;

(B) Payment for observer coverage required under § 677.10(a) have been received by observer contractors prior to April 1, 1996;

(C) The processor has not applied for a semiannual processor permit under § 677.4 prior to April 1, 1996; and

(D) The bimonthly fee assessments billed to the processor under § 677.6(b)(1) have been paid.

(4) *Recordkeeping and reporting, for purposes of this paragraph (d)*—(i) *Processor requirements.* (A) All processors that subtract costs for observer coverage from their bimonthly fee assessment under this paragraph (d) must submit to the Regional Director a copy of each paid invoice for observer

coverage and a copy of the check, money order, or other form of payment sent to the observer contractor in payment for observer coverage listed on the invoice.

(B) The information required under paragraph (d)(4)(i)(A) of this section must be sent to the following address at the time the processor submits the payment of the bimonthly fee assessment to the Department of Commerce/NOAA under paragraph (c) of this section: NMFS, Alaska Fisheries Science Center, Observer Program, 7600 Sand Point Way NE., Building 4, Bin C 15700, Seattle, WA 98115-0070, Attn: Research Plan Coordinator.

(ii) *Observer contractor requirements.*

(A) Observer contractors must submit to the Regional Director a completed Observer Coverage Payment Receipt Form (Form FPP-2; see figure 2 to part 677) for each payment received from a processor for compliance with observer coverage requirements at § 677.10(a) and a copy of the check, money order, or other form of payment. Each completed form and the attached copy of the record of payment must be submitted to the following address within 7 days after payment is received: NMFS, Alaska Fisheries Science Center, Observer Program, 7600 Sand Point Way NE., Building 4, Bin C 15700, Seattle, WA 98115-0070, Attn: Research Plan Coordinator.

(B) *Observer Coverage Payment Receipt Form.* Observer contractors may obtain Observer Coverage Payment Receipt Forms from the Regional Director. The form requests the following information:

(1) Observer contractor name and signature of a person serving as a representative for the observer contractor;

(2) Identification of the processor vessel or shoreside processing facility that received observer coverage;

(3) Name of the observer(s) and date(s) of deployment for observer coverage;

(4) The name and mailing address of the person who paid for observer coverage; and

(5) The total amount paid for observer coverage and the date payment for observer coverage was received; and

(6) Copies of the check, money order, or other form of payment.

(e) *Disputed fee assessments.* A processor must notify the Regional Director, in writing, within 30 days of issuance of a bimonthly fee assessment bill, if any portion of the bimonthly fee assessment bill is disputed. The processor must pay the undisputed amount of the bimonthly fee assessment bill within 30 days of its issuance, and provide documentation supporting the

disputed portion claimed to be under- or over-billed. The Regional Director will review the bimonthly fee assessment bill and the documentation provided by the processor, and will notify the processor of his determination within 60 days of the date of issuance of the bimonthly fee assessment bill. If the Regional Director determines a billing error has occurred, the processor's account will be rectified by credit or issuance of a corrected fee assessment bill. If the Regional Director determines that a billing error has not occurred, the outstanding payment on the bimonthly fee assessment bill will be considered past-due from the date 30 days from the date of issuance of the bill and late charges will be assessed under paragraph (f) of this section. If the processor does not dispute the amount of the fee assessment bill within 30 days of its issuance, the fee assessment will be final, and will be due to the United States.

(f) *Late charges.* The NOAA Office of the Comptroller shall assess late charges in the form of interest and administrative charges for late payment of fee assessments. Interest will accrue on the unpaid amount at a percentage rate established by the Federal Reserve Board and applied to funds held by the U.S. Treasury for each 30-day period, or portion thereof, that the payment is overdue. Payment received after 90 days from the due date will be charged an additional late payment penalty charge of 6 percent of the balance due.

§ 677.7 General prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it shall be unlawful for any person to do any of the following:

(a) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer.

(b) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(c) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(d) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or

otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(e) Process fish from a Research Plan fishery without a valid permit issued pursuant to this part.

(f) Deliver fish from a Research Plan fishery to a processor not possessing a valid permit issued pursuant to this part.

(g) Subtract from a billed fee assessment costs paid for observer coverage under provisions of § 677.6(d) that are based on false or inaccurate information.

(h) Fish for or process fish without observer coverage required under § 677.10.

(i) Require an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

§ 677.8 Facilitation of enforcement.

See § 620.8 of this chapter.

§ 677.9 Penalties.

See § 620.9 of this chapter.

§ 677.10 General requirements.

(a) *Observer requirements applicable through December 31, 1995—(1) Requirements for operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels—(i) Coverage requirements.* Observer coverage is required as follows:

(A) A mothership processor vessel of any length that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer onboard the vessel each day it receives or processes groundfish during that month.

(B) A mothership processor vessel of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer on board the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(C) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer

must carry a NMFS-certified observer at all times while fishing for groundfish, except for a vessel fishing for groundfish with pot gear as provided in paragraph (a)(1)(i)(F) of this section.

(D) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry a NMFS-certified observer during at least one fishing trip during that calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which the vessel participates.

(E) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (a)(1)(i)(D) of this section must carry a NMFS-certified observer during at least one fishing trip in the Eastern Regulatory Area of the Gulf of Alaska during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(F) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which the vessel participates.

(ii) *Groundfish fishery categories requiring separate coverage—(A) Pollock fishery.* Fishing that results in a retained catch of pollock, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(B) *Pacific cod fishery.* Fishing that results in a retained catch of Pacific cod, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(C) *Sablefish fishery.* Fishing that results in a retained catch of sablefish,

during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(D) *Rockfish fishery.* Fishing that results in a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus*, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(E) *Flatfish fishery.* Fishing that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(F) *Other species fishery.* Fishing that results in a retained catch of groundfish, during any fishing trip, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (a)(1)(ii)(A) through (E) of this section.

(iii) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch composition of groundfish species or species groups for which a TAC has been specified under § 672.20 or § 675.20 of this chapter, in round weight or round-weight equivalents, will determine to which of the fishery categories listed under paragraph (a)(1)(ii) of this section the vessel is assigned.

(A) A catcher/processor will be assigned to a fishery category at the end of a fishing trip based on the round weight or round-weight equivalent of the retained groundfish catch composition reported on the vessel's weekly production report submitted to the Regional Director under § 672.5(c)(2) or § 675.5(c)(2) of this chapter.

(B) A catcher vessel that delivers to mothership processor vessels in Federal waters will be assigned to a fishery category at the end of a fishing trip based on the round weight or round-weight equivalent of the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership processor vessel under § 672.5(c)(2) or § 675.5(c)(2) of this chapter.

(C) A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters at the end of a fishing trip will be assigned to a fishery category based on the round weight or round-weight equivalent of the retained

groundfish catch composition delivered to a processor(s) at the end of that fishing trip and reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(2) *Requirements for managers of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish shoreside processing facilities.* Observer coverage is required as follows:

(i) A shoreside processing facility that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility each day it receives or processes groundfish during that month.

(ii) A shoreside processing facility that processes 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) *Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel that processes king or Tanner crab or that harvests *C. tanneri* Tanner crab, *C. angulatus* Tanner crab, or *L. cousei* king crab, must have one or more State of Alaska-certified observers on board the vessel whenever king or Tanner crab are received, processed, or onboard the vessel in the Bering Sea and Aleutian Islands area if the operator is required to do so by Alaska State regulations at 5 AAC 34.035, 34.082, 35.082, or 39.645.

(b) *Observer requirements applicable after December 31, 1995—(1) General requirements for Research Plan fisheries—(i) Requirements for operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels and halibut from convention waters off Alaska.* An operator of a vessel that catches and retains groundfish or halibut, or a vessel that processes groundfish or halibut, must carry one or more NMFS-certified observers onboard the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(ii) *Requirements for managers of shoreside processing facilities of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish and halibut from convention waters off Alaska.* A manager of a shoreside processing facility that processes groundfish or halibut received from vessels regulated under this part must

have one or more NMFS-certified observers present at the facility whenever groundfish or halibut are received or processed, if the manager is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iii) *Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab.* An operator of a vessel subject to this part must carry one or more NMFS-certified observers or ADF&G employees onboard the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iv) *Requirements for managers of shoreside processing facilities of Bering Sea and Aleutian Islands area king and Tanner crab.* A manager of a shoreside processing facility that processes king or Tanner crab received from vessels regulated under this part must have one or more NMFS-certified observers, or ADF&G employees, present at the facility whenever king or Tanner crab is received or processed, if the manager is required to do so by the Regional Director under paragraph (b)(2) of this section.

(2) *Observer coverage for Research Plan fisheries—(i) Annual determination of coverage level.* The appropriate level of observer coverage necessary to achieve the objectives of the Research Plan, given the funds available from the North Pacific Fishery Observer Fund, will be established annually under procedures in § 677.11.

(ii) *Inseason changes in coverage level.* (A) The Regional Director may increase or decrease the observer coverage requirements for the Research Plan fisheries at any time to improve the accuracy, reliability, and availability of observer data, and to ensure solvency of the observer program, so long as the standards of section 313 of the Magnuson Act and other applicable Federal regulations are met, and the changes are based on one or more of the following:

(1) A finding that there has been, or is likely to be, a significant change in fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component.

(2) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(3) A finding that any decrease in observer coverage resulting from unanticipated funding shortfalls is consistent with the following priorities:

(i) Status of stock assessments;

(ii) Inseason management;

(iii) Bycatch monitoring; and

(iv) Vessel incentive programs and regulatory compliance.

(4) A determination that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

(B) [Reserved]

(iii) The Regional Director will consult with the Commissioner of ADF&G prior to making inseason changes in observer coverage level for the crab observer program.

(iv) NMFS will publish changes in observer coverage requirements made under paragraph (b)(2)(ii) of this section in the Federal Register, with the reasons for the changes and any special instructions to vessels required to carry observers, at least 10 calendar days prior to their implementation.

