

ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/
FINAL REGULATORY FLEXIBILITY ANALYSIS
FOR
AMENDMENT 47 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH
FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA
AND
AMENDMENT 47 TO THE FISHERY MANAGEMENT PLAN FOR GROUND FISH OF THE
GULF OF ALASKA
AND
AMENDMENT 6 TO THE FISHERY MANAGEMENT PLAN FOR THE
COMMERCIAL KING AND TANNER CRAB FISHERIES
IN THE BERING SEA AND ALEUTIAN ISLANDS AREA

TO IMPLEMENT A
NORTH PACIFIC GROUND FISH OBSERVER PROGRAM
TO REPLACE THE
NORTH PACIFIC FISHERIES RESEARCH PLAN

Prepared by

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Executive Summary

At its December 1995 meeting, the North Pacific Fishery Management Council (Council) recommended that the North Pacific Fisheries Research Plan (Research Plan) be repealed by the beginning of 1997. At the same meeting, the Council directed that a new observer plan be developed for final Council action at its April 1996 meeting that would supersede the Research Plan. Under this new plan, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a Prime Contractor. The Prime Contractor would enter into subcontracts with observer companies and direct them to respond to industry requests for observers. Payments received by the Prime Contractor would be used to cover administrative costs and pay subcontractors for providing observer services. NMFS would enter into a no-cost contractual arrangement with the Prime Contractor and would direct the Prime Contractor's activities. NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center. Because sufficient quantifiable potential cost information on this modified program was not available at its April 1996 meeting, the Council withheld final action on the modified program until those costs could be further defined. Because current observer coverage requirements expire December 31, 1996, the Council adopted an interim groundfish observer program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997 (Alternative 2, option 1). The interim groundfish observer program would extend 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program. The interim groundfish observer program would remain effective through December 31, 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council's OAC. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) addresses alternatives for an Observer Program for the BSAI and GOA groundfish fisheries to replace the Research Plan.

Alternative 1: Status quo. The status quo alternative would pursue full implementation of the Research Plan and provide for observer coverage in the North Pacific groundfish, crab, and Pacific halibut fisheries under Council jurisdiction. As authorized under section 313 of the Magnuson Act, industry funding for the Research Plan would be provided by up to a 2 percent fee assessed against the exvessel value of catch. At the direction of the Council, the Federal administrative process necessary for full implementation of the Research Plan in 1996 has been halted and fees collected from the 1995 Research Plan fisheries will be returned to Research Plan processors.

Option 1. Reinitiate the fee collection program during 1997 as authorized under section 313 of the Magnuson Act so that the Research Plan may be fully implemented by 1998.

Option 2. Do not reinitiate the fee collection program so that the Research Plan expires at the end of 1996. Lacking further action by the Council to supersede the Research Plan by an FMP amendment under Alternatives 2 or 3, no observer coverage would be authorized for the

Alaska groundfish fisheries in 1997 and beyond.

Alternative 2: Revert back to the observer program as it existed before implementation of the Research Plan. Amendments to the groundfish FMPs would be implemented that authorize regulations establishing observer coverage requirements. For 1997, these requirements would be unchanged from those implemented in 1996 under the Research Plan. Each vessel or processor owner who is required to obtain observer coverage would continue to negotiate directly with NMFS certified contractors for the required observer coverage.

Option 1. (**Council's preferred alternative**) Implement an interim observer program as set out under Alternative 2 to supersede the Research Plan on January 1, 1997. The interim program would remain effective until December 31, 1997.

Observer contractors would be required to submit information to NMFS that could be used by NMFS in Observer Program operations and to identify the ongoing ability of a company to meet the requirements of a certified observer contractor. This information includes: observer training/briefing/debriefing information, observer assignments, observer deployment and logistic reports, copies of certificates of insurance, and copies of contracts an observer contractor has with vessels and shoreside processors requiring observer services and with observers.

Alternative 3: Establish a modified "pay-as-you-go" groundfish observer program.

Under this alternative, observer coverage requirements would be established in regulations. Fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a contracted organization (Prime Contractor) which would serve as an interface between vessel and processor owners who are required to obtain observer coverage and observer contractors. Vessel and processor owners would be required to arrange for observer services through the Prime Contractor and to pay the Prime Contractor directly for the cost of observers. The Prime Contractor would arrange for observer deployment through subcontracts with companies providing observer services. All Prime Contractor costs would be incorporated in fees charged to the fishing industry by the Prime Contractor for provision of observer services.

The administrative record developed by the Council and NMFS during the past several years indicates that Alternative 2 would be unacceptable for the long-term because it fails to address the issues that give rise to concerns about the integrity of observer data used to manage the North Pacific groundfish fisheries. Alternative 2 would be acceptable on an interim basis only until a long-term program that addresses the concerns that gave rise to the Research Plan can be implemented. Alternatives 1 and 3 both address concerns about observer data integrity, although Alternative 3 further removes the observer from NMFS. Instead of a direct contract between NMFS and observer contractors, NMFS would be required to go through a prime contractor to resolve issues or problems that arise at the observer or observer contractor level. The contractual arrangements between NMFS and the prime contractor under Alternative 3 would need to be carefully developed to ensure that NMFS's ability to identify and respond to observer or observer contractor issues is not compromised.

The total cost of the Observer Program consists of several components that may differ among the three alternatives. The cost components are: (1) observer contractor costs, (2) an observer

compensation package, (3) insurance coverage for observers, (4) charge per observer deployment day, (5) costs to address observer non-payment, and (6) how changes in observer coverage requirements could impact total cost. These cost components under Alternatives 1 and 3 would tend to increase the total cost of the Observer Program compared to the pay-as-you-go program under Alternative 2. In addition, certain of the contractor costs would be shifted from NMFS to the industry. Qualitative or loose quantitative estimates of the cost effects of these components are presented in the analyses and qualitatively summarized in Table 4.

Observer costs are distributed differently under the three alternatives. Under Alternative 1, observer costs are based on the use of the fishery resource, as measured by exvessel value. Fishery data collected by observers is used for resource management which is beneficial to all industry participants. Under Alternatives 2 and 3, observer costs are based on whether or not an observer is onboard and on overall coverage needs. Higher costs are borne by those vessels and plants that require higher levels of coverage. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value revenue of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60 ft LOA but less than 125 ft LOA currently pay observer costs that are equal to or less than 1 percent of the exvessel value of catch. About 20 percent of these vessels fishing incur observer costs that range from 2 to almost 8 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. Under full implementation of the Research Plan (Alternative 1), catcher vessel observer costs would not be expected to exceed 1 percent of the exvessel value of catch because of the 2 percent cap on the Research Plan fee liability, of which processors would pay half. Under Alternatives 2 and 3, however, no cap would be implemented for observer costs and catcher vessels that pay 2 percent or higher of their exvessel value in observer costs would continue to do so. Furthermore, this impact could increase under Alternative 3 to the extent that the cost for observer coverage increased. For these reasons, Alternatives 2 and 3 could result in a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

None of the alternatives would result in a "significant regulatory action" as defined in E.O. 12866.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

1.0 INTRODUCTION

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska

and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area. Both fishery management plans (FMP) were developed by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and become effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP become effective in 1982.

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

NEPA, E.O. 12866 and the RFA require a description of the purpose and need for the proposed action as well as a description of alternative actions which may address the problem. This information is included in Section 1 of this document. Section 2 contains information on the biological and environmental impacts of the alternatives as required by NEPA. Impacts on endangered species and marine mammals are also addressed in this section. Section 3 contains a Regulatory Impact Review (RIR) which addresses the requirements of both E.O. 12866 and the RFA that economic impacts of the alternatives be considered. Section 4 contains the Final Regulatory Flexibility Analysis (FRFA) required by the RFA which specifically addresses the impacts of the proposed action on small businesses.

This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) addresses alternatives for an Observer Program for the BSAI and GOA groundfish fisheries to replace the North Pacific Fisheries Research Plan, which the Council recommended be repealed by the beginning of 1997.

1.1 Purpose of and Need for the Action

The North Pacific Groundfish Observer Program (Observer Program) is responsible for providing observer coverage aboard fishing vessels and processors which receive deliveries from vessels fishing for groundfish in the EEZ off Alaska. Since 1990, the Observer Program has provided between 20,000 and 30,000 observer coverage days each year. The program is managed by staff at the NMFS Alaska Fishery Science Center in Seattle and provides data for fisheries management and science, and compliance monitoring. Observers are hired by private contractors certified by NMFS. NMFS trains observers and certifies them upon successful completion of a three-week training program. Vessel and plant owners required to obtain observers may contact the certified contractor of their choice and enter into private negotiations for observer services. Observer costs accrue only to those vessels and plants required to obtain observers.

NMFS's ability to assure that observer data integrity is maintained is constrained by several features of the current program. First, even though certified contractors are responsible for assuring that NMFS data integrity standards are met, they also have direct responsibilities to the fishing companies with whom they contract to provide observers. Owners of fishing vessels and processors make arrangements with certified contractors of their choice to meet observer

requirements and pay contractors directly for providing observers. Thus contractors and observers are employed directly by vessel and plant owners even though they are responsible to NMFS for collecting data according to agency standards. Under this arrangement opportunities arise for owners and operators to influence the work performance of the observers and the quality of the data collected. Since objectivity and independence are fundamental to the effectiveness of the Observer Program, the potential for conflict of interest that arises through these business relationships is of serious concern.

Second, the process of negotiation among vessel and plant owners and observer contractors provides a mechanism for controlling overall observer costs through competition. Unfortunately, pressure on contractors to reduce costs and remain competitive has impacted observer compensation negatively. In general, base salary rates are low, and compensation for time spent in training, briefing, debriefing, and transit has been reduced. In some cases fringe benefits have also been eroded. This situation has undermined observer morale and influenced work performance such that NMFS is concerned about data integrity.

To address these concerns, the Council requested NMFS to develop a new program (the North Pacific Fisheries Research Plan, or "Research Plan") incorporating a concept which would require all fishery participants to pay a fee based on the value of their catch. Collection of this fee was authorized by an amendment to the Magnuson Act and would be used to fund contracts between NMFS and observer contractors for observer services. Under this program NMFS would collect the fee and would contract directly with observer companies, thus removing the direct link between the fishing industry and the observer contracting industry. Over the period that this plan was developed and implemented, industry concerns regarding the impact of observer cost redistribution and other features of the program arose and, in December 1995, the Council voted to repeal the Research Plan.

