


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: January 9, 1991

SUBJECT: North Pacific Fisheries Research Plan

ACTION REQUIRED

Receive Data Committee report and approve user-fee design options for analysis.

BACKGROUND

On November 28, 1990, the President approved the Fishery Conservation Amendments of 1990 which reauthorized the Magnuson Act. One component of the amendments was authorization for the Council and Secretary to develop and implement a North Pacific Fisheries Research Plan which provides for the placement of observers on fishing vessels and processing plants, and allows the establishment of a user-fee system to pay the observer costs. A copy of the legislation pertaining to the research plan is provided as item C-10(a). The Council has already gone on record supporting the user-fee concept and has tasked the Data Committee to work with NMFS in preparing a user-fee system for review.

A discussion paper on possible user-fee system alternatives and a work schedule have been prepared by Council staff and will be provided to the Council along with the report of the Data Committee, which will meet on Tuesday, January 15.

NORTH PACIFIC FISHERIES RESEARCH PLAN

SEC. 313. NORTH PACIFIC FISHERIES RESEARCH PLAN.

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

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

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

(b) **STANDARDS.**--

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

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

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

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

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

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

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

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

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of the law;

(E) be expressed as a percentage, not to exceed one percentum, of the value of fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of Title 31, United States Code.

(c) **ACTION BY THE SECRETARY.--**

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

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

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

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

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

(e) **SPECIAL PROVISIONS REGARDING OBSERVERS.**--

(1) The Secretary shall review--

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of this section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that--

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

**A USER-FEE SYSTEM FRAMEWORK FOR FUNDING
THE NORTH PACIFIC FISHERIES RESEARCH PLAN**

Prepared by Council Staff
January 1991

INTRODUCTION

On November 28, 1990, the President signed the Fishery Conservation Amendments of 1990 which reauthorized the Magnuson Fishery and Conservation and Management Act. The approved legislation contained several amendments to the Act including the authorization to establish a North Pacific Fisheries Research Plan. This plan, once approved by the Council and the Secretary, would require that observers be stationed on fishing vessels and at processor plants for the purpose of gathering fishery and other scientific data necessary for conservation and management of the resources. The plan could also establish a system of fees to pay the costs of implementing the observer program.

In 1989, the Council developed and approved a domestic observer program as part of its groundfish plan amendment package. The groundfish fishery management plans now authorize the placement of observers on domestic fishing vessels and at processing plants when requested by the NMFS Regional Director. Details of the observer program are presented in the NMFS Observer Plan. Costs of hiring and placing the observer are currently paid by the individual operations through a private contractor.

Through the Fishery Conservation Amendments of 1990, the Council now has the authority to more fully develop the domestic observer program and establish a user-fee system to pay for it. The year 1990 was the first year of the domestic observer program. The Council has received testimony from industry and managers alike for desired improvements to the program (ex. greater coverage, more rapid data processing, periodic data summaries, a fairer method of collecting funds, etc.). Development of a user-fee system and continued refinement of the observer plan should allow for achievement of all of these goals.

PROPOSED USER-FEE SYSTEM

Objective: To establish a fair and equitable program for collecting user-fees from the fishing industry for the purpose of: stationing observers on board fishing vessels and processing plants; the actual cost of inputting the collected data; and, if feasible, to generate funds necessary to establish a risk-sharing insurance pool to protect vessels, processing plants, and owners from the liability associated with the placement of observers.

ALTERNATIVES

Status Quo: This alternative would not achieve the plan objective and therefore it is unacceptable. No user-fee system would be established under this alternative.

Alternative 1: Develop and implement a framework program for assessing and collecting user fees.

This alternative contemplates establishing an annual procedure for:

- 1) estimating the anticipated costs of the observer program for a given year;
- 2) determining if the cost estimate falls within the legislated ceiling (e.g. 1% of the value of fish harvested);
- 3) calculating a poundage fee schedule which is designed as a sliding scale to address high-value vs. low-value species;
- 4) publishing the cost estimate, method of calculating the fee schedule, and the proposed poundage fees for the given year in the Federal Register for public review;
- 5) following public review, the Secretary approves the fee schedule.

Given the above framework procedure, two options are apparent for collecting fees.

Option 1: Collect fees in advance of the fishing year based on either prior performance (ex. State approach) or on a pre-season harvest/processing estimate (ex. NMFS foreign program). Fees could be collected when federal fishing permits are issued. Fees collected in excess of the individual's performance (evaluated at the end of the year) would be refunded. Individuals whose performance exceeded the pre-season estimate, would be assessed a year-end fee; payment would be required prior to obtaining a new federal fishing permit. Increases in NMFS Regional office staff would be necessary for accounting and administration.

An advantage of this option is that funds would be available to the observer program at the beginning of the year or fishing season. The State of Alaska uses this approach with its fish tax program, so the state is not put in the position of subsidizing the industry. It is believed that businesses should factor in these "costs" as part of their operation. A disadvantage of this approach is a considerable front-end cost to the industry before any revenue is generated from the fishery.