(c) *Vessel responsibilities.* An operator of a vessel must:

(1) Provide, at no cost to observers, the State of Alaska, or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(2) Maintain safe conditions on the vessel for the protection of observers during the time observers are on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(3) Allow observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States.

(4) Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(7) Allow observers to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook,

transfer logbook, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(8) Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to, assisting the observers in measuring decks, codends, and holding bins; providing the observers with a safe work area adjacent to the sample collection site; providing crab observers with the necessary equipment to conduct sampling, such as scales, fish totes, and baskets; assisting in collecting bycatch when requested by the observers; assisting in collecting and carrying baskets of fish when requested by observers; and allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(9) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking observers.

(10) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(11) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(12) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(13) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(d) *Shoreside processor responsibilities.* A manager of a shoreside processing facility must:

(1) Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(2) Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish, crab, or halibut prior to receipt of those fish.

(3) Allow the observers to use the shoreside processing facility's communication equipment, on request, for the entry, transmission, and receipt of work-related messages at no cost to the observers, the State of Alaska, or the United States.

(4) Allow observers free and unobstructed access to the shoreside processing facility's holding bins, processing areas, freezer spaces, weight

scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(5) Allow observers to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(6) Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to, assisting the observer in moving and weighing totes of fish, cooperating with product recovery tests, and providing a secure place to store baskets of sampling gear.

(e) *Notification of observer contractors by processors and operators of vessels required to carry observers.* (1)

Processors and operators of vessels required to carry observers under the Research Plan are responsible for meeting their observer coverage requirements. Processors and vessel operators must notify the appropriate observer contractor, as identified by NMFS, in writing or facsimile copy, at least 60 days prior to the need for an observer, to ensure that an observer will be available. Processors and vessel operators must notify the appropriate observer contractor again, in writing, facsimile copy, or by telephone, at least 10 days prior to the need for an observer, to make final arrangements for observer deployment.

(2) If observer contractors are not notified within the time periods set out at paragraph (e)(1) of this section, the availability of an observer to meet observer coverage requirements will not be guaranteed.

(3) Names of observer contractors, information for contacting contractors, and a list of embarkment/disembarkment ports for observers will be published in the Federal Register annually, prior to the beginning of the calendar year pursuant to § 677.11.

(f) *Release of observer data to the public—(1) Summary of weekly data.* The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (f)(2)(i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (f)(2)(i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (f)(1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

(g) *Vessel safety requirements applicable after December 31, 1995.* Any vessel that is required to carry observers under paragraph (b)(1) of this section must have onboard either:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in Titles 33 CFR chapter I and 46 CFR chapter I,

(2) A certificate of compliance issued pursuant to 46 CFR 28.710, or

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311. NMFS will not station observers aboard vessels that do not meet this requirement.

§ 677.11 Annual Research Plan specifications.

(a) *Proposed Research Plan specifications.* Annually, after consultation with the Council, and, in the case of observer coverage levels in the crab fisheries, the State of Alaska, NMFS will publish for public comment in the Federal Register: Proposed standard exvessel prices, total exvessel value, fee percentage, levels of observer coverage for Research Plan fisheries, and embarkment/disembarkment ports for observers, for the calendar year.

(1) *Standard exvessel prices.* Standard exvessel prices will be used in determining the annual fee percentage for the calendar year and will be the basis for calculating fee assessments. Standard exvessel prices for species harvested in Research Plan fisheries for each calendar year will be based on:

(i) Exvessel price information by applicable season, area, gear, and processing sector for the most recent 12-month period for which data are available;

(ii) Factors that are expected to change exvessel prices in the calendar year; and

(iii) Any other relevant information that may affect expected exvessel prices during the calendar year.

(2) *Total exvessel value.* The total exvessel value of Research Plan fisheries will be calculated as the sum of the

product of the standard exvessel prices established under paragraph (a)(1) of this section and projected retained catches, by species. The value of whole fish processed into meal product will not be included in this calculation.

(3) *Research Plan fee percentage.* The Research Plan fee percentage for a calendar year will equal the lesser of 2 percent of the exvessel value of retained catch in the Research Plan fisheries or the fee percentage calculated using the following equation:

$$\text{Fee percentage} = [100 \times (\text{RRPC} - \text{FB} - \text{OF})/\text{V}]/(1 - \text{NPR})$$

where RRPC is the projection of recoverable Research Plan costs for the coming year, FB is the projected end of the year balance of funds collected under the Research Plan, OF is the projection of other funding for the coming year, V is the projected exvessel value of retained catch in the Research Plan fisheries for the coming year, and NPR is the percent (expressed as a decimal) of fee assessments that are expected to result in nonpayment.

(4) *Observer coverage.* For the period January 1, 1995, through December 31, 1995, observer coverage levels in Research Plan fisheries will be as required by § 677.10(a). After December 31, 1995, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to § 677.10(b)(2)(ii).

(5) *Embarkment/disembarkment ports.* Ports to be used to embark and disembark observers will be selected on the basis of convenience to the affected industry and on the availability of facilities, transportation, and

accommodations deemed by the Regional Director to be necessary for the safe and reasonable deployment of observers.

(b) *Final Research Plan specifications.* NMFS will consider comments received on the proposed specifications and, following consultation with the Council, and with the State, in the case of observer coverage in the crab fisheries, will publish the final total exvessel value; standard exvessel prices; fee percentage; levels of observer coverage for Research Plan fisheries, including names of observer contractors and information for contacting them; and embarkment/disembarkment ports in the Federal Register annually prior to the beginning of the calendar year.

§ 677.12 Compliance.

The operator of any fishing vessel subject to this part, and the manager of any shoreside processing facility that receives groundfish, halibut, or king and Tanner crab from vessels subject to this part, must comply with the requirements of this part. The owner of any fishing vessel subject to this part, or any shoreside processing facility that received groundfish, halibut, or king and Tanner crab from vessels subject to this part, must ensure that the operator or manager complies with the requirements of this part and is liable, either individually or jointly and severally, for compliance with the requirements of this part.

Subpart B—General Provisions of Risk-Sharing Pool for Insurance Purposes [Reserved]

Figures—Part 677

Figure 1 to part 677—Federal Processing Permit Application (Form FPP-1).

BILLING CODE 3510-22-W

NOAA 88-155

OMB No. 0648-0206, expires

FEDERAL FISHERIES PERMIT APPLICATION FEDERAL PROCESSOR PERMIT APPLICATION (FPP-1)	United States Department of Commerce National Oceanic and Atmospheric Administration National Marine Fisheries Service P.O. Box 21767 Juneau, Alaska 99802-1767
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BLOCK A - PERMIT AMENDMENT INFORMATION	
If this is an application for an amended permit, provide your current Federal Fisheries Permit number and/or Federal Processor Permit number: _____	
Check the item(s) that have changed:	
<input type="checkbox"/> Vessel information (Block B)	<input type="checkbox"/> Federal Fisheries Permit information (Block E)
<input type="checkbox"/> Shoreside processor information (Block C)	<input type="checkbox"/> Federal Processor Permit information (Block F)
<input type="checkbox"/> Owner information (Block D)	

BLOCK B - VESSEL INFORMATION		
1. Vessel Name		7. Vessel Telephone Number
2. ADF&G Number	3. Coast Guard Number	8. Vessel FAX Number
4. Homeport (City, state)		9. INMARSAT Number
5. Length Overall (Feet)	6. Net Tonnage	

BLOCK C - SHORESIDE PROCESSOR INFORMATION	
1. Processor Name	4. Telephone Number
2. Business Street Address (Street, city, state, zip code)	5. FAX Number
3. ADF&G Processor Code	

BLOCK D - OWNER INFORMATION	
1. Owner Name(s)	4. Telephone Number
2. Business Mailing Address (Street or box, city, state, zip code)	5. FAX Number
3. Managing Company, if any	

BLOCK E - FEDERAL FISHERIES PERMIT INFORMATION

FEDERAL FISHERIES PERMITS MUST BE RENEWED ANNUALLY.

FISHERIES: The following fisheries in the 3-200 mile zone off Alaska require vessels to have a Federal Fisheries Permit pursuant to 16 USC 1801-1882. Check one, or both, as appropriate:

- Gulf of Alaska Groundfish Bering Sea and Aleutian Islands Groundfish

VESSEL OPERATIONS CATEGORIES: Indicate the type of operations you conduct in the groundfish fishery. Check Support Vessel OR check any combination of the other five categories.

- Catcher Vessel (Read instructions to determine whether the vessel operator/owner must also complete Block F) *
 Catcher/Processor (complete Block F also) *
 Mothership (complete Block F also) *
 Tender Vessel
 Support Vessel

* Catcher/Processor and Mothership Processor Vessel permits are not valid unless accompanied by a Federal Processor Permit for groundfish. Some Catcher Vessel owners may be required to apply for a Federal Processor Permit.

CATCHER VESSELS AND CATCHER/PROCESSORS ONLY:

GEAR TYPE: Check ONLY the gears used for GROUND FISH fishing:

- Trawl Hook and line Pots Jig/troll Other: _____

CATCHER VESSELS ONLY:

- Check here if the only groundfish you expect to catch is bycatch during halibut, crab, or salmon fisheries.
 Check here if you expect to target on groundfish, but only on sablefish (blackcod) in the Gulf of Alaska.

BLOCK F - FEDERAL PROCESSOR PERMIT INFORMATION

FEDERAL PROCESSOR PERMITS MUST BE RENEWED SEMI-ANNUALLY.

Federal Processor Permits are required for all processors of the following fisheries. Check one, or any combination, as appropriate. (See instructions for definition of a processor.)

- Gulf of Alaska Groundfish (GOA, 3-200 mile zone) *
 Bering Sea and Aleutian Islands Groundfish (BSAI, 3-200 mile zone) *
 Bering Sea and Aleutian Islands King and Tanner Crab (3-200 mile zone)
 North Pacific Halibut (Convention waters off Alaska, i.e. State and Federal waters)

* Groundfish Catcher Vessels, Catcher/Processors, and Mothership Processor Vessels that operate inside the 3-200 mile zone off Alaska are also required to have a Federal Fisheries Permit (see Block E).

