

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW
FOR THE
NORTH PACIFIC FISHERIES RESEARCH PLAN
AMENDMENT 27 TO THE FMP FOR THE
GROUNDFISH FISHERY OF THE BERING SEA ALEUTIAN ISLANDS AREA
AMENDMENT 30 TO THE FMP FOR GROUNDFISH FOR THE GULF OF ALASKA
AMENDMENT 3 TO THE FMP FOR THE COMMERCIAL KING AND TANNER CRAB
FISHERIES IN THE BERING SEA AND ALEUTIAN ISLANDS AREA
REGULATORY AMENDMENT TO THE PACIFIC HALIBUT FISHERY REGULATIONS

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1.0 INTRODUCTION

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

Working closely with industry, the National Marine Fisheries Service (NMFS), the Alaska Department of Fish & Game (ADF&G), and the Council initiated development of the Research Plan in late 1990. A draft environmental assessment/regulatory impact review (EA/RIR) for the Research Plan was initially reviewed by the Council and its advisory bodies at their January 15-17, 1991 meeting, and approved for public distribution and comment. After reviewing written comments and advice from its advisory bodies, and hearing public testimony at its meeting of April 23-26, 1991, the Council made further refinements to the Research Plan. A revised EA/RIR was reviewed by the Council and its advisory bodies at their April 20-26, 1992, meeting and approved for public distribution and comment. After reviewing written comments, obtaining further advice from its advisory bodies, and hearing public testimony at its June 23-28, 1992 meeting, the Council adopted the Research Plan and recommended that it be submitted to the Secretary for review. In preparation for submission, the EA/RIR was updated in March 1993 and the implementing regulations were drafted. As preparation of regulations proceeded, it became apparent that several changes should be considered before the Research Plan was submitted for Secretarial review. At its December 6-11, 1993 meeting, the Council discussed the Research Plan, accepted a recommendation by the Director, Alaska Region, NMFS (Regional Director) to make several modifications to the Research Plan, and recommended that the modified Research Plan be submitted to the Secretary for review.

The proposed rule to implement the Research Plan was published in the Federal Register for a 60-day comment period (59 FR 23664, May 6, 1994). The proposed rule subsequently was revised by NMFS in response to public comment received during the 60-day public comment period on the Research Plan and at required public hearings on the Research Plan held in Alaska, Washington, and Oregon. These changes are reflected in the description and analysis of Alternative 2 presented in this document. Specifically, the Council and many sectors of industry did not support a proposed first year program that would have provided

rebates to vessel and processor owners for direct observer costs, because (1) persons would have experienced delays from the time they paid for observer services to when they were reimbursed for these costs, and (2) rebates would have been based on standardized costs per observer day. The preferred alternative provides for a first year program that avoids "double payment" by any component of the Research Plan fisheries for any period of time during 1995 and the actual costs paid by persons for direct observer coverage during 1995 would be fully credited up to their portion of their fee liability.

If approved by the Secretary, the Research Plan would replace the current groundfish Observer Plan. Amendments to the Pacific Halibut fishery regulations and to the fishery management plans (FMPs) governing the Alaska groundfish and crab fisheries would be implemented to reference the provisions of the Research Plan concerning observer requirements in the groundfish, halibut, and crab fisheries.

1.1 Purpose of and Need for Action

On November 1, 1989 the Secretary approved Amendments 13 and 18 to the groundfish FMPs for the Bering Sea/Aleutian Islands Area (BSAI) and the Gulf of Alaska (GOA). The implementing regulations were published as a final rule on December 6, 1989 (54 FR 50386). One measure authorized a comprehensive domestic fishery observer program. An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and implemented by NMFS, effective February 7, 1990 (55 FR 4839, February 12, 1990).

The Observer Plan required specific levels of observer coverage, which varied with the size of fishing vessels and the quantity of fish processed by floating and shoreside processors. The observer requirements were established because it was recognized that living marine resources could not be managed effectively without the types of information that were available only or most efficiently through an observer program. Each fishing vessel and processor required to have observer coverage was responsible for the cost of obtaining the required observers from a certified contractor. Three problems were identified for this method of payment for observer coverage: (1) it may not be equitable; (2) it limits the ability of NMFS to manage the observer program effectively; and (3) it may result in a conflict of interest that could reduce the credibility of observer data.

In April 1988, the Alaska Board of Fisheries adopted regulations requiring onboard observers for all vessels that process king crab and C. bairdi (Tanner) crab in the waters off Alaska. In 1990, this was expanded to include C. opilio crab. Although, the Shellfish Onboard Observer Program was adopted principally to enforce minimum size limits for crab, the program serves a variety of functions. The funding for the crab observer program is similar to that of the groundfish observer program.

Therefore, the three problems are common to both observer programs.

The three problems were discussed during the development of the domestic observer program. However, there was no alternative method available for paying for observer coverage, such as that used for the foreign observer program. It was determined that an observer program with broad coverage, even with these problems, was preferable to the very limited coverage that otherwise would have been possible. However, it was also determined that action should be taken to develop an alternative funding mechanism. Industry support for developing an alternative method of paying for observer coverage is demonstrated by the willingness and ability of the industry to convince Congress and the President to amend the Magnuson Act to permit the establishment of the Research Plan.

The Magnuson Act includes the following requirements for a Research Plan.

1. Observers would be stationed for the purpose of collecting data necessary for the conservation, management, and understanding of any fisheries under the Council's jurisdiction, except salmon.
2. A system of fees would be established to pay the implementation costs.
3. The Research Plan should be reasonably calculated to:
 - a. Gather reliable data for the conservation, management, and scientific understanding of the fisheries covered by the Plan;
 - b. Be fair and equitable to all vessel operators and processors;
 - c. Be consistent with applicable provisions of law; and
 - d. Consider the operating requirements of the fisheries and the safety of observers and fishermen.
4. Any system of fees should:
 - a. Limit the total fees to implementation costs minus any amounts authorized under other provisions of law and any surplus in the North Pacific Fishery Observer Fund (Observer Fund);

- b. Be fair and equitable to all participants in the fisheries;
- 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 Research Plan;
- d. Not be used to offset amounts authorized under other provisions of law;
- e. Be expressed as a percentage not to exceed 2 percent of the exvessel value of the Research Plan fisheries;
- f. Be assessed against all fishing vessel operators and fish processors including those not required to have observers,
- g. Provide that the fees only be used for implementing the Research Plan; and
- h. Provide that fees collected would be deposited in the Observer Fund.

Section 313 of the Magnuson Act also requires the Secretary to review the feasibility of establishing a risk-sharing pool to provide insurance coverage for vessels and owners against liability from civil suits by observers. If such a pool is established, it also would be funded with the user fees discussed in this report. However, NMFS must first conduct a feasibility analysis on whether a government designed risk-sharing pool is necessary. Such an analysis is not yet complete, and provisions of the risk-sharing pool would be addressed separately from this document.

1.2 Purpose of this Document

This document provides background information and assessments necessary for the Secretary to determine if the Research Plan is consistent with the Magnuson Act and other applicable law. It also provides the public with information to assess the alternatives that are being considered.

1.2.1 Environmental Assessment

An EA is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered would result in significant impact on the human environment. The environmental analysis in the EA provides the basis for this determination and must analyze the intensity or severity of the impact of an action and the significance of an action with

respect to society as a whole, the affected region and interests, and the locality. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact study must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives are discussed in Sections 1.1 and 2.0, and the list of preparers is in Section 6. Sections 3.1.1 and 4.1 contain discussions of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

1.2.2 Regulatory Impact Review

Another part of the package is the RIR that is required by NMFS for all regulatory actions or for significant Department of Commerce or National Oceanic and Atmospheric Administration (NOAA) policy changes that are of significant public interest. The RIR: (1) provides a comprehensive review of the level and incidence of social and economic impacts associated with a proposed or final regulatory action; (2) provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems; and (3) ensures that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost effective way.

