MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: June 1, 1998

SUBJECT: Observer Program

ESTIMATED TIME
1.5 HOURS

ACTION REQUIRED

(a) Receive status report on JPA development.
(b) Final action to extend existing program.

BACKGROUND

Over the past year NMFS has been working with the Pacific States Marine Fisheries Commission (PSMFC) to develop a third-party procurement system for obtaining observers, following Council direction after repeal of the Research (fee) Plan. Under a joint partnership agreement (JPA), the PSMFC would become the sole source for obtaining observers, thereby creating an 'arm's length' relationship between industry and observer contracting companies. Previous information had indicated this observer program structure could be implemented in time for the 1999 season, when the existing program structure is scheduled to expire. Item C-6(a) is a recent letter from NMFS informing the Council of the current status of the JPA development. The essence of the letter is that contractual issues, liability issues, and other legal impediments have terminated the JPA between NMFS and PSMFC. Staff from these respective agencies are available to provide further detail on the JPA's demise.

Given that we will not have a replacement program structure next year, the Council will need to take formal action at this meeting to extend the existing program beyond the end of 1998. Item C-6 Supplemental is a document just compiled to allow us to effect that rollover. Because of the timing involved and the necessity to have the observer program requirements in place in January 1999, this document assumes a simple rollover of the existing program. Improvements to the existing program may well be desired by industry, observers and NMFS, but must be pursued as separate follow-up actions. Depending on which changes (if any) the Council wishes to pursue, staff work on a fee-based program would begin later this summer, with industry input in that process through the Council's Observer Advisory Committee (OAC).

Item C-6(b) contains recent correspondence received on observer program issues, including a re-submitted proposal to amend the existing program to institute a contractual arrangement between NMFS and the contracting companies. Also included is a proposal from the Association of Professional Observers (APO) to NMFS requesting several adjustments to the current program regulations.

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

June 1, 1998

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

Dear Rick,

At its December 1997 meeting, the North Pacific Fishery Management Council (Council) recommended that NMFS and Pacific States Marine Fisheries Commission (PSMFC) proceed to develop a joint partnership agreement (JPA) that would authorize PSMFC to provide observer procurement services. The intent of the JPA was to provide observer procurement and placement services that would be consistent with broader goals of collecting high quality observer data, providing adequate observer compensation and working conditions, and maintaining efficient deployment of observers within the groundfish industry.

NMFS and PSMFC have been working together to develop the JPA for over a year. PSMFC also has met with observer contractor companies, observers, and industry members to develop the infrastructure necessary to effectively provide the type of observer procurement services envisioned under the JPA.

Recently, several unresolvable legal issues have been identified by PSMFC that have forestalled efforts to proceed with the JPA. A discussion of these issues and recommendations on how to proceed with subsequent changes to the North Pacific Groundfish Observer Program follow.

Issues forestalling further development of the JPA.

Service Contract Act (SCA). Several years ago, NMFS staff informed the Council that any contractual arrangement between NMFS and another entity to provide observer services would be subject to the SCA's requirement that, absent a collective bargaining agreement, a contractor must pay observers no less that the wages and fringe benefits found by the Department of Labor to prevail in the locality where the services are to be performed. The Department of Labor has determined a base salary for observers that approximates the GS-5 pay level paid to entry level field biologists, or about $10 per hour. This level of base pay is significantly higher than that currently provided to most observers.

Guidance provided to staff over a year ago indicated that the SCA

would not apply to the JPA because a contract would not exist between NMFS and PSMFC. However, legal guidance recently solicited by PSMFC suggests that the expectations and respective roles of NMFS and PSMFC under a JPA would resemble a contractural arrangement, and therefore could be found subject to the SCA if challenged in court. NOAA General Counsel-Alaska Region has not found any legal precedent to rule out this possibility.

While continued development of the JPA under the SCA wage provisions is possible, the costs of observer services under the JPA would increase beyond those negotiated under union settlement and envisioned by the Council for this program during the immediate future. Thus, we believe the analysis supporting the JPA would have to be revised and brought back to the Council to more closely reflect expected costs.

Exposure to lawsuit and indemnification. Under the JPA, PSMFC would be responsible for providing observer services to the industry and the deployment of observers onboard vessels and at shoreside processing facilities. NMFS also envisioned that PSMFC would ensure that observers be available to NMFS through the completion of the debriefing process. The role envisioned for PSMFC would increase its exposure to lawsuit. This exposure was recently determined by PSMFC to be too high. Furthermore, NMFS could not sufficiently indemnify PSMFC against legal challenge because (1) no statutory authority for such indemnification exists and (2) the Anti-Deficiency Act precludes open-ended indemnification. Regulations developed to implement the JPA could deflect potential lawsuits away from PSMFC to NMFS. Nonetheless, we understand that such deflection could not sufficiently reduce the potential for lawsuit in a manner that allows PSMFC to go forward with the JPA as endorsed by the Council.

1999 observer program. The current observer program expires at the end of 1998 in anticipation that the JPA would have been implemented by 1999. Given the status of the JPA, the current program must be extended into 1999 to avoid a hiatus in observer coverage. Numerous desired changes to the current program have been suggested by different interests, but the necessity for final Council action at its June 1998 meeting to extend the observer program beyond 1998 precludes time for staff to sufficiently assess these suggestions. Thus, we recommend the current program be rolled over unchanged into 1999. Meanwhile, NMFS can proceed to assess these suggestions as regulatory amendments and develop them in consultation with the Council's Observer Advisory Committee (OAC).

Fee Collection Program. At its December 1997 meeting, the Council requested NMFS to redevelop a fee collection program to replace the North Pacific Fisheries Research Plan that was

repealed in 1996. We are willing to reinitiate this process, however, several new circumstances will further complicate the development of a fee collection program. First, the cost of observer coverage would increase due to the mandatory SCA wage levels. Second, fewer fisheries may be contributing to fees supporting the groundfish observer program pending the State of Alaska's adoption of alternative funding mechanisms for the shellfish observer programs. Third, NMFS must initiate steps to reassess observer coverage needs in the groundfish fisheries so that increasingly limited observer resources funded under the fee collection program could be deployed in the most effective manner. We had hoped that this assessment would occur as part of the Scientific and Statistical Committee's ongoing assessment of catch estimation procedures currently employed by NMFS. However, given the urgency of this issue and how it relates to existing industry costs and the development of a fee collection program, we believe that we must pursue an alternative approach. Different perspectives exist about the necessary scope of this reassessment. NMFS staff intend to meet this summer to develop a plan to pursue this study.

In summary, we again find ourselves in the very frustrating position of expending resources and efforts pursuing options for improvements to the observer program that cannot be realized. Union settlements with all but one observer contractor company will expire at the end of this year and must be renegotiated. While recognition exists that the observer program serves as the cornerstone for the management of the Alaska groundfish fisheries, the future of this program is unclear. Until a fee collection program or other alternative new infrastructure for the observer program is implemented, we must work within the confines of the existing program to improve it to the extent practicable. We intend to work closely with the OAC and other interested parties to initiate an assessment of suggested improvements as expeditiously as possible.

Sincerely,

Steven Pennoyer
Administrator, Alaska Region

May 5, 1998
P.O. Box 30167
Seattle, WA 98105

Chris Oliver, Deputy Director
North Pacific Fisheries Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

Dear Mr. Oliver:

Enclosed you will find a revised version of the Groundfish Fishery Management Plan Amendment Proposal I submitted last year in addition to a copy of the original proposal. To my knowledge, the proposal was never reviewed at the Council level. It was, however, discussed and rejected as a viable option by the Observer Advisory Committee. Now that the implementation of the Joint Partnership Agreement between NMFS and PSMFC has been delayed beyond the January, 1999 target, I feel that this proposal deserves to be revisited. I am not confident that the JPA will ever be implemented and believe that several changes need to be made to the current program if it is to remain viable.

Thank you for your time and consideration. I'm available through May if there are further comments and/or questions regarding my proposal.

Sincerely,

Kimberly S. Dietrich

cc: Steve Pennoyer
Sue Salveson
Bill Karp

GROUNDFISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Name of Proposer: Kim Dietrich
Address: P.O. Box 30167
Seattle, WA 98103
Telephone: 206-547-4228

Date: May 5, 1998

Fishery Management Plan: Groundfish of the Bering Sea/Aleutian Islands FMP and Groundfish of the Gulf of Alaska FMP. (Modify Amendment 47 of each FMP and/or any new amendments regarding the observer program for 1999).