Indicate the semi-annual permitting period for which you are applying: January 1 to June 30 Year: _____
 July 1 to December 31

BLOCK G - SIGNATURE

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, the information presented here is true, correct and complete.

Applicant's name (please print or type)	Signature	Date
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INSTRUCTIONS

A separate application must be completed for each vessel or processor. Type or print legibly in ink; retain a copy of completed application. Completed forms should be mailed to: NMFS Alaska Enforcement Division, P.O. Box 21767, Juneau, AK 99802-1767. If you have any questions, please call Enforcement at 907-586-7225.

BLOCK A - PERMIT AMENDMENT INFORMATION

If you already have a valid Federal permit, but the information originally provided on your application has changed, you should fill out this block. Provide your current Federal Fisheries Permit number and/or your Federal Processor Permit number, and check the item(s) that have changed. Written notification of changes must be received within 10 days of the date of the change.

BLOCK B - VESSEL INFORMATION

Complete Block B if the permit is for a vessel.

Vessel Name - Enter complete vessel name as displayed in official documentation.

ADF&G Number - Enter 5-digit State of Alaska Department of Fish & Game (ADF&G) number (example: 51233).

Coast Guard Number - Enter Coast Guard documentation number (example: 566722) or state registration number (example: AK3456C).

Homeport - Enter homeport (city and state) as recorded in official documentation.

Length Overall - Enter the vessel's length overall in feet, which is defined as the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

Net Tonnage - Enter registered net tonnage as stated in official documentation.

Vessel Telephone, FAX, and INMARSAT Numbers - Enter telephone, FAX, and INMARSAT (satellite communication) numbers used onboard the vessel.

BLOCK C - SHORESIDE PROCESSOR INFORMATION

Complete Block C if the permit is for a shoreside processor, which is defined as any person, that receives unprocessed fish, except Catcher/Processors, Mothership Processor Vessels, restaurants, or persons receiving groundfish for use as bait or personal consumption.

Processor Name - Enter complete name as displayed in official documentation.

Business Street Address - Enter complete street address of the shoreside processing facility, including street number, city, state and zip code.

ADF&G Processor Code - Enter the Alaska Department of Fish and Game Processor Number assigned to the processor.

Telephone and FAX Numbers - Enter telephone and FAX numbers used at the shoreside processor.

BLOCK D - OWNER INFORMATION

Enter information on the owner of the vessel listed in Block B, the shoreside processor listed in Block C.

Owner Name(s) - Enter the full name(s) of the vessel or processor owner(s). If there is more than one owner, list the principal owner first; the permit will be issued to the first owner listed, with an ET AL. notation. The permit MUST be issued to the owner of the vessel or processor, not operators or lessees.

Business Mailing Address - Enter your complete PERMANENT business mailing address, including state and zip code. Your permit will be sent to this address. If you need to have to your permit sent to a temporary address, please enter your PERMANENT business address on the application and attach a note with your temporary address.

Managing Company - Enter the name of any company (other than the owner) that manages the operations of your vessel or processor.

Telephone and FAX Numbers - Enter telephone and FAX numbers used by the vessel or processor owner. It is very important that you provide a telephone number where we can contact you, or where we can leave messages for you, if questions arise concerning your application.

BLOCK E - FEDERAL FISHERIES PERMIT INFORMATION

Federal Fisheries Permits are required for all vessels conducting groundfish operations in the 3-200 mile zone off Alaska. This includes vessels fishing for groundfish, vessels processing groundfish, and support vessels assisting other groundfish vessels. "Groundfish" means pollock, Pacific cod, sablefish, Atka mackerel, any species of flatfish except Pacific halibut, rockfish, smelt, eulachon, capelin, sharks, skates, sculpins, octopus, and squid.

Fisheries - Indicate the fishery or fisheries for which you are applying. You may apply for a single fishery or both.

Vessel Operations Categories - Indicate the type of operations you conduct in the groundfish fishery. Check Support Vessel, or any combination of Catcher Vessel, Catcher/Processor, Mothership Processor Vessel, and Tender Vessel. (A vessel permitted as a Catcher Vessel, Catcher/Processor, Mothership Processor Vessel, and/or Tender Vessel may conduct all operations authorized for a Support Vessel.) These categories are defined as follows:

Catcher Vessel - A vessel that is used for catching fish and that does not process onboard.

If a catcher vessel is used by a fisherman who sells fish directly to restaurants or to another individual for use as bait or personal consumption, the fisherman is considered a processor and must complete Block F.

Catcher/Processor - A vessel that is used for catching fish and processing that fish.

Mothership Processor Vessel - A vessel that receives and processes fish from other vessels.

Tender Vessel - A vessel that is used to transport unprocessed fish received from another vessel to a shoreside processor, mothership processor vessel, or buying station.

Support Vessel - Any vessel that is used in support of a permitted vessel, including, but not limited to, supplying a fishing vessel with water, fuel, provisions, fishing equipment, fish processing equipment or other supplies, or transporting processed fish. This category does not include processors or Tender Vessels.

Gear Type - Groundfish Catcher Vessels and Catcher/Processors need to indicate the gear type(s) used for groundfish operations.

Catcher Vessels Only - Indicate whether the only groundfish you catch is bycatch from halibut, crab, or salmon fisheries, or whether the only groundfish you expect to target on is blackcod in the Gulf of Alaska. Your answers will not restrict you from participating in other groundfish fisheries; they will only be used to determine whether NMFS will send you a 25-page Catcher Vessel logbook, or a 50-page logbook.

BLOCK F - FEDERAL PROCESSOR PERMIT INFORMATION

All processors of fish or shellfish from Research Plan fisheries must have a Federal Processor Permit. A processor is defined as any facility or vessel that processes fish for commercial use or consumption, any person who receives fish from fishermen for commercial purposes, and fishermen who sell fish directly to restaurants, markets, or to another individual for use as bait or personal consumption.

Indicate the fishery or fisheries for which you are applying. You may apply for a single fishery or any combination.

Indicate the semi-annual period for which you are applying. You may not apply for both periods. Processors who receive permits for January 1-June 30 will receive renewal applications for permits for the second half of the year. All Research Plan fees must be paid before the next semi-annual processor permit will be issued.

BLOCK G - SIGNATURE

The owner must sign and date the application certifying that all information is true, correct, and complete to the best of the owner's knowledge and belief. The application will be considered incomplete without this signature.

LOGBOOKS

If you apply for a Federal Fisheries Permit, you will receive a logbook for each Vessel Operations Category that you check. For example, if you check Catcher Vessel and Catcher/Processor, you will receive a Catcher Vessel Daily Fishing Logbook AND a Catcher/Processor Daily Cumulative Production Logbook. There are a few exceptions:

Support Vessels do not receive logbooks.

Catcher Vessels under 5 net tons do not receive Catcher Vessel logbooks.

A Shoreside Processor logbook will also be sent with each Federal Processor Permit for groundfish issued to a shoreside processor. A Mothership logbook will be sent with each Federal Processor Permit for groundfish issued to a vessel that does not also have a Federal Fisheries Permit.

SPECIAL HANDLING OF PERMITS

Please allow at least 10 days for processing your permit. Do not wait until right before an opening to apply for your permit -- we may not be able to get it to you in time. You may fax your permit application to us at 907-586-7313, but we cannot fax your permit back to you. We cannot pay for express mailing if you do apply late. We can express mail your permit to you only if you send us an express mail envelope with the correct amount of postage prepaid. Please send the largest envelope available, approximately 12" X 18", or send express mail stamps UNATTACHED to an envelope. If the express mail envelope you send is too small or does not have enough postage attached, we will be required to send your permit and logbooks to you by regular U.S. mail. Keep in mind that we send the appropriate logbook(s) WITH Federal Fisheries Permits for groundfish and with Federal Processor Permits. See **LOGBOOKS** on the preceding page to determine what logbook(s) you will be sent, if any. Following is the approximate size and weight of each logbook:

	<u>Dimensions</u>	<u>Weight</u>
Catcher/Vessel logbook	9" X 12.5"	2 pounds
Catcher/Processor logbook	9" X 12.5"	3 pounds
Mothership logbook	9" X 12.5"	3 pounds
Buying Station logbook	8.5" X 11"	1.5 pounds
Shoreside Processor logbook	11" X 17"	3 pounds

OTHER FISHERIES AND LICENSES

Salmon Power Troll - State of Alaska Interim Use and Limited Entry Power Troll licenses serve as a Federal permit. If you do not currently possess either State license, a Federal permit may be issued provided that sometime during the years 1975-1977, you: a) operated a vessel in the 3-200 mile zone off Alaska; b) engaged in commercial fishing for salmon from that vessel in the 3-200 mile zone off Alaska; AND c) landed salmon caught with power troll gear. If you believe that you meet these conditions, please contact NMFS at 907-586-7225. You will be required to provide fish tickets or other landing receipts showing compliance with the above requirements.

Halibut - A Federal Processor Permit is required for anyone that processes Pacific halibut off Alaska. In addition, vessels that fish for halibut are required to have a license from the International Pacific Halibut Commission (IPHC). Questions regarding IPHC licenses should be directed to: International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145-2009. Phone: 206-634-1838.

Tanner Crab and King Crab - State of Alaska area registration serves as the required Federal area registration.

State of Alaska Permits - Contact the Commercial Fisheries Entry Commission at 907-789-6150 for information on State of Alaska permits and regulations.

PUBLIC REPORTING BURDEN STATEMENT

NMFS estimates that the public reporting burden will average 0.33 hour per response for completing the Federal Fisheries Permit and Federal Processor Permit application, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), and to the Office of Management and Budget, Paperwork Reduction Project (0648-0206) Washington, DC 20503 (Attn: NOAA Desk Officer).