At the same meeting, the Council directed that a new observer plan be developed for final Council action at its April 1996 meeting that would supersede the Research Plan. Under this new plan, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a Prime Contractor. The Prime Contractor would enter into subcontracts with observer companies and direct them to respond to industry requests for observers. Payments received by the Prime Contractor would be used to cover administrative costs and pay subcontractors for providing observer services. NMFS would enter into a no-cost contractual arrangement with the Prime Contractor and would direct the Prime Contractor's activities. NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center.

At the April 1996 Council meeting the Observer Advisory Committee (OAC) highlighted that even though observer compensation and certain other costs were not currently quantifiable, the third-party alternative would be more expensive than the observer program prior to the Research Plan. The Council reviewed a draft analysis of alternatives to the Research Plan and determined that additional cost comparisons of these alternatives must be completed before it adopts an alternative to the Research Plan. Because current observer coverage requirements expire December 31, 1996, the Council adopted an interim groundfish observer program that would supersede the Research Plan and authorize mandatory groundfish observer coverage

requirements through 1997 (Alternative 2, option 1). The interim groundfish observer program would extend 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program. The interim groundfish observer program would remain effective through December 31, 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council's OAC. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

This EA/RIR assesses alternatives to the Research Plan for the Alaska groundfish observer program that were considered by the Council at its April 1996 meeting.

1.2 Alternatives Considered

1.2.1 Alternative 1: No Action

The status quo alternative would pursue full implementation of the Research Plan and provide for observer coverage in the North Pacific groundfish, crab, and Pacific halibut fisheries under Council jurisdiction. As authorized under section 313 of the Magnuson Act, industry funding for the Research Plan would be provided by up to a 2 percent fee assessed against the exvessel value of catch. This alternative has been previously described and analyzed under an August 1994 EA/RIR prepared for the Research Plan (NPFMC 1994). The August 1994 EA/RIR is incorporated into this document by reference and is available from the Council.

Given that the Council recommended that Alternative 1 not be pursued at its December 1995 meeting, the Federal administrative process necessary for full implementation of the Research Plan in 1996 has been halted. At the direction of the Council, fees collected from the 1995 Research Plan fisheries have been returned to Research Plan processors using a procedure established by NMFS (61 FR 13782, March 28, 1996). Implementation of this alternative, therefore, would require a reinitiation of the fee collection program authorized under the Research Plan and the Federal procurement process necessary to solicit and award contracts with companies providing observer services. Full implementation of the Research Plan likely could not be accomplished before 1998 given the time required to collect sufficient funds to support contract awards for observer services.

Under this alternative, two options exist:

Option 1. Reinitiate the fee collection program during 1997 as authorized under section 313 of the Magnuson Act so that the Research Plan may be fully implemented by 1998.

Option 2. Do not reinitiate the fee collection program so that the Research Plan expires at the end of 1996. Lacking further action by the Council to supersede the Research Plan by an FMP amendment under Alternatives 2 or 3, no observer coverage would be authorized for the Alaska groundfish fisheries in 1997 and beyond.

1.2.2 Alternative 2: Revert back to the observer program as it existed before implementation of the Research Plan.

Amendments to the groundfish FMPs would be implemented that authorize regulations establishing observer coverage requirements. For 1997, these requirements would be unchanged from those implemented in 1996 under the Research Plan. These coverage requirements would remain in place for the groundfish fisheries until changed by regulatory amendment. Each vessel or processor owner who is required to obtain observer coverage would continue to negotiate directly with NMFS certified contractors for the required observer coverage. NMFS would continue to fully pay for program costs including 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. 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.

Under Alternative 2, the following changes to regulations would be implemented under a groundfish observer program:

- 1) Observer coverage requirements would apply to vessels issued a Federal fisheries permit and processors that receive fish from one or more of these vessels. Fishing operations by these vessels and processors in Federal and State waters would be subject to Federal observer coverage requirements. Under the Research Plan, Federal observer coverage requirements only could be applied to fisheries in Federal waters.
- 2) Current observer coverage requirements for groundfish vessels and shoreside processors receiving groundfish would remain unchanged in regulations. The Council intends that 1997 groundfish observer coverage levels remain unchanged from 1996 levels. As in 1996, participants in the groundfish fisheries would be responsible for making their own arrangements and paying for required observer coverage.
- 3) Observer coverage requirements for the BSAI king and Tanner crab fisheries would be specified by the Alaska Board of Fisheries. Crab fisheries' observer coverage requirements would no longer be specified in Federal regulations.
- 4) Similar to the Research Plan, the Regional Director could make inseason adjustments in observer coverage requirements. Any inseason adjustment would be based on specified findings and be implemented using the procedure for inseason adjustments at 50 CFR part 679.25(c). Similar to the Research Plan, any inseason adjustment to observer coverage requirements would be published in the Federal Register at least 10 calendar days prior to the effective date.
- 5) Vessel and shoreside processor responsibilities would remain unchanged.
- 6) Criteria and procedure for the certification, suspension, and decertification of certified observers and certified observer contractors would be specified in regulations. Previously, these criteria and procedures were included in the Observer Plan. The proposed criteria and procedures are essentially unchanged except that:

a. Observer contractors certified by NMFS prior to January 1, 1997, would receive a one-year certification extension that expires December 31, 1997. The currently certified observer contractors would not have time to go through a new certification process nor would NMFS have adequate time to carry out the administrative procedures necessary for their recertification prior to implementation of the interim groundfish observer program on January 1, 1997. Any certified observer contractor could be decertified according to the decertification procedures that are set out in the proposed rule.

b. Observers and observer contractors cannot have a direct financial interest or a conflict of interest in any commercial fishery in State or Federal waters off Alaska. The conflict of interest standards in the Observer Plan were more narrowly applied to the observed fishery.

c. Observer qualifications have been revised as follows and would be available from the Observer Program Office: Prospective observers must have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences. Candidates must have a minimum of 30 semester hours or equivalent in applicable biological sciences, and must have also successfully completed at least one undergraduate course each in math and statistics (minimum of five semester hours total). In addition, all applicants are required to have computer skills which enable them to work competently with standard database software and computer hardware. Prospective observers are also required to successfully complete any screening test(s) administered by NMFS. These tests would measure basic math, algebra and computer skills as well as other abilities necessary for successful job performance. To qualify for certification, prospective observers would undergo safety and cold water survival training which requires the prospective observers to demonstrate their ability to properly put on an immersion suit in a specified time period, enter the water and travel approximately 50 m to a ladder and climb out of the water. If sufficient numbers of candidates meeting these educational prerequisites are not available, the observer contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or an equivalent. If sufficient numbers of individuals meeting the above qualifications are not available, the observer contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

The additional math, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications under the Research Plan, had it been fully implemented.

d. Training/briefing requirements for recertification have been revised as follows and would be available from the Observer Program Office:

(A) Observers who have completed a deployment must be recertified prior to another deployment. Individuals whose last deployment was within 12

months must complete a 2-day briefing and individuals whose last deployment was 12 to 24 months ago must complete a 4-day briefing. If 2 years have passed since the completion of an individual's last deployment, he/she must complete the full training course.

(B) If an observer remains undeployed from 1 to 3 months after completion of training, the individual must complete a 2-day briefing. If the individual is not deployed from 3 to 6 months after training, a 4-day briefing must be completed. If more than 6 months has passed since the completion of training, the individual must retake the full training course.

(C) Briefings (2 or 4 day) expire after 1 month. Individuals may be required to complete a 4-day briefing or the full training course if deemed necessary by the Observer Program Office. These recertification requirements are identical to those under the Research Plan, had it been implemented.

e. NMFS' selection criteria for observer contractors would remain unchanged and are available from the Observer Program Office.

f. Criteria for the suspension and/or decertification of observers or observer contractors includes an appeals process and would remain unchanged.

g. Observer contractors must provide a certificate of insurance that verifies compliance with the recommendations of the Council's Insurance Technical Committee. This coverage must include the following provisions:

(A) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum);

(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum);

(C) States Worker's Compensation as required; and

(D) Contractual General Liability.

h. Observer contractors would be required to submit information to NMFS that could be used by NMFS in Observer Program operations and to identify the ongoing ability of a company to meet the requirements of a certified observer contractor. This information includes: observer training/briefing/debriefing information, observer assignments, observer deployment and logistic reports, and copies of contracts an observer contractor has with vessels and shoreside processors requiring observer services and with observers.

Observer contractors would be required to submit information to the Observer Program Office that would be used to: 1) Coordinate and conduct effective and efficient scheduling of observers for training, briefing and debriefing sessions; 2) maintain an observer deployment database; and 3) monitor the ongoing ability of

a company to meet the requirements of a certified observer contractor. This information would include:

- (A) A list of prospective observers to be hired upon approval by the Regional Director and observer training/briefing registration;
- (B) Projected observer assignments;
- (C) Observer deployment/logistics reports;
- (D) Observer debriefing registration;
- (E) Notification that prospective observers have passed a physical examination during the 12 months prior to deployment;
- (F) A copy of each type of signed and valid contract an observer contractor has with vessels and shoreside processors requiring observer services and with observers. Copies of contracts with specific entities requiring observer services or with specific observers also may be requested;
- (G) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems submitted to the Observer Program Office within 24 hours.

7) Observer contractors would be restricted in how they could assign observers to vessels or shoreside processing facilities in the following ways:

- (A) Observers must not be deployed on the same vessel for more than 90 days in a 12 month period;
- (B) A deployment to a vessel or a shoreside processing facility cannot exceed 90 days without approval from the Observer Program Office; and
- (C) A deployment cannot include assignments to more than four vessels and/or shoreside processing facilities.

NMFS began instituting these policies in 1990 to reduce the likelihood of conflicts of interest and to ensure that debriefings occurred more frequently so NMFS could process the observers' collected fisheries data .

- 8) NMFS would clarify its intent that fish sorting of any kind prior to observer sampling procedures is prohibited. Concerns exist that mechanical and/or physical sorting could be occurring. For example, modifications to the angle and speed of incline belts in processing lines and bin openings that restrict the flow of fish act effectively to sort fish prior to observer sampling procedures. NMFS would specifically requests comments on what, if any, impact this clarification could have on vessel or processor operations.
- 9) A reference to Research Plan regulations and a prohibition in IFQ regulations would be removed to maintain consistency with the proposed removal of Research Plan regulations. The IFQ regulation prohibits permitted registered buyers required to obtain a Federal processor permit from transferring or receiving sablefish harvested in Federal waters or halibut, unless the person possesses a valid Federal processor permit. The intent of this prohibition was to

reinforce the requirement that all Research Plan processors paid their fees in a timely manner and were thus eligible for a Federal processor permit. This prohibition is no longer necessary because the Research Plan fee collection process has been terminated.