Brief Statement of Proposal:
Modify current arrangement between NMFS and the contractors who hire observers so that there is a contractual agreement between NMFS and the contractors. NMFS can solicit bids for a no-cost contract (which was originally proposed under the "Third Party" alternative). Contracts will be awarded annually and for a period of one year with quarterly or biannual evaluations. Certification could expire after 2 consecutive negative evaluations. No contractor additions will occur once the annual cycle has begun for a given year. The year need not be based on a calendar year.

NMFS must take full control of their program and take more responsibility for the people who collect the data. During the RFP process, NMFS will evaluate the contractors on their (proposed) ability to retain prior observers and their ability to provide round the clock logistic support to observers. These factors would be weighted heavily. If NMFS feels a contractors plan to retain observers is inadequate, the proposal will be returned to be revised. At a minimum, a retention rate of 65% should be maintained. Some options to maintain priors would be for NMFS to place a cap on the total number of trainees to provide an incentive for retaining prior observers OR NMFS could state that a high turnover rate will negatively impact evaluations. "Prior observers" is defined as successfully completing three months in the field.

NMFS will maintain central control over data collection, but some quality control checks can be performed by NMFS trained contractor personnel to maintain consistency. NMFS currently does not have staff to perform as in depth of a quality control check as they have in the past.

All Department of Labor laws and regulations, including the Service Contract Act (SCA) will apply to the contractor/observer relationship.

Objectives of Proposal: (What is the problem?)
At the inception of the Domestic Groundfish Observer Program (DGOP), it was understood the Program had flaws and needed to be replaced as soon as possible. Unfortunately, eight years have passed under the flawed system and the status quo continues. Section 301 of 16 U.S.C. 1851 (a)(2) states "conservation and management measures shall be based upon the best scientific information available." The current observer program is not collecting the best information possible and therefore, its continuation is a violation of a National Standard for Fishery Conservation and Management.

NMFS has exhibited little oversight of the contractors to date. Some uncertainty exists whether the lack of authority exists or whether a choice has been made by NMFS not to exercise its authority over the contractors. Regardless, NMFS' input regarding the treatment of their data collectors has been insignificant. NMFS recognizes the potential for conflict of interest under the current system. Yet, the current contractor certification process has never been enforced. In fact, evaluation of contractors by NMFS was discontinued in 1991 and did not resume until 1997. At a national workshop on NMFS Observer Programs held in 1993, guidelines were recommended for all Federal observer programs. One recommendation stated, "Contractual arrangements will only be successful if agency authority and

responsibility is adequately defined by legislation, regulation and/or contract. Contractors must contract directly with the agency responsible; when contractors contract with vessel or plant owners to provide observer coverage, agency oversight is inadequate and the potential for conflict of interest is unacceptably high." Similar conclusions and recommendations were drawn at the most recent US/Canada Observer Program Workshop held in Seattle, WA, March 11-13, 1998.

Data quality is often questioned in the current program. Data quality could be improved by decreasing the turnover rate of observers and by providing extensive, supplementary training to the existing observers. The more consistency there is in data collection, the better the data quality.

Training of new observers is currently unlimited and free of charge. Tax dollars are being spent frivolously. These funds could be spent more effectively with increased training for observers who are already established within the program. Many observers do this job not only for the money but because they enjoy the lifestyle and they genuinely care about the management of the North Pacific and Bering Sea resource.

Need and Justification for Council Action: (Why can't the problem be resolved through other channels?)
NMFS claims to be unable to take drastic action (i.e. decertification) against a contractor under the current structure. The structure must change if NMFS is to maintain any control over its program and data quality.

No regulation or policy is in place to limit the number of observers trained. There is no incentive for NMFS, the industry or the contractors to invest in observers with prior experience.

Foreseeable Impacts of Proposal: (Who wins, who loses?)
Competent, professional observers who are dedicated to the job win. Wage determinations under the Service Contract Act will apply to any contract NMFS has with a contractor(s). Wages decreased since the inception of the DGOP due to competition between the contractors and ever increasing insurance costs. 1998 wages increased only due to the observers taking drastic action through unionization. The wage decrease did not benefit the program and the wage issue isn't necessarily solved by the Union contract. At any time a new contractor can enter the scene and completely undermine the progress observers have made. Data quality will suffer again if some standards for the contractors aren't established and enforced by NMFS.

The public wins due to better utilization of public funds and the public resource. Training is currently unlimited and paid for by our tax dollars (both at NMFS and at the OTC). This money would be better spent to supplement training for prior observers. If all observers had better training, there would be an increase in data quality. Better training = better data = better management = sustainability of the public resource.

Industry wins and loses. Higher quality data will be collected so management of the resource improves. The proposed system will be more expensive due to wage increases mandated by the SCA. But, any new proposed system will be more expensive. If industry really wants something different than the status quo, then this will only be the first step.

Contractors win and lose. In general, contractors prefer prior observers because they are less of a risk. Prior observers have done the job successfully in the past and are more likely to be able to adapt to new situations quickly. A prior observer has already proven that he/she won't need to be unexpectedly replaced due to chronic seasickness. Prior observers require less supervision. Prior observers have more sea experience than the average trainee so they are less of an insurance liability. If a limit is placed on the total number of trainees per year or a limit on turnover, it is possible a contractor may need to sacrifice a little business to another contractor if that contractor suddenly finds itself shorthanded. Contractors find

themselves "short" observers under the current system; there is no reason to believe that a limit or specified turnover rate would significantly increase this occurrence.

Are There Alternative Solutions? If yes, what are they and why do you consider your proposal the best way of solving the problem?

1-Status Quo-current system is not working.
2-North Pacific Fisheries Research Plan would have been an adequate solution but was abruptly repealed in 1995.
3-JPA—doesn't solve all of the problems either and won't be implemented by 1999.
4-A new plan similar to the Research Plan is acceptable but extremely unlikely to be implemented by 2000 and likely couldn't be implemented until later.

Implementation of this proposal would address only a few of the data quality concerns as well as observer wage issues. This proposal is not a solution intended to stand alone but will act as a bridge to any future plan which requires contractor oversight by NMFS or PSMFC if JPA is implemented.

Supportive Data & Other Information: What data are available and where can they be found?

The DGOP has seen many tragedies since its inception: one observer killed due to negligent vessel operation, one contractor bankruptcy, one observer in jail, injuries without adequate compensation, wage decreases for the observers (1990-97), and high turnover of observers and staff. Many of these tragedies continue to be a real possibility. This may be the 'biggest and best' observer program in the world, but problems remain which MUST be solved.

Another recommendation of the first NMFS Observer Programs Workshop was to retain experienced observers. "Observer programs operate more effectively, and consistently collect better data if the program is able to retain experienced, high caliber observers. Further, the process of training new observers is time-consuming, costly, and may affect the quality of data collected as the observer goes through the necessary 'learning curve.'" Therefore, NMFS should establish guidelines that encourage and support the maintenance of experienced staff and observers. The minutes from this workshop are available from the NMFS and are summarized in NOAA Technical Memorandum NMFS-OPR-94-1.

Minutes from the most recent US/Canada Observer Program Workshop are tentatively scheduled to be available later this year.

Signature: 

GROUNDFISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Name of Proposer: Kim Dietrich
Address: P.O. Box 30167
Seattle, WA 98103
Telephone: 206-547-4228

Date: March 17, 1997

Fishery Management Plan: Groundfish of the Bering Sea/Aleutian Islands FMP and Groundfish of the Gulf of Alaska FMP. (Modify Amendment 47 of each FMP and/or any new amendments regarding the observer program for 1998).

Brief Statement of Proposal:
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NMFS must take more control over their program and take more responsibility for the people who collect the data. During the RFP process, NMFS will evaluate the contractors on their (proposed) ability to retain prior observers. This factor would be weighted heavily. If NMFS feels a contractors plan to retain observers is inadequate, the proposal will be returned to be revised. Some options to maintain priors would be for NMFS to place a cap on the total number of trainees to provide an incentive for retaining prior observers OR NMFS could state that a high turnover rate will negatively impact quarterly evaluations. "Prior observers" is defined as successfully completing a three months in the field.

NMFS will maintain central control over data collection, but some quality control checks can be performed by NMFS trained contractor personnel to maintain consistency. NMFS currently does not have staff to perform as in depth of a quality control check as they have in the past.

All Department of Labor laws and regulations, including the Service Contract Act (SCA) will apply to the contractor/observer relationship.

