

[Federal Register: September 6, 1994]

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Part V

Department of Commerce

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National Oceanic and Atmospheric Administration

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50 CFR Part 204, et al.

North Pacific Fisheries Research Plan; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 204, 301, 671, 672, 675, 676, and 677

[Docket No. 940412-4234; I.D. 033194E] RIN 0648-AD80

North Pacific Fisheries Research Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

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SUMMARY: NMFS issues a final rule to implement the North Pacific Fisheries Research Plan (Research Plan) for the Gulf of Alaska (GOA) groundfish fishery, Bering Sea and Aleutian Islands (BSAI) management area groundfish fishery, BSAI area king and Tanner crab fisheries, and Pacific halibut fishery in convention waters off Alaska. The Research Plan will provide an industry-funded observer program and promote management, conservation, and scientific understanding of groundfish, halibut, and crab resources off Alaska.

EFFECTIVE DATE: October 6, 1994.

ADDRESSES: Individual copies of the Research Plan and the environmental assessment/regulatory impact review may be obtained from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic groundfish fisheries of the BSAI and GOA in the exclusive economic zone (EEZ) are managed under the Fishery Management Plan (FMP) for the Groundfish Fishery of the BSAI Area and the FMP for Groundfish of the GOA. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) (Magnuson Act) and are implemented for the U.S. fishery by regulations at 50 CFR parts 620, 672, and 675. The domestic fishery for Pacific halibut off Alaska is managed by the International Pacific Halibut Commission (IPHC), as provided by the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773- 773k), with implementing regulations at 50 CFR part 301. Regulations implementing individual fishing quota (IFQ) measures for the fixed gear sablefish and halibut fisheries off Alaska are at 50 CFR part 676. The king and Tanner crab fisheries of the BSAI area are managed under the FMP for the Commercial King and Tanner Crab Fisheries in the BSAI. This FMP delegates management of the crab resources in the BSAI area to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the crab FMP appear at 50 CFR part 671.

Section 313 of the Magnuson Act, as amended by section 404 of the High

Seas Driftnet Fisheries Enforcement Act, Pub. L. 102-582, authorizes the Council to prepare, in consultation with the Secretary of Commerce (Secretary), a Research Plan for all fisheries under the Council's jurisdiction, except salmon fisheries.

The Council adopted a draft Research Plan at its June 1992 meeting and later reconsidered and adopted a revised Research Plan at its December 1993 meeting. A proposed rule to implement the Research Plan was published in the Federal Register on May 6, 1994 (59 FR 23664). Comments on the proposed rule were invited through July 5, 1994. Nine letters providing written comment were received within the comment period and one letter supporting the Research Plan was received after the end of the comment period. Oral comment on the Research Plan also was received during the June 1994 meeting of the Council, and during three public hearings conducted by NMFS on the Research Plan in Anchorage, AK (June 7, 1994), Seattle, WA (June 15, 1994) and Portland, OR (June 16, 1994). Written and oral comments on the Research Plan are summarized in the Response to Comments section, below.

Section 313(c)(3) of the Magnuson Act requires that, within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing [the Research Plan]. Consultation with the Council was concluded July 14, 1994, in a teleconference meeting between the Council and NMFS. During this consultation, public comments received by NMFS on the Research Plan were reviewed and alternatives for NMFS' response considered.

The Secretary has approved the Research Plan under section 313(c) of the Magnuson Act. Upon reviewing the Research Plan and the comments on the proposed rule to implement it, NMFS has determined that this final rule is consistent with the Magnuson Act and the Research Plan as adopted by the Council. The Research Plan requires that observers be stationed on certain fishing vessels and U.S. fish processors participating in the BSAI management area groundfish, GOA groundfish, and BSAI area king and Tanner crab fisheries. These requirements may be extended to the halibut fishery off Alaska. Observers will be deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority. The Research Plan also will establish a system of fees to pay for the costs of implementing the Research Plan. The fees will be based on the exvessel value of retained catch in the BSAI management area and GOA groundfish fisheries, the BSAI area king and Tanner crab fisheries, and the Pacific halibut fishery off Alaska (Research Plan fisheries). Future recommendations by the Council to include other fisheries under the Research Plan will require an amendment or amendments to the Research Plan and to the regulations implementing it.

The Research Plan and its implementation are explained further in the preamble to the proposed rule. With the exception of the portion of the final rule implementing the first year of the Research Plan, the measures set out in the final rule do not differ significantly from the proposed rule.

#### Response to Comments

Nine letters of comments were received within the comment period. NMFS also received oral comments during three public hearings on the Research Plan. A summary of the written and oral comments and NMFS' response follows:

Comment 1. During the current Magnuson Act reauthorization, the Secretary should recommend that the name of the Research Plan be changed to the North

Pacific Fisheries Observer Plan to better reflect its intent.

Response. NMFS agrees that the title ``North Pacific Fisheries Research Plan'' does not accurately reflect the scope of the statutory authority set out at section 313 of the Magnuson Act. Nonetheless, any change to the title would require an amendment to the Magnuson Act. NMFS' ability to include such an amendment in the current reauthorization process is limited. An amendment to the Research Plan as adopted by the Council also would be required. NMFS recommends that the Council consider changing the name of its Research Plan the next time an amendment to the Research Plan is initiated. Until the name of the Research Plan is amended, its implementing regulations will continue to refer to the ``Research Plan'' to reduce confusion and inconsistency between the Research Plan as adopted by the Council and its implementing regulations.

Comment 2. The Research Plan could become a model for other user fee programs proposed nationwide. This Research Plan, therefore, must be efficient, equitable, and supported by the industry.

Response. NMFS agrees. The Research Plan must be efficiently administered and equitable to all affected sectors of the industry to ensure its success. NMFS believes that the final rule implementing the Research Plan achieves this goal.

Comment 3. The present Observer Plan is satisfactory and the implementation of the Research Plan should be delayed until a comprehensive rationalization program for the crab and groundfish fisheries is implemented. Concerns about maintaining the integrity of the observer program under the existing Observer Plan can be readily addressed by contracts and penalties without the need to impose a costly new system on the industry.

Response. For reasons outlined in the proposed rule, NMFS, the Council, and many sectors of the affected industry do not believe that the current Observer Plan is satisfactory. Once the Research Plan is fully implemented, the cost of observer coverage would be linked much more closely to both the benefits each participant receives from the observer program and the participant's ability to pay for observer coverage. In attaining a more equitable payment system, the costs for observer coverage will be increased for some operations, decreased for some, and remain unchanged for others.

Delaying Research Plan implementation until a comprehensive rationalization program for groundfish and crab fisheries is implemented would unnecessarily delay a reasonable response to the concerns existing under the current observer programs, including conflict of interest and nonpayment for observer coverage. Under the current observer program, NMFS has limited ability to monitor contracts between vessel and processor owners, observer contractors, and observers. Under the Research Plan, observers will be employees of NMFS contractors and the possibility of conflicts of interest between the observers and the vessels they are observing is greatly reduced. Furthermore, NMFS will be in a better position to take action on cases of observer nonpayment by contractors.

Comment 4. Catcher/processors will be assessed a fee of up to 2 percent of the exvessel value of their retained catch. For some processors with 100-percent observer coverage, this will result in a fee that reflects up to an eight-fold increase in costs for observer coverage. An increase of this magnitude is difficult to accept, given that observer coverage on these vessels cannot be any greater than it is now, and many more industry participants will be sharing the costs of the program.

Response. One of the objectives of the Research Plan is to distribute the costs of observer coverage more equitably. Those who have low observer coverage costs relative to the exvessel value of the fish they retain and

those who currently have no observer coverage requirements will experience increased costs. Those who have high observer coverage costs relative to the exvessel value of the fish they retain will experience decreased costs. The distribution of costs under the Research Plan will become more equitable, both in terms of the benefits received from the observer program and the ability to pay for observer coverage.

Comment 5. Fishermen should not have to pay costs associated with agency support of the groundfish and crab observer programs under the Research Plan when NMFS and the Alaska Department of Fish and Game (ADF&G) have paid for these costs in the past.

Response. Agency costs to administer and operate the groundfish and crab observer programs are authorized recoverable costs under the Research Plan. Nonetheless, NMFS is pursuing continued funding of the observer programs at current levels. If NMFS is successful, the use of the North Pacific Fishery Observer Fund (Observer Fund) to support agency costs of implementing the observer program will be minimized.

Comment 6. The first-year fee collection program should be restructured to avoid the proposed ``double payment'' program requiring vessels using observers to pay the costs of observer coverage in addition to paying the Research Plan fee, with a later rebate for observer costs. Alternative fee collection programs include crediting billed fee assessments for observer costs, an accelerated rebate of costs for observer coverage over the 2-percent assessment rate, or a system where vessels and processors currently paying for observers would not be required to pay the Research Plan fee.

Response. NMFS agrees and has implemented a revised program for the first year of the Research Plan that allows processors to subtract from their billed fee assessments observer costs incurred by the processor during 1995. Groundfish catcher vessels equal to or greater than 60 ft (18.3 m) length overall (LOA) and crab catcher vessels required to carry observers while participating in specified crab fisheries will be exempt from fee assessments during 1995 because these two sectors of the Research Plan fisheries currently pay costs for observer coverage that are equal to or greater than amounts they would contribute under the Research Plan fee assessment program.

Comment 7. The proposed rebate program during the first year of the Research Plan constitutes an unfair imposition on the segment of the industry that supposedly has already been unfairly burdened, particularly vessels that currently are required to obtain 100-percent observer coverage. A different approach is recommended under which industry participants who are not now paying any observer costs would pay the 2-percent fee; those who are paying for 30-percent observer coverage would continue to pay for that coverage, without rebate, and would pay 70 percent of the 2-percent fee; and those who are paying for 100-percent observer coverage would continue to pay for that coverage, without rebate, and would not pay any portion of the 2-percent fee. In the second year, all participants would be assessed the same fee percentage under the percentage fee system.

Response. NMFS has revised the first year of the Research Plan to eliminate the proposed rebate program. The final rule exempts from the first-year fee assessment program those operations that currently pay costs for observer coverage that equal or exceed costs that they would pay under the Research Plan once it is fully implemented (see the response to Comment 6). Furthermore, participants in the Research Plan fisheries who currently are not required to obtain observer coverage will pay their full portion of the 1995 fee percentage. Because the fee percentage authorized under the Research Plan is assessed against the exvessel value of retained catch, fee assessments can

exceed current costs for observer coverage by vessels and processors required to have 100-percent observer coverage. These operations will be required to pay the difference between the fee assessment and observer costs. Once the Research Plan is fully implemented, all participants in the Research Plan fisheries will contribute equitably to the payment of Research Plan fee assessments based on the annual fee percentage and the exvessel value of retained catch.