Option 1. (Council's preferred alternative) Implement an interim observer program as set out under Alternative 2 to supersede the Research Plan on January 1, 1997. The interim program would remain effective until December 31, 1997.

The administrative record developed by the Council and NMFS during the past several years indicates that Alternative 2 would be unacceptable for the long-term because it fails to address the issues discussed in Section 1.1, above, that give rise to concerns about the integrity of observer data used to manage the North Pacific groundfish fisheries. Alternative 2 would be acceptable on an interim basis only until a long-term program that addresses the concerns that gave rise to the Research Plan can be implemented.

1.2.3 Alternative 3: Establish a modified "pay-as-you-go" groundfish observer program.

Under this alternative, observer coverage requirements would be established in regulations. Fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a contracted organization (Prime Contractor) which would serve as an interface between vessel and processor owners who are required to obtain observer coverage and observer contractors. Vessel and processor owners would be required to arrange for observer services through the Prime Contractor and to pay the Prime Contractor directly for the cost of observers. The Prime Contractor would arrange for observer deployment through subcontracts with companies providing observer services. Under the terms of the contract between NMFS and the Prime Contractor, NMFS would not pay the Prime Contractor for any services provided. Rather, the contract will authorize the Prime Contractor to provide such services and bill the fishing vessel and plant owners accordingly. Consequently, all Prime Contractor costs will be incorporated in fees charged to the fishing industry for provision of observer services.

The objective of the Prime Contract is to better ensure the integrity of observer data through minimizing the potential for conflict of interest, providing for fair and equitable treatment of observers, and providing the fishing industry with observer coverage consistent with regulatory requirements and program principles. Costs incurred by the Prime Contractor to fulfill these functions would be determined through the competitive procurement process used by NMFS to award a contract to the organization successfully bidding for the Prime Contract. To accomplish the objectives of the contract, the Prime Contractor would be required to implement and maintain a system to support the following basic principles of the program:

- 1) provide NMFS with data of the quality necessary to manage federal groundfish fisheries off Alaska,
- 2) establish a contractual system which will minimize opportunities for conflicts of interest by preventing direct business negotiations between observer contractors and

vessel and plant owners required to carry observers,

3) provide the fishing industry with observer coverage that is consistent with regulatory requirements and program principles in as efficient and cost effective a manner as possible, and

4) assure that observers receive fair and equitable treatment and that specified compensation (salaries, benefits, and expenses) and insurance coverage is provided.

The Prime Contractor's responsibilities under the new plan would be as follows:

- Procurement and management of subcontracts with companies providing observer services;
- Assurance that NMFS observer and observer contractor standards are met;
- Oversight of observer deployment and provision of specified observer sampling and safety equipment;
- Collection of payment for observer services directly from vessel and processor owners;
- Payment to subcontractors for observer services; and
- Assurance that timely and accurate observer data is submitted to NMFS (including maintenance of an incentive program to retain a corps of experienced observers).

NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center.

A fuller description of the responsibilities of the Prime Contractor and NMFS under this alternative is provided in the draft Statement of Work prepared by NMFS as an initial step in the procurement of a Prime Contractor (NMFS 1996a).

1.3 Background

1.3.1 Description of the Fishery

The groundfish fisheries in the EEZ of the BSAI and GOA harvest nearly 2.3 million metric tons of various groundfish species annually. In 1995 over 1800 vessels of all sizes harvested groundfish in these waters.

Although some groundfish harvesting occurs throughout the year, the duration of specific fisheries varies considerably and some major fisheries occur during relatively short seasons. Fishing vessels participating in these fisheries utilize four basic kinds of gear; trawl, hook-and-line, pots or trap, and jig. Vessels using these types of gear can be grouped into two general classes: (1) catcher/processor vessels have the capacity to catch fish and process their catch and range from about 75 feet to over 500 feet in length, and (2) catcher vessels which must deliver their catch to a fish processor (floating or shoreside) and are usually less than 150 feet in length. Catcher/processor vessels are capable of remaining at sea for weeks or months, while catcher vessels make trips as short as a few hours or as long as 10 days.

Fish processors within the groundfish fishery include shoreside plants and floating processing vessels. Shoreside plants are usually receive catch from catcher vessels; catches may be sorted or partially sorted at sea or may be delivered unsorted. Floating processors receive either sorted or unsorted catch (usually by transfer net codends) from catcher vessels.

Detailed descriptions of the BSAI and GOA groundfish fisheries are available in the final 1996 Stock Assessment and Fishery Evaluation (SAFE) reports for these fisheries (NPFMC 1995a, 1995b).

1.3.2 The North Pacific Groundfish Observer Program

NMFS maintains an observer program for collecting the data required for managing groundfish fisheries in the EEZ off Alaska. Observer requirements have been in place since the mid-1970s, when the Magnuson Act was implemented and it became necessary for NMFS to monitor foreign groundfish fisheries in the EEZ. By 1990 direct foreign participation in these fisheries had ended and the Observer Program infrastructure was changed so that observer coverage could be provided aboard domestic vessels and at processing plants receiving deliveries from domestic vessels participating in these fisheries.

Action by the Council was required to allow development and approval of this domestic Observer Program in 1989. Implementation occurred through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989). An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and implemented by NOAA (55 FR 4839, February 12, 1990). The Observer Plan established observer coverage requirements which have remained generally unchanged through 1996. These coverage requirements vary with the size of the fishing vessel or quantity of fish processed by floating or on-shore processors. Each vessel with length overall (LOA) of 125 ft or greater which harvests groundfish is required to carry a certified observer for 100% of its fishing days

each year. Fishing vessels with LOA 60 ft or greater, but less than 125 ft, are required to carry a certified observer for 30% of their fishing days each quarter during which they participated for more than 3 fishing days in a directed fishery for groundfish.

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

Additional coverage requirements may be established by regulation or at the discretion of the NMFS Alaska Regional Director. For example, regulations require two certified observers must be present aboard all processing vessels harvesting pollock under Community Development Quota (CDQ) regulations.

Since 1990, the Observer Program has provided between 20,000 and 30,000 observer coverage days each year. In 1995, about 395 vessels of 60 feet LOA or greater participated in the groundfish fisheries and were required to carry observers. Nearly 130 required 100% observer coverage. The remaining approximately 265 vessels required 30% observer coverage. Observers collected data at approximately 30 shoreside and floating processors during the same year.

NMFS certifies observers upon successful completion of a three-week training course conducted at the NMFS Alaska Fisheries Science Center (AFSC) in Seattle or the University of Alaska's Observer Training Center in Anchorage. Duties and data collection methods are developed and specified by NMFS. Observers are debriefed by NMFS staff upon completion of their deployments.

Mandatory observer requirements currently are set out in the Code of Federal Regulations (CFR) implementing the Research Plan (50 CFR part 679). NMFS also requires observers to gather data on marine mammals similar to that required by the MMPA Amendments of 1994. NMFS continues to gather data on the species and number of marine mammals taken in the fisheries and other information relevant to protection of marine mammals and understanding of marine ecosystems. Even though observers funded and placed through the NMFS Observer Program are not MMPA observers, they are required to fulfill MMPA data collection requirements.

As mention in Section 1.1 above, NMFS' ability to assure that data integrity is maintained is constrained by several features of the current program. In particular, allowing fishing companies to negotiate directly with observer companies creates a serious potential for conflict of interest. Furthermore, competition among contractors has lowered industry observer costs at the expense of observers' salaries, and instability in the fishing and contracting industries has created situations where observers have not been paid for work performed. In 1993, a certified observer contractor ceased business operations, leaving approximately 25 observers unpaid. This situation allegedly occurred because several fishing companies had failed to pay the contractor for observer services. These circumstances have undermined observer morale, increased turnover in the observer work force, and adversely influenced data quality.

In 1992, the Council adopted the Research Plan to respond to these and other issues facing the Observer Program, as well as the Alaska State crab observer program. A key element of the Research Plan was a fee-based funding mechanism based on the exvessel value of retained catch. The Research Plan also addressed the observer nonpayment issue and provided enhanced flexibility to place observers on board vessels or at processing plants to respond to management concerns. NMFS implemented the fee assessment program in 1995 with the intent of collecting sufficient funds to issue contracts with observer companies for full implementation of the Research Plan in 1996. At its December 1995 meeting, however, the Council voted to repeal the Research Plan and requested NMFS to refund the \$5.6 million collected under the 1995 fee assessment program. The Council's action was predicated on concerns about the redistribution of observer costs associated with the fee collection program and concerns that funds collected under the Research Plan would be insufficient to support increased observer coverage necessary to support future management programs under Council consideration.

At its December 1995 meeting, the Council further recommended that NMFS develop an alternative observer program for Council final action at its April 1996 meeting. The alternative program (Alternative 3) would require NMFS to contract with an organization (or Prime Contractor) which would serve as an interface between vessel and processor owners who are required to obtain observer coverage and observer contractors. Under this arrangement, observers would continue to be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries and living marine resources. Vessel and processor owners would be required to obtain observers from the Prime Contractor and to pay the Prime Contractor directly for the cost of observers. The Prime Contractor would arrange for observer deployment through subcontracts with companies providing observer services.

At the April 1996 Council meeting the Observer Advisory Committee (OAC) highlighted that even though observer compensation and certain other costs were not currently quantifiable, the third-party alternative would be more expensive than the observer program prior to the Research Plan. The Council reviewed a draft analysis of alternatives to the Research Plan and determined that additional cost comparisons of these alternatives must be completed before it adopts an alternative to the Research Plan. Because current observer coverage requirements expire December 31, 1996, the Council adopted an interim groundfish observer program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The interim groundfish observer program would extend 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program. The interim groundfish observer program would remain effective through December 31, 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council's OAC. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of

1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. 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 statement (EIS) 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 were discussed in Sections 1.1 and 1.2, and the list of preparers is in Section 8. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine 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 annual 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 annual groundfish total allowable catch specifications (NMFS 1996b).

All of the alternatives considered would provide for the collection of observer data from the Alaska groundfish fisheries. Alternatives 1 and 3 would best assure the integrity of observer data used to manage the North Pacific fishery resources, including information on the incidental takes of endangered or threatened species under the ESA.