Objectives of Proposal: (What is the problem?)
At the inception of the Domestic Observer Program (DOP), it was understood the Program had flaws and needed to be replaced as soon as possible. Unfortunately, seven years have passed under the flawed system and the status quo continues. Section 301 of 16 U.S.C. 1851 (a)(2) states "conservation and management measures shall be based upon the best scientific information available." The current observer program is not collecting the best information possible and therefore, its continuation is a violation of a National Standard for Fishery Conservation and Management.

NMFS has exhibited little oversight of the contractors to date. Some uncertainty exists whether the lack of authority exists or whether a choice has been made by NMFS not to exercise its authority over the contractors. Regardless, NMFS' input regarding the treatment of their data collectors has been insignificant. NMFS recognizes the potential for conflict of interest under the current system. Yet, the current contractor certification process has never been enforced. In fact, evaluation of contractors by NMFS was discontinued in 1991. At a national workshop on NMFS Observer Programs held in 1993, guidelines were recommended for all Federal observer programs. One recommendation stated, "Contractual arrangements will only be successful if agency authority and responsibility is adequately defined by legislation, regulation and/or contract. Contractors must contract directly with the agency

responsible; when contractors contract with vessel or plant owners to provide observer coverage, agency oversight is inadequate and the potential for conflict of interest is unacceptably high."

Data quality is often questioned in the current program. Data quality could be improved by decreasing the turnover rate of observers and by providing extensive, supplementary training to the existing observers. The more consistency there is in data collection, the better the data quality.

Training of new observers is currently unlimited and free of charge. Tax dollars are being spent frivolously. These funds could be spent more effectively with increased training for observers who are already within the program.

Need and Justification for Council Action: (Why can't the problem be resolved through other channels?)
NMFS claims to be unable to take drastic action against a contractor under the current structure. The structure must change if NMFS is to maintain any control over its program and data quality.

No regulation or policy is in place to limit the number of observers trained. There is no incentive for NMFS, the industry or the contractors to invest in prior observers.

Foreseeable Impacts of Proposal: (Who wins, who loses?)
Competent, professional observers who are dedicated to the job win. Wage determinations under the Service Contract Act will apply to any contract NMFS has with a contractor(s). Wages have decreased since the inception of the DOP due to competition between the contractors and ever increasing insurance costs. The wage decrease has not benefited the program; it has been a detriment. Data quality suffers due to an epidemic of poor morale and negative attitudes among the observers and a high turnover of returning observers.

The public wins due to better utilization of public funds and the public resource. Training is currently unlimited and paid for by our tax dollars. This money would be better spent to supplement training for prior observers. If all observers had better training, there would be an increase in data quality. Better data = better management = sustainability of the public resource.

Industry wins and loses. Higher quality data will be collected so management of the resource improves. The proposed system will be more expensive due to wage increases mandated by the SCA. But, any new proposed system will be more expensive. If industry really wants something different than the status quo, then this will only be the first step.

Contractors win and lose. In general, contractors prefer prior observers because they are less of a risk. Prior observers have done the job successfully in the past and are more likely to be able to adapt to new situations quickly. A prior observer has already proven that he/she won't need to be unexpectedly replaced due to chronic seasickness. Prior observers require less supervision. Prior observers have more sea experience than the average trainee so they are less of an insurance liability. If a limit is placed on the total number of trainees per year or a limit on turnover, it is possible a contractor may need to sacrifice a little business to another contractor if that contractor suddenly finds itself shorthanded. Contractors find themselves "short" observers under the current system; there is no reason to believe that a limit or specified turnover rate would significantly increase this occurrence.

Are There Alternative Solutions? If yes, what are they and why do you consider your proposal the best way of solving the problem?

1-Status Quo-current system is not working.

2-North Pacific Fisheries Research Plan would have been an adequate solution but was abruptly repealed in 1995.
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Another recommendation of the NMFS Observer Programs Workshop was to retain experienced observers. "Observer programs operate more effectively, and consistently collect better data if the program is able to retain experienced, high caliber observers. Further, the process of training new observers is time-consuming, costly, and may affect the quality of data collected as the observer goes through the necessary 'learning curve.'" Therefore, NMFS should establish guidelines that encourage and support the maintenance of experienced staff and observers. The minutes from this workshop are available from the NMFS and are summarized in NOAA Technical Memorandum NMFS-OPR-94-1.

Signature:

May 6, 1998
P.O. Box 30167
Seattle, WA 98103

Steve Pennoyer
Administrator for Sustainable Fisheries
NMFS Alaska Region
709 W. 9th Street
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Pennoyer:

The staff report at the April meeting of the North Pacific Fisheries Management Council indicated that there will likely be a delay in implementing the Joint Partnership Agreement between NMFS and the Pacific States Marine Fisheries Commission. If implementation is delayed, NMFS will start drafting regulations to rollover the current Interim Observer Program. The APO would like NMFS to include or address the following in regulation for the 1999 fishing season:

1. Establish a minimum 65% retention rate for observers in the Domestic Groundfish Observer Program (DGOP). The ADF&G Shellfish Observer Program has required 65% prior shellfish observers be deployed on an annual basis for several years and no crab vessels have ever been prohibited from fishing due to an observer shortage. This is the minimum stated by the current contracts between the Alaska Fisherman's Union and the current certified contractors although there is no guarantee it will remain; three of the four contracts will be re-negotiated for the 1999 season. Some of the contractors already maintain a higher retention rate; it is not impossible. This regulation would save tax dollars since less training would be required of NMFS and/or the University of Alaska's Observer Training Center (OTC). Staff time saved could be utilized in a more efficient and productive manner.
2. Add a regulation stating contractors not distribute personal information such as resumes of observers to the fishing industry. Resume requests have been a contract negotiation factor for one fishing company in particular. A contractor's unwillingness to distribute resumes can result in a threat for a vessel to change contractors. NMFS Observer Program policy, as per a memo to contractors dated April 15, 1994, is to request the contractors not release this information without the written permission of the observer. The APO finds this unacceptable. In addition to this practice being an invasion of privacy, release of personal information by contractors potentially compromises NMFS' ability to meet the Observer Programs' objectives and obligations. If observers feel that fishing company personnel can contact them or their family directly, discouraging the observer from making reports which might lead to enforcement action, observers are likely to feel pressured to not file such reports. NMFS receives copies of resumes/transcripts and is responsible for determining if the applicant complies with the experience and education requirements in regulation. Industry doesn't need or have a right to any personal information.

3. Regulations already state that observers have the right to refuse a vessel for safety reasons but this does not guarantee an observer will utilize this right even if it's warranted. If an observer refuses a vessel for safety reasons related to mechanical problems or related to the behavior of vessel personnel (i.e. drug use or unsafe deck practices), the reality of the situation is that observer gets replaced with a less fussy observer and the refusing observer is likely out of a job. There is significant disincentive to refusing vessels. If an observer refuses a vessel, there should be NMFS Observer Program notification and NMFS staff should go to the vessel immediately to evaluate the situation. Vessels should not be held up without cause. However, **NO observers should be allowed to ride the vessel until the problem is resolved.**
4. There are currently no standards in regulation for observer housing at shore-based plants while there are extensive requirements for vessels. Minimum requirements would include: a) a dry, clean, quiet room, b) communication equipment such as a phone or VHF radio so vessel observers and plant personnel can easily contact for assistance or notify of deliveries the plant observer, and c) transportation to the plant if the plant is more than one mile away from housing facilities. Observers in Kodiak have been provided substandard housing far away from the work sites. Data collection suffers if the plant observer misses offloads or is unable to assist a fellow observer due to logistic problems.
5. Modify regulations so that one observer is never covering more than one 100% coverage plant and not more than two 30% coverage plants.
6. Sample station guidelines, not regulations, need to be established. An appropriate sample station should include a small table, adequate light, a place to hang a scale or position a platform scale, adequate space, and access to a fresh or salt water source. NMFS should notify contractors when they feel a vessel has sampling problems that could be addressed by the contractor. A summary of observer sampling problems could be provided prior to each new year for all the vessels the contractor will work with.

Thank you for your time and consideration on these matters. I am available if you have further questions. The APO would like to work cooperatively with NMFS to initiate positive change for the observers and the Observer Program.