The RIR also serves as the basis for determining if proposed regulations are significant under Executive Order (E.O.) 12866 and if proposed regulations would have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (P.L. 96-354, RFA). The primary purpose of the RFA is to relieve small businesses, small organizations, and small governmental jurisdictions (collectively, "small entities") of burdensome regulatory and recordkeeping requirements. The RFA requires that the head of an agency must certify that the regulatory and recordkeeping requirements, if promulgated, would not have a significant effect on a substantial number of small entities or provide sufficient justification to receive a waiver.

This RIR analyzes the impacts of the alternatives that were considered. It also provides a description of and an estimate of the number of vessels and processors (small entities) to which regulations implementing the Research Plan would apply.

1.3 Description of the Domestic Fishing Fleet and Processors

Nearly 5,000 vessels are expected to operate in the Research Plan fisheries. The vast majority of these vessels, about 4,000, would participate in the halibut fishery. Over 1,000 of the vessels that land halibut are also expected to participate in other Research Plan fisheries. The vessels range from halibut fishery skiffs of less than 30 feet in length to crab and groundfish catcher/processors and motherships as large as 688 feet. These vessels use trawl gear and a variety of fixed gear. There are more than 100 onshore processing plants that receive fish from Research Plan fisheries. The range in annual production amounts by processors is similar to that of vessels.

Detailed descriptions of the BSAI and GOA groundfish fisheries are available in the Stock Assessment and Fishery Evaluation reports for these fisheries. Detailed descriptions of the BSAI crab fisheries are available in annual area management reports. The halibut fishery is described more fully in the Annual Report by the International Pacific Halibut Commission and in the EA/RIR for the individual fishing quota (IFQ) program for the halibut fishery off Alaska.

2.0 DESCRIPTION OF THE ALTERNATIVES

Two alternatives were considered, the status quo and the establishment of a Research Plan.

2.1 Alternative 1: Status Quo

With Alternative 1, the Magnuson Act authority to establish a Research Plan would not be used. The existing observer requirements would remain in place for the groundfish fisheries and each vessel operator or processor that is required to have observer coverage would continue to be responsible for obtaining the required observers from a certified contractor. Changes in observer coverage requirements would require an amendment to the Observer Plan. If Federal funds are available for the groundfish observer program, they would be used to pay for NMFS program costs and, to the extent possible, for observers. NMFS program costs include the cost of training and outfitting observers, the cost of receiving, reviewing, entering, and maintaining observer data, the cost of briefing and debriefing observers, and the cost of managing the observer program. If Federal funds are not available to cover NMFS program costs, the groundfish observer program would be in jeopardy. The State of Alaska crab observer program would remain a separate program and no observer program would be implemented for the Pacific halibut fishery in Convention waters off Alaska.

2.2 Alternative 2: (PREFERRED ALTERNATIVE) Establish a North Pacific Fisheries Research Plan which includes a system of user fees to pay for its implementation costs

The Magnuson Act authorizes the Council, in consultation with the Secretary, to establish a Research Plan that (1) requires that observers be stationed on fishing vessels and at fish processing facilities and (2) establishes a system of fees to pay for the cost of implementing the plan. The elements of the Research Plan being submitted for Secretarial review are presented in this section. During the development of the Research Plan, options were considered for many of its elements. The options that were considered, but discarded prior to December 1993, were discussed in the March 2, 1993, draft of the EA/RIR¹. The options that were discarded at the December 1993 Council meeting are discussed in Chapter 3.

A. OBJECTIVES

1. Provide a framework for developing an observer program for the Alaska groundfish and halibut fisheries, which has the capability to accommodate in-season management and stock assessment needs and to provide accurate, real-time data of sufficient quality to implement an individual vessel incentive program. In the context of this Research Plan, the term groundfish is meant to include the halibut fisheries as well.
2. Provide a framework for developing an observer program for BSAI king and Tanner crab fisheries, which accommodates in-season management needs, ensures management compliance, and provides for the collection of biological and management data necessary to achieve the sustained yield of the crab resource without overfishing.
3. Ensure that the groundfish and crab observer programs are efficient and cost effective, that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revisions to the programs, and that such changes are necessary to meet fishery management needs.
4. Provide for cooperation and coordination between the groundfish observer program administered by NMFS and the crab observer program administered by ADF&G.

B. ELEMENTS OF THE NMFS GROUND FISH (HALIBUT) OBSERVER PROGRAM

1. Observer employment and contracts

A copy of the March 2, 1993 draft of the EA/RIR can be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510.

- a. Observers would be either employees of NMFS or employees of NMFS observer contractors.
- b. Observer contracts would be subject to a competitive bid process and would comply with federal and/or agency procurement regulations. If cost effective and in accordance with procurement regulations, a minimum of three contractors would be used if three or more bidders are qualified.
- c. Observers must possess the education and specific training necessary to meet the requirements of the groundfish observer program as specified in the contracts issued by the Federal Government to provide groundfish and halibut observers.

2. Duties of observers

The observers' duties are described in detail in the NMFS observer manual, which is updated as necessary and is available from the NMFS Observer Program. Observer duties may include:

- a. Collecting data on catch, effort, bycatch, and discards of finfish and shellfish, including prohibited species, and transmitting required data to facilitate in-season management;
- b. Collecting biological samples, which may be used to determine species, length, weight, age, and sex composition of catch and predator prey interactions;
- c. Collecting data on incidental take of marine mammals, seabirds, and other species as appropriate; and
- d. Other duties as described in the NMFS observer manual, available from the Alaska Fisheries Science Center.

3. Data collection, transmission, and input programs should be implemented according to the following:

- a. NMFS would be responsible for entering, editing, and maintaining all of the data collected by observers.
- b. The Regional Director would review fishery monitoring programs and report to the Council on methods to improve data collection and sampling techniques, provide for real-time data transmission from the groundfish and halibut fleet, including daily reporting, and other

measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs.

- c. NMFS could continue to release observer data authorized for disclosure under existing regulations and guidelines.

C. ELEMENTS OF THE ADF&G SHELLFISH ONBOARD OBSERVER PROGRAM

The State of Alaska Shellfish Onboard Observer Program would be incorporated within the Research Plan. Subject to the availability of funds and the coverage priorities established for the Research Plan, State costs for observer coverage in the BSAI king and Tanner crab fisheries allowable under the Magnuson Act would be paid for by fees collected from the Research Plan fisheries (Section G).

1. Observer employment and contracts

- a. Observers would be employees of ADF&G, NMFS, or NMFS observer contractors.
- b. Observer contracts would be subject to a competitive bid process and would comply with federal and/or agency procurement regulations. If cost effective and in accordance with procurement regulations, a minimum of three contractors would be used if three or more bidders are qualified.
- c. Observer deployment should be determined by ADF&G.
- d. Observers would possess the education and specific training necessary to meet the requirements of the crab observer program as specified in the contracts issued by the federal government to provide crab observers.