Comment 8. If the proposed rule is revised to eliminate the first-year rebate program, concern exists that insufficient start-up funds would be collected to allow full implementation of the Research Plan by January 1996. This is of particular concern if fees are assessed only against fish harvested and processed by vessels or processors not required to obtain observer coverage.

Response. See the response to Comment 6. The revised program for the first year of the Research Plan will collect fees from all participants in the Research Plan fisheries except from those persons who pay costs for required observer coverage that exceed their fee liability under the Research Plan. Based on the analysis presented in the final environmental assessment/regulatory impact review (EA/RIR) and assuming a 2-percent fee percentage for 1995, the revised program should provide sufficient start-up funds for full implementation of the Research Plan by January 1996.

Comment 9. If a rebate program is implemented for the first year of the Research Plan, rebates should be based on actual costs for observer coverage and not on a ``standardized cost of an observer day.''

Response. NMFS agrees. Although the final rule implementing the Research Plan does not include a rebate program, a processor can subtract from its portion of a billed fee assessment the actual costs incurred by the processor for observer coverage during 1995.

Comment 10. The Research Plan should include a requirement for an annual audit of the program by an independent (non-government) auditor.

Response. At this time NMFS believes that a regulatory requirement for an annual audit of the Research Plan by an independent (non-government) auditor is unnecessary. Under the Department of Commerce (DOC) Financial Management System (FIMA), annual financial reports that summarize all financial activity within the Observer Fund will be prepared for review by the Council's Observer Oversight Committee (OOC) and the Council.

Special audits by a non-government or independent governmental agency, such as the General Accounting Office (GAO) or the DOC Inspector General, can be solicited by the Council, provided the intended extent of the audit is clearly defined and the audit utilizes generally accepted governmental auditing standards issued by the Comptroller General of the United States. NMFS believes costs associated with a special audit would be recoverable under the Research Plan.

Comment 11. The proposed requirements for 60-day and 10-day advance notice to observer contractors for observer coverage do not pose a problem for those fishing seasons that are scheduled regularly and well in advance. These requirements will be impossible to meet when inseason changes in season opening dates occur, or when reserves are released. These latter types of announcements are frequently made with notice of a week or less, obviously precluding any ability to arrange for an observer 60, or even 10 days, in advance. The proposed rule should be revised to provide an exception for situations in which advance notice cannot be given due to circumstances outside the control of the vessel owner.

Response. The final rule implementing the Research Plan does not change

the proposed criteria for notifying an observer contractor of a vessel's or processor's observer needs. The 60-day and 10-day notification periods are necessary to guarantee the availability of observers to meet observer coverage requirements, particularly if additional observer training classes must be arranged to meet the demand for observer coverage. NMFS agrees that circumstances could occur that would preclude a person from providing a 60-day or 10-day notice to an observer contractor for observer coverage. If this should occur, NMFS cannot guarantee the availability of observers to satisfy observer coverage requirements. NMFS is aware of the logistic and planning problems that can arise when fisheries are opened on short notice and will attempt to provide sufficient advance notice of inseason fishery openings to allow vessels and processors to comply with observer coverage requirements.

Comment 12. Designated observer embarkment/disembarkment locations were proposed for Alaska in the preamble to the proposed rule. Vessels based in Washington State often proceed directly to the fishing grounds and the proposed rule should be revised to add one or two locations for embarkment/disembarkment of observers in Washington.

Response. NMFS considered designating embarkment/disembarkment locations outside Alaska, but due in part to the prohibitive transportation costs, declined to include non-Alaska sites in the list of proposed ports. ADF&G crab managers recommended that crab observer embarkment/disembarkment sites coincide with the observer briefing/ debriefing sites in Alaska. The selection of embarkment/disembarkment ports occurs annually as part of the Research Plan specification process with opportunity for Council review and public comment. Embarkment/disembarkment sites outside of Alaska may be considered, along with the attendant costs, during this annual process.

Comment 13. The proposed rule specified that vessels requiring observer coverage must have passed a Coast Guard safety inspection within the last 2 years. If this requirement is a reference to the fishing-industry-specific inspection requirements contained in 46 U.S.C. Chapter 45, the final rule should be clarified to say so.

Response. The U.S. Coast Guard implemented regulations codified at Titles 33 and 46 CFR, which implemented statutory provisions at 46 U.S.C. Chapter 45. The final rule has been clarified to require that vessels with observer coverage display certification of compliance with certain U.S. Coast Guard regulations codified at Titles 33 and 46 CFR and at 46 U.S.C. 3311. This requirement is intended to provide observers with some assurance that vessels they are stationed on meet specified U.S. Coast Guard safety standards.

Comment 14. Vessels cannot always provide officer's accommodations for observers as would be required by Sec. 677.10(c)(1) of the proposed rule.

Response. Section 677.10(c)(1) has been changed in the final rule to require accommodations and food for observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel. The intent of this regulation is to require a vessel operator to treat the observer with respect. The observer need not be given the captain's quarters, but the observer should not be housed in a room with accommodations less than those provided for management personnel.

Comment 15. If a funding shortfall exists, would NMFS allow overharvesting of a total allowable catch (TAC) to generate additional funding?

Response. NMFS will not authorize an overharvest of a species' TAC to generate additional revenue under the Research Plan.

Comment 16. Catcher vessels should not be liable for delivering fish to an unpermitted processor. The violation should remain with the processor, not the vessel. Some other means besides NMFS' electronic bulletin board should be

used to notify the industry of the processors with valid permits.

Response. NMFS believes it is the responsibility of catcher vessel operators to be aware of the permit status of each processor they choose to do business with. A processor will not be issued semiannual processor permits unless its billed fee assessments are paid. The prohibition on delivering fish to a processor not possessing a current semiannual permit provides additional incentive to the processor to submit timely payments on its billed fee assessment. This is a crucial consideration in achieving the objectives of the Research Plan. NMFS will maintain an updated list of permitted processors on its electronic bulletin board. A vessel operator also can request this information directly from a processor.

Comment 17. Currently, 30-percent observer coverage requirements are strictly adhered to because vessel operators do not want to pay for additional observer coverage. Under the Research Plan, this strong incentive to effectively limit coverage to required levels will be eroded.

Response. NMFS realizes that full implementation of the Research Plan will erode some of the incentive to a vessel operator to disembark an observer as soon as coverage requirements are met. Observer contractors will work with vessel owners to monitor the observer coverage and to see that observers are transferred to other vessels where coverage is needed. NMFS may order a vessel to port to disembark an observer, should that prove necessary.

Comment 18. Concern exists that the Research Plan will ultimately result in reduced observer coverage, because the statutory limit on the annual fee percentage (2 percent) will not allow for the collection of funds sufficient to provide for increased costs of observer coverage, nor for increased administrative costs incurred by NMFS and ADF&G.

Response. NMFS is committed to providing an efficient and effective observer program within the statutory constraints. NMFS will use the best available information to establish the annual fee percentage. If increased Research Plan costs or reduced fee collections due to a reduced exvessel value of Research Plan fisheries create unanticipated shortfalls within any calendar year, a regulatory mechanism exists to decrease observer requirements over the season. Alternatives to reduced observer coverage in both the short and long term also exist in the form of amending the Magnuson Act to allow for a fee percentage greater than 2 percent, or obtaining other sources of funding.

During 1995, the first year of the Research Plan, an annual fee percentage of 2 percent may be necessary to accumulate sufficient start-up funds to support the contracts for observer coverage during the first half of 1996. In succeeding years, the percentage should be lower. In all cases the 2 percent limit should serve as an incentive to keep down the costs, make the observer programs more efficient, and seriously evaluate the benefits of any proposed increase in observer coverage requirements.

Comment 19. The Council is considering alternative incentive programs to address bycatch waste that would require additional observer coverage for participating vessels. The final rule implementing the Research Plan should not preclude voluntary increases in observer coverage by vessel owners as a prerequisite for participation in these incentive programs.

Response. Observer coverage regulated under the Research Plan is set out under Sec. 677.10 of the final rule. The Research Plan does not preclude observer coverage beyond levels required under the Research Plan by anyone participating in a voluntary incentive program. However, persons who voluntarily obtain observer coverage beyond that required under the Research Plan would incur the costs of the additional coverage. Furthermore, voluntary or mandatory requirements for observer coverage beyond those authorized under

the Research Plan would require rulemaking.

Comment 20. Concern exists about the possibility of new fees being imposed on the fishing industry during the current reauthorization of the Magnuson Act. Because of this concern, a sunset date should be added to the Research Plan that would take effect if and when amendments to the Magnuson Act duplicate fees being charged under the Research Plan. Any new fee imposed under the Magnuson Act should not be in addition to the fees required under the Research Plan.

Response. Changes to regulations normally must be accomplished through rulemaking, rather than being automatically triggered by events, such as passage of legislation. Under the Administrative Procedure Act notice and comment procedures, the public must be given notice of the proposed change and have an opportunity to comment on the proposed change. Should the Council decide that, in the future, the Research Plan should be withdrawn or modified to take into account amendments to the Magnuson Act, or for any other reason, it can recommend that the Secretary do so under normal rulemaking procedures.

Comment 21. Industry members should be allowed to participate in the NMFS/ADF&G work group to oversee agency efforts to streamline the groundfish and crab observer programs and to maximize efficiency of administration and implementation of these programs.

Response. NMFS disagrees. Industry members have many opportunities to comment on or participate in agency efforts to streamline the groundfish and crab observer programs. These opportunities include the Advisory Panel (AP), the OOC, and public testimony or written comment on the annual Research Plan specification process or other pertinent actions before the Council. The NMFS/ADF&G work group meetings will provide a setting for staff members to address administrative, implementation, and efficiency issues of the observer programs and to respond to issues and concerns raised by the public through the AP, OOC, or testimony before the Council.

Comment 22. Given limited resources and a need to expand overall observer coverage, it is essential that the Research Plan be implemented in such a way as to maximize efficiency and minimize administrative overhead and costs. The first major step in that direction would be to consolidate the crab and groundfish observer programs. In addition to reduced costs, a consolidated program would provide an opportunity to standardize training and qualification requirements for observers, develop more rational deployment schemes, coordinate research and data collection objectives, and move toward the development of a professional, well trained, well qualified observer corps. With this goal in mind, NMFS and ADF&G should prepare budgets and report to the OOC and Council on the feasibility of combining the groundfish and crab observer programs.

