

**Joint Meeting
Alaska Board of Fisheries
and
North Pacific Fishery Management Council
January 30, 1996**

TAB 2: RESEARCH (OBSERVER) PLAN UPDATE

- a. Research Plan Update**
- b. NMFS News Release**
- c. Alaska Board of Fisheries Notice on Observer Coverage for the Dutch Harbor Brown King Crab Fisheries**

RESEARCH (OBSERVER) PLAN UPDATE

At the December 1995 meeting, the Council voted to repeal the North Pacific Fisheries Research Plan (Research Plan), and to develop a modified pay-as-you-go observer program utilizing a third party 'umbrella' organization as an interface between the fishing/processing industry and the private contracting companies providing observers. The Research Plan would have provided for an across-the-board fee on landed catch of groundfish and crab (up to 2% of exvessel value) to fund the placement of observers in both the groundfish and crab fisheries. Because the plan has been repealed, fees collected in 1995 will be refunded, and groundfish observer coverage in 1996 will be based on existing requirements by vessel size, paid for directly by those operations required to carry observers. For the crab fisheries, the repeal of the Research Plan essentially means that crab observer requirements revert to a Category III measure under the FMP and will be set by the Board of Fisheries, independent of groundfish coverage considerations.

The Council's decision to pursue an alternative to the Research Plan was based on several months of discussion augmented by industry input and close scrutiny of the alternatives by the Observer Oversight Committee (OOC). Attached is a summary comparison, from the OOC, of the Research Plan versus a modified pay-as-you-go plan. Among the concerns expressed by the Council with regard to the Research Plan were: (1) the fee system imposed relatively high costs to some fishing and processing sectors, (2) the fee collection and bookkeeping process was extremely burdensome, to both the agency and processors, (3) the industry was extremely concerned about the prospects of a 'Supplemental', pay-as-you-go program, in addition to the fee (which could occur if observer requirements, above and beyond those covered by the fee, were deemed necessary for either groundfish or crab), and (4) a modified pay-as-you-go program provides more planning certainty for fishermen and processors, while allowing for potentially greater flexibility in the management of the observer program.

Council and agency staff will be working to bring a revised Observer Program, for groundfish, to the Council for consideration and action at the April 1996 meeting in Anchorage. We will also be looking at options for addressing the relatively high cost (as a percentage of gross groundfish revenues) of direct observer coverage for some groundfish vessels currently in the '30% coverage' category. It is still the desire of the industry to work toward a single, integrated observer program for both groundfish and crab fisheries. Part of the Council's action this past December included a request to ADF&G to work with the Board of Fisheries in examining how the shellfish observer program might be integrated into the newly proposed program, by which observers would be obtained through a third party, umbrella organization. This would provide the industry with a single source from which to obtain all their observer coverage. An additional aspect of the Council's action on this issue has to do with ADF&G funding for the shellfish program which was to be covered by the Research Plan fee. Approximately \$500,000, which would have been collected under the fee and earmarked to cover operational expenses of ADF&G, will now be unavailable.

Finally, while we are on the issue of observer coverage, the Council would like some discussion of how the State of Alaska intends to deal with observer coverage for vessels fishing in State-managed groundfish fisheries, such as PWS pollock or Pacific cod fisheries which may be allowed in State waters.

Summary Comparison of Observer Program Alternatives by OOC (10/27/95)