2. Duties of observers

The observers' duties are described in detail in the ADF&G observer manual, which would be updated as necessary. Crab observer duties may include:

- a. Collecting data on catch, effort, bycatch, and discards of finfish and shellfish, and transmitting required data to facilitate in-season management;
- b. Collecting biological samples, which may be used to determine species, length, weight, age, and sex composition of catch;
- c. Collecting data on marine mammals, seabirds, and

other species as appropriate;

- d. Providing an effective means to ensure management compliance; and
 - e. Other duties as described in the ADF&G observer manual.
3. Data collection, transmission, and input programs should be implemented according to the following:
- a. Initial implementation should be as specified under existing regulations and guidelines to facilitate in-season management at the Dutch Harbor and Kodiak offices.
 - b. ADF&G should review its fishery monitoring and data transmission programs in conjunction with NMFS, to help develop coordinated methods to improve data collection and sampling techniques, provide for real time data transmission from the fleet including daily reporting, and other measures as appropriate to improve the accuracy and efficiency of fishery monitoring programs and improve coordination between agencies.

D. ANNUAL DETERMINATION OF THE LEVEL OF OBSERVER COVERAGE FOR THE RESEARCH PLAN FISHERIES

1. Annual determination of the level of coverage

Levels of observer coverage may vary by fishery and vessel size depending upon the objectives to be met for each fishery. This applies to all groundfish and crab fisheries under Council FMP jurisdiction and includes possible coverage for vessels participating in the halibut fisheries. During the first year of the Research Plan, observer coverage levels in the groundfish fishery would be as required by the Federal Observer Plan at the time the Research Plan is approved. All king and Tanner crab catcher/processors and mothership processors in the BSAI area would continue to carry observers under the State Shellfish Onboard Observer Program during the first year of the Research Plan. Starting with the second year of the Research Plan (January 1, 1996), the level of observer coverage would be determined annually by the Regional Director in consultation with the Council and the State of Alaska. In making that annual determination, the Council, State, and Regional Director would consider: (1) the levels of coverage required to provide reliable information for management purposes and to achieve the objectives of the Research Plan and (2) the amount of available funds.

2. In-season changes to the level of coverage

In-season changes to the levels of observer coverage for the groundfish, halibut, and crab fisheries to improve the accuracy and availability of observer data may be implemented by the Alaska Regional Director based on one or more of the following findings.

- a. A significant change in fishing methods, times, or areas for a specific fishery or fleet component has occurred, or is likely to occur.
- b. A significant change in catch or bycatch composition for a specific fishery or fleet component has occurred, or is likely to occur.
- c. Any decrease in observer coverage due to unanticipated funding shortfalls must be consistent with the following priorities: (1) Accommodate status of stock assessments (i.e., collection of data on total catch, species composition, size, sex, and age); (2) inseason management; (3) bycatch monitoring; and (4) vessel incentive programs and regulatory compliance.
- d. Such modifications are necessary to ensure or improve data availability or quality in order to meet specific fishery management objectives.
- e. Any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

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

E. OBSERVER OVERSIGHT COMMITTEE

An Observer Oversight Committee (Committee) would be established by the Council Chairman to provide advice to the Council, the Board, the Commissioner of ADF&G, and the Regional Director on general provisions of the observer and fee portions of the Research Plan. NMFS, with the assistance of ADF&G, would annually provide Research Plan reports and budget documents to the Committee. The Committee would include industry representatives from the factory trawlers, catcher trawlers, shoreside processors, crab catcher vessels, freezer longliners, non-freezer longliners, crab catcher-processors, vessels under 60 feet (18.3 m) LOA, observers, observer contractors, and independent observer training entities. The Committee would meet with NMFS and ADF&G staff within the annual cycle of

the Research Plan to review the reports and budgets and provide input to the Council on fee levels and observer coverage needs. The Committee would not have oversight of the daily operations of the Federal and State observer programs.

F. COORDINATION BETWEEN THE NMFS GROUND FISH PROGRAM AND THE ADF&G CRAB OBSERVER PROGRAM

1. Recognizing the differences in the missions between the ADF&G crab observer program and the NMFS groundfish observer program, but wishing to provide for the maximum efficiency in administration and implementation of the groundfish and crab observer programs, NMFS and ADF&G would form a work group to do the following:
 - a. Develop consistent, cost effective, and compatible observer training and debriefing procedures;
 - b. Develop consistent data collection, transmission, and processing systems including a single data base available to both agencies on a real-time basis;
 - c. Identify costs which are appropriate for reimbursement to the State pursuant to the Magnuson Act;
 - d. Review costs and identify possible cost savings measures, including the use of public or private contractors to perform some or all of the duties under the Plan; and
 - e. Review the costs and benefits of training groundfish observers in Alaska or elsewhere.
2. The University of Alaska, as an observer training entity, should be included as an ex-officio member of the agency work group for the purpose of part F.1.a above.
3. On an annual basis, NMFS and ADF&G would provide to the Council a report detailing steps taken to improve overall coordination between the two observer programs and to improve administrative efficiency.

G. ANNUAL DETERMINATION OF RESEARCH PLAN FEE PERCENTAGE

NMFS would establish annually a Research Plan fee percentage for the upcoming calendar year. The fee percentage would be based on standard exvessel prices by species and on projections of the following: (1) retained catches by species (i.e., catch retained by either at-sea or shoreside processors) in all Research Plan fisheries, (2) program

costs, and (3) the surplus in the Observer Fund, other sources of funding for the Plan, and nonpayment. After consulting with the Council and State, NMFS would publish in the Federal Register the fee percentage and the values of the variables on which it is based and invite comments. After considering comments received and again consulting with the Council and the State, NMFS would publish final values in the Federal Register.

1. Research Plan fisheries

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

- a. GOA groundfish (EEZ only),
- b. BSAI groundfish (EEZ only),
- c. North Pacific halibut off Alaska (all Convention waters off Alaska), and
- d. BSAI king and Tanner crab (EEZ only).

Future recommendations by the Council to include other fisheries under the Research Plan would require an amendment to the Research Plan.

2. Standard Exvessel Prices

NMFS would annually establish standard exvessel prices for species harvested in Research Plan fisheries. These prices would be used in estimating the exvessel value of the Plan fisheries for the coming year. The standard exvessel prices would be based on (1) exvessel price information for the most recent 12-month period for which data are available, (2) factors that are expected to change exvessel prices in the upcoming calendar year, and (3) other information that may affect expected exvessel prices in the upcoming calendar year.

3. Retained Catch

Retained catch by species for the Research Plan fisheries would be projected annually for the upcoming calendar year using the best available information concerning expected catches and discards.

4. Total Exvessel Value

NMFS would annually calculate the total exvessel value of retained catches for Research Plan fisheries as the sum of the product of the standard exvessel prices and projected retained catches by species.

5. Program Costs

NMFS and ADF&G would each prepare an annual budget that identifies expected recoverable Research Plan cost for the upcoming calendar year. Recoverable costs identified in each budget would include: (1) costs for observer training, certification, briefing, and debriefing; (2) costs for stationing observers, including travel, salaries, benefits, and insurance; (3) costs for data collection, transmission, input, processing, and management; (4) contract services and general program operational costs, excluding overhead; and (5) the cost of the risk-sharing pool, if one is established. The estimated budget would be based on anticipated observer coverage and the anticipated costs directly incurred in carrying out the Research Plan.

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

Annually, NMFS would project (1) the surplus that would be in the Observer Fund at the end of the current calendar year, (2) the funds that would be available from other sources for use in funding the Research Plan during the upcoming calendar year, and (3) the nonpayment rate on fees assessed under the Research Plan during the upcoming calendar year.