Response. NMFS and ADF&G are actively pursuing ways in which the NMFS groundfish and ADF&G crab observer programs can combine tasks and more efficiently utilize resources. Some areas being explored for possible future collaboration are training, briefing, debriefing, and field support. Also, under the Research Plan, an interagency (NMFS and ADF&G) working group will be established to address issues of consolidation and cost efficiency.

Comment 23. Fiscal year (FY) 96 budgets prepared for the crab and groundfish observer programs do not include the costs for shellfish observer training. NMFS has factored the costs of shellfish training into a daily observer cost estimate reported by observer contractors, rather than use training costs incurred by the University of Alaska, which has been bearing these costs. True costs of the crab observer training should be included in the Research Plan budget so that everyone has an accurate picture of the



entire program. Crab fishermen and shellfish observer contractors may claim they are being discriminated against if they will have to pay an additional cost of shellfish training beyond that paid by user fees. Shellfish observer training should not be treated differently from groundfish observer training under the Research Plan.

Response. Specific comments on agency budgets and policy necessary to administer the groundfish and crab observer programs are outside the scope of the final rule to implement the Research Plan. Comments of this sort would best be addressed under the annual specification process set out at Sec. 677.11 of the final rule.

Nonetheless, NMFS agrees the FY96 budgets for the crab and groundfish observer programs do not include the costs for shellfish observer training because neither NMFS nor ADF&G currently train crab observers. NMFS believes it is appropriate to require potential observer contractors to incorporate subcontracted costs for training crab observers in their response to the request for solicitation. NMFS believes that this approach will incorporate all the costs of training crab observers within the Research Plan contracts, thereby avoiding the possibility of crab vessels or observer contractors incurring additional costs.

Under the Research Plan, the NMFS/ADF&G working group will examine differences and similarities between the groundfish and crab observer programs and will consider the potential benefits of training crab observers within the ADF&G observer program or within the NMFS observer program.

Comment 24. Agency budgets should include costs for crab observer training and explicitly identify groundfish and crab observer program costs. NMFS and ADF&G must work towards streamlining programs and reducing costs (e.g., cross-training of observers, sharing field facilities, coordinating briefing and debriefing functions.)

Response. See the responses to Comments 22 and 23.

Comment 25. NMFS staff have expressed the intent to solicit bids for crab observer training, but not the groundfish observer training. Both crab and groundfish training programs should be subject to the bidding process. Not only will this produce the most cost-effective approach to training, but it will assure that the groundfish and crab industry receive similar treatment under the Research Plan.

Response. As mentioned in the responses to Comments 22 and 23, the NMFS/ADF&G working group will be considering various options for both groundfish and crab training and these options will be discussed before the OOC and the Council as part of the annual specification process.

Comment 26. In-season price adjustments, in-season payment adjustments, or price forecasts should be used, when practicable, to decrease differences between the standard exvessel prices and the actual exvessel price that can result from seasonal or inter-annual price fluctuations.

Response. Early in the development of the fee collection program for the Research Plan, the Council recommended the use of actual exvessel prices and values for processors that purchase fish from fishermen and the use of standard exvessel prices for integrated harvesting and processing operations that do not purchase fish. This recommendation adjusted prices to reflect the actual prices for the former class of processors and post-season price settlements. By 1992, the Council had identified problems with this recommendation and voted to recommend the use of standard exvessel prices for all processors. The problems included the following: (1) The incentive of fishermen and processors to understate actual exvessel prices, (2) the difficulty of verifying that the reported prices were correct, (3) the

difficulties of applying post-season adjustments in exvessel prices to the standard exvessel prices used for processors that catch their own fish, and (4) the lack of timely price information from fish tickets. The Council recognized that actual inseason exvessel price data may provide a more equitable basis for fee assessments among processors who purchase fish. However, the Council determined that the potential for more equitable fee assessments was not sufficient to overcome the problems associated with using actual prices.

The Council has recommended that NMFS establish standard prices for 6-month periods. This recommendation should increase the ability of NMFS and the Council to set standard prices that will closely approximate actual prices. This process will be facilitated if the exvessel price information from fish tickets becomes available in a more timely manner.

Fee revenue and actual fee liability would be more uncertain if they were based on inseason price or payment adjustments. If prices increase, processors could have difficulty collecting the additional fees from fishermen, and if prices decrease, processors may not make the appropriate refunds to fishermen. Over time, the unexpected increases and decreases in exvessel prices are expected to cancel out.

Under the final rule, the standard exvessel prices will be based on: (1) Exvessel price information during the most recent 12-month period for which data are available for different seasons, gear types, management areas, and processing sectors; (2) factors that are expected to change exvessel prices in the upcoming calendar year; and (3) other information that indicates what exvessel prices would be expected to be in the upcoming calendar year. Therefore, to the extent practicable, price forecasts will be used.

Comment 27. When differences in prices by gear, area, mode of operation, and season are real and significant, separate standard prices should be established for each.

Response. NMFS agrees and intends to propose exvessel prices that reasonably accommodate price differences by season, gear, area, and processing sector (inshore and offshore components) (see the response to Comment 26). However, even when real and substantial differences exist in exvessel prices by gear, area, mode of operation, and season, there are justifications for not establishing a separate standard price for each. To the extent that exvessel prices differ due to differences in the services a fishing vessel provides in addition to harvesting raw fish, it may be inappropriate to establish separate standard prices.

Comment 28. It is unfair not to account for differences in prices due to stage of product processing and mode of operation.

Response. As noted in the response to Comment 27, NMFS believes it may be inappropriate to charge different fees per pound of retained catch for different fishermen due to differences in the distribution of services between fishermen and processors or to assess a higher fee per pound for a group of fishermen that perform services that are typically performed by processors.

Comment 29. Prices should be imputed by area when the size of fish differ by area and product prices differ by the size of fish.

Response. The cost of accommodating this suggestion could be justified if large differences exist in product prices by area of catch. The annual processor survey conducted by the State of Alaska does not collect price data for narrowly defined areas. As a result, NMFS would have to use other sources of product price data that would tend to increase information and analytical costs and, perhaps, decrease the quality of the price estimates. In the future, NMFS may consider rulemaking to collect additional price information

if existing sources of data are deemed insufficient.

Comment 30. The method used by NMFS to impute exvessel prices is acceptable, but the product prices and product price to exvessel price conversion factor should be reviewed, a conversion factor of 20-percent should be used, and an industry committee of those familiar with these species should be part of the review process.

Response. The Research Plan specification process set out in the final rule at Sec. 677.11 includes review of the imputed standard exvessel prices by the OOC, AP, Scientific and Statistical Committee (SSC), the public, and the Council before the standard exvessel prices are proposed. The proposed standard exvessel prices will be published in the Federal Register annually, and the data on which they are based will be included in a report available from the Council. Public comments will be requested on both the proposed standard exvessel prices and the data on which they are based. The final standard exvessel prices will be established after further review by the OOC, AP, SSC, and the Council. Therefore, the process for establishing standard exvessel prices allows for as much input and review as the industry is willing to provide. The industry is free to establish a committee to assist in establishing standard exvessel prices.

Comment 31. Actual prices paid to fishermen are recorded on fish tickets and these prices should be used to calculate fee assessments, rather than the proposed method of using standard exvessel prices. If standard exvessel prices are used, NMFS should implement a separate rebate program to reimburse fishermen who were ultimately charged more than 2 percent of the exvessel value in those cases where the standard exvessel price is less than the actual price they received.

Response. See the response to Comments 26 and 27.

Comment 32. Fee assessments should not be assessed on deadloss crab.

Response. Fee assessments will be based on the amount of crab retained by a processor. Crab that is harvested alive but dies enroute to the processor is considered deadloss and is not purchased by the processor or buyer. This crab, therefore, will not be considered retained catch for the purpose of calculating fee assessments.

Comment 33. Under the proposed rule, retained catch for processor vessels would be determined by using standard product recovery rates (PRRs) to calculate round-weight equivalents. Retained catch can be calculated most accurately by actual weights, rather than by using a derivative system. Recognizing that not all processor vessels are equipped with scales, a system should be implemented under which a processor could elect to have retained catch calculated by any recognized acceptable means, such as actual weight, volumetric measure, or standard PRRs.

Response. NMFS has prepared a draft analysis for Council consideration that evaluates different alternatives for obtaining accurate catch weight measurements. The Council is scheduled to take final action on a preferred alternative before the end of 1994. Until regulations are implemented that serve as consistent guidelines for obtaining accurate measurements of catch weight, NMFS will continue to rely on PRRs to calculate round-weight equivalents.

Comment 34. NMFS has reported that a 10-20 percent discrepancy exists between observed retained catch estimates and retained catch amounts reported by processor vessels in their weekly production reports. Currently, an easy and precise method to verify the accuracy of reported catch amounts is not available. Given that the projection of groundfish exvessel value was based on projected catch using a blend of observer and vessel data, concern exists that

this projection overestimates the fees that will be collected during the start-up year by 10 percent or more. If this is the case, full implementation of the Research Plan may be unnecessarily delayed. A better alternative is to calculate the fee based on retained weight, but incorporate the ``blend'' method to decrease the problem of under-reporting.

Response. Retained catch amounts used to project exvessel value of groundfish for purposes of the Research Plan were based on data submitted by the industry on weekly production reports and ADF&G fish tickets. These data, not blend data, were used to project exvessel value of retained catch and provide the best information available on which to base projected revenues under the Research Plan.

Comment 35. The use of PRRs to calculate round weight of retained catch is problematic for several reasons. First, a sizeable disparity exists within the industry regarding the PRRs of various products. Second, the current rates being used by NMFS are not necessarily based on scientific or statistically defensible data. If PRRs must be used, they must be based on the best available scientific evidence.

Response. NMFS has determined that the standard PRRs that it will use to calculate round-weight equivalents of retained catch by at-sea processors represent the best available scientific information about product recoveries being achieved by the processing industry. NMFS has invited public comment on the standard PRRs it will use and will soon publish them in a final rule. NMFS will continue to review information about product recoveries and will propose regulations to revise any particular standard PRR, if necessary. See also the Response to comment 33.

Comment 36. Under the proposed Research Plan, vessels are charged a fee based on the round-weight of retained fish. As a result, a large incentive will exist to not make products such as fish meal or process small fish or male flatfish, which may be perfectly fit for human consumption but have a lower market value. A better method would be for each vessel to pay for what it catches, whether or not the fish are retained for processing. If vessels were assessed a fee based on the weight of fish caught, there would be an economic incentive to reduce bycatch and other fish waste, as well as an incentive to collect and report the best possible data.