Option 2: Collect fees monthly, based on catch/production in that month. This option would require close monitoring of individual vessel catch records and individual processor product reports. Monthly billing statements would have to be generated, mailed, and fee payments processed. Additional staff to those hired under Option 1 would be necessary for accounting.

This option would minimize the disadvantage stated with Option 1 by reducing the fee payment to monthly installments and basing it on actual production. This option does not solve the problem of providing start-up funding for the observer program in its first year. This particular problem could be addressed by NMFS/NOAA funding or a special appropriation from Congress. Funds used to start the observer program could be re-paid once funds have been collected from the industry.

The initial start-up phase of this program is a critical funding issue that must be addressed by the Council and the Secretary. Observers must be hired, trained and available for deployment at the beginning of the year. Personnel need to be hired to handle deployment logistics, debrief observers, and input data.

ADDITIONAL BACKGROUND INFORMATION

Fees collected would not exceed one percent of the value of the resources harvested. The Senate Commerce Committee defines "value" as the value of fish or shellfish harvested prior to any value-added activities (e.g. exvessel). An annual estimate of the observer program costs would be determined by NMFS and a fee-schedule developed for each species which apply. Publication in the Federal Register and request for public comment would occur annually. Council/NMFS modification to the Observer Plan could result in fluctuations in program costs from year to year. In any event, the maximum level of funds collected through this means would not exceed 1% of the exvessel value of the groundfish, halibut, king, and Tanner crab fisheries (e.g. fisheries under Council jurisdiction).

Poundage fees would be applied to either: (1) the amount of fish landed and processed; or (2) that amount caught (including discards). The latter approach would require estimates of discards by species at the catcher and processor level. A "standard discard rate" could be used in situations where actual observer estimates are not available.

Calculating and expressing the appropriate user fees can be done at least two ways:

- 1) based on the amount of fish caught or processed (in units of pounds or metric tons);
or
- 2) based on value of the fish caught or product produced.

Fees expressed as poundage fees.

Once an estimate of observer program costs is known, a sliding scale fee schedule can be prepared that will generate the estimated funds needed to meet program costs. The Council and NMFS usually have a pretty good idea as to what the TACs will be in the upcoming year. Anticipating the upcoming quotas, even crudely, will provide a species-by-species estimator for use in calculating the poundage fee for each species. The sliding scale would be based on the Council's valuation of each species. For example, halibut is of greater value to the industry and the nation than arrowtooth flounder. A weighting factor could be determined that would result in a higher fee for halibut than flounder. The flounder fishery, which has a high TAC, and is underutilized by the industry could have a lower weighting factor. This sliding scale, based on valuation of individual species, might encourage further development in underutilized species by not creating an "economic penalty" with an excessively high user-fee. This was the approach used by NMFS in their management of the foreign observer program.

Fees expressed as a percentage of the value of the product.

With this approach, the Council and NMFS would apply a fee as a percentage of the exvessel value of the fishery, collected at the processor level. This is the approach used by the State of Alaska in their fish-tax program.

The proposed framework approach would lay out a process for annually reviewing the observer program and estimating program costs. The details of administering the framework, processing permits and fee statements, collecting funds, providing refunds, etc., would be developed by NMFS before the system is implemented.

It is envisioned that the current NMFS Observer Plan would be combined with this user-fee system within the framework of the North Pacific Fisheries Research Plan. It would be a "stand-alone" plan, independent of the Council's FMP's. Any amendments to the Research Plan would affect all fisheries/species specified in the plan. Amendment to each of the FMPs would not be necessary.

PROPOSED WORK SCHEDULE

The Fishery Conservation Amendments included a review schedule for the plan. The Secretary is required to publish proposed regulations in the Federal Register within 60 days of receipt of the Council's plan, or return the plan if he determines it does not satisfy the requirements of the Act. The Secretary is then to provide a 60-day public review period and hold public hearings in Alaska, Washington, and Oregon. Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council is to analyze the public comments and approve or disapprove the plan. A 30-day cooling off period is typical of federal regulations prior to becoming effective.

Attached is a proposed work schedule for the Council. It clearly shows that to have a user-fee system in place for 1992, will require final Council action no later than its June meeting, and that the Secretary will have to shorten his review in the fall.

A meeting with NMFS staff to discuss the development of the user-fee system and its analysis has been scheduled for January 23 at the Alaska Fisheries Science Center.

North Pacific Fisheries Research Plan

PROPOSED WORK SCHEDULE

1991

January 14-16	Council meeting. Approval of basic alternatives.
April 22-26	Council meeting. Review system design and analysis. Release to public review.
June 24-28	Council meeting. Final Council action on system.
July 5	Submit package to Secretary.
July 10	Receipt by the Secretary. (Day 1 of potentially a 60-day review.)
August 16	Secretary publishes proposed rule (Day 37; this date assumes an accelerated Secretarial review). Public review period begins for 60 days.
September	Public hearings held by the Secretary in Alaska, Washington and Oregon.
September 23-27	Council meeting. Council provides comments on proposed rule to Secretary.
October 16	Public Comment period ends.
December 1	Secretary publishes final rule. (Day 45 following end of comment period.)
December 31	Research Plan implemented.