7. Calculation of the Fee Percentage

Annually, the fee percentage for the upcoming calendar year would be set equal to which ever is less, the fee percentage calculated using the following equation or 2 percent.

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

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

If the fee percentage calculated using this formula is greater than 2 percent, there would be a funding shortfall due to the 2 percent limit in the Magnuson Act. This would require a reevaluation of the levels of coverage that would be required and funded. Available funds would be utilized to address the Research Plan objectives, in the following priority: (1) stock assessment; (2) in-season management; (3)

bycatch monitoring; and (4) vessel incentive programs and regulatory compliance.

H. FEE COLLECTION

1. Although the fee liability for a given amount of retained catch would be divided equally between the processor and harvesting vessel, processors would be responsible for collecting all fee assessments and for paying them bimonthly (i.e., every 2 months).
2. Fish processors are defined in the Magnuson Act; however, for purposes of collecting fees, harvesting vessels are considered processors when they sell directly to any entity other than a federally permitted processor under this plan.
3. A processor's bimonthly fee assessments for each species or species group would be calculated by NMFS by multiplying the fee percentage, times the standard exvessel price, times the actual amount of retained catch, expressed as round weight or round-weight equivalent. For example, if the fee percentage for Research Plan fisheries were 1.0 percent and the standard exvessel price of pollock were \$0.09/lb, a retained catch of 500,000 lbs of pollock would result in a fee assessment due from the processor of $0.01 \times \$0.09/\text{lb} \times 500,000 \text{ lbs}$, which is \$450.
4. Values for actual amount of retained catch to be used by NMFS in calculating fee assessments would be obtained through existing data reporting systems. These include Weekly Production Reports, ADF&G fish tickets, and IFQ reports, when available.
5. If these processors weigh or otherwise directly determine the amount of their retained catch, then those documented amounts would be used to estimate fee liability. Otherwise, product recovery rates published by NMFS and product weights would be used to estimate retained catch. For crab at-sea processors, scale weights of sample catches would be used to estimate total weight of retained catch. If a more reliable system for determining total weights is implemented in the future, the regulations would be amended accordingly.
6. Processors would be billed bimonthly by NMFS for their fee assessments. Payments must be received by NMFS within 30 days of the issuance date of the bill. The NOAA Office of the Comptroller should assess late charges for underpayment or late payments of fees. All payments would be deposited in the Observer Fund within the U.S. Treasury.

7. A processor would be required to notify the Regional Director, in writing, within 30 days of issuance of the bill, if any billed amount is disputed. The processor would be responsible for paying the undisputed amount of the bill within 30 days of its issuance, and for providing documentation supporting the disputed amount claimed to be under- or over-billed. Within 60 days of the date of issuance of the bill the Regional Director would review the bill and the documentation provided by the processor, and would notify the processor of his determination. If the Regional Director determines a billing error had occurred, the processor's account would be rectified by credit or subsequent billing. If the Regional Director determines that a billing error had not occurred, the outstanding payment on the bill would be considered past-due from the date 30-days from the date of issuance of the bill. Interest penalty and administrative charges would be assessed for payments that are not received within 30 days of the bill issuance. Processor permits would not be issued until all fee assessments are paid.
8. All processors as defined under Item H(2) above would be required to have a federal permit to receive fish from Plan fisheries. Separate permit applications would be required for each processing vessel or shoreside facility, even if several vessels or facilities are owned by the same company. Permits would be issued for each of the two 6-month periods-- January 1 through June 30, and July 1 through December 31. The permit issued by the Regional Director would continue in full force and effect for the period January 1 through June 30, or July 1 through December 31, of the year for which it was issued, or until it is revoked, suspended, or modified.
9. No permit would be issued until the permit application is complete and all fee assessments paid. Processors that have paid their accounts and submitted complete permit applications would be issued a permit within 30 days. Permits would not be issued to those processors not submitting complete applications and those whose accounts are past due, until their applications are complete and their accounts are paid.
10. Processing fish from Research Plan fisheries without a valid permit, or delivering fish from Research Plan fisheries to a processor not possessing a valid permit would be prohibited. NMFS would make available to the public a list of those processors holding valid permits to process fish from Research Plan fisheries.

I. FIRST YEAR OF THE RESEARCH PLAN

The first phase of the Research Plan is based on the following assumptions and criteria:

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

During the first, or start-up year, of the Research Plan, NMFS would accumulate necessary start-up funds in the Observer Fund. To avoid "double payment" by any component of the Research Plan fisheries for any period of time during 1995 and to allow credit up to their fee liability for actual costs paid by persons for direct observer coverage during 1995, the fee assessments would be calculated as described in H.2 with the following considerations for implementation in 1995:

1. BSAI and GOA Groundfish Fisheries
 - a. One half of the fee percentage would be multiplied by the amount of retained catch by vessels less than 60 feet LOA because these vessel operators are not required to pay for observer coverage.
 - b. All catcher vessels that are at least 60 feet LOA would be exempt from the half of the fee percentage that would otherwise be collected from these vessels. They would be exempt because, with one exception, all of these vessels have observer requirements. The exception is a vessel that only delivers unsorted cod ends to motherships is exempt from observer coverage regardless of its size. However, there would be few, if any, vessels that would only make that type of delivery.
 - c. One half of the fee percentage would be multiplied by the amount of retained catch received by a shoreside processor or a mothership; however, each such processor may subtract its observer coverage costs from the processor's portion of its bimonthly bill.

- d. The full fee percentage would be multiplied by the amount of retained catch of a catcher/processor vessel; however, each such processor may subtract its observer coverage costs from its bimonthly bill.
2. BSAI King and Tanner Crab Fisheries
 - a. Crab catcher vessels with special-use permits fishing for C. tanneri, C. angulatus, or Lithodes cousei are required to carry observers. Those catcher vessels would not be required to contribute to the fee assessment based on the exvessel value of these species.
 - b. Except as noted in 2.a, the full fee percentage would be multiplied by the amount of retained catch delivered to shoreside processors because neither the catcher vessels nor the shoreside processors are required to pay for observer coverage.
 - c. Except as noted in 2.a, the full fee percentage would be multiplied by the amount of retained catch delivered to mothership (i.e., floating) processors or caught by or delivered to catcher/processors. However, such a processor may subtract its observer coverage costs from the processor's portion of its bimonthly bill. The deduction for observer costs would be limited to whichever is less, the actual cost or one half of the fee liability.
 3. Halibut Fishery
 - a. The full fee percentage would be multiplied by the amount of all retained catch in the halibut fishery because neither the catcher vessels nor the processors are required to pay for observer coverage in the halibut fishery.

Processors would be responsible for collecting all fee assessments and for paying them bimonthly.
 4. Vessel operators and processors that are required to pay for observer coverage under the Federal Observer Plan and under State regulations would continue to pay for observer coverage during the first year of the Research Plan.
 5. NMFS believes that funds equal to approximately two-thirds of the current estimated annual cost needed to operate the Research Plan is the minimum amount needed

to begin full operation of the Research Plan and to ensure that cash flow is adequate to meet start-up costs. Pending approval of regulations implementing the Research Plan, full implementation of the observer and fee portions of the Research Plan are anticipated to begin January 1, 1996.

3.0 ANALYSIS OF THE ALTERNATIVES

The analysis of the two alternatives is in terms of (1) the expected differences in effects between Alternative 1 (the status quo) and Alternative 2 (establishing a Research Plan) and (2) the Magnuson Act requirements for a Research Plan (see Sections 3.1 and 3.2, respectively). Changes approved by the Council in December 1993 and clarifications and modifications since the December 1993 Council Meeting are addressed in Sections 3.3 and 3.4.