Response. NMFS has revised the final rule to exempt from bimonthly fee assessments the exvessel value of whole fish that are processed into meal. This action is intended to address concerns that the imposition of Research Plan fees on the exvessel value of retained catch may create an incentive for processors to discard low value fish that otherwise may have been retained. Section 313 of the Magnuson Act authorizes the assessment of fees on both retained and discarded catch. Given this authority and the Council's desire to encourage retention of catch under the Research Plan, the Council has asked the OOC to explore options for assessing fees on discarded catch. Any future recommendation by the Council to implement a fee assessment program for discarded catch will require rulemaking and likely would not be implemented before 1996.

Comment 37. Insurance coverage requirements should be established for observers.

Response. At its June 1994 meeting, the Council indicated that it will appoint a technical committee to address the issue of standard insurance coverage for observers.

Comment 38. The concept of a risk-sharing pool for observer insurance is not acceptable because the pool concept undermines the competitive process for insurance.

Response. Section 313(e) of the Magnuson Act requires the Secretary to review the feasibility of establishing a risk-sharing pool to provide insurance coverage for vessels and owners against liability from civil suits by observers. This feasibility study will include a cost analysis and a review of potential impact on vessel owners, observer contractors, and observers. The Secretary will not establish a risk-sharing pool if his review shows that comprehensive commercial insurance currently is available for all fishing vessels and processors required to have observers, and such insurance will provide a greater measure of coverage at a lower cost to each participant.

As noted in the response to Comment 37, the Council took action at its June 1994 meeting to establish a technical committee to address this issue.

Comment 39. Identification should be required for observers at shoreside plants (e.g., vest, tag, ID card), to facilitate their access to confidential information (fish tickets, data on plant production, etc.).

Response. NMFS agrees and presently is investigating the feasibility of supplying observers with an ID card that would either replace, or be in addition to, the present letter of certification.

Comment 40. NMFS should be more effective in dealing with observer harassment issues as reported by observer contractors.

Response. Contractors currently have the ability to deny observer coverage to vessels that have had continuing problems with harassment of observers. Under the fully implemented Research Plan, vessel or processor owners no longer will be the clients of the contractors and NMFS will have greater ability to ensure that harassment situations are handled in an appropriate manner. NMFS Enforcement will continue to investigate reported instances of observer harassment and will take action where warranted.

Comment 41. Observer duties should remain unchanged under the Research Plan and should not become more enforcement oriented.

Response. Existing observer duties will be unchanged under the Research Plan.

Comment 42. NMFS should assess an observer's performance through survey information collected from the industry.

Response. At present, members of the fishing industry can and do comment on an observer's performance by calling or writing to the NMFS Observer Program office. NMFS recognizes the need for a more formalized process for providing feedback, and is in the process of designing a questionnaire. Such questionnaires would need to be approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, even though responses would be voluntary.

Comment 43. The Research Plan must be implemented to provide for greater NMFS oversight over the relationships between observers, observer contractors, and fishing interests. Currently, these relationships are compromised and NMFS and the Council have failed to oversee properly the integrity of these relationships. Instead, observer contractors continually exhibit interest in profits before either data quality or observer security. This situation reduces the collection of scientific data by observers to a vendor activity, jeopardizes the safety and well-being of observers, and undermines the credibility of the scientific data collected by observers.

Response. The expected change in the relationships between observers, observer contractors, and fishing interests with the full implementation of the Research Plan is one of the most important reasons for implementing it. Under the Research Plan, money for observer coverage will be distributed through NMFS, and NMFS will exercise more oversight through contractual relationships with the observer contractors.

Comment 44. NMFS and the Council should analyze the usefulness and economic efficiency of observer contractors. These individuals serve as a third-party conduit of financial payment for observer coverage and the financial resources distributed to them could be more constructively channeled.

Response. Under the Research Plan, NMFS could fund Federal employees to serve as observers. NMFS is presently evaluating the feasibility of having Federal observers serve at least some of the observer needs. However, many obstacles exist to implement such a proposition, notably the present effort to reduce the Federal work force.

Comment 45. Nonpayment of contractors and observers has been a problem since 1991. NMFS' inaction in not decertifying contractors who do not pay their observers allows these contractors to essentially loan observer coverage to the fishing industry. This situation seriously undermines the credibility of the observer program and requires greater oversight by NMFS.

Response. Under current regulations, vessel and processor owners contract with observer contractors to provide observer coverage. NMFS is not a party to those contracts, so has limited ability to enforce contracts between vessel and processor owners, observer contractors, and observers. Under full implementation of the Research Plan, contractors will be paid from the Observer Fund and NMFS will be in a much better position to investigate and act on cases of observer nonpayment by contractors. Changes in the Final Rule From the Proposed Rule

This final rule has been revised from the proposed rule to address public comment on the first year of the Research Plan. Neither the Council nor the general public supported the proposed first-year program that would have provided rebates to vessel and processor owners for observer costs, because (1) persons would have experienced delays from the time they paid for observer coverage until they were reimbursed for these costs, and (2) rebates would have been based on standardized costs per observer day. This final rule implements an alternative program for the first year of the Research Plan that addresses these concerns based on the following assumptions and criteria:

- a. The first year of the Research Plan will generate sufficient start-up funds during 1995 to allow full implementation of the Research Plan by January, 1996;
- b. NMFS will seek funding for the financial support of the observer programs, at least through fiscal year 1996;
- c. The first year of the Research Plan will not require ``double payment`` by any participant in the Research Plan fisheries for any period of time during 1995; and
- d. The first year of the Research Plan will credit actual costs paid by a participant in the Research Plan fisheries for observer coverage during 1995 up to the limit of the participant's fee liability.

The revised program for the first year of the Research Plan is set out in this final rule at Sec. 677.6 and is further discussed in the final EA/RIR prepared for this action (see ADDRESSES). In summary, this final rule exempts owners of groundfish catcher vessels equal to or greater than 60 ft (18.3 m) LOA from payment of fee assessments during 1995 because, as a group, this vessel size class currently pays observer costs that exceed 1 percent of the exvessel value of their catch. Crab catcher vessels participating in fisheries for *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, or *Lithodes cousei* king crab are required to carry observers under Alaska State regulations at 5 AAC 34.082 and 5 AAC 35.082. Vessel costs for this observer coverage equal or exceed the vessels' expected fee liability for the retained

catch of these species. As a result, these catcher vessels also are exempt from contributing to the portion of the 1995 fee assessment based on the exvessel value of retained catch of these specific Tanner and king crab species.

Under the final rule, groundfish mothership processor vessels and shoreside processors will be billed for their portion of the 1995 fee assessment (i.e., a fee assessment based on one-half of the annual fee percentage multiplied by the exvessel value of retained catch) plus one-half of the fee assessment calculated for the exvessel value of retained catch delivered by vessels less than 60 ft (18.3 m) LOA. Each of these processors may subtract its observer coverage costs from the processor's portion of the bimonthly bill. With the exception of processors retaining *C. tanneri*, *C. angulatus*, or *L. cousei*, who will be billed one half the fee percentage for these species, groundfish catcher/processors, crab catch/processors, crab shoreside processors, crab floating processors, and halibut processors will be billed the full fee percentage. Groundfish catcher/processors, crab catcher/processors, and crab floating processors may subtract their groundfish and crab observer coverage costs, respectively, from their bimonthly fee assessment for retained catch of groundfish and crab. The annual deduction for observer costs is limited to the actual cost paid for observer coverage during 1995 or the 1995 fee liability, whichever is less.

Several changes from the proposed rule have resulted from the revised program for the first year of the Research Plan. In addition, other changes have been made to respond to more specific public comments on the proposed rule and to improve the clarity and consistency of regulations. Significant changes are as follows.

1. The OMB control numbers for approved information collection requirements have been added to 50 CFR part 204 to comply with requirements of the Paperwork Reduction Act.

2. Figure 1 of 50 CFR part 677, the Federal Processing Permit Application (Form FPP-1), has been revised to combine existing permitting requirements under Sec. 672.4 and Sec. 675.4 to reduce the reporting burden on processors and to facilitate administrative efficiency in issuing permits. Form FPP-1 also has been changed to more clearly identify persons who qualify as ``processors'' for purposes of the Research Plan.

3. Figure 2 of 50 CFR part 677, the Observer Coverage Payment Receipt Form (Form FPP-2), has been revised to collect information on payments to an observer contractor by a processor for observer coverage during 1995. NMFS will use this information to audit the observer coverage costs subtracted by a processor from its billed fee assessments.

4. In Sec. 677.2, the definitions of the terms ``Bimonthly'', ``Catcher vessel'', ``Fishing trip'', ``Mothership processor vessel'', ``Processor'', ``Retained catch'', and ``Shoreside processor or shoreside processing facility'' have been changed; the definitions of the terms ``At-sea processor'', ``Standard observer day'', and ``Standardized cost of an observer day'' have been removed; and a definition of the term ``Fishermen'' has been added.

The definition of ``Bimonthly'' has been revised to coincide with calendar months, rather than weekly reporting periods. This change is necessary to allow greater consistency between ADF&G and NMFS data collected from the industry that is used to calculate processor fee assessments.

The definition of ``Catcher vessel'' has been revised to clarify that a

catcher vessel is used for catching fish, but does not process fish.

The definition of ``Fishing trip'' has been changed to more clearly implement NMFS' intent for observer coverage requirements set out at Sec. 677.10(a)(1) for catcher vessels delivering groundfish to shoreside processing facilities. A catcher vessel required to carry a NMFS-certified observer during at least 30 percent of its fishing days in a calendar quarter under Sec. 677.10(a)(1) also must carry an observer during at least one fishing trip during the calendar quarter for each of six different groundfish fishery categories defined at Sec. 677.10(a)(1)(ii) in which it participates. In the proposed rule, these fishery definitions were based on a vessel's retained catch composition of groundfish during a weekly reporting period. However, retained catch information for catcher vessels delivering groundfish to shoreside processors is recorded on ADF&G fish tickets that summarize catch retained during a fishing trip, not a weekly reporting period. To resolve this discrepancy, the definition of ``Fishing trip'' at Sec. 677.2 and of fishery categories at Sec. 677.10(a)(1)(ii) have been clarified to allow the use of ADF&G fish tickets completed at the end of a fishing trip to assign catcher vessels to fisheries.

The definition of ``Mothership processor vessel'' has been revised to clarify that a mothership processor is not used for, or equipped to be used for, catching fish.

The definition of ``Processor'' has been revised to include those fishermen who deliver fish directly to restaurants. This change is necessary because information on retained catch is not obtained from restaurants under the recordkeeping and reporting requirements set out under Sec. 672.5 and Sec. 675.5.