BILLING CODE 3510-22-C

Figure 2 to part 677—Observer Coverage
Payment Receipt (Form FPP-2).

BILLING CODE 3510-22-W

PUBLIC REPORTING BURDEN STATEMENT

NMFS estimates that the public reporting burden will average 0.16 hour per response for completing the Observer Coverage Payment Receipt Form, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel), and to the Office of Management and Budget, Paperwork Reduction Project (0648-0280), Washington, DC 20503 (Attn: NOAA Desk Officer).

[FR Doc. 94-21711 Filed 9-2-94; 8:45 am]

BILLING CODE 3510-22-C

August 26, 1994

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North Pacific Fishery Management Council

Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director

605 West 4th Avenue
Anchorage, Alaska 99501
August 25, 1994



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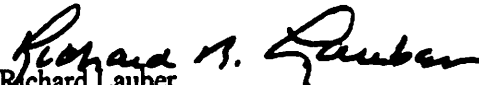
Dear Mr. Barcott:

The North Pacific Fishery Management Council (Council) is one of eight regional councils around the U.S. charged with management of the fisheries resources in federal waters of the U.S. Our Council is somewhat unique in that we utilize a fisheries observer program to collect scientific data which is used in the management and conservation of the fisheries resources off Alaska. Fisheries observers are required on certain fishing and processing operations, at the expense of the operator who contracts for these services through private observer contracting companies. This will change somewhat under the North Pacific Fisheries Research Plan (the new Observer Plan) which will levy a fee on all vessels and plant operating in the fisheries under Council jurisdiction. This is an attempt to, among other things, more equitably distribute the costs of observer coverage throughout the fleet.

One of the issues we have been struggling with recently involves insurance coverage requirements for observers at sea. The Council's Observer Oversight Committee (OOC), a collection of industry representatives established to help oversee the program, has prompted the Council to establish an Insurance Technical Committee (ITC) to help us resolve some of these issues. We will be looking at potential methods to standardize insurance requirements for observers, as well as look at the feasibility of establishing a risk-sharing pool for observer insurance coverage. After conversations with many of the parties involved in this issue, including industry representatives, agency personnel, and observer contractors, your name was suggested as a member of the ITC we wish to establish.

We are awaiting recent Magnuson Act reauthorizations which may help clarify the parameters of this issue and, therefore, are looking tentatively at convening the ITC sometime in October. The most likely meeting place will be the Alaska Fisheries Science Center in Seattle, where the Observer Program resides. We envision a one- or two-day meeting and invite your expertise on this issue. The contact person for the Council is Mr. Chris Oliver, who can be reached at the number shown above if you have any questions. He will be finalizing the details for this meeting and your response should be directed to him at the Council offices in Anchorage. Although we are unable to cover any expenses associated with your participation, I hope you will be able to attend the meetings. Thank you in advance for your time and I hope that you will be able to participate.

Sincerely,


Richard Lauber
Council Chairman

cc: Mr. Bob Maier, NMFS Observer Program
Ms. Chris Blackburn, OOC Chair



UNIVERSITY OF ALASKA ANCHORAGE

211 West 7th Avenue
Anchorage, Alaska 99501
(907) 272-2704
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North Pacific Fisheries
OBSERVER TRAINING PROGRAM
COLLEGE OF COMMUNITY AND
CONTINUING EDUCATION

September 20, 1994

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

Dear Clarence:

With the Council scheduled to review the status of the North Pacific Research Plan at the upcoming meeting, I thought it appropriate to provide you with an update on the University of Alaska Anchorage observer training program. Significant ground has been gained over the summer, with Congress approving an increased appropriation level as well as authority to use this education grant to more fully support all Council FMP observer programs.

The issue concerning groundfish observer training, and where that training is to occur is a controversial one and in my view very politicized. It is clear that Congress intends to have the University program included under the Research Plan. Observer training in Alaska is considered a high priority among state leaders who wish to create job opportunities for Alaskans. Costs to train in Alaska may be higher than in Seattle. However, both NMFS and the UAA plan on approaching Congress for continued appropriations for FY96 so that "government" continues to pay for the administrative program costs and not burden the fishing industry. In fact, Congress has already been presented with a cost-differential proposal which would result in no difference in cost paid by the industry regardless of the training site chosen. I expect that in the future, this issue will be resolved either by the Council, in Washington, D.C., or through competitive bid for all observer training.

I would appreciate if you would provide the attached program update to the Council family. I plan on attending the Council meeting, and will be prepared to provide greater details and answer any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "S. Davis".

Steven K. Davis
Director
North Pacific Fishery Observer Training Center

Attachment

NORTH PACIFIC FISHERIES OBSERVER TRAINING CENTER

UNIVERSITY OF ALASKA ANCHORAGE
Program Update

Prepared By Steve Davis

September 13, 1994

Since the June 1994 Council meeting, the North Pacific Fisheries Observer Training Center (NPFOTC) has worked to secure funding to support its observer training operations through calendar year 1995. As described previously in the FY96 Budget Narrative presented to the Council and the Observer Oversight Committee (Attachment 1), almost all financial support to the NPFOTC during its pilot program phase has come from two sources: (1) annual federal appropriation and (2) the State of Alaska.

This summer Congress approved an increase in NPFOTC funding to \$300,000 for use in 1995. State of Alaska funding, through use of allocated University funds will total about \$117,000. This is roughly \$100,000 less than our projected FY96 budget presented to the Council in June. The difference can be largely explained by the need to add facility rent and maintenance charges beginning in 1996. Up to now, the Municipality of Anchorage has been providing the facility at no cost to the university.

This recent appropriation will ensure continued observer training operations at the UAA through 1995.

Other news to report is that Congress has notified the UAA that it wants these funds used to support all Council/FMP observer programs. In the past, the NPFOTC has used these funds solely for groundfish training. From the outset, the UAA has worked to provide training services to the State of Alaska for its observer programs. Now, this increase in federal support can be used to support the Council's other FMP's. From my perspective, this increase is the first step toward the NPFOTC becoming less dependent on State funds at a time when universally state budgets are being cut.

Another issue to report concerns the Research Plan and the role the UAA NPFOTC is to have under that plan. I have been informed by both university and congressional staff that the intent of Congress when they first approved the MFCMA amendments which authorized the Research Plan and the funding of the NPFOTC, was to have the Alaska training supported by Research Plan funds once the plan was implemented. Some at NMFS claim that this was never envisioned.

This summer, I researched this topic and found little to clarify this issue. I passed along this information to Congress and the National Sea Grant Program (the NPFOTC sponsoring agency) and requested congressional clarification on this issue.

In August, I received a copy of P.L. 103-317 which was signed into law and includes the FY96 NMFS budget. It states that Congress "expects that training of observers in the North Pacific groundfish and shellfish fisheries at the North Pacific Fisheries Observer Training Center in Anchorage, Alaska, will be fully funded by NOAA from the North Pacific observer fund once the North Pacific Research Plan is implemented."

I have interpreted this direction to mean that the NPFOTC's recoverable costs as defined by the Research Plan are to be funded by program funds. As shown in Attachment 1, my best estimate of these costs is \$347,608.

To the fishing industry, who are being required to pay up to 2% of their catch's value to the Research Plan Fund, I raise the question of what they will receive for their \$347,608?

For this sum, the NPFOTC can provide all of the shellfish training and roughly a third or more of the groundfish training required. This figure compares favorably to the NMFS projected training budget presented to the Council in June which shows their recoverable costs in FY96 to be \$734,700. I must emphasize that the NMFS figure includes costs associated with briefing, debriefing, data editing, and logistics and the figure is therefore higher than what actually costs them to do their training. It is also important to note that the NMFS cost estimate assumes that the Seattle facility will conduct 100% of the groundfish training. If this were to occur, the UAA cost estimate presented in Attachment 1 (which assumes 30-40% groundfish training) would go down. Likewise, if the UAA were to provide any groundfish training, NMFS's costs would similarly go down.

A lot of this boils down to the long-standing issue of where the training will occur, Seattle, or Anchorage, or some combination of sites. This issue has been extremely politicized among policy makers and agency staff, at levels well above those charged with day-to-day training operations. It is my expectation that at some point in time, this issue will be either resolved in Washington, D.C., the Council, or all training will be put out to competitive bid. In either case, the competitiveness of two organizations to perform some if not all the training will assure that the industry and the public receive the greatest return on the dollar.

**NORTH PACIFIC FISHERIES OBSERVER TRAINING CENTER
UNIVERSITY OF ALASKA ANCHORAGE**

**BUDGET NARRATIVE (FY96)
May 25, 1994 Draft**

INTRODUCTION AND BACKGROUND

In September 1991, a pilot observer training center (OTC) was established at the University of Alaska Anchorage. The objectives of the program included the determination of whether acceptable training of NMFS-certified groundfish observers could be achieved by a non-government post-secondary teaching institution. Up to this point in time, all observer training for the foreign and domestic observer programs had been performed by NMFS, and there was some question whether the government should be in the training business and whether non-NMFS personnel could perform the training duties.

This program was the result of a series of discussions between the NMFS, the NPFMC, and the University of Alaska's Alaska Sea Grant Program on the merits of providing a training facility in the state of Alaska. The pilot program received the support of the Alaska congressional delegation and has been funded directly through congressional appropriation. These "add-on" funds have been attached to the annual NMFS budget for purposes of administration and program oversight. A common misconception concerned these funds. Many within NMFS were of the impression that OTC funding came as a direct "reprogramming cost" to other NMFS projects. Actually the OTC funds were added by Congress to an approved NMFS budget and did not directly impact any other agency program. It has been the intent of Congress, the NPFMC, and Alaska Sea Grant that these annual appropriations would continue to support the OTC until the North Pacific Research Plan was fully developed and implemented, at which time the OTC was to be fully integrated into the Research Plan structure.