Sincerely,

Kimberly S. Dietrich

cc: Sue Salveson, AK Region
Jim Balsiger, Alaska Fisheries Science Center
Bill Karp, Alaska Fisheries Science Center
Shannon Fitzgerald, Alaska Fisheries Science Center
Chris Oliver, North Pacific Fisheries Management Council

May 5, 1998
5026 9th Avenue, NE
Seattle, WA 98105

Steve Pennoyer, Administrator for Sustainable Fisheries
NMFS Alaska Region
709 W. 9th Street
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Pennoyer:

I have worked as a NMFS-certified observer with the Domestic Groundfish Observer Program. This year observers have seen more stringent enforcement of the 90-day field limit (in regulation) which has been detrimental to many observers. There was no warning for this change in policy. I am writing because I would like to see NMFS reconsider the stringent enforcement of the ninety day cruise limit and possibly even eliminate this limit from the regulations. While I understand and respect the reasoning behind this rule, I do feel that a degree of flexibility can be maintained without jeopardizing the program's integrity. I believe that this would be in the best interest of both the program and observers. It would facilitate the ability of observers to tailor their work year to best meet their needs. In the name of data quality, NMFS is making data quality worse. Already in 1998 data has likely suffered for two reasons. Observers who wanted to continue working were pulled out of the field and many who wanted early returns (i.e. short contracts) were forced to stay. To stay within the 90-day limit contractors had to move more observers around resulting in more boats/observer and more observers on boats for only one trip. One trip worth of data is not always the best. A likely result will be to unemploy priors while employing more trainees. I don't understand how this sudden change in policy improves data quality.

The main worries of the Observer Program with long contracts seem to be data quality problems; timeliness of data and quality debriefings; and problems with abuse of extensions by contractors. I believe that all of these problems can be addressed within a flexible system.

First, data quality problems could be minimized by evaluating observers on an individual basis. Different observers have different field deployment limits. Observers would like to see concrete evidence from the Observer Program that data suffers beyond a 90-day field deployment. Have evaluations of observers who were over and under 90-days been compared? Were more decertifications instigated against observers who've had an extension? Each individual observer should be responsible for determining what his/her limit is, when s/he is burned out and when his/her collection of data is suffering. If there is an option to return early or extend, which option is best for him/her personally and which option is best for the quality of data collected. Observers with a good work history may be a much lower risk for systematic errors but if they are forced to stay in the field when they don't want to be there, data quality could suffer. NMFS should grant exemptions on an individual basis rather than by using a rigid guideline. Even observers on probation or new trainees should have the option to work if the NMFS field office deems their data acceptable. NMFS could stop exempting people from mid-cruise evaluations. Any contractor who thinks they are going to request an extension for an observer should have that observer go in for an early trip mid-cruise and also have them go in for a second mid-cruise at the 2-2 ½ month mark to make a final determination whether an extension should be granted. Use the field offices to their fullest potential.

The issue of timeliness and debriefing quality also seem far from insurmountable. Timeliness should become less and less of an issue as more of the fleet acquires ATLAS capacity. NMFS will have access to essentially all of an observers' data on a regular basis with this technology. NMFS tells us each debriefer will be assigned a group of observers who they will monitor throughout their field deployment so that problems will be caught and solved before debriefing. In cases where ATLAS is unavailable or if that avenue of reporting is deemed insufficient, it is possible to have observers who decide early on in their contracts that they would like to extend go in for partial debriefings such as is done when observers work over the new year. This way NMFS would have access to the early portion of the observers data, there would be a thorough check done on their work, and the observer would not lose field time. Data could be handed in on one port call and corrections be made and problems dealt with three weeks or a month later at the next port call. This would give field staff plenty of time to deal with data checks and still get information to NMFS in a timely manner. This would also help to eliminate the problem of a

long term cruise leading to poor quality debriefing because of the time elapsed between the beginning of a cruise and the debriefing. Final vessel reports can be filled out in Dutch Harbor or Kodiak during port calls if the observer has finished on one or more vessels; I believe the field offices are now equipped with that computer capacity.

Contractor abuse of extensions and coercion of observers to stay beyond their original contract length is a serious issue. NMFS could potentially follow-up with the observers to verify they have agreed to a given request to extend. Observers send in weekly reports—a text message is easily added for the observers to retrieve the next time they send a message. Coercion of observers should be considered an unacceptable practice by a contractor and NMFS should move to first reprimand and then decertify a contractor if complaints continue. However, we are uncertain what legal ground NMFS has to pursue either the reprimand or the decertification. If observers are worried that a refusal to request an extension could result in future problems obtaining employment or a relegation to the worst possible assignments, the Alaska Fisherman's Union is their current and best avenue for litigation. If a prior observer has made a written request for work by a set deadline they have legal priority over new hires. No one to date has tested the grievance process available if they believe they've been unfairly forced to work. The union contracts have only been in place since Jan. 1.

Finally, I'd like to try and explain why I feel so strongly that it is important to allow observers the possibility of extending contracts. Quantity of work available in this profession is constantly in flux, but I think it is fairly safe to say that the majority of work comes early on in the calendar year. For many observers who use this as a sole source of income it is necessary to obtain 4-5 months of work between January and June. Summer and fall work tends to be limited either in quantity or duration and although some do manage to get full three month contracts or even more work in the later year it is not a certainty. With the ability to extend a month in years when work is short (such as this year) an observer is much more likely to be able to get a solid four months of work in. If they are required to return to Seattle to debrief the chances of a contractor sending them back up for three to four weeks is minimal (an airfare costs the same be it a three week or three month cruise) whereas the same contractor might well be willing to extend an employee as long as a reasonable amount of work remains even though they didn't absolutely need them. Another problem that should be of concern to NMFS in years where work is short is that observers may well commit to second contracts very early on in their first in order to insure themselves employment with the understanding that they'll be debriefed/rebriefed a little early (maybe at the 2 month mark) and then related directly back to the field. Here you'll have someone who in essence made a commitment to work five or more months straight after only a few weeks or a month in the field. At three months they may well want to go home but they'll be tied into their contract. Or, alternatively, in years when work is plentiful a person who wants to work four months (and perhaps has a financial need to do so) may be required to sign a second full contract if they want to return to the field after having to return to debrief at the three month mark (again, airfare stays constant). These situation seems much more likely to result in burnout and lowering of work quality than would be the case in situations where you are allowing contract extensions to prior observers with a history of quality work and to observers who want to work.

I believe that many long term priors have kept with this job in part because of the ability it affords us to work when it best suits our needs (within the confines of work availability of course). While I know that a stringent enforcement of the ninety day rule will not affect all observers, it will affect some. I hope that NMFS will honesty explore alternatives to a strict rule and strive to maintain a level of flexibility that will allow observers to continue to do a quality job while meeting their own financial and time off needs.

Sincerely,

Kimberly S. Dietrich

Cc: Sue Salveson, Assistant Administrator for Sustainable Fisheries
Jim Balsiger, Alaska Fisheries Science Center
Bill Karp, Alaska Fisheries Science Center
Shannon Fitzgerald, Alaska Fisheries Science Center
Chris Oliver, North Pacific Fisheries Management Council

Alaska Groundfish Data Bank — P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: COMMENTS ON EXTENDING THE EXISTING OBSERVER PROGRAM
AGENDA ITEM C-6

DATE: JUNE 2, 1998

SENT BY FAX: 1 PP

COMMENTS ON EXTENDING THE EXISTING OBSERVER PROGRAM (AGENDA ITEM C-6)

SUBMITTED BY ALASKA GROUNDFISH DATA BANK

Since the existing observer program must be extended because which all efforts so far to replace the existing program with a program which is cost effective and provides better data, the members AGDB request that the Council specifically call for proposals this summer designed to improve the current program and proposals for the "ideal program."

The increased observer costs along with the increases in travel costs and the requirement in contracts that observers be paid every day even if sitting in town while a storm blows through is making some fisheries uneconomic for small vessels, particularly the resident Alaska fleets and Gulf of Alaska processors.

AGDB feels the JPA approach is not feasible and that the Council should begin work on a fee plan. The call for proposals should assist in a better observer plan under the existing framework and offer ideas for the next iteration of the observer plan.

It has been seven and a half years since the observer program was implemented. There should be at this time enough experience and data to substantially improve the observer program.

Thank you for your attention to our comments.

Chris Blackburn, Director
Alaska Groundfish Data Bank

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REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS (RIR/IRFA)

TO EXTEND BEYOND 1998

THE

INTERIM GROUNDFISH OBSERVER PROGRAM

FOR THE

GULF OF ALASKA AND THE BERING SEA AND ALEUTIAN ISLANDS

Prepared by

National Marine Fisheries Service
Alaska Region
Juneau, Alaska

June 4, 1998

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EXECUTIVE SUMMARY

At the request of the North Pacific Fisheries Management Council, NMFS and the Pacific States Marine Fisheries Commission (PSMFC) developed the concept of a joint partnership agreement (JPA) under which PSMFC would provide third party procurement functions envisioned by the Council for the North Pacific Groundfish Observer Program (NPGOP) after the repeal of the fee collection program authorized under the North Pacific Fisheries Research Plan in 1995. At its June 1997 meeting, the Council endorsed the continued development of a JPA with the goal of taking final action on the third party program early in 1998 so that a new program could be implemented by 1999. Given the fact that the JPA arrangement could not be developed and implemented prior to 1998, the Council also voted to extend the interim observer program though 1998.