The definition of ``Retained catch'' has been revised to more clearly apply to all processors defined at Sec. 677.2.

The definition of ``Shoreside processor or shoreside processing facility'' has been changed to more clearly separate this type of processing operation from other types of processors (e.g., catcher/ processors, mothership processor vessels, or fishermen who sell fish to restaurants or to another person for use as bait or personal consumption).

The definition of ``Fishermen'' has been added to clarify reference to this term under the definition of ``Processor.''

In Sec. 677.2, the term ``At-sea processor'' has been removed because this term is not referred to in regulations. The terms ``Standardized cost of an observer day'' and ``Standard observer day'' have been removed because these terms no longer are applicable.

5. In Sec. 677.6, the following changes have been made.

a. Paragraph (b) has been revised and a new paragraph (d) is added to implement a credit program rather than a rebate program during the first year of the Research Plan. In paragraphs (b)(1) and (b)(2), regulatory language has been added to exempt the exvessel value of whole fish that is processed into meal from bimonthly fee assessments. This change addresses concerns that the imposition of Research Plan fees on the exvessel value of retained catch may create a greater incentive for processors to discard fish that otherwise may have been processed.

b. Old paragraph (d) has been redesignated paragraph (e) and revised to authorize NMFS to charge late fees for the balance of a bimonthly fee assessment in the event the Director, Alaska Region, NMFS, determines that a billing error has not occurred in response to a billing dispute initiated by a processor. The authority to charge a late fee is necessary to discourage a person from using the process set out for disputing a bimonthly fee assessment



bill only as a means to delay payment of the bill.

c. Old paragraph (e) has been redesignated paragraph (f) and revised to encourage the timely payment of a billed fee assessment by providing NMFS the authority to assess a penalty fee in the event payment is not received after 90 days from the due date.

d. Paragraph (f), which would have implemented the proposed rebate program, has been removed.

6. In Sec. 677.7, paragraph (g) has been changed to refer to the revised program for the first year of the Research Plan instead of the proposed rebate program.

7. In Sec. 677.10 the following changes have been made in addition to those referred to under item 4.

a. Paragraph (a)(3) has been changed to include references to Alaska State observer coverage requirements at 5 AAC 34.035, 34.082, and 35.082.

b. Paragraph (c) has been revised to remove the reference to required compliance with U.S. Coast Guard vessel safety requirements. This requirement was moved to a new paragraph (g).

c. Paragraph (c)(1) has been revised to remove a proposed requirement that vessel operators provide accommodations for observers that are equivalent to those provided for officers of the vessel. The regulatory language has been clarified to implement the intent of the proposed rule to require a vessel operator to treat the observer with respect and not provide the observer with accommodations reflective of the lowest level crew onboard the vessel.

d. Paragraph (e) has been revised to clarify that if contractors for observer coverage are not notified within specified time periods, the availability of an observer to meet observer coverage requirements will not be guaranteed.

e. Paragraph (f) has been revised to reflect recent rulemaking that authorized the release of specified observer data on prohibited species bycatch (59 FR 18757, April 20, 1994).

f. Paragraph (g) has been added to clarify a requirement formerly at paragraph (c) that vessels required to carry observers must pass a U.S. Coast Guard safety inspection. Safety requirements for all vessels are clarified. Observers will not be stationed aboard vessels not meeting safety requirements.

8. In Sec. 677.11, regulatory language has been added that would authorize the annual specification of standard exvessel prices by season, area, gear, and processing sector. Reference to the annual specification of ``standardized cost(s) of an observer day'' also has been removed because this term no longer is applicable.

#### Classification

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. Public reporting burden for each year of this collection is estimated to average 0.33 hour per response for completing the semiannual FPP-1, 0.25 hour per response for notifying contractors of needs for observers, and 1.0 hour per response to provide information to document claims of disputed bills. For the first year of the Research Plan, completion of FPP-2 by observer contractors for payment of observer coverage by processor vessels and shoreside processing facilities is estimated to average 0.16 hours per response. All reporting burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The collection of information has been approved by the Office of Management and Budget, OMB control numbers 0648-0206 (Processor Permit Application) and

0648-0280 (North Pacific Fisheries Research Plan).

The Council, NMFS, and the Alaska Department of Fish and Game prepared a final Regulatory Flexibility Analysis as part of the Regulatory Impact Review. A copy of this analysis is available from the Council at (See ADDRESSES).

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

List of Subjects 50 CFR Part 204

Reporting and recordkeeping requirements. 50 CFR Parts 301, 671, 672, 675, 676, and 677

Fisheries, Reporting and recordkeeping requirements.

Dated: August 25, 1994. Charles Karnella, Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, title 50 CFR Chapters II, III, and VI are amended as follows:

PART 204--OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 204 continues to read as follows:  
Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520 (1982).

Sec. 204.1 [Amended]

2. The table in Sec. 204.1(b) is amended by adding in the left-hand column, in numerical order, the entries ``677.4, 677.5'', 677.6'', and 677.10''; and adding in the right-hand column, in corresponding positions, the entry P[``-0280''].

PART 301--PACIFIC HALIBUT FISHERIES

3. The authority citation for part 301 continues to read as follows:  
Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773-773k.

4. Section 301.23 is added to read as follows: Sec. 301.23 North Pacific Fisheries Research Plan.

Permit requirements, observer requirements, and fee assessments for the Northern Pacific halibut fishery under the North Pacific Fisheries Research Plan are contained in part 677 of this title.

PART 671--KING AND TANNER CRAB FISHERIES OF THE BERING SEA AND ALEUTIAN ISLANDS

5. The authority citation for part 671 continues to read as follows:  
Authority: 16 U.S.C. 1801 et seq.

6. A new Sec. 671.4 is added to subpart A to read as follows:

Sec. 671.4 Permits.

All processors of Bering Sea and Aleutian Islands area king and Tanner crab must comply with permit requirements contained in Sec. 677.4 of this chapter.

7. A new Sec. 671.21 is added to subpart B to read as follows: Sec. 671.21 Observer requirements.

Bering Sea and Aleutian Islands area king and Tanner crab observer requirements are contained in part 677 of this chapter.

PART 672--GROUNDFISH OF THE GULF OF Alaska

8. The authority citation for part 672 continues to read as follows:  
Authority: 16 U.S.C. 1801 et seq.

9. In Sec. 672.4, paragraphs (b)(1) through (b)(10) are redesignated paragraphs (b)(1)(i) through (b)(1)(x), respectively; introductory text of paragraph (b) is redesignated as introductory text of paragraph (b)(1); and a

new paragraph (b)(2) is added to read as follows:

Sec. 672.4 Permits.

\* \* \* \* \*

(b) \* \* \*

(2) All processors of Gulf of Alaska groundfish must comply with permit requirements contained in Sec. 677.4 of this chapter, in addition to any applicable requirements of this Sec. 672.4.

\* \* \* \* \*

10. Section 672.27 is revised to read as follows:

Sec. 672.27 Observer requirements.

Gulf of Alaska groundfish observer requirements are contained in part 677 of this chapter.

PART 675--GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

11. The authority citation for part 675 continues to read as follows:  
Authority: 16 U.S.C. 1801 et seq.

12. In Sec. 675.4, paragraphs (b)(1) through (b)(10) are redesignated paragraphs (b)(1)(i) through (b)(1)(x), respectively; introductory text of paragraph (b) is redesignated as introductory text of paragraph (b)(1); and a new paragraph (b)(2) is added to read as follows:

Sec. 675.4 Permits.

\* \* \* \* \*

(b) \* \* \*

(2) All processors of Bering Sea and Aleutian Islands management area groundfish must comply with permit requirements contained in Sec. 677.4 of this chapter, in addition to any applicable requirements of this Sec. 675.4.

\* \* \* \* \*

13. Section 675.25 is revised to read as follows:

Note: This revision supersedes the amendments to Sec. 675.25 published in the emergency interim rule at 59 FR 35479, July 12, 1994:

Sec. 675.25 Observer requirements.

Bering Sea and Aleutian Islands management area groundfish observer requirements are contained in part 677 of this chapter.

PART 676--LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF Alaska

14. The authority citation for part 676 continues to read as follows:  
Authority: 16 U.S.C. 773 et seq. and 1801 et seq.

15. In Sec. 676.13, paragraph (a)(1) introductory text is revised to read as follows:

Sec. 676.13 Permits.

(a) \* \* \*

(1) In addition to the permit and licensing requirements prescribed at 50 CFR parts 301 of this title, and 672, 675, and 677 of this chapter, all fishing vessels that harvest IFQ halibut or IFQ sablefish must have onboard:

\* \* \* \* \*

16. In Sec. 676.16, paragraph (q) is redesignated paragraph (r) and a new paragraph (q) is added to read as follows:

Sec. 676.16 General prohibitions.

\* \* \* \* \*

(q) Any person who is issued a registered buyer permit under Sec. 676.13(a)(2) and who also is required to obtain a Federal processing permit under Sec. 677.4 of this chapter may not transfer or receive sablefish

harvested in Federal waters or halibut, unless the person possesses a valid permit issued under Sec. 677.4 of this chapter.

17. Part 677 is added to read as follows:

PART 677--NORTH PACIFIC FISHERIES RESEARCH PLAN

Subpart A--General Provisions of the North Pacific Fisheries Research Plan

Sec. 677.1 Purpose and scope.

677.2 Definitions.

677.3 Relation to other laws.

677.4 Permits.

677.5 Recordkeeping and reporting.

677.6 Research Plan fee.

677.7 General prohibitions.

677.8 Facilitation of enforcement.

677.9 Penalties.

677.10 General requirements.

677.11 Annual Research Plan specifications.

677.12 Compliance.

Subpart B--General Provisions of Risk-Sharing Pool for Insurance Purposes  
[Reserved]

Figures--Part 677

Figure 1--Federal Processing Permit Application (Form FPP-1).

Figure 2--Observer Coverage Payment Receipt (Form FPP-2).

Authority: 16 U.S.C. 1801 et seq.

Subpart A--General Provisions of the North Pacific Fisheries Research Plan

Sec. 677.1 Purpose and scope.

(a) These regulations implement the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

(b) Regulations in this part govern elements of the Research Plan for the following fisheries under the Council's authority: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, and Bering Sea and Aleutian Islands area king and Tanner crab in the exclusive economic zone; and halibut from convention waters off Alaska.

Sec. 677.2 Definitions.

In addition to the definitions in the Magnuson Act and in 50 CFR part 620, the terms used in this part have the following meanings:

ADF&G means the Alaska Department of Fish and Game.