3.1 Expected Differences in Effects between Alternative 1 and Alternative 2

The Magnuson Act was amended to provide the authority to establish a Research Plan. This was done because, in the absence of such a Plan, the vessels and onshore processors with observer coverage requirements would continue to be responsible for the cost of obtaining the required observers from a certified contractor. Three problems were identified initially for this method of payment for observer coverage: (1) it may not be equitable; (2) it limits the ability of NMFS to manage the observer program effectively; and (3) it may result in a conflict of interest that could reduce the credibility of observer data. An additional problem occurred in 1993 when failure of a contractor to pay observers resulted in a demoralizing effect on the observers. Each of these problems is discussed below.

The current source of funding is considered 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. 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. This situation would remain unchanged under Alternative 1. Once the Research Plan is fully implemented, payments for observer coverage would be based on retained catch and standardized exvessel prices. Therefore, the cost of observer coverage would be linked much more closely to both the benefits each participant receives from the observer program and the participant's ability to pay for observer coverage.

The second problem is that this method of payment for observers

also limits the level of control NMFS has over the observer program and thus its ability to manage the program effectively. The certified contractors are not solely responsible to NMFS for the quality of their work performance, creating conflicting concerns between their clients to which they are providing observers and their responsibilities to NMFS.

The third problem is that this method of payment for observer coverage results in a potential conflict of interest between the certified observer contractors and their observers and the owners of vessels and processing plants to which observers are provided. The owners and operators of vessels and processing plants now have the responsibility for making arrangements with a certified observer contractor of their choice to meet observer requirements and for paying the costs of the observer directly to that contractor. This direct business relationship and the ability of an operation to select among the group of certified contractors mean that each contractor and, indirectly, the observers are essentially working for the operations they are observing. This provides an effective way for an operation to reward or penalize contractors and their observers and thus control the work performance of the observer and quality of data collected.

The nonpayment problem and the second and third problems can only be addressed partially under the status quo (Alternative 1). The observer conduct, conflict of interest standards for observers and contractors, and reasons for revoking contractor or observer certification that are included in the Observer Plan can be modified to reduce but not eliminate these problems. The Research Plan (Alternative 2) would provide substantial improvements with respect to these problems by replacing the direct business relationship between the observed operations and observer contractors with a direct business relationship between NMFS and observer contractors.

Compared to the status quo, the Research Plan has two additional benefits. First, it provides greater flexibility for changing groundfish observer coverage in response to changing conditions. Second, it may provide a more secure source of funding for observer program costs beyond the cost of stationing observers on vessels and at processing plants.

With the Research Plan, the level of observer coverage would be set annually based on the objectives of the Plan and expected funding; and the Regional Director would have the authority to make in-season changes to observer coverage requirements. Currently, a regulatory amendment is required to change observer coverage in the groundfish fisheries. This increased ability to make timely changes in groundfish and crab observer coverage requirements may be very beneficial given the variability of the biological and economic factors that determine the optimal levels of coverage.

The cost of the domestic groundfish observer program, excluding the cost of stationing observers, has been about \$1.6 million per year. Alaska Groundfish Log Book Program funds have provided \$0.1 million and the rest of this cost has been covered principally by Marine Mammal Protection Act (MMPA) funds. The observer program has to compete for MMPA funds on an annual basis and the amount of funding that would be received can change. Under Alternative 1, it is not clear how the observer program would be funded if adequate MMPA funds are not available. With the Research Plan, the funds generated by the Research Plan fees would be available to offset reductions in MMPA funds.

The above benefits are not without costs. The adverse effects of the Research Plan include increased program costs, the potential for the 2 percent limit on the fee percentage rate to prevent adequate observer coverage, and a redistribution of observer program costs among individual participants in the Research Plan fisheries.

Increased Costs The cost of the Research Plan is expected to exceed the cost of the current Observer Plan by \$0.6 million. This includes an additional \$0.1 million for the management of the observer program and \$0.5 million for administering and enforcing the fee collection program. The latter consists of funds for the Alaska Region and NOAA Finance to administer the program, for NMFS enforcement, and for Justice Department prosecutions.

The Research Plan may also increase the direct cost of observer coverage. The following types of changes would tend to increase these costs.

1. Processors may be less willing to provide bunkhouse use to observers.
2. Vessel operators may be less willing to allow observers to sleep and eat on the vessel when the vessel is in port.
3. Vessel operators and processors would have less of an incentive to share observers efficiently.
4. Vessel operators and processors would have less of an incentive to minimize the observer coverage they have.

The first two types of changes would tend to redistribute and increase the cost of housing and feeding observers. The third type of changes would tend to increase the cost per coverage day by decreasing the number of observer coverage days per month of observer employment. The last type of change would increase the total number of observer coverage days. It is difficult to estimate the magnitude of the cost increase that would result from these types of changes. Given that the current direct cost of observer coverage in the groundfish and crab fisheries is

about \$6.9 million, these changes could increase direct costs by more than \$0.5 million. In that case, the Research Plan would cost \$1.1 million more than the Observer Plan.

Would the 2 percent limit on the fee percentage rate prevent adequate observer coverage? Under the Research Plan, observer coverage would be limited by the level of funding that is available from the fees and other Federal funds. However, given that the cost of the Research Plan is expected to be about \$9.8 million, of which about \$2.1 million historically has been paid for with Federal funds, and given that the exvessel value of the Research Plan fisheries is expected to be about \$700 million, the 2 percent fee would provide \$13.3 million which is \$3.5 million or 36 percent more than the \$9.8 million needed from the fees. If Federal funding continues at current levels, the 2 percent fee would provide \$5.6 million or 73 percent more than is needed from the fees. This suggests that the 2 percent limit would not prevent adequate observer coverage unless there is a substantial increase in the cost of adequate coverage relative to the value of the Research Plan fisheries and the availability of other Federal funds.

The redistribution of observer program costs among individual participants in the Research Plan fisheries. One of the objectives of the Research Plan is to have a more equitable distribution of the costs of observer coverage. With the Research Plan, the harvesters and processors would pay for observer coverage based on the amount of fish and crab they retain from Research Plan fisheries and standardized exvessel prices for each species or species group. Compared to the status quo, this would increase the costs of the observer programs for some operations, decrease it for some, and leave it unchanged for other operations. The first group would include those who currently have no observer coverage requirements and those who have low observer coverage requirements relative to the exvessel value of the fish they retain. The second group would include those who have high observer coverage requirements relative to the exvessel value of the fish they retain. If the current cost of observer coverage is \$200 per day, if the fee percentage is 1 percent, if both the harvester and processor pay half of the fee, and if the total cost of the observer program does not change, the break-even point for a harvester or processor with 100 percent observer coverage is \$40,000 of exvessel value per day. That is, a harvester or processor with more than \$40,000 of exvessel value per day would pay more under the Research Plan than with the status quo and the opposite would be true for a harvester or processor with less than \$40,000 of exvessel value per day. For an operation with 30 percent observer coverage, the break-even point is \$12,000 per day. Those in the group that would have higher costs may not consider this a desirable change in the distribution of costs; however, in terms of either the benefits received from the observer program or the ability to pay for observer coverage, the distribution of costs tends to be better once the Research Plan is implemented fully.