2.2 Impacts on Endangered or Threatened Species

Endangered and threatened species under the ESA that may be present in the GOA and BSAI include:

Endangered

Northern right whale	<i>Balaena glacialis</i>
Sei whale	<i>Balaenoptera borealis</i>
Blue whale	<i>Balaenoptera musculus</i>
Fin whale	<i>Balaenoptera physalus</i>
Humpback whale	<i>Megaptera novaeangliae</i>
Sperm whale	<i>Physeter macrocephalus</i>
Snake River sockeye salmon	<i>Oncorhynchus nerka</i>
Short-tailed albatross	<i>Diomedea albatrus</i>

Threatened

Steller sea lion	<i>Eumetopias jubatus</i>
Snake R. spring and summer chinook salmon	<i>Oncorhynchus tshawytscha</i>
Snake R. fall chinook salmon	<i>Oncorhynchus tshawytscha</i>
Spectacled eider	<i>Somateria fischeri</i>

The status of the ESA section 7 consultations required to assess the impact of the groundfish fisheries on endangered or threatened species is updated annually as part of the annual groundfish specifications process.

The impact of GOA groundfish fisheries on listed marine mammals was addressed in a formal consultation pursuant to section 7 of the ESA that culminated in a biological opinion dated April 19, 1991; NMFS concluded that the GOA groundfish fisheries were not likely to adversely affect listed cetaceans or to jeopardize the continued existence or recovery of Steller sea lions or their respective critical habitats. NMFS determined that section 7 consultation should be reinitiated for Steller sea lions if any proposed change in the GOA fishery was likely to adversely affect them, if new information regarding the effects of the fishery on Steller sea lions was obtained, or if there was a change in the status of sea lions. Since April 1991, NMFS has reinitiated section 7 consultation for several GOA regulatory amendments and for the annual total allowable catch specifications.

Endangered and threatened species of seabirds that may be found within the regions of the GOA and BSAI where the groundfish fisheries operate, and potential impacts of the groundfish fisheries on these species are discussed in the EA prepared for the TAC specifications (NMFS 1996b). The U.S. Fish and Wildlife Service (USFWS), in consultation on the 1995 specifications, concluded that groundfish operations will not jeopardize the continued existence of the short-tailed albatross (letter, Rappoport to Pennoyer, February 7, 1995). None of the alternatives considered would be expected to affect threatened or endangered seabird species or their critical habitats in any manner or extent not already addressed under previous consultations.

None of the alternatives would modify the groundfish harvest thresholds that have been established for reinitiating section 7 consultation. However, Alternatives 1 and 3 would be expected to best protect the integrity of observer data upon which the management of the groundfish fisheries are based.

Fishing activities conducted under any of the alternatives would not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on this fishery.

2.3 Impacts on Marine Mammals

Marine mammals not listed under the ESA that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

A list of marine mammal species and detailed discussion regarding life history and potential impacts of the 1995 groundfish fisheries of the BSAI and GOA on these species can be found in the EA prepared for the 1996 Total Allowable Catch Specifications for Groundfish (NMFS 1996b). None of the alternatives would be expected to adversely affect marine mammals.

2.4 Coastal Zone Management Act

Implementation of 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 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Conclusions or Finding of No Significant Impact

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

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

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

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

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

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

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

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in the effects described above. The RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

The analysis of the three alternatives is in terms of the potential impact on: (1) data integrity, (2) the total cost of the Observer Program, (3) the distribution of costs within the industry, and (4) the implementation schedule.

3.1 Expected differences among alternatives with respect to observer data integrity.

The Research Plan under Alternative 1 was designed to replace the pay-as-you-go Observer Plan under Alternative 2 because the Council identified changes that were essential to the integrity of the Observer Program. One of the primary changes concerned the business relationships between observer contractors and vessel and plant owners and operators. Under Alternative 2, vessel and plant owners and operators would negotiate directly with certified contractors for observer coverage. This gives rise to conflict-of-interest concerns and could result in business practices which could fail to ensure that observers are treated in a fair and equitable manner. This situation potentially jeopardizes the integrity of the data collected by observers. The management of the North Pacific fisheries largely is dependent on observer data. Therefore, recognizing that resolving the conflict-of-interest issue is of fundamental concern, the Council has indicated that any proposed alternative to the Research Plan should create and maintain an "arms-length" relationship between observer contractors and vessel and plant owners and operators. Alternative 2 option 1 would provide for an interim program with some improvements and would be in place until a more long-term solution could be developed.

Another related change identified by the Council concerned the necessity of ensuring fair and equitable salaries and working conditions for observers. The failure of a contractor in 1993 to pay observers resulted in a demoralizing effect on the observers. Without prudent measures to remedy these situations, one can expect the quality of observer performance to decrease, thereby negatively impacting data integrity. Data integrity depends on both the quality of the observers and the "arms-length" relationship between observer contractors and vessel and plant owners and operators.

Under Alternative 3, a single prime contractor would be responsible for assuring that shoreside processors and vessels were provided with the observers necessary to meet mandatory coverage requirements. This prime contractor would receive payments for coverage from industry members and would subcontract with observer contracting companies who would, in turn, hire and deploy observers as directed. Under this scheme, opportunities for fishing companies to negotiate with observer providers would be reduced and concerns regarding observer salaries, insurance, and working conditions could be addressed through contract stipulations.

Although interest has been expressed by the industry and existing observer contractors to contract out additional observer program functions such as checking observer data and debriefing, NMFS believes that it must maintain control of these functions to adequately monitor

observer operations and assess the quality of observer data. NMFS does not believe it appropriate at this time to contract out functions other than those directly associated with contracting for and deployment of observers, and ensuring that observers are provided with required safety and sampling equipment. In general, the Council concurred with this position.

A fundamental difference exists between Alternatives 1 and 3. Alternative 3 further removes the observer from NMFS. Instead of a direct contract between NMFS and observer contractors, NMFS would be required to go through a prime contractor to resolve issues or problems that arise at the observer or observer contractor level. The contractual arrangements between NMFS and the prime contractor under Alternative 3 would need to be carefully developed to ensure that NMFS's ability to identify and respond to observer or observer contractor issues is not compromised.

3.2 Expected differences among alternatives with respect to total costs of the Observer Program.

3.2.1 Cost components of the Observer Program.

The total cost of the Observer Program consists of several components that may differ among the three alternatives. The cost components are: (1) observer contractor costs, (2) an observer compensation package, (3) insurance coverage for observers, (4) charge per observer deployment day, (5) costs to address observer non-payment, and (6) how changes in observer coverage requirements could impact total cost.

Preliminary estimates of total annual costs of the Observer Program with and without the Research Plan were provided at the September 1995 Council meeting ("Revised Preliminary Estimates of Annual Costs, Exvessel Values, and the Fee Percentage for the Current Level of Observer Coverage and A Comparison of Costs With and Without the Research Plan", Item C-4(a), September 25, 1995). Annual costs can be projected using previous years' actual costs and by using estimates of cost per observer deployment day. Current estimates and reports of cost per observer deployment day are based on total costs paid by the vessel or plant owners and operators required to carry observers. Deployment days can be thought of as the days a contractor bills a client for observer services. This typically translates into the days that an observer is stationed onboard a vessel or at a shoreside plant.

The cost components listed above would tend to increase the total cost of the Observer Program compared to the current pay-as-you-go program. In addition, certain of the contractor costs would be shifted from NMFS to the industry. Qualitative or loose quantitative estimates of the cost effects of these components are presented below.

3.2.1.1 Observer contractor costs.

The observer contractor cost is the largest cost and the most difficult to estimate accurately. The cost per deployment day estimates provided at the September 1995 Council meeting were made

using cost data submitted by applicants for observer cost credits under the Research Plan fee program. With the submission of more cost data from observer contractors, the \$178 cost per observer deployment day in the groundfish fisheries has been revised to \$201 (Table 1). The best estimate of observer deployment days in 1995 is 30,000 (Observer Program). This would result in a revised estimate of \$6 million for groundfish observer contractor costs.

Under full implementation of the Research Plan (Alternative 1), it is not known how the direction or the magnitude of the contractor costs would change. The changes in incentives both for those who are required to have observers and for observer contractors would tend to increase the cost per day and the number of days. However, the increased flexibility available with the Research Plan would result in at least partially offsetting cost reductions (see Section 3.3).

Under a pay-as-you-go system (Alternative 2), competition among contractors and the desire of each vessel or plant to meet its coverage requirement at the lowest cost tend to keep the total observer cost at a minimum. Each contractor has a strong incentive to minimize the cost per observer day to attract business. Therefore, each contractor has a strong incentive to work closely with vessels and plants to schedule observer placement. Similarly, vessels and plants have a strong incentive to work closely with contractors both to ensure that observers will be available to meet the coverage requirements and to reduce the cost per day of deployment. Vessels and plants also have an incentive to minimize the number of observer days. This does not mean that some 30 percent coverage vessels will not pay for more than 30 percent coverage if it is in their interest to do so. For example, to ensure that they have at least 30 percent coverage, they may attempt to have a bit more coverage. Similarly, to avoid the cost of interrupting a trip to return an observer to port once the 30 percent coverage is reached, a vessel may choose to pay for the extra observer days. In some cases, the latter may result in vessels choosing to have close to 100 percent coverage. With the Research Plan (Alternative 1), the competitive request for proposals (RFP) process provides an incentive for contractors to have low costs per observer day and the decreased uncertainty for the winning contractors should allow them to reduce some of their costs. However, the contractors could have less of an incentive to minimize the number of observer deployment days; those who are required to have observer coverage would have an incentive to cooperate with the contractors to schedule observers no more than is required in the Research Plan regulations; and they would have a substantially reduced incentive to minimize the number of days they have an observer.

Under Alternative 2, certified observer contractors would be required to submit information to the Observer Program that would be used to: 1) Coordinate and conduct effective and efficient scheduling of observers for training, briefing and debriefing sessions; 2) maintain an observer deployment database; and 3) monitor the ongoing ability of a company to meet the requirements of a certified observer contractor. This information would include but is not limited to:

- (A) A list of prospective observers to be hired upon approval by the Regional Director and observer training/briefing registration;
- (B) Projected observer assignments;

- (C) Observer deployment/logistics reports;
- (D) Observer debriefing registration;
- (E) Certificate of insurance that verifies compliance with the insurance coverage recommendations of the Council's Insurance Technical Committee;
- (F) Notification that observers have passed a physical examination during the 12 months prior to deployment;
- (G) A copy of each type of signed and valid contract an observer contractor has with vessels and shoreside processors requiring observer services and with observers. Copies of contracts with specific entities requiring observer services or with specific observers also may be requested;
- (H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems submitted to the Observer Program Office within 24 hours.