PART I <i>Major Tasks:</i>	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
1 • Overall timing	January 1997 implementation	January 1997 possible, depending on whether additional system development is required.	Neutral
2 • Procurement & management of subcontracts with companies providing observers	NMFS through RFP process (only if Council takes action at December 1995 meeting).	Third Party Contractor (selected through RFP or sole source) selects from NMFS/ADFG certified contractors	Third party more flexible, particularly should non-performance arise during contract period.
3 • Assurance that NMFS/ADFG observer & observer contractor standards are met	NMFS/ADFG	Third Party Contractor	Neutral
4 • Oversight of observer communications, logistics & deployment	NMFS/ADFG/observer company	Third Party Contractor/Subcontractor (umbrella group assigns a subcontractor to a vessel/plant). NMFS/ADFG retain some communication functions.	Neutral
5 • Provide sampling/safety gear	Contractor/subcontractor	Subcontractor	Future procurements, upgrade, and maintenance more economical under third party management
6 • Collection of payments directly from vessels and plants	NMFS via across-the-board fee program	Third Party Contractor via up front payment (could incorporate mechanism for standardized observer cost <u>within</u> major fishery subcomponents).	Pre-payment requirements may impose burden on industry under third party system. Under Research Plan, the fee collection process is very burdensome to processors and NMFS.
7 • Payment to subcontractors for observer services	NMFS	Third Party Contractor pay subcontractor who then pays observer.	Neutral

PART I (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
8	<ul style="list-style-type: none"> • Submit timely and accurate observer data to NMFS/ADFG 	Subcontractor for groundfish (NMFS), observer for crab (ADFG).	Third Party Contractor/Observer Neutral
9	<ul style="list-style-type: none"> • Management/Use of Observer Data 	NMFS/ADFG	NMFS/ADFG Neutral
10	<ul style="list-style-type: none"> • Training/Briefing 	NMFS/ADFG/OTC	NMFS/ADFG/OTC Neutral
11	<ul style="list-style-type: none"> • Debriefing 	NMFS/ADFG	NMFS/ADFG Neutral
12	<ul style="list-style-type: none"> • Initial data quality reviews 	Contractor	Third party contractor/subcontractor/ADFG Neutral
<p>PART II</p> <p><i>Major Issue Areas</i></p>			
13	<i>Observer Insurance</i>	Specified insurance minimums included in RFP.	Same minimums specified under this program. Neutral
14	<i>Observer Compensation (\$)</i>	At this time, no specified salary but overall observer compensation package is key component in evaluating contractor bids. Includes provision for minimum levels of prior observers. <u>Could</u> stipulate minimum or range of salaries.	Includes provision for maintaining minimum level of prior observers; Overall compensation reflected in each subcontractor's bid. <u>Could</u> stipulate minimum or range of salaries. Neutral - could be done the same under either system.
15	<i>Impacts to Current Contracting Companies</i>	Would utilize 3 contractors; 2 existing companies will cease, under current RFP. Could be modified in future.	Third party contractor would be responsible for selection of certified subcontractors. Could utilize 1, 5, or more. Third party alternative could provide opportunity for all existing contractors to continue, but does not necessarily guarantee it.