At its December 1997 meeting, the Council recommended that NMFS and PSMFC continue to develop a JPA that would authorize PSMFC to provide observer procurement services. The Council also requested NMFS to work with the Council's Observer Advisory Committee to again develop a fee collection program. The intent of the JPA was to provide observer procurement and placement services that would be consistent with broader goals of collecting high quality observer data, providing adequate observer compensation and working conditions, and maintaining efficient deployment of observers within the groundfish industry. The Council anticipated that the JPA would be effective by 1999 and that a fee collection program would be implemented as soon as possible thereafter.

Recently, several unresolvable legal issues have been identified by PSMFC that have forestalled the ability of PSMFC to go forward with the JPA as endorsed by the Council. The current observer program expires at the end of 1998 in anticipation that the JPA would have been implemented by 1999. Given the status of the JPA, the current program must be extended beyond 1998 to avoid a hiatus in observer coverage. The management objective of this action is to allow for the continued operation beyond 1998 of the NPGOP which provides data for fisheries management and science and compliance monitoring of the groundfish fisheries. Given the unanticipated demise of the JPA, time does not exist to develop alternatives for revisions to the interim program prior to the June 1998 Council meeting. However, revisions may be developed, considered by the Council, and implemented under separate rulemaking as soon as practicable.

Based on an assumed average number of observer deployment days equal to 31,297 days and the estimated cost per observer day presented in Table 3, the total estimated industry costs for observer coverage could range from $ 7.73 million to $10.33 million, depending on whether or not observer compensation costs are increased through union negotiations. The number of vessels and processors that would be affected from continuation of the NPGOP are listed in Tables 1 (1997 data) and 4 (1995 data). In addition, 360 individual observers were trained or debriefed in 1997 who were contracted by 5 different observer contractor companies. The IRFA prepared for this action describes and estimates the total number of small entities affected, and analyzes the economic impact on those small entities. Based on the IRFA, it was determined that this action could have a significant economic impact on a substantial number of small entities.

If action is not taken to extend the observer program beyond 1998, observer coverage requirements would not be effective after the end of the current year. This is not a realistic option. The preferred alternative would extend the current groundfish observer coverage requirements and implementing regulations for the Observer Program that expire December 31, 1998. This action is necessary to assure uninterrupted observer coverage requirements beyond 1998.

This action is a necessary adjustment to the rules governing the Interim Groundfish Observer Program and will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Groundfish Observer Program, dated August 27, 1996. The extension of the interim observer program beyond 1998 is within the scope of

issues thoroughly analyzed for the implementation of the Interim Groundfish Observer Program in 1996. Therefore, the EA/RIR/FRFA prepared for the Interim Groundfish Observer Program (August 27, 1996) and incorporated by reference into this document precludes the need to prepare an additional EA.

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

1.0 INTRODUCTION

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

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

This document provides information about the economic and socioeconomic impacts of extending the interim North Pacific groundfish observer program beyond 1998, including identification of the individuals or groups that may be affected by this action, the management objectives of this action, a qualitative analysis of the expected benefits and costs of this action, and the impacts of the proposed action on small businesses.

NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the categorical exclusion from the NEPA requirement to prepare an environmental analysis. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 contains the Initial Regulatory Flexibility Analysis (IRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses.

1.1 Background

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

Action by the Council was required to allow development and approval of this domestic Observer Program in 1989. Implementation occurred through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989). An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and implemented by NOAA (55 FR 4839, February 12, 1990). The Observer Plan established observer coverage requirements which have remained generally unchanged through 1998. These coverage requirements vary with the size of the fishing vessel or quantity of fish processed by floating or on-shore processors. Each vessel with length overall (LOA) of 125 ft or greater which harvests groundfish is required to carry a certified observer for 100% of its fishing days each year. Fishing vessels with LOA 60 ft or greater, but less than 125 ft, are required to carry a certified observer for 30% of their fishing days each calendar quarter during which they participate for more than 3 fishing days in a directed fishery for groundfish.

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

Additional coverage requirements are established for specific management programs such as the pollock or multispecies groundfish Community Development Quota (CDQ) program.

Since 1990, the Observer Program has provided between 20,000 and 31,000 observer days each year. In 1997, 352 catcher vessels or catcher/processor vessels carried observers. Observers collected data from an additional 20 shoreside and floating processors during the same year (Table 1).

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

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

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

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

arrangement between observer companies and NMFS or a third party organization providing observer services.

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

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

- Redistribution of costs for observer services that resulted from the collection of fees based on a percentage of exvessel value;
- Industry concerns about unlimited observer costs in the event observer coverage beyond that funded by fees continued to be required of some vessels participating in specified management programs;
- The amount of observer coverage that could be funded under the Research Plan fee collection program was limited and could constrain the development of programs under consideration by the Council that would require increased observer coverage;
- Increased costs of observer coverage due to the contractual arrangements between NMFS and observer companies that would fall under the Services Contract Act. As a result, the Department of Labor would establish minimum wage provisions for observers that would result in increased salaries for observers and increased costs for observer services.

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

At its April 1996 meeting the Council adopted an interim groundfish observer program that superseded the Research Plan and authorized mandatory groundfish observer coverage requirements through 1997. The interim groundfish observer program extended 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program through December 31, 1997.

During 1997, observers organized to bargain for better compensation and working conditions. By an overwhelming vote of endorsement, observers now are represented by the Alaska Fishermen's Union (AFU). AFU successfully negotiated an agreement with the five existing certified observer contractor companies; agreements with four of these companies will expire at the end of 1998 and will have to be renegotiated. The agreement with the remaining company is effective through 2000.

Also during 1997, NMFS began to develop with Pacific States Marine Fisheries Commission (PSMFC) the concept of a joint partnership agreement (JPA) under which PSMFC would provide the third party procurement functions envisioned by the Council. At its June 1997 meeting, the Council endorsed the continued development of a JPA with the goal of taking final action on the third party program early in 1998

so that a new program could be implemented by 1999. Given the fact that the JPA arrangement could not be developed and implemented prior to 1998, the Council also voted to extend the interim observer program though 1998.

At its December 1997 meeting, the Council recommended that NMFS and PSMFC continue to develop a joint partnership agreement (JPA) that would authorize PSMFC to provide observer procurement services. The Council also requested NMFS to work with the Council's Observer Advisory Committee to again develop a fee collection program. The intent of the JPA was to provide observer procurement and placement services that would be consistent with broader goals of collecting high quality observer data, providing adequate observer compensation and working conditions, and maintaining efficient deployment of observers within the groundfish industry. The Council anticipated that the JPA would be effective by 1999 and that a fee collection program would be implemented as soon as possible thereafter.

Recently, several unresolvable legal issues have been identified by PSMFC that have forestalled efforts to proceed with the JPA. First, legal guidance recently solicited by PSMFC suggests that the expectations and respective roles of NMFS and PSMFC under a JPA would resemble a contractual arrangement, and therefore could be found subject to the Services Contract Act (SCA) if challenged in court. NOAA General Counsel-Alaska Region has not found any legal precedent to rule out this possibility. While continued development of the JPA under the SCA wage provisions is possible, the costs of observer services under the JPA would increase beyond those negotiated under union settlement and envisioned by the Council for this program during the immediate future.

Second, under the JPA, PSMFC would be responsible for providing observer services to the industry and the deployment of observers onboard vessels and at shoreside processing facilities. NMFS also envisioned that PSMFC would ensure that observers be available to NMFS through the completion of the debriefing process. The role envisioned for PSMFC would increase its exposure to lawsuit. This exposure was recently determined by PSMFC to be too high. Furthermore, NMFS could not sufficiently indemnify PSMFC against legal challenge because (1) no statutory authority for such indemnification exists and (2) the Anti-Deficiency Act precludes open-ended indemnification. Regulations developed to implement the JPA could deflect potential lawsuits away from PSMFC to NMFS. Nonetheless, such deflection could not sufficiently reduce the potential for lawsuit in a manner that would allow PSMFC to go forward with the JPA as endorsed by the Council.