The reports as well as the certification application and an appeal of suspension/decertification represent a new collection-of-information requirement¹ that is subject to the Paperwork Reduction Act (PRA). The cost of the new information collection would be borne by the contractor and could increase the cost per observer deployment day. The estimate of annual costs to an observer contractor provided in the PRA supporting statement was \$8327.50. Even though the information collection is new under PRA, observer contractors have been supplying NMFS with similar information for the past several years. Therefore, the noted costs may not represent an increase in current costs.

Under Alternative 3, the prime contractor would provide a variety of services. The cost of these services plus the cost of the services provided by the sub-contractors and observers would be included in the cost per observer deployment day. To a great extent, the prime contractor would perform services that currently are being provided by either NMFS or the observer contractors. To the extent that the prime contractor can provide such services at a lower cost, total program costs would be reduced. Conversely, if the prime contractor provides these services at a higher cost, the total cost of the program would increase. The cost of services the prime contractor would perform that would not be transferred from either NMFS or current contractors would also increase the total cost of the observer program. The desired cost comparison cannot be made until the prime contractor has been selected.

Associated with the change in the distribution of services under Alternatives 1 and 3, are some expected cost savings for the observer contractors that should result from the following: 1) an increased ability to plan for requests for observers, 2) decreased risk of non-payment or late payment, 3) economies of scale, and 4) economies of specialization. Such changes in business practices would decrease the average cost per deployment day for the contractors.

¹"Supporting Statement for OMB Clearance of a New Information Collection to Support an Interim Groundfish Observer Program" was prepared with the proposed rulemaking and includes annual cost and time burdens to observer contractors.

To take full advantage of the economies of scale and specialization under Alternatives 1 and 3, there probably would be a decrease in the number of contractors that would be used. Although over time this could decrease the competition among contractors and increase costs, that is not expected to happen. It appears that the barriers to entry for potential contractors are sufficiently low that the competition would not be decreased substantially.

The function of providing observer safety and sampling gear would be shifted from NMFS to observer contractors (Alternative 1) or the prime contractor (Alternative 3). The Observer Program's current observer gear inventory is valued at about \$395,000 with annual replacement and repair expenses of \$130,000 (Table 2). A capital expense of \$340,000-440,000 for 200 additional laptop computers would be required to fully implement a program to provide realtime data for management and assessment purposes, along with the annual computer maintenance costs of \$127,500-\$165,000 (for 250 laptops valued at \$425,000-550,000). Based on a projection of 30,000 observer deployment days (September 1995 Council report), observer gear and equipment and the one-time capital expense for laptop computers would cost approximately \$22-27 per observer deployment day (Table 3). In subsequent years without the capital expense for additional computers, the cost per observer deployment day would be approximately \$11-12. The estimated cost for laptop computers is based on acquisition costs. Under Alternative 3, the expectation is that a prime contractor may receive significant discounts for computer acquisition.

3.2.1.2 Observer compensation costs.

Under a pay-as-you-go system (Alternative 2), competition among observer contractors has reduced the overall compensation package offered to observers. This has decreased the integrity of observer data by making it more difficult to attract and retain highly qualified and motivated observers. Observer compensation would continue to be determined by individual observer contracting companies. Minimum insurance provisions would be required by regulation. Under Alternative 3, the prime contractor would be selected in part based on the adequacy of the observer compensation packages that are proposed. A compensation package could include a combination of an increase in pay per standard deployment day, overtime pay, and payment for some non-deployment days (i.e., training, briefing, debriefing, and travel days). In 1995, there were approximately 36,800 total observer employment days--4300 for training and briefing (11 percent), 30,000 for deployment (82 percent), and 2500 for debriefing (7 percent).

Under Alternatives 1 and 3, observer compensation (salaries, travel, reimbursable expenses, per diem) and insurance provisions would be addressed and adequately provided under contractual arrangements between NMFS and observer contractors (Alternative 1) or NMFS and a prime contractor (Alternative 3). The specifics of these provisions would be developed and standardized in the RFP process and NMFS' review of submitted proposals. Insurance provisions have been developed by the ITC, an ad hoc committee of the Council, and would be incorporated in the statement of work (SOW) and RFP documents supporting the competitive procurement process. Through the process of proposal review and the ensuing negotiations with the prime contractor, an adequate compensation package and salary schedule would occur.

It is estimated that on average groundfish observer contractors charged about \$200 per observer deployment day in 1995. On average, observers received \$83 per deployment day with the balance going to pay for travel, observer per diem during specific non-deployment days, and various other contractor costs (Table 1). In 1993, a number of observers were not paid for their services because their contractor company ceased operation (personal communication, Observer Program). Without knowing how the compensation package would change with the modified pay-as-you-go program, any estimate of the increase to the current cost of \$200 per deployment day is highly speculative. Therefore, no estimate has been made.

For purposes of discussion, part of the anticipated increase in cost can be calculated as the difference between what observers currently receive per standard deployment day and what is thought to be adequate pay per day. For example, if the current average pay is \$100 per day and \$120 is thought to be necessary to attract and retain adequately qualified and motivated observers, the cost increase would be at least \$20 per deployment day or \$0.6 million for 30,000 deployment days. In this strictly hypothetical example, the actual cost increase would be greater than that either if other components of the compensation package, such as payment to observers for non-deployment day, also increased or if other contractor costs increased as the result of an increase in observer pay per deployment day.

Historically, observers have provided their own raingear, gloves, glove liners, wristers, boots, and sleeping bags. The observer contractor under Alternative 2 and the prime contractor under Alternative 3, would provide these items at an annual cost of about \$60,000; this is two-thirds the cost of purchasing these items for the approximately 400 observers that are employed in a year and allows for items being used for more than one year (Table 3). With 30,000 deployment days per year, this would increase the cost per deployment day by about \$2.00.

An additional item of the compensation package might be increased transportation costs due to the trend of shorter fishing seasons that the Alaskan groundfish fisheries are experiencing. The relatively more frequent travel by observers to and from embark and disembark ports would tend to increase transportation costs.

3.2.1.3 Insurance coverage for observers.

Current observer insurance coverage costs are included in the cost per observer day estimates and typically represent 28 percent of salary costs (pers. comm., Observer Program). To date, the ITC has addressed the complex question of what the standardized observer insurance coverage requirements should be and what possible statutory changes may be required. It is possible that in the future, when the insurance coverage package has been standardized, the coverage needs could be reduced at a cost savings.

Currently, differences exist among the insurance packages provided for observers by the observer contractors. Some contractors provide packages that are similar to those recommended by the ITC, some provide more complete coverage, while others provide less complete coverage. The costs are passed on to the vessels and plants paying for observers, and ultimately to the

observers themselves (in the form of reduced salaries and/or benefits). Under either Alternative 2 or 3, it is estimated that the implementation of the base and additional insurance packages included in the SOW would increase the average cost per deployment day.

3.2.1.4 Equal charge per observer deployment day.

Under Alternative 3, the SOW would propose to have the same base rate charge per observer deployment day for all vessels and plants. A base rate charge would probably increase the cost per day at least during the first year of the new program. To charge a common rate, the prime contractor would have to estimate the total annual cost for the base observer services and the total number of observer days and then calculate the common base service cost per observer day by dividing the total cost by the number of days. To increase the probability that the common base charge per observer day is enough to cover the actual costs of the base services, the prime contractor would tend to adjust the estimate upward. If the resulting common base service charge per day more than covers the actual cost during the first year, the extra funds could be used to offset future discrepancies between the projected and actual base service cost per day. If this were done, a smaller adjustment could be made the next year. Although it is not known what upward adjustment would be made the first year, a 10 percent adjustment would not be unreasonable. If, for example, the cost of the base services was expected to be \$175 per deployment day for a particular year, this would increase the cost per observer deployment day by \$17.50 for that year. Although the base service has not been defined, it probably would not include either services with costs that differ by the embark and disembark port or extra services required to obtain an observer on short notice.

Charging the same price per day for base observer services for all vessels and plants regardless of the actual cost of providing each vessel and plant with observers raises the following issues:

1. The definition of "base observer services";
2. The incentives generated by this pricing option;
3. The ability of the prime contractor to determine what average price would have to be charged to assure that its total costs are covered; and
4. The extent to which this is a surcharge on some operations used to subsidize the cost for other operations.

Each of these related issues is discussed below.

1. The definition of "base observer services". It would be necessary to determine which services would be provided for the common price. The actual cost of providing an observer for a specific vessel or plant would depend on a number of factors including the following: 1) the amount of advance notice given to the prime contractor, 2) the embark and disembark location(s), 3) the length of the assignment, 4) the season, and 5) the

flexibility the prime contractor has with respect to the timing of the observer deployment. Basically, a decision would have to be made concerning which of these factors would be considered in setting the price that would be charged each vessel and plant. If none of these factors are taken into account, all vessels and plants would be charged the same price per observer deployment day. Conversely, if they all are taken into account, the price per observer deployment day would differ substantially among individual vessels and plants.

2. The incentives generated by this pricing option. If none of the factors are taken into account, the vessels and plants that use observers have much less of an incentive to consider how their actions affect the total cost of the observer program. For example, if the price does not reflect the extra cost of providing an observer at very short notice, a vessel or plant has less of an incentive to provide the advanced notice that would allow the prime contractor to provide observers at a lower cost. Similarly, if a vessel is not charged more when it selects a more expensive embark or disembark port, it would be more likely to do so.
3. The ability of the prime contractor to determine what average price would have to be charged to assure that its total costs are covered. The difficulty of estimating the standard price that would cover the prime contractor's actual costs increases as fewer factors that affect the actual cost of providing observers are considered. This is because there is then greater uncertainty about the difference between the price that will be charged a specific vessel or plant and the actual cost of providing an observer. As the difficulty of setting a safe price increases, the prime contractor would be expected to increase the standard price to decrease the probability that actual total cost would exceed its receipts.
4. The extent to which a common base price is a surcharge on some operations used to subsidize the cost for other operations. The Magnuson Act grants the Federal government only very limited authority to collect funds for fishery management purposes. It has been determined that the Magnuson Act does not provide the authority for the prime contractor to collect a surcharge from some vessels and plants to pay for observers used by other vessels and plants. It is not clear to what extent the differences in the actual costs of providing observers to different vessels and plants can be ignored in determining the pricing scheme that would be used.