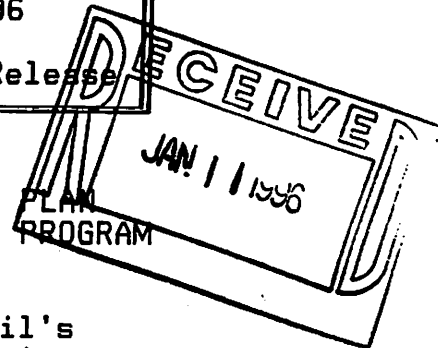
PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
16 <i>Conflict of Interest Concerns</i>	Establishes "arms length" relationship; government is the client, not the fishing operation. Vessel still works directly with one company for at least a year, but NMFS assigns company to vessel. Vessel has no choice.	Establishes "arms length" relationship; third party umbrella organization is the client. Vessel could work with multiple contractors, as assigned by prime contractor.	Neutral - but because vessels may be reassigned for shorter periods, third party system may further diminish conflict of interest problems between vessels and specific contractors (more flexibility with regard to subcontract process); both systems sever direct financial relationship.
17 <i>Review of companies providing observers</i>	Review process built into RFP	Periodic review of third party contractor by NMFS. Review of subcontractor performance by Contractor/NMFS/ ADFG. Perceived enhanced ability to regulate subcontractors.	Remedial action may be quicker/easier under third party system, though third party may be more vulnerable to liability.
18 <i>Determination of Coverage Levels</i>	Annual specification process with OOC, Council & ADF&G. Changes in coverages by fishery or vessel category may be less controversial, however, because it will not directly redistribute costs to fishing operations (within 2% cap).	Coverage levels set in regulations by Council/BOF through regulatory amendment process. Changes will redistribute costs to fishing operations, and thus will be more controversial.	Currently, advantage lies with Research Plan's ability to efficiently redistribute coverage where most appropriate without directly raising costs to specific vessels.
19 <i>Flexibility (annually & in-season) to fine tune coverage levels</i>	There is an annual process to facilitate changes each year. Flexibility to assign coverages in-season (will not directly affect each fishing operation). Research Plan allows for 'fleet coverage' as opposed to vessel coverage. Ability to regulate when a vessel takes its coverage.	Less flexible annually due to regulatory process, though it is expected that a more flexible spec-type process would be incorporated (making it function similar to Research Plan). Little or no <u>in-season</u> flexibility. Need to develop ability to regulate when a vessel takes coverage. Change by Council process will redistribute costs to fishing operations.	Initially, advantage lies with Research Plan; over time, it is expected to be the same, though implementation under third party system may be more difficult due to direct cost implications.

PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
20 <i>Cost Projections (assuming current coverage levels) ★</i>	Industry Cost - \$6.6 million + \$.5 million + \$.3 million = \$7.4 million <u>total cost to industry</u> . (Assumes NMFS would continue to pay \$2.2 million. \$.5 million of ADF&G and \$.3 million in fee collection process would now be paid by industry). Fee percent would be 1.1%. (Total cost is \$9.6 million)	Industry Cost - \$6.6 million in observer costs, plus third party overhead (@ 8% overhead, <u>total cost to industry would be \$7.1 million</u>). Assumes NMFS & ADF&G continue to pay \$2.2 and \$.5 million respectively. (Total cost is \$9.8 million)	Neutral
21 <i>Distributional Cost Incidence</i>	All vessels/processors pay across-the-board fee on landings. For large operations, this will result in higher costs than status quo. For mid-size, cost will likely be lower. Supplemental Program would add to these costs.	Cost based on whether an operation is required to carry observer(s). Some operations will continue to pay no observer costs. Some operations may pay as high as 4-8% of their exvessel Research Plan fisheries.	See minutes for discussion points
22 <i>Annual cost issues</i>	Fluctuates annually depending on fish prices, etc.	Could change annually, but operations have knowledge of fixed cost per day.	More certainty in planning under Third Party system
★ Taken from September 25, 1995 NMFS report.			

PART II (continued)	Research Plan	Third Party "Pay-as-you-go"	Advantages or Disadvantages of either program
23 <i>Supplemental Coverage Considerations</i>	2% cap may require additional payments via "pay-as-you-go" program for coverage above and beyond normal data collection. Strictly defining activities covered by fee may keep fee percentage down, but supplemental payments for special programs would increase costs for these participants. Some crab fisheries would be outside Research Plan.	N/A. All required coverage determined by Council/BOF process and borne directly by those required to carry observers.	Under third party system, supplemental program is moot - it does not exist. Third party program guarantees arms length relationship for all coverage. Research Plan would likely require supplemental pay-as-you-go, thereby creating a "blend" program.
24 <i>Budget Review and Oversight</i>	Annual process in place for review of agency costs, observer costs, etc. OOC, then Council review and set fee percentage based on available funds.	Need to establish annual review of costs and audits.	Neutral
25 <i>Cost-reduction Incentives</i>	Flexibility to adjust coverage levels may reduce costs. May be offset by reduced incentives to minimize number of days an observer is retained, though this tendency is addressed in regulations. No market incentives to drive down actual observer costs - this will be in RFP contractual arrangement.	Agency costs continue to be paid by NMFS/ADFG. Specification of coverage levels directly affects costs to industry. Direct business relationship between subcontractor and vessel, which tended to drive costs down, no longer exists, though competitive forces exist in prime contractor/subcontractor relationship. Incentive for vessels (30% coverage) to reduce observer days.	Neutral