1.1.1 Distribution of 1997 observer coverage

Table 2 lists the number of observer days and sampling effort as a percentages of observed hauls and catch across the Alaska groundfish fleet in 1997. Observers actively sampled catch a total of 21,794 days in 1997. These sampling days are a subset of the total deployment days and do not include the days before an observer got onboard a vessel or days after an observer got off. This data is presented by vessel size class, gear type, and area of operation (BSAI or GOA). For vessels less than 125 ft, data only is available for those vessels while observers were aboard. For example, 3515 tows are listed for catcher processor vessels using bottom trawl gear that are equal to or greater than 60 ft LOA and less than 125 ft LOA. This means that there were 3515 tows while observers were aboard. The real number of tows taken in the year is not available except through logbook data, which is not readily accessible.

Most of the data fields in Table 2 are self explanatory except for the following:

days = number of distinct days a gear type was used for a specific vessel size, region, type, and gear.
hauls = total number of hauls while an observer was onboard
sampled hauls = total number of hauls which were sampled by observers
percent sampled = percent of the total hauls taken which were sampled.

total catch_t = total catch of all fish for all tows.
sampled_t = total catch of all tows which was sampled for species composition.
percent sampled = the percent of the total tonnage which was sampled for species composition.

The proposed action does not include a change in observer coverage requirements. Such changes will require additional analyses and assessments relative to the objectives of the NPGOP and the use of the data collected by observers for various fishery management and monitoring purposes. The information listed in Table 2 simply presents the current distribution of coverage under the current management regime.

During the 1995 and 1996, the number of observer deployment days were 31,163 and 31,430 days respectively, for an average of 31,297 days of observer services paid for by the Alaska groundfish industry.

1.2 Purpose of and Need for the Action

The current observer program expires at the end of 1998 in anticipation that the JPA would have been implemented by 1999. Given the status of the JPA, the current program must be extended beyond 1998 to avoid a hiatus in observer coverage. The management objective of this action is to allow for the continued operation beyond 1998 of the NPGOP which provides data for fisheries management and science and compliance monitoring of the groundfish fisheries. Given the unanticipated demise of the JPA, time does not exist to develop alternatives for revisions to the interim program prior to the June 1998 Council meeting. However, revisions may be developed, considered by the Council, and implemented under separate rulemaking as soon as practicable

The proposed rollover of the interim observer program is within the scope of issues thoroughly analyzed for the implementation of the Interim Groundfish Observer Program in 1996. Therefore, the analysis prepared for the Interim Groundfish Observer Program is incorporated by reference into this document:

- EA/RIR/FRFA for Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries In the Bering Sea and Aleutian Islands Area To Implement a North Pacific Groundfish Observer Program to Replace the North Pacific Fisheries Research Plan, NMFS, August 27, 1996.

1.3 Alternatives Considered

1.3.1 Alternative 1: Status quo - No Action

If no action is taken, regulations implementing the North Pacific Groundfish Observer Program (NPGOP) will expire at the end of 1998 and observer coverage requirements would not be in place. This is not a realistic option given the reliance on observer data for the management of the groundfish fisheries.

1.3.2 Alternative 2: Extend the Current Groundfish Observer Program Beyond 1998

This alternative would extend the current groundfish observer coverage requirements and implementing regulations for the NPGOP that expire December 31, 1998. This action is necessary to assure uninterrupted observer coverage requirements after 1998. This program would remain in effect until amended through subsequent Council action that is implemented by NMFS.

Option: Establish a sunset date for the interim program based on an anticipated effective date of a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions. This long-term alternative has yet to be developed and would comprise a separate regulatory action.

2.0 CATEGORICAL EXCLUSION FROM NEPA REQUIREMENTS

Amendments falling within the range or scope of alternatives addressed in a previous environmental assessment do not require preparation of an additional environmental document. The extension of the interim observer program beyond 1998 is within the scope of issues thoroughly analyzed for the implementation of the Interim Groundfish Observer Program in 1996.. Therefore, the EA/RIR/FRFA prepared for the Interim Groundfish Observer Program (August 27, 1996) and incorporated by reference into this document precludes the need to prepare an additional EA. Also, section 6.02b.3(b)(ii) of NAO 216-6 categorically excludes from environmental assessment "[a]ctions which do not result in a significant change in the original environmental action." Included within this general category are "minor technical additions, corrections, or changes to a management plan or regulation." This regulatory action simply extend the effective data of the NPGOP beyond 1998.

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

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

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

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

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

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

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The Regulatory Impact Review (RIR) is designed to provide information to determine whether the proposed regulation is likely to be "economically significant." None of the alternatives is expected to result in a "significant regulatory action" as defined in E.O. 12866.

3.1 Economic Effects of extending the observer program beyond 1998

The proposed action would affect all persons required to have groundfish observer coverage, observers, and observer contractors that provide observer services. Table 1 lists domestic groundfish observer statistics since 1989, including the annual number of observers and number of vessels and plants covered. Currently 5 observer contracting companies provide observer services to the Alaska groundfish industry.

Under the proposed action, the level of required observer coverage established in regulations directly affects costs to industry. Based on the data presented in Table 3 and the general assumption for analytical purposes of a salary range for observers that approximates the 1998 unionized salary rate, the total cost per observer day under Alternative 2 is estimated at $247. If an increased salary for observers is assumed for the future under union negotiations that approximates the wages that would be paid to observers under the SCA, the cost per observer day could increase to $330.

Based on an assumed average number of observer days equal to 31,297 days and the estimated cost per observer day presented in Table 3, the total estimated industry costs for observer coverage under Alternative 2 could range from $ 7.73 million to $10.33 million, depending on whether or not observer compensation costs are increased through union negotiations.

4.0 Initial Regulatory Flexibility Analysis

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

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a "substantial number" of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it changed annual gross

revenues by more than 5 percent, total costs of production by more than 5 percent, compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities, or if 2 percent of the small entities affected by the regulation are forced out of business.

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

1. a description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and

2. analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

A draft analysis was presented to the Council at its December 1997 meeting that analyzed relative costs of the observer program among different segments of the industry (NPFMC 1997). That analysis is applicable to the this proposed action and is summarized below:

> Under [the proposed action], observer costs are based on whether or not an observer is onboard and on overall coverage needs. Higher costs are borne by those vessels and plants that require higher levels of coverage. Table [4] summarizes costs by groundfish harvesting and processing sector considering observer costs as a fraction of ex-vessel groundfish value alone, and of the sum of ex-vessel values for groundfish and halibut. For most sectors, ranges, averages and medians are similar for both groundfish only and groundfish plus halibut categories. Participation in halibut fisheries occurred in only four of the ten sectors examined (100 % and 30% fixed-gear catch vessels (CVs), 30 % fixed-gear catcher/processor vessels (CPs), and 30 percent trawlers CVs). The data in Table 4 are based on 1995 assumptions for estimated costs per observer day ($180- $198/day) and indicate that vessel and processor observer costs ranged from .02 to 24.8 percent of the operations exvessel value of catch. Fixed gear vessels generally experience the highest relative cost for observer coverage (about 3.5 percent of the groundfish exvessel value for catch vessels $\geq$ 125 ft LOA and 2.5 percent for catch vessels > 60 ft and < 125 ft LOA). These relative costs are decreased slightly to 3.4 and 2.0 percent, respectively, if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.5 percent and 1.0 percent, respectively). Note that these relative costs, would increase under [the proposed action] to the extent that observer union negotiations continue to result in increased costs per deployment day.
>
> [Table 4 also presents data] based on an assumption for estimated costs per observer day of $325/day. [Under this higher cost sceanario,] vessel and processor observer costs ranged from .04 percent to 40.7 percent of the operations exvessel value of catch. Again, fixed gear vessels generally experience the highest relative cost for observer coverage (about 6.3 percent of the groundfish exvessel value for catch vessels $\geq$ 125 ft LOA and 4.2 percent for catcher/processor vessels $\geq$ 125 ft LOA). The relative costs for catcher vessels is decreased slightly to 6.1 if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.8 percent and 1.7 percent, respectively).
>
> Under both cost scenarios, the highest relative costs of observer coverage were correlated with vessel operations that were at the lowest end of the revenue spectrum within each sector examined. The fact that fixed gear operations general pay higher relative costs for observer coverage reflects that these operations generally receive less revenue from the groundfish/halibut fisheries compared to trawl operations. The single case where observer costs exceeded 20 percent under reflected a single vessel operation that experienced less than $5,500 in groundfish revenues for 1995.

The number of vessels and processors that would be affected from continuation of the NPGOP are listed in Tables 1 (1997 data) and 4 (1995 data). In addition, 360 individual observers were trained or debriefed in 1997 who were contracted by 5 different observer contractor companies.