Bering Sea and Aleutian Islands area is defined at Sec. 671.2 of this chapter.

Bering Sea and Aleutian Islands management area is defined at Sec. 675.2 of this chapter.

Bimonthly refers to a time period equal to 2 calendar months. Six consecutive bimonthly periods are established each year, as follows: January 1-February 29; March 1-April 30; May 1-June 30; July 1-August 31; September 1-October 31; and November 1-December 31.

Catcher/processor means a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel means a vessel that is used for catching fish and does not process fish on board.

Commissioner of ADF&G means the principal executive officer of ADF&G.

Convention waters off Alaska means all waters off Alaska in halibut regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E as defined in part 301 of this title.

Exvessel price means the price in dollars received by a harvester for fish from Research Plan fisheries. Exvessel price excludes any value added by processing.

Fee percentage means the annually calculated assessment rate, in percent of exvessel value of Research Plan fisheries, used to determine fee assessments under the Research Plan.

Fishermen means persons who catch, take, or harvest fish.

Fishing day means a 24-hour period, from 0001 A.l.t. through 2400 A.l.t., in which fishing gear is retrieved and groundfish, halibut, or king or Tanner crab are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

Fishing trip means one of the following time periods:

(1) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership processor vessel--a weekly reporting period, as defined at Sec. 672.2 or Sec. 675.2 of this chapter, during which one or more fishing days occur.

(2) For a catcher vessel used to deliver fish to other than a mothership processor vessel--the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel: Offloads groundfish, halibut, or king or Tanner crab; returns to an Alaskan port; or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

Groundfish is defined at Sec. 672.2 or Sec. 675.2 of this chapter.

Gulf of Alaska is defined at Sec. 672.2 of this chapter.

Halibut means Pacific halibut (*Hippoglossus stenolepis*).

King crab means red king crab (*Paralithodes camtschatica*), blue king crab (*P. platypus*), brown (or golden) king crab (*Lithodes aequispina*), and scarlet (or deep sea) king crab (*Lithodes couesi*).

Landing is defined at Sec. 672.2 of this chapter.

Length overall (LOA) is defined at Sec. 672.2 of this chapter.

Mothership processor vessel means a processor vessel that receives and processes fish from other vessels and is not used for, or equipped to be used for, catching fish.

Processing or to process means the preparation of fish to render it suitable for human consumption, industrial uses, or long term storage, including, but not limited to, cooking, canning, smoking, salting, drying, freezing, and rendering into meal or oil, but does not mean icing, bleeding, heading, or gutting.

Processor means any facility or vessel that processes fish for commercial use or consumption, any person except a restaurant who receives fish from fishermen for commercial purposes, and fishermen who sell fish directly to a restaurant or to another individual for use as bait or personal consumption.

Regional Director means the Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

Research Plan means the North Pacific Fisheries Research Plan developed by the North Pacific Fishery Management Council under the Magnuson Act.

Research Plan fisheries means the following fisheries: Bering Sea and Aleutian Islands management area groundfish, Gulf of Alaska groundfish, Bering

Sea and Aleutian Islands area king and Tanner crab, and halibut from convention waters off Alaska.

Retained catch means the catch retained by a processor, in round weight or round-weight equivalents, from Research Plan fisheries.

Round weight or round-weight equivalent means:

(1) For groundfish or halibut--the weight of fish calculated by dividing the weight of the primary product made from that fish by the standard product recovery rate as determined using the best available evidence on a case-by-case basis.

(2) For Bering Sea and Aleutian Islands area crab processed by catcher/processors--scale weight of a subsample multiplied by the number of subsamples comprising the retained catch.

(3) For Bering Sea and Aleutian Islands area crab processed by mothership processor vessels or shoreside processors--scale weights of retained catches.

Shoreside processor or shoreside processing facility means any person that receives unprocessed fish, except catcher/processors, mothership processor vessels, restaurants, or persons receiving fish for use as bait or personal consumption.

Standard exvessel price means the exvessel price for species harvested in Research Plan fisheries, calculated annually by NMFS for each species or species group, from exvessel price information for all product forms, used in determining fee assessments.

Tanner crab means *Chionoecetes* species or hybrids of these species. Sec. 677.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in Sec. 620.3 of this chapter and paragraphs (b) through (c) of this section.

(b) Domestic fishing for groundfish. Regulations governing the conservation and management of groundfish in the Gulf of Alaska and the Bering Sea and Aleutian Islands management area are set forth at parts 672 and 675 of this chapter, respectively. The conservation and management of groundfish in waters of the territorial sea and internal waters of the State of Alaska are governed by Alaska Administrative Code at 5 AAC Chapter 28 and Alaska Statute at A.S. 16.

(c) King and Tanner crab fishing. The conservation and management of king crab and Tanner crab in the Bering Sea and Aleutian Islands area are governed by Alaska Statutes at A.S. 16 and Alaska Administrative Code at 5 AAC Chapters 34, 35, and 39; and at part 671 of this chapter.

#### Sec. 677.4 Permits.

(a) General. In addition to the permit and licensing requirements at Sec. 301.3 of this title and 672.4, 675.4, and 676.13 of this chapter, all processors of fish from Research Plan fisheries must have a Federal Processor Permit issued by the Regional Director under this section. Such permits shall be issued without charge.

(b) Application. The permit required under paragraph (a) of this section may be obtained by submitting to the Regional Director a completed Federal Processor Permit Application (Form FPP-1; see figure 1 to part 677) containing the following information:

(1) The semiannual period for which the permit is requested.

(2) The Research Plan fishery or fisheries for which the permit is requested.

(3) If the application is for an amended permit, the current Federal Processor Permit number and an indication of the information that is being

amended.

(4) The processor owner's name or names, business mailing address, telephone number, and FAX number.

(5) If the processor is a shoreside processor, the plant's name, business mailing address, ADF&G Processor Code, telephone number, and FAX number.

(6) If the processor is a vessel, the vessel's name, home port, net tonnage, length overall, U.S. Coast Guard number, telephone number, FAX number, INMARSAT (satellite communications) number, and ADF&G number.

(7) The applicant's name, signature, and date.

(c) Issuance.

(1) Permits required under this section will be issued semiannually by the Regional Director.

(2) The Regional Director will issue a permit required under paragraph (a) of this section upon receipt of a complete application, if all Research Plan fees due are paid. Upon receipt of an incomplete or improperly completed application, or if Research Plan fees are not paid, the Regional Director will notify the applicant of the deficiency. No permit will be issued to an applicant until a complete application is submitted and all fees are paid.

(d) Notification of change. Any person who has applied for and received a permit under this section must notify the Regional Director, in writing, of any change in the information provided under paragraph (b) of this section within 10 days of the date of that change.

(e) Duration. The permit issued by the Regional Director will continue in full force and effect for the period January 1 through June 30, or July 1 through December 31, of the year for which it is issued, or until it is revoked, suspended, or modified under part 621 (Civil Procedures) of this chapter.

(f) Alteration. No person may alter, erase, or mutilate any permit issued under this section. Any permit that has been intentionally altered, erased, or mutilated is invalid.

(g) Transfer. Permits issued under this section are not transferable or assignable. Each permit is valid only for the processor for which it is issued. The Regional Director must be notified of a change in ownership, pursuant to paragraph (d) of this section.

(h) Inspection. The permit issued under this section must be maintained on the processor vessel or at the shoreside processor. The permit must be available for inspection upon request by an authorized officer or any employee of NMFS, ADF&G, or the Alaska Department of Public Safety designated by the Regional Director, Commissioner of ADF&G, or Commissioner of the Alaska Department of Public Safety.

(i) Sanctions. Procedures governing permit sanctions are found at subpart D of 15 CFR part 904.

(j) Disclosure. NMFS will maintain a list of permitted processors that may be disclosed for public inspection.

#### Sec. 677.5 Recordkeeping and reporting.

(a) Applicability. Any processor that retains fish from a Research Plan fishery is responsible for compliance with the applicable recordkeeping and reporting requirements of this part.

(b) General requirements. Any form, record, or report that is required to be submitted or provided to the Regional Director must be addressed or delivered to the National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Submissions must be complete, legible, and in English.

Sec. 677.6 Research Plan fee.

(a) Fee percentage. The fee percentage will be set annually under procedures at Sec. 677.11, such that the total fees equal the lesser of the following:

(1) The cost of implementing the Research Plan, including nonpayments, minus any other Federal funds that support the Research Plan and any existing surplus in the North Pacific Fishery Observer Fund; or

(2) Two percent of the exvessel value of all Research Plan fisheries.

(b) Fee assessment-

(1) Fee assessments applicable from January 1, 1995, through December 31, 1995.

(i) NMFS will calculate bimonthly fee assessments for each processor of Research Plan fisheries based on the best available information received by the Regional Director since the last bimonthly billing period on the amount of fish retained by the processor from Research Plan fisheries. Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(ii) The bimonthly fee assessment calculated by NMFS for each shoreside processor or mothership processor vessel retaining groundfish shall equal the sum of:

(A) The round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels equal to and greater than 60 ft (18.3 m) LOA determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to Sec. 677.11 for the calendar year; plus

(B) The round weight or round-weight equivalent of retained catch of each groundfish species delivered by catcher vessels less than 60 ft (18.3 m) LOA determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by the fee percentage established pursuant to Sec. 677.11 for the calendar year.

(iii) The bimonthly fee assessment calculated by NMFS for each processor retaining king or Tanner crab shall equal the sum of:

(A) The round weight or round-weight equivalent of retained catch of *Chionoecetes tanneri* Tanner crab, *C. angulatus* Tanner crab, and *Lithodes cousei* king crab determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by one-half the fee percentage established pursuant to Sec. 677.11 for the calendar year; plus

(B) The round weight or round-weight equivalent of retained catch of king or Tanner crab, except for those species listed under paragraph (b)(1)(iii)(A) of this section, determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by the fee percentage established pursuant to Sec. 677.11 for the calendar year.

(iv) Except as provided in paragraph (b)(1)(ii) of this section, the bimonthly fee assessment calculated by NMFS for each processor that retains groundfish or halibut is the round weight or round-weight equivalent of



retained catch of these species determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by the fee percentage established pursuant to Sec. 677.11 for the calendar year.

(2) Fee assessments applicable after December 31, 1995. The bimonthly fee assessment calculated by NMFS for each processor of Research Plan fisheries is the round weight or round-weight equivalent of retained catch for each species from Research Plan fisheries determined by the best available information received by the Regional Director since the last bimonthly billing period, multiplied by the standard exvessel price established pursuant to Sec. 677.11 for the calendar year, multiplied by the fee percentage established pursuant to Sec. 677.11 for the calendar year. Fee assessments will not be calculated for the retained amounts of whole fish processed into meal product.