NEWS RELEASE (96-03)
Steven Pennoyer
907-586-7221

January 11, 1996
8:35 a.m.
For Immediate Release



REPEAL OF THE NORTH PACIFIC FISHERIES RESEARCH PLAN
(RESEARCH PLAN) AND ITS ASSOCIATED FEE COLLECTION PROGRAM

As a result of the North Pacific Fishery Management Council's vote to repeal the Research Plan at its December 1995 meeting, the National Marine Fisheries Service (NMFS) intends to proceed with the following actions necessary to terminate the fee-based Research Plan funding mechanism, according to Steven Pennoyer, Director, Alaska Region, NMFS:

1. No further Research Plan bills will be issued. To date, four bills were issued in 1995. Two more bimonthly fee assessments were anticipated to complete the 1995 billings. They will not be issued.
2. Federal processor permits will be issued without regard to status of payment of Research Plan fees. Processor permit issuance will not depend upon payment of past due Research Plan fees.
3. Over \$5.5 million in Research Plan fee assessments was collected in 1995. This will be refunded at the earliest possible date.

To obtain information concerning the changes, contact the Fisheries Management Division, NMFS, 907-586-7228.

RECEIVED
JAN 1996

**NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALASKA BOARD OF FISHERIES**

Notice is given that the commissioner of the Alaska Department of Fish and Game, by delegation of authority from the Alaska Board of Fisheries, under authority of AS 16.05.251 and AS 16.05.270, proposes to adopt, amend, or repeal regulations in Title 5 of the Alaska Administrative Code, dealing with catcher vessels in the brown king crab fishery in the Dutch Harbor Area as follows:

5 AAC 39.645. SHELLFISH ONBOARD OBSERVER PROGRAM. is proposed to be amended to include requirements for a mandatory onboard observer program for all catcher vessels that take brown king crab in the Dutch Harbor Area described in 5 AAC 34.600.

Notice is also given that any person interested may present written comments relevant to the proposed action, including the potential costs to private persons of complying with the proposed action, by writing to Kevin J. Messing, Regulations Specialist, Department of Fish and Game, PO Box 25526, Juneau, AK 99802-5526, so that they are received no later than 5:00 p.m., February 5, 1996.


If you are a person with a disability who may need a special accommodation in order to participate in the process on the proposed regulations, please contact Lana Francis at (907)465-4111 or TDD 1-800-478-2028 no later than 5:00 p.m., January 22, 1996 to ensure that any necessary accommodations can be provided.

This action is not expected to require an increased appropriation.

Copies of the proposed regulations may be obtained by writing to the above address.

After the close of the public comment period, the commissioner of the Alaska Department of Fish and Game will either adopt these or other proposals dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may vary from that of the proposed regulations. You should comment during the time allowed if your interest could be affected.

DATE: December 29, 1995



Robert C. Clasby, Director
Commercial Fisheries Management and
Development Division
Alaska Department of Fish and Game

ADDITIONAL REGULATIONS NOTICE INFORMATION
(AS 44.62.190(d))

1. Adopting agency: Alaska Department of Fish and Game
2. General subject of regulation: Mandatory onboard observer program for all catcher vessels that take brown king crab in the Dutch Harbor Area.
3. Citation of regulation: 5 AAC 39.645.
4. Reason for proposed action: Require onboard observers on all catcher vessels that take brown king crab in the Dutch Harbor Area in order to collect biological data for inseason management of the fishery. Catcher/processor vessels are currently required to have onboard observers. However there is not an adequate number of catcher/processor vessels in the Dutch Harbor Area to collect necessary biological data for inseason management of the fishery.
5. Program category and BRU affected: Commercial Fisheries and Natural Resources.
6. Cost of implementation to the state agency and available funding (in thousands of dollars)