The economic impact on small entities could result in a reduction in annual gross revenues by more than 5 percent and could, therefore, potentially have a significant economic impact on a substantial number of small entities.

Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities are not being considered by the Council or in this analysis for purposes of the proposed action. Such alternatives are not relevant to this proposed action and would not mitigate the impacts on small entities. Allowing exemptions for small entities from this proposed action would not be appropriate because the objective to assure uninterrupted observer coverage requirements beyond 1998 could not be achieved if small entities were exempted.

The EA/RIR for the Research Plan (NPFMC 1994) addressed the issue of cost distribution within the affected industry. A pay-as-you-go system of funding was viewed by many to be inequitable, because although all participants in the groundfish, halibut, and crab fisheries benefit from the groundfish and crab observer programs, only those with observer coverage requirements bear the cost. Among those that bear this cost, the cost varies substantially in terms of the exvessel value of their catch. Some operations would continue to pay no observer costs whereas some operations, such as small fixed gear catcher vessels, may pay in excess of 20 percent of their exvessel value. The cost paid by an operation is not dependent on either the benefits it receives from the observer coverage or its ability to pay for observer coverage.

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

At its December 1995 meeting, the Council also discussed options to help defray costs to vessel owners who would pay an unreasonably high proportion of their gross catch value for direct observer coverage. Options discussed were: a surcharge for observer coverage paid by some vessels to subsidize coverage for other vessels, observer pooling for vessels, and adjustment of coverage levels for vessels that pay relatively high costs. A surcharge is not authorized under section 313 of the Magnuson-Stevens Act. Understanding the time constraints facing the development and implementation of an alternative fee collection program, the Council did not recommend that NMFS develop this alternative in the analysis for the modified pay-as-you-go program. Similarly, pooling or exemptions from observer coverage pose other concerns about data used to manage the North Pacific fishery resources that cannot be readily addressed within the current analysis given the need to avoid a potential hiatus in observer coverage requirements by 1999. Rather, these options could be considered by an industry/agency work group for future consideration and therefore, are beyond the scope of the current analysis.

5.0 SUMMARY AND CONCLUSIONS

If no action is taken, regulations implementing the Observer Program would cease to be effective and observer coverage requirements would not be in place after 1998. This is not a realistic option. The preferred alternative would extend the current groundfish observer coverage requirements and implementing

regulations for the Observer Program that expire December 31, 1998. This action is necessary to assure uninterrupted observer coverage requirements beyond 1998.

This action is a necessary adjustment to the rules governing the Interim Groundfish Observer Program and will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Groundfish Observer Program, dated August 27, 1996.

The IRFA prepared for this action described and estimated the total number of small entities affected, and analyzed the economic impact on those small entities. Based on the IRFA, it was determined that this action could have a significant economic impact on a substantial number of small entities.

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

6.0 REFERENCES

North Pacific Fishery Management Council (NPFMC). 1997. EA/RIR/IRFA for Amendment 47 to the FMP for the Groundfish Fishery of the BSAI and Amendment 47 to the FMP for Groundfish of the GOA to implement a Third Party Observer Procurement Program for the North Pacific Groundfish Observer Program. November 18, 1997.

National Marine Fisheries Service, 1996. EA/RIR/FRFA for Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries In the Bering Sea and Aleutian Islands Area To Implement a North Pacific Groundfish Observer Program to Replace the North Pacific Fisheries Research Plan, NMFS, August 27, 1996.

7.0 AGENCIES AND INDIVIDUALS CONSULTED

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TABLE 1

DOMESTIC GROUNDFISH OBSERVER STATISTICS, 1989 - 1997

03-Jun-98

	1997	1996	1995	1994	1993	1992	1991	1990	1989	Total
Observers Trained or Briefed	528	562	593	564	513	665	582	582	99	4688
Observers Deployed (Total Cruises)	514	550	584	522	523	682	613	515	158	4661
WA/OR/CA (WOC) Cruises	26	20	16	1	28	15	2			108
Individual Observers Trained or Briefed	359	397	398	402	337	467	458	472	87	1867
Individual Vessels Covered	352	406	394	296	331	390	352	281	85	605
Individual Plants Covered	20	23	24	26	29	37	38	34	6	59
Prior Observers	348	387	406	363	425	454	337	208	59	2985
New Observers	182	177	189	201	88	211	245	374	40	1707
Female Observers	176	178	194	165	134	180	172	170	20	1389
Male Observers	352	386	400	397	378	485	408	411	79	3296
Observers Trained in Seattle	77	111	127	173	94	193	275	394	43	832
Observers Trained in UAK-Anchorage	107	71	72	35	8	26	0	0	0	319
Total Observers Trained	184	182	199	208	102	219	275	394	43	1806
Observers Briefed in Seattle	135	240	298	299	342	356	295	188	56	2209
Observers Briefed in UAK-Anchorage	145	81	51	0	1	0	0	0	0	278
Observers Briefed in Dutch Harbor	26	32	8	30	32	39	5	0	0	172
Observers Briefed in Kodiak	8	9	25	24	25	46	7	0	0	144
Observers Excused from Briefing	30	20	14	3	11	5	0	0	0	83
Total Observers Briefed	314	362	382	353	400	441	307	188	56	2886

NOTES:

1. Total number of observers trained was 2067.
2. Database records do not contain complete briefing location information prior to 1992. Therefore all briefings were recorded as occurring in Seattle.
3. Of the observers trained in UAK-Anchorage:
   - 286 were employed with Alaska-based contractors.
   - 10 were Alaska residents.
4. Of the observers briefed in UAK-Anchorage:
   - 192 were employed with Alaska-based contractors.
   - 13 were Alaska residents.

Table 2. - Observer effort distribution (observed days, and sampling effort as percentage of observed hauls and catch) across the Alaska groundfish fleet, 1997.

Region	Vessel length_ft	Vessel_type	Gear_type	Days	Hauls	Sampled_hauls	%_smpled	Total Catch_t	Sampled_t	%_smpled
BSAI	>=60 to <125 ft	Catcher/processors	Bottom trawl	598	3,515	1,725	49.08	36,127.88	19,932.27	55.17
BSAI	>=60 to <125 ft	Catcher/processors	Pelagic trawl	16	73	36	49.32	775.48	447.34	57.69
BSAI	>=60 to <125 ft	Catcher/processors	Pots	74	208	130	62.50	532.54	386.07	72.50
BSAI	>=60 to <125 ft	Catcher/processors	Longline	712	2,015	1,408	69.88	14,411.89	10,192.68	70.72
BSAI	>=60 to <125 ft	Shoreside catcher boats	Bottom trawl	851	2,444	1,846	75.53	30,875.31	24,182.96	78.32
BSAI	>=60 to <125 ft	Shoreside catcher boats	Pelagic trawl	818	1,495	1,167	78.06	61,472.88	51,716.30	84.13
BSAI	>=60 to <125 ft	Shoreside catcher boats	Unidentified trawl	1	2	1	50.00	12.98	7.08	54.55
BSAI	>=60 to <125 ft	Shoreside catcher boats	Pots	457	1,135	799	70.40	4,177.13	3,242.31	77.62
BSAI	>=60 to <125 ft	Shoreside catcher boats	Longline	82	182	141	77.47	581.94	446.07	76.65
BSAI	>=60 to <125 ft	Sold bait to fishing vessel	Bottom trawl	4	5	3	60.00	26.55	18.16	68.40
BSAI	>=60 to <125 ft	Sold bait to fishing vessel	Pots	11	14	11	78.57	23.83	21.12	88.63
BSAI	>=60 to <125 ft	Sold bait to fishing vessel	Longline	1	1	0	0.00	1.60	0.00	0.00
BSAI	>=60 to <125 ft	In transit, no fishing		174	0	0	0.00		0.00	
BSAI	>=125 ft	Catcher/processors	Bottom trawl	4,064	16,847	9,363	55.58	432,011.76	266,883.06	61.78
BSAI	>=125 ft	Catcher/processors	Pelagic trawl	1,762	6,647	4,614	69.41	542,887.19	395,101.75	72.78
BSAI	>=125 ft	Catcher/processors	Pair trawl	1	1	1	100.00	9.18	9.18	100.00
BSAI	>=125 ft	Catcher/processors	Shrimp trawl	2	2	1	50.00	30.29	30.29	100.00
BSAI	>=125 ft	Catcher/processors	Pots	182	572	410	71.68	1,921.68	1,410.43	73.40
BSAI	>=125 ft	Catcher/processors	Longline	4,463	11,493	7,515	65.39	135,026.62	97,752.04	72.39
BSAI	>=125 ft	Catcher/processors	Gillnet	1	1	1	100.00	90.00	90.00	100.00
BSAI	>=125 ft	Motherships	Bottom trawl	245	829	539	65.02	31,877.25	22,715.99	71.26
BSAI	>=125 ft	Motherships	Pelagic trawl	519	2,604	1,441	55.34	140,394.42	78,689.28	56.05
BSAI	>=125 ft	Shoreside catcher boats	Bottom trawl	626	1,923	1,437	74.73	41,835.25	33,692.80	80.54
BSAI	>=125 ft	Shoreside catcher boats	Pelagic trawl	1,632	3,035	2,519	83.00	224,451.80	197,563.29	88.02
BSAI	>=125 ft	Shoreside catcher boats	Pair trawl	2	2	1	50.00	15.42	13.15	85.28
BSAI	>=125 ft	Shoreside catcher boats	Pots	145	327	253	77.37	1,559.59	1,271.76	81.54
BSAI	>=125 ft	Shoreside catcher boats	Longline	3	11	0	0.00	17.85	0.00	0.00
BSAI	>=125 ft	Floating processors	Bottom trawl	72	147	1	0.68	8,731.11	150.00	1.72
BSAI	>=125 ft	Floating processors	Pelagic trawl	2	6	0	0.00	682.11	0.00	0.00
BSAI	>=125 ft	Floating processors	Pots	1	1	0	0.00	72.98	0.00	0.00
BSAI	>=125 ft	Sold bait to fishing vessel	Bottom trawl	1	1	0	0.00	0.00	0.00	0.00
BSAI	>=125 ft	Sold bait to fishing vessel	Pots	1	1	1	100.00	0.18	0.18	100.00
BSAI	>=125 ft	In transit, no fishing		1,043	0	0	0.00		0.00	
BSAI Total				18,566	55,539	35,364	63.67	1,710,634.69	1,205,965.56	70.50