Since its inception, appropriated funding levels for the OTC have varied from \$91,000 (FY93) to 184,000 (FY91) annually. Actual program costs have fluctuated from \$200,000 (FY93) to \$370,000 (FY91) during this same time period. The State of Alaska has balanced the OTC's budget through indirect support through the University of Alaska Anchorage's College of Community and Continuing Education. The industry has also contributed through the payment of tuition fees associated with crab training and shellfish observer certification.

During the period 1991-1994 the OTC has demonstrated its capability to organize and conduct observer training classes. The program has graduated 34 NMFS-certified groundfish observers out of 36 candidates and has trained more than 70 ADF&G-certified shellfish observers. The OTC serves as a focal point in Alaska for equipment and observer logistics. Benefits associated with the OTC in Anchorage have been reported elsewhere.

In early 1994, the OTC reached a crossroads in its history. OTC staff were completing pilot program requirements, and, based on that experience, were engaged with the University in evaluating whether to move into the next phase as a permanent, full-scale training center in

Alaska. Meetings were held between the University, Alaska Sea Grant and the Alaska Congressional delegation. Discussions were also held with representatives of NMFS, ADF&G, and the fishing industry. The conclusion was that the University should move forward toward making the OTC a permanent institutional program, broadening its focus to include other necessary observer training, briefing and debriefing sessions, data preparation, and to assist NMFS and ADF&G with analysis and preparation of reports.

The OTC's budget for FY95 is \$417,000. This increase in program costs is the result of the OTC's move from the pilot program phase into a new era as a full-service observer training center.

THE FY96 BUDGET

An anticipated training class schedule for FY96 is provided in Attachment 1. This schedule is based on prior discussion between NMFS, Alaska Sea Grant and observer contractors as well as a review of current needs and projected needs. One of the approved objectives of the University's pilot program was to build the infrastructure and capability to support 30-40% of the anticipated groundfish observer training. The FY96 schedule is based on this estimate as well as the anticipated crab and scallop training requirements.

The University has determined that the OTC will require a total budget in FY96 of \$517,275 Attachment 2. Of this figure, \$103,455 in indirect costs are not recoverable from the Research Plan as it is currently written. Also not recoverable at the present time are the costs associated with scallop observer training.

The federal scallop FMP will not be approved by the Secretary of Commerce until November 1994. Integrating the ADF&G scallop observer program will require amending the Research Plan sometime in 1995. Given the current schedule for the collection of fees and allocation of those funds to fee-collected fisheries, the scallop fishery could not become fully integrated into the Research Plan and its budget until FY97. The costs of scallop observer training have been estimated at 16% of the total recoverable budget, or \$66,211.

The University is looking toward the Research Plan to fund the OTC for the purpose of continuing groundfish and crab observer training programs. The University's current estimate of the total FY96 recoverable costs associated with these programs is \$347,608.

LINE-ITEM REVIEW

The following is a review of the FY96 budget provided as Attachment 2.

A. Salaries and Wages

Provided here is a listing of every position associated with the training of observers. The position title, its corresponding federal civil service rank, full-time or part-time position status, and the corresponding salary are provided. Associate faculty refers to Alaska Sea Grant faculty

located in Anchorage, Fairbanks, and Kodiak who routinely participate in the training of observers. Other university faculty and invited lecturers, expert in fisheries science, resource management, statistics, etc, may also be utilized from time to time. Total salaries/wages for FY96 are estimated at \$221,000.

B. Fringe Benefits

This line item includes required health, benefits, accident and disability insurance, and vacation/sick leave. For a full-time, administrative and/or teaching position the rate is 41% of the base salary. For clerical positions and associate faculty, the rate is 32% of base salary. Total fringe benefits for FY96 is estimated at \$87,820.

The OTC operation will require the equivalent of 6.2 FTE in staff requirements.

C. Permanent Equipment

This line item refers to the anticipated and frequent need to update teaching equipment and materials, computers, observer manuals, etc. In FY94 a total of \$5,000 was needed to satisfy this requirement. The FY96 estimate is \$6,000.

D. Expendable Supplies and Equipment

This budget category includes specimen acquisition, paper, pencils, computer discs and other office supplies. Estimated FY96 cost is \$4,000.

E. Travel

This category presents estimated costs of travel to fully participate in the Research Plan. Based in part on past travel costs, OTC staff must be able to attend NPFMC meetings and Research Plan committee meetings. OTC staff must also travel to the Alaska Fisheries Science Center periodically for routine instructor training and certification. Travel is also necessary from time to time for the purpose of obtaining fish and shellfish specimens for the Center's teaching collection. Estimated cost included obtaining discounted rates whenever possible. FY96 budget is \$6,500.

F. Publication and Documentation Costs

An estimated FY96 budget of \$7,000 is projected for the purpose of producing OTC reports, newsletters, and other associated publications .

G. Other

1. Computer Costs - \$500 for the purchase of computing time on equipment not owned or leased by the OTC.

2. Duplicating & Drafting - \$2,000 is projected for the purpose of photocopying training materials, correspondence, and the preparation of illustrations.

3. Communications - \$2,000 is estimated to meet the anticipated costs of telephone and facsimile services.

4. Equipment Rent/Maintenance - \$1,000 is projected to maintain the OTC's current equipment inventory.

5. Postage, Shipping, & Freight - \$3,000 is estimated to support the mailing of equipment, specimens, documents, etc.

6. Office Rent - The current lease agreement between the University of Alaska Anchorage and the Municipality of Anchorage calls for the payment of rent and utilities totaling \$62,000 per year beginning in FY96. Since 1992, the City has been providing the OTC facility at no cost to the university or the observer program.

7. Janitorial Services - An estimated \$9,000 is necessary to support maintaining the OTC during training sessions. The teaching laboratory, restrooms, classrooms, offices, hallways, storage areas, all are heavily used during the classes and require daily cleaning, beyond that necessary when classes are not in session. Fish wastes and other trash must be removed frequently.

8. Contract Services - \$2,000 is projected for FY96. These funds are used for the production of teaching slides and other professionally produced products.

Total Other Costs for FY96 are estimated at \$81,500.

TOTAL DIRECT PROGRAM COSTS (A through G) projected for FY96 are \$413,820.

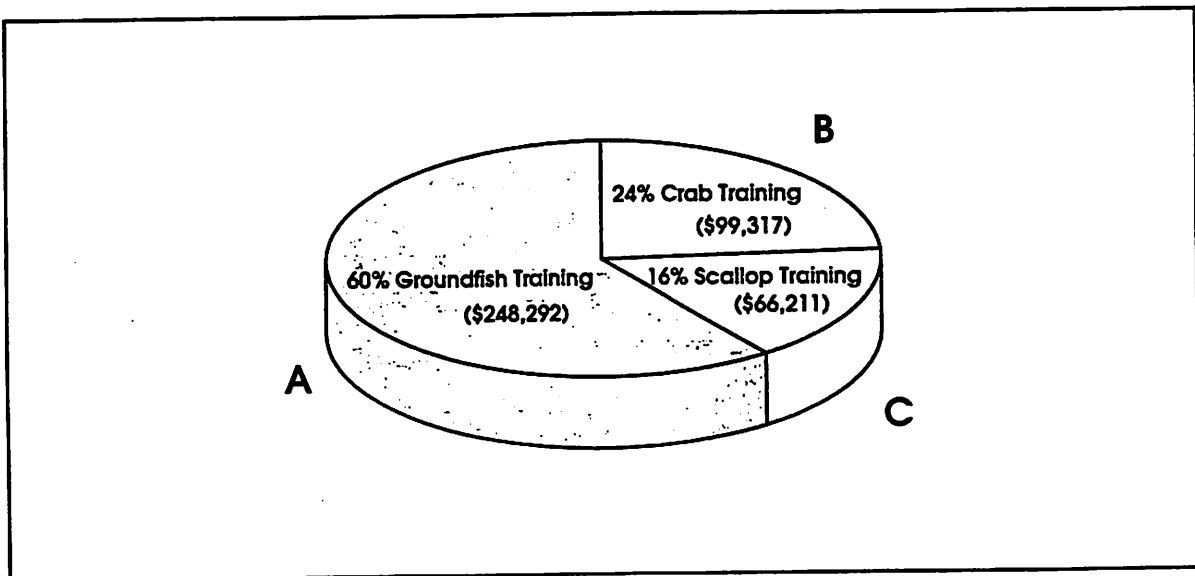
INDIRECT COSTS (nonrecoverable under the Research Plan) which are charged by the University for overhead and other OTC program support are estimated at \$103,455.

TOTAL PROGRAM COSTS for FY96 are \$517,275.