3.2.1.5 Costs to address observer non-payment.

In 1993, under the old "pay-as-you-go" system (Alternative 2), a number of observers were not paid for their services because their contractor company ceased operation. The Research Plan (Alternative 1) addressed the issue of timely fee payments by requiring semi-annual processor permits in order to operate. If processors had not paid their Research Plan fee assessments, they would not be issued a processor permit. Under Alternative 2 option 1 (interim observer program), observer contractors would be required by regulation to provide observers' salary, benefits and personnel services in a timely manner. Under Alternative 3, the SOW expects the

prime contractor to address the issue of observer non-payment. This could be addressed in numerous ways---prepayment, issuance of bonds, etc. For example, if a prime contractor required prepayment for observer services, and if on average this results in payments that are made one month earlier, the cost to vessels and plants is roughly one month's interest on their total payments to the prime contractor. With an annual interest rate of 10 percent, the cost would be about 0.8 percent of their total payments. Therefore, this would increase the cost per observer deployment day by about \$1.67 based on the current cost per day of \$200. But, any additional costs to vessels and plants could be offset by cost savings realized by the prime contractor. Requiring prepayment or issuance of bonds to address observer non-payment could effectively decrease the prime contractor's administrative costs. This cost realization could be passed through to the vessels and plants that pay the prime contractor for observer services.

3.2.1.6 How changes in observer coverage requirements could impact total cost.

Alternative 1 provides the greatest flexibility to adjust observer coverage requirements from year to year or within a fishing season to address management concerns. The increased flexibility of the Research Plan is in terms of changing the levels of observer coverage for different types of harvesting and processing operations as well as changing the definition of coverage for operations with less than 100 percent coverage requirements. If that flexibility is used effectively, observer data that are at least as useful as the current data could be provided with fewer observer coverage days; and the observer scheduling problem and associated cost increases that could occur with the Research Plan would be reduced substantially. It clearly is not unreasonable to assume that this flexibility could result in cost decreases that more than offset the cost increases that could occur by reduced incentives to minimize the number of days an observer is retained. Under Alternative 1, observer coverage requirements are specified annually and levels of coverage would be dependent on the funds available to provide desired coverage.

The Research Plan also provides the authority to place observers onboard halibut vessels and crab vessels, unlike Alternatives 2 and 3. Individual vessels or processors would not pay additional costs associated with observer coverage in excess of their fee liability. However, without an amendment to section 313 of the Magnuson Act which authorizes the fee collection program to support the Research Plan, this alternative is limited in its ability to support significant increases in observer coverage that future management programs under consideration by the Council may require (e.g., groundfish Community Development Quota program or individual vessel quotas for groundfish).

Under Alternative 3, the specification of coverage levels directly affects costs to industry. All costs associated with prime and subcontractor services would be paid by vessel and plant owners required to carry observers. Incentives to reduce observer costs are incorporated in the RFP contractual arrangement between NMFS and observer contractors. The direct business relationship between subcontractor and vessel (in Alternative 2), which tended to drive costs down, would no longer exist. Similar to Alternative 2, cost-reduction incentives could occur in the prime contractor/subcontractor relationship. An incentive would exist for vessels to reduce

their observer coverage days and to cooperate with the contractors to assure that an adequate number of observers is available at a reasonable cost. With the exception of some cost differentials (for example, those implemented to encourage timely notification of coverage needs), each fishing industry participant should pay the same daily costs for observer services regardless of the grade of the observer or the specific contractor involved in providing the observer.

The level of observer coverage under Alternatives 2 and 3 is not limited by funding, although any increase in observer coverage would be borne directly by the vessels or processors required to comply with increased observer coverage requirements. Actual observer coverage requirements would be established in regulations, and regulatory amendments would be required to change these requirements. As a result, less flexibility is available under these two alternatives to change observer coverage to address management concerns. Although regulatory provisions for interim in-season adjustments to observer coverage could be employed, the in-season notice and comment procedure still could require up to several months to implement.

Because it is not known to what extent the flexibility under Alternative 1 would actually be used, the net effect on the total observer contractor cost is very difficult to predict. Any pay-as-you-go system (Alternatives 2 and 3) would require justifying the increased costs to the segment of the fleet where observer coverage levels may be increased. For small vessels, increased observer coverage levels may not be economically feasible under a pay-as-you-go plan (see 3.3 for further discussion).

At this time, it is very difficult to quantitatively evaluate cost projections for the various alternatives (Table 4). Alternatives 1 and 3 would utilize competitive procurement processes soliciting bidders to provide information regarding costs for services provided. NMFS and the Council can provide guidelines and the SOW can lay out required provisions but these in themselves do not provide quantitative information on cost projections or limits. The 1996 situation most closely resembles the old "pay-as-you-go" system (Alternative 2) which does not incorporate several necessary elements for any future program (e.g. improved observer compensation and insurance package, address observer non-payment, etc.). The predictability of annual costs for observer coverage is greater under a pay-as-you-go system than under the Research Plan fee system that is dependent upon exvessel value (i.e. fish prices) for generation of revenue. The cost per observer deployment day under Alternative 3 could fluctuate much less on a yearly basis than a fee based on exvessel value.

3.3 Expected differences among alternatives with respect to distribution of costs within the industry.

The EA/RIR for the Research Plan (Council, 1994) addressed the issue of cost distribution within the affected industry. A pay-as-you-go system of funding was viewed by many to be inequitable, because although all participants in the groundfish, halibut, and crab fisheries benefit from the groundfish and crab observer programs, only those with observer coverage requirements bear the cost; among those that bear this cost, the cost varies substantially in terms

of the exvessel value of their catch. Some operations would continue to pay no observer costs whereas some operations may pay as high as 4 to 8 percent of their exvessel value. The cost paid by an operation is not dependent on either the benefits it receives from the observer coverage or its ability to pay for observer coverage.

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

At its December 1995 meeting, the Council also discussed options to help defray costs to vessel owners who would pay an unreasonably high proportion of their gross catch value for direct observer coverage. Whereas some operations would continue to pay no observer costs, some may pay as high as 4 to 8 percent of their exvessel value. Options discussed were: a fleet-wide surcharge for observer coverage, observer pooling for vessels in this group, and adjustment of coverage levels for vessels in this group. Note, a fleet-wide surcharge for observer coverage is not possible under the Magnuson Act. Other than section 313 which authorizes fee collection under the Research Plan, the only provision for the establishment of fees is limited to charging fees to cover the administrative costs incurred in issuing specified permits (Magnuson Act, section 304(d)). Understanding the time constraints facing the development and implementation of an alternative program to replace the Research Plan, the Council did not recommend that NMFS incorporate any of these options in rulemaking for the replacement program. Rather, these options will be considered by an industry/agency work group for future consideration and therefore, are beyond the scope of the current analysis.

Observer Costs vs. Exvessel Value In 1995 the Research Plan fee assessment was calculated by multiplying exvessel value (fish weight x standard exvessel price) by an annually determined fee percentage. This fee was assessed to generate start-up funds for full implementation of the program in 1996. In addition to the fee, processors and vessel operators required to have observer coverage, paid observer contractors directly for observer services. Processors could apply for and receive credit for these costs against their billed fee assessments and vessel operators were exempt from their portion of the 1995 fee assessment. In this way, "double payment" was avoided. To illustrate the distribution of observer costs in the affected industry, billing data was used to compare a processor's fee assessment (i.e. their "observer costs" under the Research Plan) with their observer costs under a pay-as-you-go system (i.e. their 1995 observer cost credits). This relationship is graphically represented by plotting a processor's observer cost credits ("pay-as-you-go" costs) as a percent of exvessel value vs. exvessel value (Figure 1). Exvessel value as used here denotes Research Plan exvessel value only. It does not include increased value by participation in salmon fisheries, for instance, and any other harvest of fish in State waters. This additional value, where applicable, would reduce the "pay-as-you-go" costs as a percent of exvessel value. Research Plan exvessel value includes halibut, even

though there is no associated observer costs. The inclusion of halibut, therefore, acts to counter the reduction noted with the additional value of non-Research Plan fish.

Under the Research Plan, the processor portion of a catcher/processors' fee assessment was 2 percent of the exvessel value. For shoreside processors and motherships, the processor portion was 1 percent (vessel portion made up the other 1 percent). For all processors, the overall trend is an inverse relationship between the ratio of observer cost to standardized exvessel value and standardized exvessel value; i.e. as the exvessel value increases, the relative "pay-as-you-go" observer costs decrease. As stated earlier, widespread industry support was lacking after larger operations received bills for amounts much greater than their "pay-as-you-go" costs. Similar trends occurred for groundfish vessels having observer coverage costs. An inverse relationship exists between the ratio of a vessel's observer cost to standardized exvessel value and standardized exvessel value; i.e. as the exvessel value increases, the relative observer costs decrease (Figure 2). This holds true for vessels 60-124 ft and vessels greater than 124 ft. Table 5 illustrates, by processor type, the percent of billed processors whose observer coverage credits exceeded the processor's portion of their billed fee assessment. In other words, their "pay-as-you-go" observer costs were greater than their Research Plan fee. For groundfish-halibut catcher processors, 51 of 102 (50 percent) had observer coverage costs that exceeded their billed fee assessment (Figure 3). A similar outcome occurred for groundfish catcher vessels--47 percent of 60 to 124 ft groundfish catcher vessels paying for observer coverage had costs that exceeded the 1 percent vessel portion of the Research Plan fee. For groundfish catcher vessels over 124 ft, 57 percent had observer coverage costs exceeding the 1 percent vessel portion (Figure 4).

Observer costs are distributed differently under the three alternatives. Under Alternative 1, observer costs are based on the use of the fishery resource, as measured by exvessel value. Fishery data collected by observers is used for resource management which is beneficial to all industry participants. Under Alternatives 2 and 3, observer costs are based on whether or not an observer is onboard and on overall coverage needs. Higher costs are borne by those vessels and plants that require higher levels of coverage.

3.4 Expected differences among alternatives with respect to implementation schedule.

The Council's request to repeal the Research Plan and cease the administrative process necessary to fully implement the Research Plan by 1996 has stalemated agency efforts to pursue the status quo alternative. In response to the Council's request, NMFS has fully refunded Research Plan processors the amounts they paid for 1995 Research Plan fees as well as earned interest (61 FR 13782, March 28, 1996). 331 refund checks were issued May 28, 1996, totalling \$5,802,279.12 (\$5,647,311.50 principal, \$154,967.62 interest). The refund of 1995 fees does not eliminate NMFS' ability to collect fees under the Research Plan in the future. A decision by the Secretary of Commerce to repeal NMFS' fee collection authority would be required for such an act.