Table 2. - Observer effort distribution (observed days, and sampling effort as percentage of observed hauls and catch) across the Alaska groundfish fleet, 1997.

Region	Vessel length_ft	Vessel_type	Gear_type	Days	Hauls	Sampled_hauls	%_smpled	Total Catch_t	Sampled_t	%_smpled
GOA	<60 ft	Shoreside catcher boats	Longline	4	10	10	100.00	13.47	13.47	100.00
GOA	<60 ft	In transit, no fishing		1	0	0	0.00		0.00	
GOA	>=60 to <125 ft	Catcher/processors	Bottom trawl	168	987	420	42.55	6,603.38	3,015.98	45.67
GOA	>=60 to <125 ft	Catcher/processors	Pelagic trawl	22	116	58	50.00	541.31	300.81	55.57
GOA	>=60 to <125 ft	Catcher/processors	Unidentified trawl	1	1	1	100.00	23.64	23.64	100.00
GOA	>=60 to <125 ft	Catcher/processors	Longline	176	512	382	74.61	4,113.56	2,985.12	72.57
GOA	>=60 to <125 ft	Shoreside catcher boats	Bottom trawl	965	2,511	1,783	71.01	16,505.15	12,699.97	76.95
GOA	>=60 to <125 ft	Shoreside catcher boats	Pelagic trawl	472	827	623	75.33	21,613.00	17,806.68	82.39
GOA	>=60 to <125 ft	Shoreside catcher boats	Pots	153	300	236	78.67	632.43	490.59	77.57
GOA	>=60 to <125 ft	Shoreside catcher boats	Longline	414	950	808	85.05	3,465.29	2,957.92	85.36
GOA	>=60 to <125 ft	Sold bait to fishing vessel	Longline	1	1	1	100.00	9.83	9.83	100.00
GOA	>=60 to <125 ft	In transit, no fishing		134	0	0	0.00		0.00	
GOA	>=125 ft	Catcher/processors	Bottom trawl	290	1,234	657	53.24	18,666.74	11,502.99	61.62
GOA	>=125 ft	Catcher/processors	Pelagic trawl	26	45	30	66.67	1,685.83	1,161.63	68.91
GOA	>=125 ft	Catcher/processors	Longline	115	360	214	59.44	2,862.52	1,773.92	61.97
GOA	>=125 ft	Motherships	Pelagic trawl	5	6	2	33.33	341.15	131.87	38.65
GOA	>=125 ft	Shoreside catcher boats	Bottom trawl	41	87	64	73.56	2,189.24	1,851.10	84.55
GOA	>=125 ft	Shoreside catcher boats	Pelagic trawl	80	148	122	82.43	12,783.57	11,405.99	89.22
GOA	>=125 ft	Shoreside catcher boats	Pots	9	11	7	63.64	72.02	52.48	72.87
GOA	>=125 ft	Floating processors	Bottom trawl	5	15	0	0.00	683.83	0.00	0.00
GOA	>=125 ft	Sold bait to fishing vessel	Bottom trawl	2	2	0	0.00	1.00	0.00	0.00
GOA	>=125 ft	In transit, no fishing		144	0	0	0.00		0.00	
GOA Total				3,228	8,123	5,418	66.70	92,806.96	68,183.99	73.47
Grand Total				21,794	63,662	40,782	64.06	1,803,441.65	1,274,149.55	70.65

Table 3. Estimated observer costs per day

Status quo observer costs per day						
	1997 Salary Rate		1998 (Unionized) Salary Rate[1]		1998 GS5-Based Salary Rate[2]	
Direct Contractor Costs						
Observer Salaries	$94	43%	$108	44%	$161	49%
Payroll Taxes & Insurance	$30	14%	$35	14%	$60	18%
Deployment Costs	$17	8%	$22	9%	$23	7%
Other Direct Costs	$6	3%	$10	4%	$12	4%
Subtotal Contractor Direct Costs	$147	68%	$175	72%	$256	78%
Indirect Contractor Costs	$45	21%	$48	20%	$51	15%
Travel Costs[3]	$23	11%	$23	9%	$23	7%
Total Cost Per Observer Day	$216		$247		$330	

[1] Assumptions:
- Observers paid at negotiated rates
- Insurance/tax rates are unchanged from those used for 1997
- Distribution of observer days by contractor is unchanged from that used for 1997
- All companies achieve the following observer experience profile (65% priors):
  - New 35%
  - 1-2 Cruises 30%
  - 3-5 Cruises 20%
  - >5 Cruises 15%
- Contractor expenses increased 4% for inflation

[2] 1998 General Schedule locality rates of pay for Seattle/Tacoma/Bremerton, WA

[3] Travel costs are assumed to be constant

Table 4. Details of potential groundfish observer costs expressed as a percentage of ex-vessel value of groundfish/halibut combined given an observer cost range of ~$187/day to $325/day for all sectors[1]. Based on 1995 data presented in draft EA/RIR/IRFA for third party procurement program (NPFMC 1997).

		Observer cost of ~$187/day				Observer cost of $325/day			
	No. Entities	Range	Ave.	Median	No. Entites w/ obs. Costs >5% of revenues	Range	Ave.	Median	No. Entites w/ obs. Costs >5% of revenues
100% CV TRWL	23	0.5 - 2.4	1.3	1.3	0	0.9 - 4.2	2.3	2.3	0
100% CV FIXED	14	1.7 - 9.1	3.4	2.7	3	3.0 - 16.4	6.1	4.8	6
100% CP TRWL	57	0.3 - 2.5	1.0	0.9	0	0.6 - 4.3	1.7	1.6	0
100% CP FIXED	30	1.3 - 6.1	2.4	1.9	3	2.3 - 11.0	4.2	3.4	7
30% CV TRWL	102	0.02 - 9.6	1.4	1.2	2	0.04 - 16.5	2.3	2.0	4
30% CV FIXED	126	0.2 - 24.8	2.0	0.9	8	0.4 - 40.7	3.2	1.5	16
30% CP TRWL	9	1.0 - 3.5	2.2	2.4	0	1.6 - 5.9	3.8	4.0	3
30% CP FIXED	21	0.4 - 7.4	2.1	1.4	2	0.7 - 12.8	3.6	2.3	6
Shoreplants	17	0.1 - 0.9	0.5	0.5	0	0.1 - 1.5	0.8	0.9	0
Motherships	11	0.3 - 7.4	1.8	1.1	1	0.5 - 13.1	3.1	1.9	2
Total	410	0.02 - 24.8	1.7	1.2	19	0.04 - 40.7	2.9	2.0	44

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

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