No estimate
7. The name of the contact person for the regulations:

Name: Kevin J. Messing
Title: Regulations Specialist
Address: ADF&G/Commercial Fisheries Management and
Development Division, PO Box 25526, Juneau, Alaska 99802-5526

Telephone: (907) 465-6124
8. The origin of the proposed action:

(X) delegation of authority from the Alaska Board of Fisheries.
9. Date: December 29, 1995

Prepared by: _____


Kevin J. Messing
Regulations Specialist
(907)465-6124

Note to Publisher: When a subsection, paragraph, subparagraph, etc. is indicated by the appropriate number or letter and no text follows that symbol, then the omitted text is the same as that set out in the previous register containing that section. Amended text to be added is underlined. Amended text to be deleted is capitalized and enclosed in brackets. All new sections should be added to the appropriate contents lists.

Register ____, ____ 1996

FISH AND GAME

TITLE 5. FISH AND GAME.

PART 1. COMMERCIAL AND SUBSISTENCE

FISHING AND PRIVATE NONPROFIT

SALMON HATCHERIES.

CHAPTER 39. GENERAL PROVISIONS.

ARTICLE 6. SHELLFISH FISHERY.

5 AAC 39.645(a) and (d) are amended to read:

5 AAC 39.645. SHELLFISH ONBOARD OBSERVER PROGRAM. (a) The Board of Fisheries finds that onboard observers provide the only effective means of collecting essential biological and management data from catcher/processor and floating processor vessels that process shellfish, and from all catcher vessels that take brown king crab in the Dutch Harbor Area described in 5 AAC 34.600 and red or brown king crab in the Adak Area described in 5 AAC 34.700. These data are necessary to achieve the sustained yield of the shellfish resource without

overfishing. The department has traditionally collected essential biological and management data at the point of shoreside landing immediately before processing. The rapid evolution to processing by catcher/processor and floating processor vessels in particular shellfish fisheries, and the lack of an adequate number of catcher/processor vessels in the Dutch Harbor and Adak Areas [AREA] king crab fisheries that are required by this section to have an onboard observer on board the vessel, has seriously eroded the department's ability to adequately monitor harvests and collect biological data for inseason management. Onboard observers are the only practical data-gathering mechanism for these fisheries without unduly disrupting the operation of these fisheries.

.....

(d) Based on the findings in (a) - (c) of this section, the department shall institute a mandatory onboard observer program, following the requirements and guidelines set out in this section, for all vessels that process Tanner crab, red king crab, blue king crab, or brown king crab, and for all catcher vessels that take brown king crab in the Dutch Harbor Area described in 5 AAC 34.600 and red or brown king crab in the Adak Area described in 5 AAC 34.700. The department may waive the onboard observer requirement for a vessel that processes those species of crab at a place where a department sampler is located, if the sampler has reasonable access to the vessel and if the vessel is tied to a dock or is at anchor; all other vessel inspection requirements remain in effect. The department may waive the onboard observer requirement when an observer is taken ill or is injured while onboard and is unable to function, or when in the judgment of the department the observer is unavailable despite the good faith effort of the vessel

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operator and for a reason that is totally beyond the control of the vessel operator. A request for a waiver and all supporting documentation must be submitted in writing. The department may place its own representatives on board a processing vessel to perform tank inspections, or to verify the performance of an observer, without waiving the observer requirement.

(Eff. 7/12/86, Register 99; am 7/23/88, Register 107; em am 9/20/88 - 1/17/89, Register 108; am 7/30/89, Register 111; am 9/19/90, Register 115; em am 3/19/91 - 7/16/91, Register 118; am 5/2/92, Register 122; am 6/24/93, Register 126; am 11/3/95, Register 136; am __/__/96, Register _____)

Authority: AS 16.05.251