Given that the refunded fees originally were collected to provide start-up funding for full implementation of the Research Plan in 1996, a reversal of the Council's action on the Research Plan in support of Alternative 1 would require that start-up funding again be collected and a

competitive procurement process be reinitiated to award contracts to companies providing observer services. At best, this process would require at least a year to complete, after which the Research Plan could be fully implemented. Given this schedule, Alternative 1 likely could not be fully implemented until 1998.

A competitive procurement process also would be required under Alternative 3 to obtain a prime contractor. Based on input from the NMFS Office of Policy and Planning, and General Counsel from NOAA and the Department of Commerce, NMFS has determined that a competitive procurement process would best ensure accountability from the prime contractor, protect the interests of the agency and the Council, and provide free and open competition for a significant business opportunity. As part of this process, NMFS would draft a SOW and RFP and solicit responses from interested parties. All prospective bidders would be treated in the same manner and none would receive preferential consideration. Before preparing an RFP, NMFS would schedule a public meeting for prospective bidders, and solicit comments and suggestions concerning the statement of work from all interested parties. This procurement process would be expected to take approximately one year and additional time may be required for the prime contractor to issue subcontracts with companies providing observer services.

At its April 1996 meeting, the Council adopted Alternative 2 option 1 as its preferred alternative. Because current observer coverage requirements expire December 31, 1996, the Council adopted an alternative that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The interim program would remain effective through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

Table 1. Observer compensation costs.

Salaries.

<u>Year</u>	<u>Monthly \$ salary range</u>	<u>Daily \$ salary range¹</u>
1990-94	2400 - 3000	80 - 100
1995	2150 - 2800	72 - 93
1996	2200 - 3000	73 - 100

¹Based on 30 days per month; figures from Observer Program's communications with observer contractor(s).

<u>Year</u>	<u>Total cost/observer deployment day²</u>	<u>Salary component³</u>	<u>Non-salary component⁴</u>
1994	182	90	92
1995	201	83	118

²The 1994 figure is a cost estimate from the September 1994 Council meeting report "North Pacific Fisheries Observer (Research) Plan: Establishing the Fee Percentage and Standard Exvessel Prices for 1995". Estimates of cost per day were based on a survey of observer contractors conducted in June, 1994 by the Observer Program. The survey asked for daily rates (what they charge their clients) and airline costs (round-trip Seattle-Dutch Harbor & Seattle-Kodiak). The 1995 figure is based on actual cost data submitted by processors and observer contractors for observer cost credits under the Research Plan fee program.

³Average of daily \$ salary range above.

⁴Non-salary component consists of expenses for travel, per diem, reimbursables, and insurance.

Table 2. Itemized list of gear including cost, turnover rate, current inventory, and value.

Category	Item	Cost ¹	Turnover Rate ²	Stock ³	Value
Instruction Material	ADF&G Map	\$ 0.70	1	190	\$ 33.00
	Binder, Black 2"	2.35	6	445	1,045.75
	Binder, Blue 1"	2.24	6	175	392.00
	Book, Wynne	15.00	6	130	1,950.00
	Book, Eschmeyer	13.95	6	233	3,250.35
	Book, Hart	25.00	6	34	850.00
	Book, Leatherwood	12.95	6	107	1,385.65
	Book, Miller and Lea	5.00	6	15	75.00
	Forms, 90 Day Deployment	11.40	1	386	4,400.40
	Logbook	4.88	1	39	190.32
	Manual, Species ID	6.24	2 ½	245	1,528.80
	Manual, Training	15.18	1 ½	200	3,036.00
	TOTAL		114.89		
Safety Equipment	Anti-exposure Suit ⁴	\$ 185.86	10	123	\$ 22,860.78
	Ear Cup (plant observers)	10.10	2	11	111.10
	Ear Plugs (3 Pair)	0.96	1	1065	1,022.40
	Flashlight	7.00	2	237	1,659.00
	Hardhat/With Ratchet	9.20	6	212	1,950.40
	Immersion Suit, Universal	241.58	20	271	65,468.18
	Lifevest	35.50	6	431	15,300.50
	Safety Glasses/With Cord	6.05	3	67	405.35
	Strobe Light	31.65	4	209	6,614.85
	Lithium Battery	37.29	10	76	2,283.04
Whistle	1.97	4	243	487.71	
TOTAL		567.16			118,163.31

Data	Batteries, AA (4ea)	\$	0.98	1	998	\$	978.04
Recording	Calculator		11.99	2	220		2,637.80
Supplies	Clipboards		1.43	3	447		639.21
	Eraser Refills,		0.25	1 ½	235		58.75
	Mechanical Eraser Stick		0.76	1 ½	331		251.56
	Eraser, Drawing		0.19	1 ½	196		37.24
	Hole Reinforcements		0.46	1	378		173.88
	Lead, .07hb		0.24	1	436		104.64
	Mechanical Pencil 7mm		1.98	1	318		629.64
	Paperclips		1.00	1	234		234.00
	Pen, Ball Point (4ea)		1.88	1	860		1,616.80
	Pencil #2 (3ea)		0.30	1	1537		461.10
	Pencil Sharpener		0.59	2	141		83.19
	Pencil, Drawing, 3b (3ea)		1.64	1	869		1,425.16
	Ring, 1"		0.05	1	225		11.25
	Ring, 2" (3ea)		0.39	1	825		321.75
	Rubber Bands		1.00	1	223		223.00
	Ruler		0.28	2 ½	261		73.08
	Tabs		0.40	1	143		57.20
	Tape, Scotch		0.37	1	225		83.25
	Wallet Envelope, Legal		0.87	2	215		187.05
	TOTAL		27.31				10,287.59

Table 2. continued.

Category	Item	Cost ¹	Turnover Rate ²	Stock ³	Value
Sampling Equipment	Bags, Tags, Various	\$ 2.50	1	5445	\$ 13,612.50
	Basket Lid	16.00	6-8	250	4,000.00
	Basket, Standard Sampling	68.00	4	541	36,788.00
	Basket, with Castors	86.00	4	204	17,544.00
	Dividers	4.04	16	92	371.68
	Fish Gaff	9.75	2 ½	224	2,184.00
	Forceps	2.40	2	206	494.40
	Knee Pads (longline obs)	28.05	2	34	953.70
	Knife, Finger Grip	1.00	1 ½	215	215.00
	Knife, Special Project	11.95	4	81	967.95
	Knife, With Sheath	13.95	2	206	2,873.70
	Leg Wrap Bands	0.23	1	175	40.25
	Length Measuring Board	38.71	8	187	7,238.77
	Lubricant Oil with Bottle	2.82	1	238	671.16
	Otolith Vials, 100/Box	36.28	1	369	13,387.32
	Plastic Bags (10 ea)	2.10	1	1475	3,097.50
	Plastic Form, Crab Meas.	4.40	2	75	330.00
	Plastic Form, Length Freq	4.40	2	796	3,502.40
	Plastic Form, Otolith	4.40	2	75	330.00
	Plastic Form, Samp. Data	0.42	2	586	246.12
	Rope, 20 Ft	3.35	1 ½	251	840.85
	Scale Envelopes	2.00	1 ½	5425	10,850.00
	Scale Hanger	3.10	4	180	558.00
	Scale Hook	3.42	4	767	2,623.14
	Scale, 12.5 Kg	41.25	4	372 ⁵	15,345.00
	Scale, 2 Kg	35.25	4	343 ⁵	12,090.75
	Scale, 50 Kg	110.00	4	487 ⁵	53,570.00
	Scalpel Blades (10 Ea)	5.10	1	3750	19,125.00
	Scalpel Handle	6.83	1 ½	461	3,148.63
	Scouring Powder	0.64	1	395	252.80
	Sponge W/Scrubber	0.50	1	435	217.50
	Tape Measure, 2m	4.33	4	307	1,329.31
	Tape Measure, 15m	14.67	4	192	2,816.64
	Tape Measure, 30m	16.95	4	51	864.45
Thumbcounter	8.37	1 ½	411	3,440.07	
Twine	0.10	1	300	30.00	
Vial Holder	5.00	10	75	375.00	
Whetstone	2.30	8	150	345.00	
TOTAL		593.61 ⁶			248,010.59
GRAND TOTAL		1,302.97			394,698.76

Table 2. continued

- ¹ Cost of gear issued to each observer.
- ² Total number of trips a piece of equipment is expected to complete before replacement is necessary. Most of the equipment makes 2 trips/year.
- ³ As of February, 1996.
- ⁴ About half of the observers deployed take anti-exposure suits to sea. They are issued primarily to observers on longline and catcher vessels.
- ⁵ A large inventory of scales is maintained because they may be held as evidence in enforcement cases. At any one time there are between 75-100 scales held for enforcement cases. At present 70 of the 50 kg in our inventory are awaiting major maintenance.
- ⁶ The value of the sampling equipment is dependant on the type of tape measure the observer is issued. The value given here is an average.

Notes:

1. The prime contractor (Alternative 3) or observer contractor (Alternative 2) would be responsible for providing observers with raingear, gloves and glove liners, wristers, boots, and sleeping bags. The estimated cost of this equipment is \$220 per observer.
2. The Observer Program is developing a program to provide realtime data for management and assessment purposes. Full implementation of this program is expected to require 250 laptop computers. The program currently has an inventory of 50 laptops computers, valued at \$110,000.
3. The cost of replacing and repairing gear was approximately \$130,000 in FY95. Of this approximately \$7,500 was spent on repairing gear and \$122,500 was spent on replacing gear.

Table 3. Observer gear and equipment costs.

<u>Item</u>	<u>Annual \$ expense</u>	<u>\$ cost/observer deployment day¹</u>
Gear replacement and repair	130,000	4.33
Raingear & misc. gear ²	60,000	2.00
Capital expense of 200 laptops ³	340,000- 440,000	11.33 - 14.67
Computer maintenance ⁴	127,500- 165,000	4.25 - 5.50
Total cost for initial year	657,500- 795,000	21.92 - 26.50
Total cost for subsequent years	317,500- 355,000	10.58 - 11.83

¹Cost/observer deployment day is based on 30,000 groundfish observer deployment days per year.

²See Table 2, Note #1--raingear, gloves and glove liners, wristers, boots, and sleeping bags.

³The Observer Program currently has an inventory of 50 laptop computers, valued at \$110,000 (\$2200/laptop). A total of 250 is required for full implementation of a program to provide realtime data for management and assessment purposes. Additional laptop computers could probably be purchased at \$1700-\$2200/laptop computer.