(c) Fee assessment payments. NMFS will bill each processor of Research Plan fisheries for bimonthly fee assessments calculated under paragraph (b) of this section. Each processor must collect and pay the bimonthly fee assessments. Bimonthly fee assessment payments must be in the form of certified check, draft, or money order payable in U.S. currency to ``The Department of Commerce/NOAA.'' Except as provided in paragraphs (d) and (e) of this section, payment in full must be received by the financial institution authorized by the U.S. Treasury to receive these funds within 30 calendar days from the date of issuance of each bimonthly fee assessment bill. Payments will be deposited in the North Pacific Fishery Observer Fund within the U.S. Treasury.

(d) Credit for observer coverage costs incurred from January 1, 1995, through December 31, 1995-

(1) General. Subject to the limitations set out in paragraph (d)(2) of this section, each processor may subtract from its portion of the processor's billed fee assessment the cost of observer coverage paid by the processor to an observer contractor(s) for the processor's compliance with observer coverage requirements at Sec. 677.10(a).

(2) Limitations. (i) Only those payments to observer contractors for observer coverage required under Sec. 677.10(a) of this part that are received by observer contractors prior to April 1, 1996, will be credited against a processor's billed fee assessment under this paragraph (d). (ii) The amount that may be subtracted from a catcher/processor's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under Sec. 677.10(a) of this part up to an amount equal to the fee assessment calculated under paragraph (b)(1)(iv) of this section. (iii) The amount that may be subtracted from a shoreside processor's or mothership processor vessel's billed fee assessment for retained catch of groundfish is limited to the actual cost of observer coverage required under Sec. 677.10(a) of this part up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(ii)(A) of this section plus one-half the fee assessment calculated under paragraph (b)(1)(ii)(B) of this section.

(iv) The amount that may be subtracted from a catch/processor or mothership processor vessel's billed fee assessment for retained catch of king or Tanner crab is limited to the actual cost of observer coverage required under Sec. 677.10(a) of this part up to an amount equal to the sum of the fee assessment calculated under paragraph (b)(1)(iii)(A) of this section plus one-half the fee assessment calculated under paragraph (b)(1)(iii)(B) of this section.

(3) Processor Account Status-

(i) Credit applied by NMFS to bimonthly fee assessments. If a processor's cost for observer coverage required under Sec. 677.10(a) during a bimonthly period exceeds the calculated fee assessment for that period, the Regional Director will credit the processor's next bimonthly fee assessment up to an amount equal to the remaining observer coverage costs as reported to the Regional Director under paragraph (d)(4) of this section, or the bimonthly fee assessment, whichever is less.

(ii) Refunds. As soon as practicable after April 1, 1996, NMFS will issue a refund to a processor for any portion of the processor's costs for observer coverage required under Sec. 677.10(a) and reported to the Regional Director under paragraph (d)(4) of this section up to an amount equal to the sum of the bimonthly fee assessments paid by the processor for retained catch during 1995, provided that:

(A) These observer coverage costs previously have not been subtracted from the processor's billed fee assessment;

(B) Payment for observer coverage required under Sec. 677.10(a) have been received by observer contractors prior to April 1, 1996;

(C) The processor has not applied for a semiannual processor permit under Sec. 677.4 prior to April 1, 1996; and

(D) The bimonthly fee assessments billed to the processor under Sec. 677.6(b)(1) have been paid.

(4) Recordkeeping and reporting, for purposes of this paragraph (d)--

(i) Processor requirements.

(A) All processors that subtract costs for observer coverage from their bimonthly fee assessment under this paragraph (d) must submit to the Regional Director a copy of each paid invoice for observer coverage and a copy of the check, money order, or other form of payment sent to the observer contractor in payment for observer coverage listed on the invoice.

(B) The information required under paragraph (d)(4)(i)(A) of this section must be sent to the following address at the time the processor submits the payment of the bimonthly fee assessment to the Department of Commerce/NOAA under paragraph (c) of this section: NMFS, Alaska Fisheries Science Center, Observer Program, 7600 Sand Point Way NE., Building 4, Bin C 15700, Seattle, WA 98115-0070, Attn: Research Plan Coordinator.

(ii) Observer contractor requirements.

(A) Observer contractors must submit to the Regional Director a completed Observer Coverage Payment Receipt Form (Form FPP-2; see figure 2 to part 677) for each payment received from a processor for compliance with observer coverage requirements at Sec. 677.10(a) and a copy of the check, money order, or other form of payment. Each completed form and the attached copy of the record of payment must be submitted to the following address within 7 days after payment is received: NMFS, Alaska Fisheries Science Center, Observer Program, 7600 Sand Point Way NE., Building 4, Bin C 15700, Seattle, WA 98115-0070, Attn: Research Plan Coordinator.

(B) Observer Coverage Payment Receipt Form. Observer contractors may obtain Observer Coverage Payment Receipt Forms from the Regional Director. The form requests the following information:

(1) Observer contractor name and signature of a person serving as a representative for the observer contractor;

(2) Identification of the processor vessel or shoreside processing facility that received observer coverage;

(3) Name of the observer(s) and date(s) of deployment for observer coverage;

(4) The name and mailing address of the person who paid for observer coverage; and

(5) The total amount paid for observer coverage and the date payment for observer coverage was received; and

(6) Copies of the check, money order, or other form of payment.

(e) Disputed fee assessments. A processor must notify the Regional Director, in writing, within 30 days of issuance of a bimonthly fee assessment bill, if any portion of the bimonthly fee assessment bill is disputed. The processor must pay the undisputed amount of the bimonthly fee assessment bill within 30 days of its issuance, and provide documentation supporting the disputed portion claimed to be under- or over-billed. The Regional Director will review the bimonthly fee assessment bill and the documentation provided by the processor, and will notify the processor of his determination within 60 days of the date of issuance of the bimonthly fee assessment bill. If the Regional Director determines a billing error has occurred, the processor's account will be rectified by credit or issuance of a corrected fee assessment bill. If the Regional Director determines that a billing error has not occurred, the outstanding payment on the bimonthly fee assessment bill will be considered past-due from the date 30 days from the date of issuance of the bill and late charges will be assessed under paragraph (f) of this section. If the processor does not dispute the amount of the fee assessment bill within 30 days of its issuance, the fee assessment will be final, and will be due to the United States.

(f) Late charges. The NOAA Office of the Comptroller shall assess late charges in the form of interest and administrative charges for late payment of fee assessments. Interest will accrue on the unpaid amount at a percentage rate established by the Federal Reserve Board and applied to funds held by the U.S. Treasury for each 30-day period, or portion thereof, that the payment is overdue. Payment received after 90 days from the due date will be charged an additional late payment penalty charge of 6 percent of the balance due.

#### Sec. 677.7 General prohibitions.

In addition to the general prohibitions specified in Sec. 620.7 of this chapter, it shall be unlawful for any person to do any of the following:

(a) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer.

(b) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(c) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(d) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(e) Process fish from a Research Plan fishery without a valid permit

issued pursuant to this part.

(f) Deliver fish from a Research Plan fishery to a processor not possessing a valid permit issued pursuant to this part.

(g) Subtract from a billed fee assessment costs paid for observer coverage under provisions of Sec. 677.6(d) that are based on false or inaccurate information.

(h) Fish for or process fish without observer coverage required under Sec. 677.10.

(i) Require an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

Sec. 677.8 Facilitation of enforcement.

See Sec. 620.8 of this chapter.

Sec. 677.9 Penalties.

See Sec. 620.9 of this chapter.

Sec. 677.10 General requirements.

(a) Observer requirements applicable through December 31, 1995-

(1) Requirements for operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels-

(i) Coverage requirements. Observer coverage is required as follows:

(A) A mothership processor vessel of any length that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer onboard the vessel each day it receives or processes groundfish during that month.

(B) A mothership processor vessel of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer on board the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(C) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry a NMFS-certified observer at all times while fishing for groundfish, except for a vessel fishing for groundfish with pot gear as provided in paragraph (a)(1)(i)(F) of this section.

(D) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry a NMFS-certified observer during at least one fishing trip during that calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which the vessel participates.

(E) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (a)(1)(i)(D) of this section must carry a NMFS-certified observer during at least one fishing trip in the Eastern Regulatory Area of the Gulf of Alaska during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(F) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (a)(1)(ii) of this section in which the vessel participates.

(ii) Groundfish fishery categories requiring separate coverage--(A) Pollock fishery. Fishing that results in a retained catch of pollock, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(B) Pacific cod fishery. Fishing that results in a retained catch of Pacific cod, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(C) Sablefish fishery. Fishing that results in a retained catch of sablefish, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(D) Rockfish fishery. Fishing that results in a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus*, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(E) Flatfish fishery. Fishing that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (a)(1)(ii).

(F) Other species fishery. Fishing that results in a retained catch of groundfish, during any fishing trip, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (a)(1)(ii)(A) through (E) of this section.

(iii) Assignment of vessels to fisheries. At the end of any fishing trip, a vessel's retained catch composition of groundfish species or species groups for which a TAC has been specified under Sec. 672.20 or Sec. 675.20 of this chapter, in round weight or round-weight equivalents, will determine to which of the fishery categories listed under paragraph (a)(1)(ii) of this section the vessel is assigned.

(A) A catcher/processor will be assigned to a fishery category at the end of a fishing trip based on the round weight or round-weight equivalent of the retained groundfish catch composition reported on the vessel's weekly production report submitted to the Regional Director under Sec. 672.5(c)(2) or Sec. 675.5(c)(2) of this chapter.

(B) A catcher vessel that delivers to mothership processor vessels in Federal waters will be assigned to a fishery category at the end of a fishing trip based on the round weight or round-weight equivalent of the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership processor vessel under Sec. 672.5(c)(2) or Sec. 675.5(c)(2) of this chapter.

(C) A catcher vessel that delivers groundfish to a shoreside processor or

to a mothership processor vessel in Alaska State waters at the end of a fishing trip will be assigned to a fishery category based on the round weight or round-weight equivalent of the retained groundfish catch composition delivered to a processor(s) at the end of that fishing trip and reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(2) Requirements for managers of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish shoreside processing facilities. Observer coverage is required as follows:

(i) A shoreside processing facility that processes 1,000 mt or more in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility each day it receives or processes groundfish during that month.