Tentative Observer Training Schedule for FY96

Number of Classes	Class Title	Duration/ Prep. Time	Total Days
4	Groundfish Observer (basic training)	21 days/10 days	124
12	Groundfish Refresher Course (i.e. Briefing)	2 days/2 days	48
6	Groundfish Refresher Course (Briefing)	4 days/3 days	42
3	Crab Observer (basic training)	14 days/10 days	72
3	Crab Refresher Course	3 days/2 days	15
2	Scallop Observer (basic training)	14 days/10 days	48
2	Scallop Refresher Course	3 days/2 days	10
32			359

Direct/Recoverable Costs



Total FY96 Recoverable Costs = A + B = \$347,608
Total FY96 OTC Direct Costs = A + B + C = \$413,820
Total FY96 OTC Program Costs = (A + B + C) + Indirect = \$517,275

NORTH PACIFIC FISHERIES OBSERVER TRAINING CENTER
UNIVERSITY OF ALASKA ANCHORAGE
SEA GRANT BUDGET (FY96)
DRAFT

Category

	<u>Person-Months</u>	<u>TOTAL</u>
A. SALARIES AND WAGES		
<u>Senior Personnel</u>		
OTC Director (GS-12)	12	\$ 60,000
Senior Instructor (GS-9)	12	35,000
Instructor (GS-9)	12	30,000
Administrative Officer (GS-9)	12	35,000
Secretarial/Clerical (GS-5)	12	25,000
Associate Faculty	2	6,000
Data Manager (GS-7)	12	<u>30,000</u>
		SALARIES/WAGES TOTAL \$ 221,000
B. FRINGE BENEFITS (Health, Insurance, Vac/Sick) (41% APT/32% Sec/Cler, Assoc. Fac.)		<u>87,820</u>
		SALARIES/WAGES/FRINGE BENEFITS TOTAL (6.2 FTE) \$ 308,820
C. PERMANENT EQUIPMENT		\$ 6,000
D. EXPENDABLE SUPPLIES AND EQUIPMENT (Specimen acquisition, paper, pencils, disks)		\$ 4,000
E. TRAVEL (Domestic)		
For instruction and instructor certification		\$ 5,000
For participation in NPFMC meetings, etc.		\$ 4,500
For specimen acquisition		<u>\$ 1,000</u>
	TRAVEL TOTAL	\$ 6,500
F. PUBLICATION AND DOCUMENTATION COSTS		\$ 7,000
G. OTHER		
Computer costs		\$ 500
Duplicating and drafting		\$ 2,000
Communications (phone, FAX)		\$ 2,000
Equipment rent/maintenance		\$ 1,000
Postage, shipping & freight		\$ 3,000
Office rent		\$ 62,000
Janitorial services		\$ 9,000
Contract services		<u>\$ 2,000</u>
		TOTAL DIRECT COSTS (A through G) \$ 413,820
		INDIRECT (non recoverable costs under Research Plan) \$ 103,455
		<u>TOTAL PROGRAM COSTS (FY96) \$ 517,275</u>

NORTH PACIFIC FISHERIES OBSERVER (RESEARCH) PLAN

**ESTABLISHING THE FEE PERCENTAGE
AND STANDARD EXVESSEL PRICES FOR 1995**

September 27, 1994

I. INTRODUCTION

This report describes the process that will be used annually to establish the fee percentage and standard exvessel prices for the North Pacific Fisheries Research Plan (Research Plan). It also describes the first-year fee payment program and presents information that will assist the North Pacific Fishery Management Council (Council) in making recommendations concerning the fee percentage and standard exvessel prices for 1995. The Council made its recommendations for the preliminary values at the June meeting and will make its recommendations for the final fee percentage and standard exvessel prices for 1995 at its September 1994 meeting. The Council's final recommendation will be based on the following: (1) public comments concerning the preliminary values; (2) this report and comments on it; (3) public comments at the September meeting; and (4) Observer Oversight Committee (OOC), Advisory Panel (AP) and Scientific and Statistical Committee (SSC) comments and recommendations.

II. PROCESS FOR ESTABLISHING THE FEE PERCENTAGE AND STANDARD EXVESSEL PRICES

NMFS will establish annually a Research Plan fee percentage for the upcoming calendar year. The fee percentage will be based on:

- a. Standard exvessel prices which are established as part of the fee setting process,
- b. Projected retained catches by species (i.e., catch retained by either at-sea or onshore processors, excluding fish retained only for meal) in all Research Plan fisheries,
- c. Projected program costs,
- d. Projected surplus in the North Pacific Fishery Observer Fund (Observer Fund) at the end of the year in which the fee percentage is set,
- e. Projected funding for the Research Plan from other sources, and
- f. Projected nonpayment.

After consulting with the Council and the State of Alaska (State), NMFS will publish the fee percentage and the values of the variables on which it is based in the Federal Register and invite comments. After considering comments received and again consulting with the Council and the State, NMFS will publish final values in the Federal Register.

1. Research Plan Fisheries

The following fisheries will be Research Plan fisheries and will be subject to the fee assessment:

- a. **Groundfish of the Gulf of Alaska (GOA) (exclusive economic zone (EEZ) only),**
- b. **Groundfish of the Bering Sea and Aleutian Islands area (BSAI) (EEZ only),**
- c. **North Pacific halibut off Alaska (all Convention waters off Alaska), and**
- d. **King and Tanner crab fisheries of the Bering Sea and Aleutian Islands (EEZ only).**

2. Standard Exvessel Prices

Annually, NMFS will establish standard exvessel prices for species harvested in Research Plan fisheries. The standard exvessel prices will be based on:

- a. **Exvessel price information by applicable season, area, gear, and processing sector for the most recent 12-month period for which data are available;**
- b. **Factors that are expected to change exvessel prices in the upcoming calendar year; and**
- c. **Other information that indicates what exvessel prices will be expected to be in the upcoming calendar year.**

The standard exvessel prices will be used:

- a. **To project the exvessel value of the Research Plan fisheries for the coming year and**
- b. **To determine the fee liability of each processor.**

3. Retained Catch

Retained catch by species for the Research Plan fisheries will be projected annually for the upcoming calendar year using the best available information concerning expected catches and discards. Fish that are only retained to produce meal are considered to be discards.

4. Total Exvessel Value

NMFS will calculate the total exvessel value of retained catches for Research Plan fisheries as the sum of the product of the standard exvessel price and projected retained catch by species.

5. Program Costs

NMFS and the Alaska Department of Fish and Game (ADF&G) will each prepare an annual budget that identifies expected recoverable Research Plan costs for the upcoming calendar year. Recoverable costs identified in each budget will include:

- a. Costs for observer training, certification, briefing, and debriefing;
- b. Costs for stationing observers, including travel, salaries, benefits, and insurance;
- c. Costs for data collection, transmission, input, processing, and management;
- d. Contract services and general program operational costs, excluding overhead; and
- e. The cost of the risk sharing pool, if one is established.

The estimated budget will be based on anticipated observer coverage and the anticipated costs directly incurred in carrying out the Research Plan.

6. Surplus Funds, Other Sources of Funding, and Fee Nonpayment

NMFS will make a projection of each of the following:

- a. The surplus that will be in the North Pacific Fishery Observer Fund at the end of the current calendar year;
- b. The funds that will be available from other sources for use in funding the Research Plan during the upcoming calendar year; and
- c. The nonpayment rate on fees assessed under the Research Plan during the upcoming calendar year.

7. Calculation of the Fee Percentage

The fee percentage for the upcoming calendar year will be set equal to which ever is less, the fee percentage calculated using the following equation or 2 percent (%).

$$\text{Fee percentage} = [100 \times (\text{RRPC} - \text{FB} - \text{OF})/\text{V}]/(1 - \text{NPR}),$$

where:

RRPC = projection of recoverable Research Plan costs for the coming year

FB = projected end of the year Fund balance

OF = projection of other funding for the coming year

V = projected exvessel value of retained catch in the Research Plan fisheries for the coming year

NPR = percent of fee assessments that are expected to result in nonpayment

III. THE FEE COLLECTION PROGRAM FOR 1995

In response to oral and written comments received on the proposed rule, NMFS revised the final rule to eliminate the first-year rebate program and implement an alternative first-year program, based on the following assumptions and criteria:

1. Sufficient start-up funds must be generated during 1995 to allow full implementation of the Research Plan by January, 1996;
2. NMFS will continue to contribute towards the financial support of the observer programs, at least through fiscal year 1996;
3. The first-year program must avoid "double payment" by any component of the Research Plan fisheries for any period of time during 1995; and
4. Actual costs paid by persons for direct observer coverage during 1995 must be fully credited up to their portion of their fee liability.

The revised first-year program that is intended to meet these criteria and assumptions is summarized below by fishery and type of operation. The summary is followed by a brief justification for the specifics of the revised first-year program.

1. **BSAI and GOA Groundfish Fisheries**
 - 1.1 One half of the fee percentage will be applied to the retained catch by vessels less than 60 feet in length over all (LOA).
 - 1.2 All catcher vessels that are at least 60 feet in length are exempt from the half of the fee percentage that would otherwise be collected from these vessels.
 - 1.3 One half of the fee percentage will be applied to the retained catch received by a on-shore processor or a mothership; however, each such processor may subtract its observer coverage costs from the processor's portion of its bimonthly bill.
 - 1.4 The full fee percentage will be applied to the retained catch of a catcher/processor vessel; however, each such processor may subtract its observer coverage costs from its bimonthly bill.
2. **BSAI King and Tanner Crab Fisheries**
 - 2.1 The full fee percentage will be applied to retained catch delivered to on-shore processors, floating processors, and crab caught or delivered to catcher/processors. However, each such processor may subtract its observer coverage costs from the processor's portion of its bimonthly bill.
 - 2.2 Crab catcher vessels that participate in special-use permit crab fisheries are exempt from the half of the fee percentage that would otherwise be collected from these vessels for their catch in the special-use permit fisheries.
3. **Halibut Fishery**
 - 3.1 The full fee percentage will be applied to all retained catch in the halibut fishery.

Groundfish catcher vessels less than 60 feet LOA are subject to the fee because these vessels are not required to pay for observer coverage. The same is true for the entire halibut fishery. Groundfish catcher vessels that are 60 feet or over LOA and crab catcher vessels that participate in special-use permit crab fisheries are exempt from the fee. First, because the fees are submitted to NMFS by processors, it would be difficult to provide timely credits for these vessels. Second, as a group these vessel classes will pay observer costs that exceed 1 percent of the exvessel value of their retained catch. Thus, the overall observer costs for these classes of vessels will not change during the start-up year as a result of the fee collection program. Less than 2 percent of the crab catcher vessels participate in developing crab fisheries and are required to obtain a special-use permit from ADF&G and carry observers. Those developing fisheries are limited in scope and the associated observer coverage costs are insignificant relative to the total exvessel value of the crab fisheries.

The credits are fishery-specific but not billing period-specific. That is, a processor's payments for groundfish observer coverage costs may be claimed as a credit against its

fee liability for 1995 groundfish landings and a processor's payments for crab observer coverage costs may be claimed as a credit against its fee liability for 1995 crab landings. For each fishery for the year as a whole, a processor's credit cannot exceed the processor's portion of its fee liability.