⁴Annual computer maintenance expenses are projected to be 30 percent of the total computer inventory (\$425,000 -\$550,000). This value is similar to the annual gear replacement and repair expense which is 33 percent of the total gear inventory.

Table 4. Qualitative summary of potential total cost changes under Alternatives 1 and 3.

<u>Cost component</u>	<u>Alternative 1--Research Plan</u>	<u>Alternative 3--Modified pay-as-you-go</u>
<i>Observer contractor costs</i>		
* Administrative costs to provide observer services	Costs & services limited to agency funding &/or funding from Research Plan fee	prime contractor administrative costs transferred to industry
* Gear, replacement & repair	pass through contractors to industry	pass through prime contractor to industry
* Savings to contractors (those providing observers)	?	?
<i>Observer compensation costs</i>		
* Salary issues	increased costs to industry	increased costs to industry
<i>Standardized insurance coverage</i>	increased costs to industry	increased costs to industry
<i>Equal charge per observer deployment day</i>	NA; user-fee based program	could increase costs to industry for at least the first year
<i>Observer non-payment</i>	permit issuance based on fee payment	could increase cost to industry relative to the Research Plan
<i>Impacts of changes in observer coverage requirements on cost</i>	limited to 2% fee cap (or a supplemental program authorized by a Mag. Act amd.)	additional costs borne by industry

Table 5. Percent of billed processors whose observer coverage credits exceeded their processor's portion of their billed fee assessment (from "North Pacific Fisheries Research Plan Fee Collection System: Status Report on Fee Assessment Billings", September 21, 1995, Agenda C-4(a) item).

<u>Type of Processor</u>	<u>% Exceeding Billed Fee Assessment</u>
groundfish/halibut catcher/processors	50%
groundfish/halibut shoreside and mothership	35%
crab catcher/processors	17%
crab floating processors	0%

These percentages are based on 1995 figures when the Research Plan fee percentage was 2 percent. The percentages here would vary according to numerous factors, such as, fee percentage and standardized exvessel prices.

Figure 1. from "North Pacific Fisheries Research Plan Fee Collection System: Status Report on Fee Assessment Billings", September 21, 1995, September 1995 Council meeting.

Figure 2. from "Revised preliminary estimates of annual costs, exvessel values, and the fee percentage for the current level of observer coverage and a comparison of costs with and without the Research Plan", Item C-4(a), September 25, 1995, September 1995 Council meeting.

Figure 3. from "North Pacific Fisheries Research Plan Fee Collection System: Status Report on Fee Assessment Billings", September 21, 1995, September 1995 Council meeting.

Figure 4. from "Revised preliminary estimates of annual costs, exvessel values, and the fee percentage for the current level of observer coverage and a comparison of costs with and without the Research Plan", Item C-4(a), September 25, 1995, September 1995 Council meeting.

4.0 FINAL REGULATORY FLEXIBILITY ANALYSIS

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

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of \$2,000,000 as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. A "substantial number" of small entities would generally be 20% of the total universe of small entities affected by the regulation. A regulation would have a "significant impact" on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent, or resulted in compliance costs for small entities that are at least 10 percent higher than compliance costs as a percent of sales for large entities.

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

- (1) a description and estimate of the number of small entities and total number of entities in a particular affected sector, and total number of small entities affected; and
- (2) analysis of economic impact on small entities, including direct and indirect compliance costs, burden of completing paperwork or recordkeeping requirements, effect on the competitive position of small entities, effect on the small entity's cashflow and liquidity, and ability of small entities to remain in the market.

4.1 Economic Impact on Small Entities

Most of the catcher vessels participating in the groundfish fisheries off Alaska and required to carry observers (i.e., vessels over 60 ft LOA) meet the definition of a small entity under the RFA. Any increase in the cost of observer coverage under any of the alternatives would affect these catcher vessels. For individual vessels, the impact increases as the percentage of observer costs relative to total exvessel value revenue of catch increases. In 1995, about 280 catcher vessels carried observers (data from Observer Program Office). Based on information presented

by NMFS to the Council at its September 1995 meeting², about one half of the catcher vessels equal to or greater than 60 ft LOA but less than 125 ft LOA currently pay observer costs that are equal to or less than 1 percent of the exvessel value of catch. About 20 percent of these vessels fishing incur observer costs that range from 2 to almost 8 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. Under full implementation of the Research Plan (Alternative 1), catcher vessel observer costs would not be expected to exceed 1 percent of the exvessel value of catch because of the 2 percent cap on the Research Plan fee liability, of which processors would pay half. Under Alternatives 2 and 3, however, no cap would be implemented for observer costs and catcher vessels that pay 2 percent or higher of their exvessel value in observer costs would continue to do so. Furthermore, this impact could increase under Alternative 3 to the extent that the cost for observer coverage increased for the reasons discussed above in Section 3.

For these reasons, Alternatives 2 and 3 could result in a significant economic impact on a substantial number of small entities for purposes of the RFA. Efforts to minimize potential economic impacts on small entities include reduced or absent observer coverage requirements on small entities that effectively reduces or removes the cost burden of observer coverage. The Research Plan (Alternative 1) represents an alternative which could minimize the economic impact on some small entities. But for reasons explained elsewhere (61 FR 13782, March 28, 1996; 61 FR 36702, July 12, 1996; 61 FR 40380, August 2, 1996), the Research Plan is not the Council's or a vast majority of the industry's preferred alternative. Alternative 2 option 1 (preferred alternative) represents the least restrictive alternative to small entities that still accomplishes the stated goals and objectives.

5.0 SUMMARY AND CONCLUSIONS

At its December 1995 meeting, the Council recommended that the Research Plan be repealed by the beginning of 1997. At the same meeting, the Council directed that a new observer plan be developed for final Council action at its April 1996 meeting that would supersede the Research Plan. Under this new plan, fishing operations required to obtain observers would continue to pay coverage costs, but payment would be made to a Prime Contractor. The Prime Contractor would enter into subcontracts with observer companies and direct them to respond to industry requests for observers. Payments received by the Prime Contractor would be used to cover administrative costs and pay subcontractors for providing observer services. NMFS would enter into a no-cost contractual arrangement with the Prime Contractor and would direct the Prime Contractor's

² A September 1995 report prepared by NMFS for presentation to the Council titled "Revised Preliminary Estimates of Annual Costs, Exvessel Values, and the Fee Percentage for the Current Level of Observer Coverage and A Comparison of Costs With and Without the Research Plan."

activities. NMFS would maintain functions necessary for the management of observer data, including debriefing. Briefing and training of observers would be carried out by NMFS staff and certified trainers at the University of Alaska Anchorage Observer Training Center. This Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) addresses alternatives for an Observer Program for the BSAI and GOA groundfish fisheries to replace the Research Plan.

At the April 1996 Council meeting, NMFS reported that as a result of its analysis of alternative measures to the Research Plan, it did not anticipate the feasibility of developing and implementing an alternative program prior to December 31, 1996 when the observer coverage requirements extended under Amendment 1 to the Research Plan are scheduled to expire. To avoid any hiatus in groundfish observer coverage requirements, the Council recommended the adoption of an interim groundfish observer program that would provide authority for mandatory groundfish observer coverage requirements beyond 1996. The interim groundfish observer program would extend the 1996 program and would incorporate improvements recommended by NMFS. The interim groundfish observer program would remain effective until December 31, 1997, or until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer working conditions, and other concerns raised by the Council's Observer Advisory Committee is adopted and implemented by NMFS, whichever comes first. The Council may extend the interim groundfish observer program until a long-term observer program that addresses the concerns that gave rise to the Research Plan is implemented.

The alternatives for an Observer Program are described in Section 2 of this document.

The administrative record developed by the Council and NMFS during the past several years indicates that Alternative 2 (the pay-as-you-go program prior to the Research Plan) would be unacceptable for the long-term because it fails to address the issues that give rise to concerns about the integrity of observer data used to manage the North Pacific groundfish fisheries. Alternative 2 would be acceptable on an interim basis only until a long-term program that addresses the concerns that gave rise to the Research Plan can be implemented. Alternative 1 (Research Plan) and Alternative 3 (the modified pay-as-you-go program using a Prime Contractor as an interface between persons required to obtain observer services and those who provide those services) both address concerns about observer data integrity, although Alternative 3 further removes the observer from NMFS. Instead of a direct contract between NMFS and observer contractors, NMFS would be required to go through a prime contractor to resolve issues or problems that arise at the observer or observer contractor level. The contractual arrangements between NMFS and the prime contractor under Alternative 3 would need to be carefully developed to ensure that NMFS's ability to identify and respond to observer or observer contractor issues is not compromised.

The total cost of the Observer Program consists of several components that may differ among the three alternatives. The cost components are: (1) observer contractor costs, (2) an observer compensation package, (3) insurance coverage for observers, (4) charge per observer

deployment day, (5) costs to address observer non-payment, and (6) how changes in observer coverage requirements could impact total cost. These cost components under Alternatives 1 and 3 would tend to increase the total cost of the Observer Program compared to the pay-as-you-go program under Alternative 2. In addition, certain of the contractor costs would be shifted from NMFS to the industry. Qualitative or loose quantitative estimates of the cost effects of these components are presented in the analyses and qualitatively summarized in Table 5.

A significant redistribution of observer costs occurs under Alternative 1. Observer costs are based on the use of the fishery resource, as measured by exvessel value. Fishery data collected by observers is used for resource management which is beneficial to all industry participants. Under Alternatives 2 and 3, observer costs are based on whether or not an observer is onboard and on overall coverage needs. Higher costs are borne by those vessels and plants that require higher levels of coverage. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value revenue of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60 ft LOA but less than 125 ft LOA currently pay observer costs that are equal to or less than 1 percent of the exvessel value of catch. About 20 percent of these vessels fishing incur observer costs that range from 2 to almost 8 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. Under full implementation of the Research Plan (Alternative 1), catcher vessel observer costs would not be expected to exceed 1 percent of the exvessel value of catch because of the 2 percent cap on the Research Plan fee liability, of which processors would pay half. Under Alternatives 2 and 3, however, no cap would be implemented for observer costs and catcher vessels that pay 2 percent or higher of their exvessel value in observer costs would continue to do so. Furthermore, this impact could increase under Alternative 3 to the extent that the cost for observer coverage increased. For these reasons, Alternatives 2 and 3 could result in a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

None of the alternatives would result in a "significant regulatory action" as defined in E.O. 12866.

None of the alternatives are likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

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