(ii) A shoreside processing facility that processes 500 mt to 1,000 mt in round weight or round-weight equivalents of groundfish during a calendar month is required to have a NMFS-certified observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab. An operator of a vessel that processes king or Tanner crab or that harvests *C. tanneri* Tanner crab, *C. angulatus* Tanner crab, or *L. cousei* king crab, must have one or more State of Alaska-certified observers on board the vessel whenever king or Tanner crab are received, processed, or onboard the vessel in the Bering Sea and Aleutian Islands area if the operator is required to do so by Alaska State regulations at 5 AAC 34.035, 34.082, 35.082, or 39.645.

(b) Observer requirements applicable after December 31, 1995--(1) General requirements for Research Plan fisheries--

(i) Requirements for operators of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish vessels and halibut from convention waters off Alaska. An operator of a vessel that catches and retains groundfish or halibut, or a vessel that processes groundfish or halibut, must carry one or more NMFS-certified observers onboard the vessel whenever fishing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(ii) Requirements for managers of shoreside processing facilities of Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish and halibut from convention waters off Alaska. A manager of a shoreside processing facility that processes groundfish or halibut received from vessels regulated under this part must have one or more NMFS-certified observers present at the facility whenever groundfish or halibut are received or processed, if the manager is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iii) Requirements for vessel operators of Bering Sea and Aleutian Islands area king and Tanner crab. An operator of a vessel subject to this part must carry one or more NMFS-certified observers or ADF&G employees onboard the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director under paragraph (b)(2) of this section.

(iv) Requirements for managers of shoreside processing facilities of Bering Sea and Aleutian Islands area king and Tanner crab. A manager of a shoreside processing facility that processes king or Tanner crab received from vessels regulated under this part must have one or more NMFS-certified observers, or ADF&G employees, present at the facility whenever king or Tanner crab is received or processed, if the manager is required to do so by the

Regional Director under paragraph (b)(2) of this section.

(2) Observer coverage for Research Plan fisheries-

(i) Annual determination of coverage level. The appropriate level of observer coverage necessary to achieve the objectives of the Research Plan, given the funds available from the North Pacific Fishery Observer Fund, will be established annually under procedures in Sec. 677.11.

(ii) Inseason changes in coverage level. (A) The Regional Director may increase or decrease the observer coverage requirements for the Research Plan fisheries at any time to improve the accuracy, reliability, and availability of observer data, and to ensure solvency of the observer program, so long as the standards of section 313 of the Magnuson Act and other applicable Federal regulations are met, and the changes are based on one or more of the following:

(1) A finding that there has been, or is likely to be, a significant change in fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component.

(2) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(3) A finding that any decrease in observer coverage resulting from unanticipated funding shortfalls is consistent with the following priorities:

(i) Status of stock assessments;

(ii) Inseason management;

(iii) Bycatch monitoring; and

(iv) Vessel incentive programs and regulatory compliance.

(4) A determination that any increased costs are commensurate with the quality and usefulness of the data to be derived from any revised program, and are necessary to meet fishery management needs.

(B) [Reserved]

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

(iv) NMFS will publish changes in observer coverage requirements made under paragraph (b)(2)(ii) of this section in the Federal Register, with the reasons for the changes and any special instructions to vessels required to carry observers, at least 10 calendar days prior to their implementation.

(c) Vessel responsibilities. An operator of a vessel must:

(1) Provide, at no cost to observers, the State of Alaska, or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(2) Maintain safe conditions on the vessel for the protection of observers during the time observers are on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(3) Allow observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers, the State of Alaska, or the United States.

(4) Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process,

weigh, or store fish or fish products at any time.

(6) Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(7) Allow observers to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(8) Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to, assisting the observers in measuring decks, codends, and holding bins; providing the observers with a safe work area adjacent to the sample collection site; providing crab observers with the necessary equipment to conduct sampling, such as scales, fish totes, and baskets; assisting in collecting bycatch when requested by the observers; assisting in collecting and carrying baskets of fish when requested by observers; and allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(9) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking observers.

(10) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(11) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(12) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(13) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(d) Shoreside processor responsibilities. A manager of a shoreside processing facility must:

(1) Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(2) Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish, crab, or halibut prior to receipt of those fish.

(3) Allow the observers to use the shoreside processing facility's communication equipment, on request, for the entry, transmission, and receipt of work-related messages at no cost to the observers, the State of Alaska, or the United States.

(4) Allow observers free and unobstructed access to the shoreside processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(5) Allow observers to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.



(6) Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to, assisting the observer in moving and weighing totes of fish, cooperating with product recovery tests, and providing a secure place to store baskets of sampling gear.

(e) Notification of observer contractors by processors and operators of vessels required to carry observers.

(1) Processors and operators of vessels required to carry observers under the Research Plan are responsible for meeting their observer coverage requirements. Processors and vessel operators must notify the appropriate observer contractor, as identified by NMFS, in writing or facsimile copy, at least 60 days prior to the need for an observer, to ensure that an observer will be available. Processors and vessel operators must notify the appropriate observer contractor again, in writing, facsimile copy, or by telephone, at least 10 days prior to the need for an observer, to make final arrangements for observer deployment.

(2) If observer contractors are not notified within the time periods set out at paragraph (e)(1) of this section, the availability of an observer to meet observer coverage requirements will not be guaranteed.

(3) Names of observer contractors, information for contacting contractors, and a list of embarkment/disembarkment ports for observers will be published in the Federal Register annually, prior to the beginning of the calendar year pursuant to Sec. 677.11.

(f) Release of observer data to the public-

(1) Summary of weekly data. The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

- (i) Vessel name and Federal permit number;
- (ii) Number of chinook salmon and ``other salmon'' observed;
- (iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;
- (iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;
- (v) The number of observed trawl hauls or fixed gear sets;
- (vi) The number of trawl hauls that were basket sampled; and
- (vii) The total weight of basket samples taken from sampled trawl hauls.

(2) Haul-specific data. (i) The information listed in paragraphs (f)(2)(i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

- (A) Date.
- (B) Time of day gear is deployed.
- (C) Latitude and longitude at beginning of haul.
- (D) Bottom depth.
- (E) Fishing depth of trawl.
- (F) The ratio of the number of chinook salmon to the total round weight of groundfish.
- (G) The ratio of the number of other salmon to the total round weight of groundfish.
- (H) The ratio of total round weight of halibut to the total round weight of groundfish.
- (I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (f)(2)(i) of this section are collected will not be released.

(3) In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (f) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

(g) Vessel safety requirements applicable after December 31, 1995. Any vessel that is required to carry observers under paragraph (b)(1) of this section must have onboard either:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in Titles 33 CFR chapter I and 46 CFR chapter I,

(2) A certificate of compliance issued pursuant to 46 CFR 28.710, or

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311. NMFS will not station observers aboard vessels that do not meet this requirement.

#### Sec. 677.11 Annual Research Plan specifications.

(a) Proposed Research Plan specifications. Annually, after consultation with the Council, and, in the case of observer coverage levels in the crab fisheries, the State of Alaska, NMFS will publish for public comment in the Federal Register: Proposed standard exvessel prices, total exvessel value, fee percentage, levels of observer coverage for Research Plan fisheries, and embarkment/disembarkment ports for observers, for the calendar year.

(1) Standard exvessel prices. Standard exvessel prices will be used in determining the annual fee percentage for the calendar year and will be the basis for calculating fee assessments. Standard exvessel prices for species harvested in Research Plan fisheries for each calendar year will be based on:

(i) Exvessel price information by applicable season, area, gear, and processing sector for the most recent 12-month period for which data are available;

(ii) Factors that are expected to change exvessel prices in the calendar year; and

(iii) Any other relevant information that may affect expected exvessel prices during the calendar year.

(2) Total exvessel value. The total exvessel value of Research Plan fisheries will be calculated as the sum of the product of the standard exvessel prices established under paragraph (a)(1) of this section and projected retained catches, by species. The value of whole fish processed into meal product will not be included in this calculation.

(3) Research Plan fee percentage. The Research Plan fee percentage for a calendar year will equal the lesser of 2 percent of the exvessel value of retained catch in the Research Plan fisheries or the fee percentage calculated using the following equation:  $\text{Fee percentage} = [100 \times (\text{RRPC} - \text{FB} - \text{OF}) / \text{V}] / (1 - \text{NPR})$  where RRPC is the projection of recoverable Research Plan

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

(4) Observer coverage. For the period January 1, 1995, through December 31, 1995, observer coverage levels in Research Plan fisheries will be as required by Sec. 677.10(a). After December 31, 1995, the level of observer coverage will be determined annually by NMFS, after consultation with the Council and the State of Alaska, and may vary by fishery and vessel or processor size, depending upon the objectives to be met for the groundfish, halibut, and king and Tanner crab fisheries. The Regional Director may change observer coverage inseason pursuant to Sec. 677.10(b)(2)(ii).

(5) Embarkment/disembarkment ports. Ports to be used to embark and disembark observers will be selected on the basis of convenience to the affected industry and on the availability of facilities, transportation, and accommodations deemed by the Regional Director to be necessary for the safe and reasonable deployment of observers.

(b) Final Research Plan specifications. NMFS will consider comments received on the proposed specifications and, following consultation with the Council, and with the State, in the case of observer coverage in the crab fisheries, will publish the final total exvessel value; standard exvessel prices; fee percentage; levels of observer coverage for Research Plan fisheries, including names of observer contractors and information for contacting them; and embarkment/disembarkment ports in the Federal Register annually prior to the beginning of the calendar year.

#### Sec. 677.12 Compliance.

The operator of any fishing vessel subject to this part, and the manager of any shoreside processing facility that receives groundfish, halibut, or king and Tanner crab from vessels subject to this part, must comply with the requirements of this part. The owner of any fishing vessel subject to this part, or any shoreside processing facility that received groundfish, halibut, or king and Tanner crab from vessels subject to this part, must ensure that the operator or manager complies with the requirements of this part and is liable, either individually or jointly and severally, for compliance with the requirements of this part.

Subpart B--General Provisions of Risk-Sharing Pool for Insurance Purposes  
[Reserved]

Figures--Part 677

Figure 1 to part 677--Federal Processing Permit Application (Form FPP-1).

BILLING CODE 3510-22-W <GRAPHIC><TIFF>TR06SE94.002  
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3510-22-C

Figure 2 to part 677--Observer Coverage Payment Receipt (Form FPP-2).

BILLING CODE 3510-22-W <GRAPHIC><TIF5>TR06SE94.007  
<GRAPHIC><TIF6>TR06SE94.008

[FR Doc. 94-21711 Filed 9-2-94; 8:45 am] BILLING CODE 3510-22-C