First-year phase of the Research Plan. During the first year of the Research Plan, when those with observer requirements would still be responsible for paying observer contractors directly and when exemptions or credits would be used to offset most of the cost of those direct payments, the distribution of costs would tend to be minimally less equitable than it would be under full implementation. With the combination of direct payments to observer contractors, fee payments to NMFS, and credits from NMFS, the cost for each vessel and processor would be approximately equal to what it would pay if it were only subject to the fee percentage that would be established for the first year of the Research Plan.

Under the preferred alternative, for the first-year phase during 1995, revenue (in millions of dollars) needs to be generated for the following costs, net of allowed credits:

1995 fee collection costs	\$ 0.3
1996 observer coverage costs	\$ 4.9
contingency costs	\$ 1.0
Total	\$ 6.2

A level of uncertainty exists in 1995 with respect to actual fee collections, actual observer coverage costs, and the Federal funds that will be provided for the observer program in FY 1996. A contingency cost of \$1 million is included to account for this uncertainty. If fee collections actually exceed net recoverable costs in 1995, there would be a positive balance in the Observer Fund at the end of 1995 and as a result a lower fee percentage would be set for 1996.

With a fee of between 1.815% and 2.0%, the fee liability net of credits is given by the following equation:

$$\text{net fee liability} = \text{fee percentage} \times \$622.6 - \$5.23,$$

where \$622.6 million and \$5.23 million, respectively, are the exvessel value and the sum of the credits for the groups of fishing and processing operations that have a net fee > 0 (Table 2). Note, only the processors' half of the exvessel value attributed to groundfish catcher vessels >60' (\$70.1) is considered since groundfish catcher vessels >60' are exempt from the fee during 1995. Therefore, the equation that can be used to calculate the fee percentage that will generate a given level of revenue is as follows:

$$\text{fee percentage} = [(\text{revenue}/0.95) + 5.23]/\$622.6,$$

where the nonpayment rate is 5%.

To generate \$6.2 million in fee revenue, a fee of 1.89% would be required and would result in fee liabilities net of credits of approximately \$6.5 million.

Table 1 Observer contractor cost projections for 1995.

Type of Operation	Days	Cost/day	Cost
BSAI Groundfish			
catcher vessel	5,240	\$181	948,000
catcher/processor	16,523	\$180	2,974,000
mothership	426	\$180	77,000
plant	1,556	\$181	282,000
GOA Groundfish			
catcher vessel	2,753	\$188	518,000
catcher/processor	1,778	\$187	332,000
mothership	0	\$187	0
plant	881	\$188	166,000
Groundfish subtotal	29,157	-	\$5,297,000
BSAI crab			
catcher/processor	2,275	\$204	464,000
floating/processors	1,225	\$204	250,000
Crab subtotal	3,500	-	\$ 714,000
Total	32,657	-	\$6,011,000

Note: A "day" is a deployment day. The estimates of cost per day are based on a survey of contractors conducted in June, 1994. The survey asked for daily rates (what they charge their clients) and airline costs (round-trip Seattle-Dutch & Seattle-Kodiak.) The cost per day estimates for crab include the cost the contractors pay for training. The estimates of the number of days are based on the 1993 groundfish fishery and the 1993/94 crab fishery. The estimates of the cost per day varied by contractor from about 85% to 115% of the point estimates presented above. If this range is applied to the point estimate of the total cost of \$6.8 million, the range of the estimate of total cost is from about \$5.1 million to \$6.9 million. The upper end of the range is used in Table 2.

Table 2 Projections of ex-vessel value, direct observer costs, fees net of credits for direct observer costs, and the total of direct observer costs and net fees by fishery and sector for 1995 with a fee of 2 percent (%).

(millions)

	Ex-vessel value	Observer cost	Fee- credit	Total cost	%
Groundfish					
Motherships	\$ 35.3	\$0.09	\$0.26	\$ 0.35	1.0%
Shore plants	\$129.7	\$0.52	\$0.78	\$ 1.30	1.0%
Catcher vessels					
≥60 ft	\$140.2	\$1.69	\$0.00	\$ 1.69	1.2%
<60 ft	\$ 24.8	\$0.00	\$0.25	\$ 0.25	1.0%
All	\$165.0	\$1.69	\$0.25	\$ 1.94	1.2%
Subtotal	\$165.0	\$2.30	\$1.29	\$ 3.59	2.2%
Catcher/processors	\$218.7	\$3.80	\$0.58	\$ 4.38	2.0%
Groundfish total	\$383.7	\$6.10	\$1.87	\$ 7.97	2.1%
Crab Fisheries					
Floating/processors	\$112.5	\$0.29	\$0.83	\$ 1.12	1.0%
Shore plants	\$101.3	\$0.00	\$1.01	\$ 1.01	1.0%
Catcher vessels ¹	\$213.8	\$0.00	\$2.14	\$ 2.14	1.0%
Subtotal ²	\$213.8	\$0.29	\$3.98	\$ 4.27	2.0%
Catcher/processors	\$ 29.2	\$0.53	\$0.05	\$ 0.58	2.0%
Crab total	\$243.0	\$0.82	\$4.03	\$ 4.85	2.0%
Halibut fishery	\$ 66.0	\$0.00	\$1.32	\$ 1.32	2.0%
Grand total	\$692.7	\$6.92	\$7.22	\$14.14	2.0%

Note: The observer costs estimates used are based on the upper end of the cost estimates (i.e., 115% of the point estimates) from Table 1. Each projection of the fee net of direct observer cost credits is calculated using a projection of observer costs for a sector as a whole. Therefore, the credits are overstated and the net fees are understated to the extent that the processor's share of the fee liability is less than the credit for some processors. Given that the processor's share of the fee liability is 1% of the ex-vessel value of the fish it receives and given that the cost per observer day is about \$200, a processor with less than \$20,000 of ex-vessel value per observer day would pay more than 1% in direct observer costs and would pay no fees. For a catcher/processor, the comparable break even point is \$10,000.

¹ Less than 2 percent of the crab catcher vessels participate in developing crab fisheries and are required to obtain a special-use permit from ADF&G and carry observers. Those developing fisheries are limited in scope and the associated observer coverage costs are insignificant relative to the total exvessel value of the crab fisheries.

² The Subtotal line for the Exvessel value column is the value of either the fish sold by catcher vessels or the value of fish bought by motherships and shore plants. The Subtotal line for the Observer cost, Fee-credit, and Total cost columns adds the Motherships, Shore plants, and Catcher vessels-All lines. The percentage entry in the Subtotal line is the Subtotal line Total cost divided by the Subtotal Exvessel value for that segment of the Research Plan fisheries.

During the first year, two groups are projected to have direct observer costs that exceed their share of the fee liability-- groundfish catcher vessels at least 60 feet LOA and crab catcher vessels that participate in special-use permit crab fisheries. The observer costs for these two groups would not change during the first year as a result of the fee collection program.

3.1.1 Biological Considerations

The biological impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks that may result in changes in food availability to predators, changes in the population structure of target fish stocks, and changes in community structure; (2) changes in the physical and biological structure of the benthic environment as a result of fishing practices (e.g., effects of gear use and fish processing discards); and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear. A summary of the effects of the 1994 groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the final environmental assessment for the 1994 groundfish total allowable catch specifications.

The Research Plan is expected to increase the quality of the data provided by the observer program and thus result in more informed and better management decisions being made. This should result in improved conservation and management for living marine resources in the BSAI and GOA. Although the expectation is that this would result in ecological benefits, the specifics and magnitudes of these benefits are not known.

3.1.2 Economic Considerations

The Research Plan and the resulting improvements in conservation and management are expected to increase net benefits to the Nation. However, as with the ecological benefits, the specifics and magnitudes of these benefits are uncertain.