1. Projection of Recoverable Research Plan Costs for 1995 (millions)

1.1 Agency costs

Observer Programs

Alaska Fisheries Science Center	\$ 2.1
ADF&G	\$ 0.5
Total	\$ 2.6

Fee Collection Programs (Alaska Regional Office, Alaska Enforcement Office, Alaska General Counsel, Western Administrative Services Center)	\$ 0.3
--	--------

Total agency costs	\$ 2.9
--------------------	--------

1.2 Funds obligated in 1995 for 1996 observer coverage

First quarter	\$ 3.0
Second quarter	\$ 1.8
Total	\$ 4.8

1.3 Allowable credits	\$ 4.6
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1.4 Total recoverable costs	\$12.3
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2. Recoverable costs net of Observer Fund balance and other funds

Total recoverable costs	\$12.3
- Fund Balance at end of 1994	\$ 0.0
- Other Funding for 1995	\$ 2.6
= Net recoverable costs	\$ 9.7

The \$2.6 million of other funding is \$2.1 million from NMFS and \$0.5 from ADF&G for the groundfish and crab observer programs, respectively.

3. Exvessel value

groundfish *	\$275.8
crab	\$158.9
halibut	\$ 66.0
total	\$500.7

* The estimate of the exvessel value of groundfish excludes one half of the value of retained catch delivered by catcher vessels $\geq 60'$ (\$145.6 million/2) because this retained catch is only subject to the processors' half of the fee percentage.

4. Nonpayment rate on fee liability 2.7 percent

5. Fee percentage $[100 \times (\$12.3 - \$0 - \$2.6) / \$500.7] / (1 - 0.027) = 1.99\%$

The estimates of observer contractor costs in Table 1 are used to estimate net recoverable costs and net fee collections. Projections of exvessel value, direct observer costs, fees net of credits for direct observer costs, and the total of direct observer costs by fishery and sector for 1995 with a fee of 2.0% are presented in Table 2.

Table 1 Observer contractor cost projections for 1995.

Type of Operation	Days	Cost/day	Cost
BSAI Groundfish			
catcher vessel	5,240	\$181	948,000
catcher/processor	16,523	\$180	2,974,000
mothership	426	\$180	77,000
plant	1,556	\$181	282,000
GOA Groundfish			
catcher vessel	2,753	\$188	518,000
catcher/processor	1,778	\$187	332,000
mothership	0	\$187	0
plant	881	\$188	166,000
Groundfish subtotal	29,157	-	\$5,297,000
BSAI crab	1,700	\$204	346,800
Total	30,857	-	\$5,643,800

Notes:

1. A "day" is a deployment day. The estimates of cost per day are based on a survey of contractors conducted in June, 1994. The survey asked for daily rates (what they charge their clients) and airline costs (round-trip Seattle-Dutch Harbor & Seattle-Kodiak). The cost per day estimates for crab include the cost the contractors pay for training.
2. The estimates of the number of days are based on the 1993 groundfish fishery and the projected 1994/95 crab fishery. The estimates of the cost per day varied by contractor from about 85% to 115% of the point estimates presented above. If this range is applied to the point estimate of the total cost of \$5.64 million, the range of the estimate of total cost is from about \$4.8 million to \$6.5 million. The upper end of the range is used in Table 2.

Table 2 Projections of exvessel value, gross fee liability, direct observer costs, observer cost credits, fee net of credits, and the total of direct observer costs and net fees by fishery and sector for 1995 with a fee of 2.0 percent (%).
(millions)

	Exves. value	Rate	Fee	Obs cost	Credits	Fee less credits	Total cost	% of value
Groundfish								
Motherships	\$ 33.8	1.0%	\$ 0.34	\$0.09	\$0.09	\$0.25	\$ 0.34	1.0%
Shore plants	\$137.6	1.0%	\$ 1.38	\$0.52	\$0.52	\$0.86	\$ 1.38	1.0%
Catcher vessels								
≥60'	\$145.6	0.0%	\$ 0.00	\$1.69	\$0.00	\$0.00	\$ 1.69	1.2%
<60'	\$ 25.8	1.0%	\$ 0.26	\$0.00	\$0.00	\$0.26	\$ 0.26	1.0%
All	\$171.4		\$ 0.26	\$1.69	\$0.00	\$0.26	\$ 1.95	1.1%
Subtotal	\$171.4		\$ 1.98	\$2.30	\$0.61	\$1.37	\$ 3.67	2.1%
Catcher/proc.	\$177.2	2.0%	\$ 3.54	\$3.80	\$3.54	\$0.00	\$ 3.80	2.1%
<u>Groundfish total</u>	\$348.6		\$ 5.52	\$6.10	\$4.15	\$1.37	\$ 7.47	2.1%
Crab fisheries								
Floaters	\$ 68.8	1.0%	\$ 0.69	\$0.14	\$0.14	\$0.55	\$ 0.69	1.0%
Shore plants	\$ 71.0	1.0%	\$ 0.71	\$0.00	\$0.00	\$0.71	\$ 0.71	1.0%
Catcher vessels	\$139.8	1.0%	\$ 1.40	\$0.00	\$0.00	\$1.40	\$ 1.40	1.0%
Subtotal	\$139.8		\$ 2.80	\$0.14	\$0.14	\$2.66	\$ 2.80	2.0%
Catcher/proc.	\$ 19.1	2.0%	\$ 0.38	\$0.26	\$0.26	\$0.12	\$ 0.38	2.0%
<u>Crab total</u>	\$158.9	2.0%	\$ 3.18	\$0.40	\$0.40	\$2.78	\$ 3.18	2.0%
<u>Halibut</u>	\$ 66.0	2.0%	\$ 1.32	\$0.00	\$0.00	\$1.32	\$ 1.32	2.0%
<u>Grand total</u>	\$573.5		\$10.02	\$6.50	\$4.55	\$5.47	\$11.97	2.1%

Table 2 Continued.

Notes:

1. The observer costs estimates used are based on the upper end of the cost estimates (i.e., 115% of the point estimates) from Table 1.
2. Each projection of the fee net of direct observer cost credits is calculated using a projection of observer costs for a sector as a whole. Therefore, the credits are overstated and the net fees are understated to the extent that the processor's share of the fee liability is less than the credit for some processors. Given that the processor's share of the fee liability is 1% of the exvessel value of the fish it receives and given that the cost per observer day is about \$180, a processor with less than \$18,000 of exvessel value per observer day would pay more than 1% in direct observer costs and would pay no fees. For a catcher/processor, the comparable break even point is \$9,000.
3. The Subtotal line for the Exvessel value column is the value of either the fish sold by catcher vessels or the value of fish bought by motherships and shore plants. The Subtotal line for the Observer cost, Fee, Credit, Fee-credit, and Total cost columns adds the Motherships, Shore plants, and Catcher vessels-All lines. The percentage entry in the Subtotal line is the Subtotal line Total cost divided by the Subtotal Exvessel value for that segment of the Research Plan fisheries.

IV. INFORMATION FOR ESTABLISHING THE STANDARD EXVESSEL PRICES FOR 1995

The standard exvessel prices are expected to be controversial for the following reasons:

1. They are important variables in the process used to establish the fee percentage;
2. They will be used to determine the fee liability per pound of retained catch for each processor (for each species the fee/lb = fee percentage x standard exvessel price);
3. Actual exvessel prices will differ from the standard prices for a variety of reasons;
4. Actual exvessel prices change over time and can differ by gear, area, port, the size and quality of fish, season, mode of operation, and processor;
5. The standard exvessel prices will be based on price information submitted on fish tickets when an adequate amount of retained catch is priced on fish tickets, but when it is not, standard exvessel prices will be established using other information;
6. The State of Alaska may base its landing tax for at-sea processors on the standard exvessel prices established for the Research Plan.

Groundfish: The major problem associated with establishing the standard exvessel prices for groundfish is that, for a number of species, most of the retained catch is taken by catcher/processors and there are not exvessel transactions for which exvessel price data can be collected. For each of these species, it is necessary to impute an exvessel price based on other information. The following explanation of what is meant by an "exvessel price" provides a basis for calculating an imputed price.

When fishermen sell unprocessed fish to a processor, the amount paid per pound of fish is the "exvessel price". That price reflects the value added by fishermen by catching the fish, maintaining the quality of the fish, and delivering the fish to the processor. The relative importance of each of these three activities in terms of the value added by fishermen is variable. The processor will add more value to the fish by processing and marketing it. The relative importance of each of these two activities in terms of the value added by processors is variable. The differences between the round weight equivalent price a processor receives for processed fish and the exvessel price is the value added per pound by the processor. Therefore, the exvessel price is the processed product price minus the value added per pound by the processor.

The relationship between exvessel and processed product prices for species for which both types of prices are available can be used to determine the value added by processors. The estimate of the value added by processors and product prices for species without observed exvessel prices can be used to calculate imputed exvessel prices. For example, if the round weight equivalent processed product price of the headed and gutted fish is \$0.80 per pound and if it is determined that for headed and gutted products 60% of the product price is due to

value added by the processor, the imputed exvessel price is \$0.32 which is 40% of the product price.

The standard exvessel prices proposed for the Council's review are in Table 3. The projections of groundfish exvessel value by species based on these proposed standard exvessel prices and retained catch in 1993 are in Table 4. The estimates of retained catch are based on the weekly processor reports because these reports will be used to calculate fee liabilities. The exvessel value projection of \$349 million for the 1995 groundfish fishery is substantially less than recent estimates of the annual value of this fishery. The estimates in the Economic Status of the Groundfish Fisheries off Alaska, 1993 (Preliminary) that was prepared as part of the SAFE last November are as follows:

	(million)
1988	\$445
1989	\$423
1990	\$475
1991	\$478
1992	\$675
1993	\$455.

The exceptionally high value for 1992 is explained by unusually high exvessel prices, particularly for pollock. The 4-year mean for 1988-1991 is \$456 million, this is \$107 million more than the projection for 1995.