3.1.2.1 Reporting Costs

Alternative 1, the status quo, would not require a change in reporting requirements or costs.

Alternative 2 would require four separate information collections from participants in the Research Plan fisheries. Descriptions and derivation of industry burden and costs are set forth in the Supporting Statement for Collection of Information prepared for

the North Pacific Fisheries Research Plan². A brief description of these collections and associated costs follow:

Federal Processing Permit Application

All processors of GOA groundfish, BSAI groundfish, BSAI king and Tanner crab, and Pacific halibut taken from convention waters off Alaska (Research Plan fisheries) would be required to complete a Federal Processing Permit Application on a semi-annual basis. Permits would be valid for the periods January 1 through June 30, and July 1 through December 31, each year. The preprinted application form would be distributed to all known qualifying processors, and notification of the availability of applications would annually be published in the Federal Register. The information collected on the permit application is necessary to issue permits that would be used to ensure compliance with the fee collection system. A permit would not be issued if prior fee assessments were past due, and no permit would be issued until such time that the processor's fee assessments were paid. The estimated cost to the 681 processors that may be involved in Research Plan Fisheries and who would be required to comply with this permit requirement is \$21,000 annually.

Observer Coverage Payment Receipt Form

Information on this form would be required only during the first year of the Research Plan to collect data to be used by NMFS to audit the observer coverage costs subtracted by a processor from its billed fee assessments. All NMFS-certified observer contractors and observer contractors supplying observers to mothership (i.e., floating) processors participating in the Alaska crab fisheries would be required to submit to NMFS completed Observer Coverage Payment Receipt Forms within 15 days after they receive payment for observer coverage. NMFS would use this information to verify the observer coverage costs subtracted by a processor from its billed fee assessments. Without this collection, an audit of amounts that processors are subtracting from their billed fee assessments for direct observer costs paid during the first year of the Research Plan would not be possible. The estimated cost to the 10 observer contractors that may provide observer services during the first year of the Research Plan is estimated at \$7,000.

Process to Resolve Billing Disputes

Bills would be issued to processors every 2 months. A processor would be required to notify the Director, Alaska Region, NMFS, (Regional Director), in writing, within 30 days of issuance of the bill, if any billed amount is disputed. The processor would

A copy of the Supporting Statement for Collection of Information prepared for the North Pacific Fisheries Research Plan may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

be responsible for paying the undisputed amount of the bill within 30 days of its issuance, and for providing documentation supporting the disputed amount claimed to be under- or over-billed. Within 60 days of the date of issuance of the bill the Regional Director would review the bill and the documentation provided by the processor, and would notify the processor of his determination. If the Regional Director determines a billing error has occurred, the processor's account would be rectified by credit or subsequent billing. If the Regional Director determines that a billing error has not occurred, the balance of the outstanding payment on the bill would be considered past-due from the date 30-days from the date of issuance of the bill and late charges would be assessed. It is expected that the documentation submitted by the processor for this process would consist of information already maintained in the course of doing business. If 10 percent of the anticipated number of bills issued are disputed, costs to the industry could exceed \$12,000 annually.

Notification Requirements

All operators of vessels and processors participating in Research Plan Fisheries who are required to meet specific levels of observer coverage under the Research Plan would be required to notify the appropriate observer contractor, in writing or by facsimile copy, no less than 60 days prior to their need for an observer, to ensure that an observer would be available. Information requested would be the name of the vessel or processor; and the estimated dates, location, and duration for which an observer is being requested. This notification is necessary to arrange for the hiring, training, and deployment of observers. A second notification by processors and vessel owners required to carry observers, no less than 10 days prior to their need for an observer, would be required in writing, facsimile copy, or by telephone. The total number of responses under this requirement would depend on the number of observer deployments. NMFS estimates that total costs to the industry to comply with this requirement could exceed \$11,000 annually.

3.1.2.2 Administrative, Enforcement, and Information Costs

Alternative 1 would not change administrative, enforcement, and information costs. Alternative 2 would increase these annual costs by approximately \$0.6 million. This includes the cost of meeting the increased responsibilities that NMFS would have to manage the observer program and the cost of implementing the system of user fees. The latter includes the cost of obtaining the information necessary to establish the fee and calculate fee liabilities for processors. It also includes enforcement and prosecution costs associated with collecting the fees and the cost of administering the Observer Fund.

For the groundfish and crab fisheries, the fees would only be assessed on retained catch from the EEZ. This would require a change in reporting areas for the groundfish fisheries. It would also be very difficult to enforce for vessels that operate both in the EEZ and in other areas during a trip. The amount of catch incorrectly reported from non-EEZ areas is expected to increase.

3.1.2.3 Impacts on Consumers

The choice that is made between these two alternatives is not expected to have a measurable effect on consumers. The differences in neither the cost of the required observer coverage nor the redistribution of that cost are expected to result in a measurable change in the quantities of seafood products available to consumers or the prices of these products.

3.1.2.4 Distribution of Benefits and Costs

Compared to Alternative 1, Alternative 2 is expected to result in a more equitable distribution of the cost of meeting the current observer requirements for the groundfish fisheries. It is also expected to increase the ability of NMFS to manage the observer program effectively and to eliminate a conflict of interest that could decrease the credibility of observer data. These benefits would be accompanied by a \$0.6 million increase in the cost of the observer program including fee collection costs. The redistribution of costs would be from observed operations that would otherwise bear a disproportionately large part of the cost of the observer program to those who would otherwise pay for none or a disproportionately small part of that cost.

3.2 Consistency with Magnuson Act Requirements for the North Pacific Fisheries Research Plan

The Research Plan meets the requirements established in the Magnuson Act. Specifically, the Plan would require that observers be stationed for the purpose of collecting data necessary for the conservation, management, and understanding of any fisheries under the Council's jurisdiction except salmon. The Research Plan would establish a system of fees to pay the implementation costs. The Research Plan is designed to: (1) gather reliable data for the conservation, management, and scientific understanding of the Research Plan fisheries; (2) be fair and equitable to all vessels and processors; (3) be consistent with applicable provisions of law; and (4) consider the operating requirements of the fisheries and the safety of observers and fishermen. The system of fees should: (1) limit the total fees to implementation costs minus any amounts authorized under other provisions of law and any surplus in the Observer Fund; (2) be fair and equitable to all participants in the fisheries; (3) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the Research Plan; (4) not be used to offset amounts authorized under other provisions of law; (5) be

expressed as a percentage not to exceed two percent of the exvessel value of the Research Plan fisheries; (6) be assessed against all fishing vessels and fish processors including those not required to have observers; and (7) provide that the fees only be used for implementing the Research Plan.

After the Secretary has reviewed the feasibility of establishing a risk-sharing pool to provide insurance coverage for vessels and owners against liability from civil suits by observers, the Research Plan would be modified to include a risk-sharing pool if that review demonstrates that such a pool is necessary.

3.3 Changes Approved by the Council in December 1993

At its December 1993 meeting, the Council approved several changes for the Research Plan before submission to the Secretary. Those changes are included in the description and analysis of Alternative 2 presented in this document. A brief analysis of the changes is presented below.

The Council had recommended requiring guarantees equal to the maximum estimated quarterly fee assessment for the upcoming calendar year to secure anticipated fee liabilities, in the form of prepayments, letter of credit, surety bond, or lien on property. However, in December the Council agreed that the requirement of such guarantees is premature and could be burdensome to the industry, particularly to smaller enterprises, and costly to administer. Small or marginally profitable enterprises could have difficulty in securing such guarantees and there are irrecoverable costs to the industry associated with guarantees, such as letters of credit and surety bonds. Furthermore, collection on some guarantees could be difficult to accomplish in a timely and cost-effective manner; therefore, they could be of limited value in ensuring necessary cash flows and achieving the objectives of the Research Plan. The Council voted to replace the requirement for such guarantees with a simplified system to encourage timely fee assessment payments by processors. That system consists of: (1) bimonthly billing; (2) semi-annual processor permitting with a requirement that all Research Plan fee assessments must be current before a permit application would be considered complete and a permit would be issued; (3) a prohibition against processing landings from Research Plan fisheries without a valid processing permit; and (4) a prohibition against delivery of landings from Research Plan fisheries to a processor not possessing a valid processing permit. This system also has the advantage of simplified reporting and recordkeeping requirements for processors and reduced administrative costs for NMFS. The extent of nonpayment of fee assessments, which is inherent in any fee collection system, would be taken into account in determining the fee percentage rate for the following year; the proposed system is designed to minimize such nonpayment. If experience demonstrates that nonpayment is a significant problem, the Research Plan could

be modified to implement other measures, including guarantee requirements.

The other change was the Council had initially recommended that the fee collection system under the proposed Research Plan would be in effect for only 3 years, after which it would terminate, unless extended through rulemaking. At the time it made this recommendation, the Magnuson Act limited the fees to 1 percent of the value of the Research Plan fisheries. The Council had determined that 1 percent of the exvessel value of these fisheries would not be enough to fund the current level of observer coverage and it decided to impose a fee of not more than 1 percent of the wholesale value or 2 percent of the exvessel value. Subsequent to that recommendation, the Magnuson Act was amended to increase the fee limit to 2 percent of exvessel value. This revised limit and the annual review that would be required under the Research Plan decreased the concern that there would not be sufficient fiscal responsibility in setting the observer coverage requirements and the annual fee percentage. This, combined with the brief time that the Research Plan would have been in effect when it would have been necessary to evaluate its extension, decreased the expected net benefits of a specific expiration data.

4.0 CONSISTENCY WITH OTHER APPLICABLE LAW

4.1 Effects on Endangered Species and Marine Mammals

Fishing activities conducted under any of the considered alternatives would not affect marine mammals or birds or any endangered or threatened species listed under the Endangered Species Act in any manner not already considered in previous formal and informal consultations on the GOA and BSAI groundfish fisheries or the BSAI commercial king and Tanner crab fisheries. As a result, none of the alternatives would constitute actions that would adversely affect endangered or threatened species or their habitat as outlined in regulations implementing section 7 of the Endangered Species Act of 1973 and consultation procedures under section 7 on the final actions and their alternatives would not be necessary.

4.2 Coastal Zone Management Act

Each of the alternatives would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of section 307(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

4.3 Executive Order 12866

E.O. 12866, "Regulatory Planning and Review", September 30, 1993, established guidelines for promulgating new regulations and reviewing existing regulations. While the executive order covers a variety of regulatory policy considerations, the benefits and costs of regulatory actions are a prominent concern. Section 1 of the order deals with the regulatory philosophy and principles that are to guide agency development of regulations. The regulatory philosophy stresses that, in deciding whether and how to regulate, agencies should assess all costs and benefits of all regulatory alternatives. In choosing among regulatory approaches, the philosophy is to choose those approaches that maximize net benefits to society.

The regulatory principles in E.O. 12866 emphasize careful identification of the problem to be addressed. The agency is to identify and assess alternatives to direct regulation, including economic incentives, such as user fees or marketable permits, to encourage the desired behavior. When an agency determines that a regulation is the best available method of achieving the regulatory objective, it should design its regulations in the most cost-effective manner to achieve the regulatory objective. Each agency should assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Each agency should base its decisions on the best reasonably obtainable scientific,

technical, economic, and other information concerning the need for, and consequences of, the intended regulation.

NMFS requires the preparation of an RIR for all regulatory actions that either implement a new FMP or significantly amend an existing plan. The RIR is part of the process of preparing and reviewing FMPs and provides a comprehensive review of the changes in net economic benefits to society associated with proposed regulatory actions. The analysis also provides a review of the problems and policy objectives prompting the regulatory proposals and an evaluation of the major alternatives that could be used to solve the problems. The purpose of the analysis is to ensure that the regulatory agency systematically and comprehensively considers all available alternatives so that the public welfare can be enhanced in the most efficient and cost-effective way. The RIR addresses many of the items in the regulatory philosophy and principles of E.O. 12866.

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 result in a rule that may:

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 in item 1 above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

The user fee program would have an annual effect of substantially less than \$100 million, since it would not collect funds in excess of 2 percent of the exvessel value of the plan fisheries (valued at less than \$1 billion), since most of the fees collected would reflect a redistribution of costs as opposed to an increase in costs for the industry as a whole, and since the total value of the catch of the plan fisheries is not expected to change as a result of the collection of user fees.

Regulations commonly impose costs and cause redistribution of costs and benefits. If the proposed regulations are implemented to the extent anticipated, these costs are not expected to be economically significant. The user fee program would not have significant adverse effects on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. While payment of user fees would increase costs for some fishing and processing operations, it would decrease costs for others. The total fees that can be collected cannot exceed 2 percent of the exvessel value of the plan fisheries. Therefore, for the plan fisheries as a whole, the fees would be substantially less than 2 percent of the first wholesale value of the covered seafood products

The proposed program should not interfere with actions taken or planned by other agencies, nor should it materially alter the budgetary impact of entitlements, grants or loan programs. The user fees collected under this program would reflect the budgetary impact intended by Congress to specifically fund the observer program from industry contributions. There are no novel legal or policy issues raised by this proposed program.

The proposed regulation establishing a user fee program to fund the Research Plan is not a "significant" or "economically significant regulatory action" under the criteria established in E.O. 12866.

4.4 Regulatory Flexibility Act

The Regulatory Flexibility Act requires that impacts of regulatory measures imposed on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources) be examined to determine whether a substantial number of small entities would be significantly impacted by the proposed measures. Although the proposed regulations would have an economic impact on a large number of small entities, the impacts would not be significant.

4.5 Title 9701 (B)

Title 9701 (B) of the U.S. Code Annotated, Chapter 31, requires an assessment of the value of services received compared to the charges of those services. Specifically, the section states that each such charge should be:

1. fair; and
2. based on
 - (A) the costs to the government,
 - (B) the value of the service to the recipient,
 - (C) public policy or interest served, and
 - (D) other relevant facts.

The proposed Research Plan would result in a method of funding

for the observer program that has been determined to be more fair than the current system whereby some participants in the fishery pay directly for their required observer coverage. The value of the service, in this case observer coverage, is directly related to the public policy or interest served. It has been determined by the Council, with the overwhelming support of the fishing industry, that an observer program is vitally necessary to provide the information crucial to fisheries management. The information gained through the observer program is necessary for monitoring the directed catch of fish off Alaska, bycatch of prohibited species, interactions with marine mammals, and overall conservation of the resources under the jurisdiction of the Council.

4.6 Finding of No Significant Impacts

For the reasons discussed above, neither implementation of the status quo nor any of the alternatives would significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(c) of the National Environmental Policy Act or its implementing regulations.

Date

5.0 COORDINATION WITH OTHERS

The preparers consulted extensively with representatives of the Council and its Data Committee, NMFS, NOAA Comptroller's Office, Pacific States Marine Fisheries Commission, ADF&G, and members of the fishing industry.

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