With few exceptions, the proposed standard exvessel prices are based on 1993 and 1994 PacFIN exvessel prices. The exceptions are discussed below. The rock sole price is based on unsorted price of \$0.15 reported by one processor and a retention rate of 42.6% based on blend estimates of rock sole retention in the rock sole fishery ($\$0.15/0.426 = \0.352). The price for rock sole after the roe rock sole fishery and the price of other flatfish was set equal to the PacFIN price for yellowfin sole. The price for Greenland turbot is based on exvessel price information provided by one processor, that price was similar to the price that was imputed using product prices for turbot. The price for Atka mackerel was imputed as 30% of the mean export price after adjusting the export quantity using product recovery rates and product mix data.

Halibut: The estimate of halibut exvessel value is based on a IPHC staff projection of 1995 retained catch and a projected exvessel price of \$1.50. The price for 1994 is expected to be \$1.25 in Alaska and \$1.50 in Seattle; therefore, the projected price allows for both an upward trend and an increase under IFQs. The resulting projection of \$66 million for 1995 is almost \$12 million less than the 4-year mean for 1989-1992.

Crab: The crab exvessel value estimate is based on the information presented in Table 5. The total projection for crab in 1995 is \$159 million. This is about \$128 million less than the mean value for the 1991/92 through 1993/94 fishing years.

Table 3 Proposed standard exvessel prices for groundfish (\$ per pound round weight).

Season	Species	BSAIO	BSAIT	WCGO	WCGT	EGO	EGT
1	Arrowtooth	.020	.020	.020	.020	.020	.020
1	Atka mackerel	.090	.090	.090	.090	.	.
1	Deep flat	.	.	.563	.125	.563	.
1	Dems rock	.	.	.310	.151	.545	.151
1	Flathead sole	.122	.122	.122	.122	.	.122
1	G. Turbot	.300	.300	.	.	.	.
1	Other flatfish	.060	.060	.	.	.	.
1	Other groundfish	.188	.020	.188	.020	.188	.020
1	Other rockfish	.484	.120	.	.	.	.
1	POP	.249	.063	.249	.063	.249	.063
1	Pacific cod	.190	.131	.188	.142	.269	.152
1	Pels rock	.	.	.393	.130	.273	.130
1	Pollock	.072	.075	.078	.089	.	.
1	Rex sole	.	.	.	.191	.	.250
1	Rock sole	.352	.352	.	.	.	.
1	Sablefish	1.100	.702	1.136	.702	1.125	.701
1	Shallow flat	.	.	.	.147	.147	.
1	Sharpchin/northern	.208	.208	.208	.208	.208	.
1	Shortraker/rougheye	.315	.120	.260	.120	.260	.120
1	Slope rock	.	.	.350	.104	.253	.104
1	Thornyhead rock	.	.	.478	.263	.531	.263
1	Yellowfin sole	.060	.060	.	.	.	.
2	Pollock	.072	.062	.078	.071	.	.058
2	Rock sole	.060	.060	.	.	.	.

Notes: BSAIO is BSAI other gear, BSAIT is BSAI trawl, WCGO is Western and Central Gulf other gear, WCGT is Western and Central Gulf trawl, EGO is Eastern Gulf other gear, and EGT is Eastern Gulf trawl. Season 1 for pollock and BSAI rock sole in January - March and Season 2 is April - December. Seasonal prices are not used for the other species. Fish ticket price data indicate that, in the BSAI, motherships and on-shore processors paid approximately the same price for pollock during the A season, but that motherships paid 17.4% less than on-shore plants during the B season. If a separate standard exvessel prices are used for at-sea processors and onshore processing during the B season, the proposed prices are \$0.051 and \$0.062, respectively.

Table 4 Projected 1995 groundfish retained catch, price, and exvessel value by species.

	Retained catch (1,000 lbs)	Price (\$/lb)	Exvessel value	% of value
Arrowtooth	3,475	.02	69,500	0.0
Atka mackerel	120,226	.09	10,820,361	3.1
Deep flat	3,210	.13	417,659	0.1
Dems rock	1,620	.44	708,248	0.2
Flathead sole	14,468	.12	1,765,144	0.5
G. Turbot	13,691	.30	4,107,326	1.2
Other flatfish	7,930	.06	475,825	0.1
Other groundfish	3,386	.15	491,211	0.1
Other rockfish	962	.41	398,724	0.1
POP	32,852	.06	2,075,441	0.6
Pacific cod	355,754	.16	56,812,243	16.3
Pels rock	5,877	.15	858,503	0.2
Pollock	2,744,282	.07	185,954,749	53.3
Rex sole	9,414	.19	1,797,782	0.5
Rock sole	44,712	.24	10,845,726	3.1
Sablefish	52,226	1.09	57,094,359	16.4
Shallow flat	13,685	.15	2,008,931	0.6
Sharpchin/northern	1,989	.21	413,620	0.1
Shortraker/rougheye	4,677	.16	754,453	0.2
Slope rock	12,917	.11	1,360,995	0.4
Thornyhead rock	1,803	.36	648,639	0.2
Yellowfin sole	146,685	.06	8,801,101	2.5
Total			\$348,680,539	100.0

Notes: Exvessel prices are weighted average prices across areas and gears. The product of retained catch and price does not necessarily equal the exvessel value due to rounding of retained catch and price. If a BSAI pollock B season price of \$0.051 per pound is used for at-sea processors instead of the on-shore processor price of \$0.062, total exvessel value is reduced by about \$10 million. The use of a on-shore processor rock sole price of \$0.072 throughout the year for rock sole deliveries to on-shore processors instead of the at-sea processor price of \$0.352 during the roe rock sole fishery reduces total value by less than \$0.1 million.

Table 5 BSAI crab fishery projections of retained catch, ex-vessel prices, and ex-vessel for 1995 by fishery and mode of operation.

	Pounds (millions)	\$/pound	Percent of catch			Value			Total (millions)
			On-shore	CP	Floater	On-shore	CP	Floater	
BB red	0.0	\$ -	0%	0%	0%	\$ -	\$ -	\$ -	\$ -
Opilio	55.7	\$1.75	31%	15%	54%	\$29.9	\$14.5	\$53.1	\$ 97.5
Bairdi	7.5	\$2.25	70%	10%	20%	\$11.8	\$ 1.7	\$ 3.4	\$ 16.9
Adak red	1.0	\$5.00	60%	33%	7%	\$ 3.0	\$ 1.6	\$ 0.4	\$ 5.0
Prib red	2.0	\$6.00	66%	2%	32%	\$ 8.0	\$ 0.2	\$ 3.8	\$ 12.0
Norton S. red	0.3	\$2.20	100%	0%	0%	\$ 0.7	\$ 0.0	\$ 0.0	\$ 0.7
St. Matt blue	3.0	\$4.00	27%	6%	68%	\$ 3.2	\$ 0.7	\$ 8.1	\$ 12.0
Dutch brown	1.2	\$2.75	100%	0%	0%	\$ 3.3	\$ 0.0	\$ 0.0	\$ 3.3
Adak brown	4.1	\$2.80	97%	3%	0%	\$11.1	\$ 0.4	\$ 0.0	\$ 11.5
Total						\$71.0	\$19.1	\$68.8	\$158.9

The catch projections are based on the guideline harvest levels (GHLs) for the 1994-95 fishery. The prices are 1993-94 prices adjusted upward due to the GHL reductions.



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C-4 Supplemental
September 1994

North Pacific Fisheries
OBSERVER TRAINING PROGRAM
COLLEGE OF COMMUNITY AND
CONTINUING EDUCATION

September 22, 1994

Mr. Steve Pennoyer
Alaska Regional Director
National Marine Fisheries Service
P. O. Box 21688
Juneau, Alaska 99802

Dear Steve:

This letter is to bring up the issue of utilizing North Pacific Fisheries Observer Training Center staff as debriefers. My predecessors have raised the issue on numerous occasions and in my new role here at the University, I see no reason why NMFS couldn't take advantage of this opportunity.

From my perspective, OTC training staff who are NMFS-certified to train groundfish observers, and whose activity is supported with federal funds (passed thru NMFS) are ideally suited to assist agency staff in performing debriefing functions in between training sessions. In addition to providing needed support, the debriefing experience will alert trainers and staff to problems which occur with data collection at sea. That information can be used to improve the quality and effectiveness of the training classes. The response from the AFSC has been that "they have determined that debriefing must be performed by NMFS staff." The problem is that there are not enough NMFS debriefers to handle the work when a large fishery closes (ex. Pollock 'B' season). The result is a tremendous backlog in work, with individual observers waiting for, in many cases, several weeks to be debriefed before they can be re-deployed. This situation places tremendous burden on the observers, observer contractors, and the fishing industry.

The policy to require debriefers to be NMFS employees is the view of the AFSC program, not NMFS. During the NMFS sponsored Observer Program Workshop held November 11-13, 1993 in Galveston, Texas, it was reported that the Northeast Region contracts all its debriefing duties.

At the June Council meeting, I restated the University's willingness to participate in debriefing observers, and I offered office space to both NMFS and ADF&G for debriefing here in Anchorage at the OTC. One idea that comes to mind is should the AFSC view prevail, and University training staff not be permitted to debrief groundfish observers, might NMFS/AFSC reconsider the situation as long as the University staff debriefs under the direct supervision of NMFS personnel. In this way, instead of having two observers in line outside the office with one observer being debriefed by NMFS staff, we could have all three observers being debriefed simultaneously under the oversight of NMFS. Questions or problems which surface during the debriefing can be immediately addressed by NMFS staff.

My goal in all this is to find ways to get more bang for the buck, and find ways to streamline the domestic groundfish observer program and make it more efficient.

Your thoughts on this matter would be most appreciated. Perhaps we can find some time to discuss this issue at the upcoming Council meeting.

Sincerely,



Steven K. Davis
Director
North Pacific Fisheries Observer Training Center

cc: NPFMC members
Senator Ted Stevens