

January 30, 2002

David Benton, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501

Dear Chairman Benton:

RECEIVED

JAN 30 2002

N.P.F.M.C

The Association for Professional Observers (APO) would like to thank NMFS and Council staff for the effort that has gone into the Draft EA/RIR for proposed changes to the regulations authorizing the North Pacific Groundfish Observer Program (NPGOP). We believe that many of the changes will have a positive effect on observers and the quality of their data. Below you will find our comments on a few of the proposed alternatives, based on the language in the Draft EA/RIR distributed to the Observer Advisory Committee (OAC) in January 2002. We apologize if some of these items have been addressed in the current draft.

The APO approves of the modified version of Alternative 3 that was discussed at the OAC meeting, which would extend the current program until December 31, 2007 (rather than 2005, as written in the Preliminary Draft). Alternative 2, which would effectively institutionalize the status quo by extending the regulations indefinitely, is based on the "expectation that the regulations would be amended periodically as necessary" but contains no provision to ensure that this would occur. While it is true that sunset dates cannot provide that guarantee, in reality they create considerable incentive for action and in the past have consistently resulted in programmatic changes. NMFS currently envisions creating a long-term plan for restructuring the NPGOP; we believe that a 2007 sunset date allows adequate time to accomplish this objective without creating an undue administrative burden, while still providing a mechanism for accountability should the agency be delayed in meeting its objectives.

Overall, the APO supports Option 1 for Alternatives 2 and 3, which would increase NMFS' management controls over observer providers and observers.

We have the following comments regarding the proposed changes to the observer certification criteria and standards of conduct (Item B):

B1. Adding a criterion so that individuals who have been convicted as an adult for a crime involving dishonesty or false statements within the last ten years would be ineligible for observer certification. Our concerns are the following: a) The agency needs to define exactly what crimes fall into this category. b) Since observer providers would not conduct background checks, it would be entirely dependent upon the applicant to provide this information. c) Since the intent is to eliminate applicants whose integrity is in question, it seems reasonable to include some other crimes in this criterion, i.e., those involving violence. d) The ten-year period seems overly long; it could potentially eliminate a high-quality applicant with a strong work history who committed a minor infraction eight years previously. e) We would like the agency to grandfather currently active observers, unless a reasonable argument can be made against this suggestion.

B3. Changing the standards of behavior to make each contractor responsible for misuse of alcohol and drugs by their employees. We believe that NMFS should set minimum standards for contractors' drug and alcohol policies, including making possession of illegal drugs a violation. This would establish a basic framework of acceptable behavior common to all observers.

Overall, the APO approves of replacing the observer contractor certification and decertification process with an APA-compliant permitting process (Item C). However, we are concerned that the permits, once issued, would remain valid indefinitely. We believe that an annual review of

contractors' performances is necessary in order to hold them accountable to the standards they committed to in their initial applications. Based on opinions voiced at numerous APO meetings, the idea of NMFS providing an annual evaluation of contractors has been strongly supported by observers for years.

The APO supports many of the changes to the application criteria and the responsibilities of contractors (Item D). Specific comments on a few of the proposals follow:

D8. Requiring observers to complete in-person mid-deployment data reviews unless specifically exempted by NMFS. We understand the need to establish preventative measures designed to catch mistakes early. However, more clarification regarding deadlines is necessary, and some leeway should be built into this regulation to allow for uncertainties involved in the logistics of scheduling around vessel assignments.

D16. Requiring contractors to meet their own minimum requirements for candidate interviews. The APO would like to see NMFS establish minimum guidelines for interviewing that would be a required part of each contractor's screening process. We have requested that the NPGOP create an informational brochure describing the hardships of observing in order to better prepare applicants for challenging conditions.

D18. Requiring contractors to verify that a vessel has a valid USCG safety decal before placing an observer onboard. The APO supports the idea of giving contractors more responsibility regarding the safety of the vessels to which they assign observers, and would like to see the USCG decal specifically mentioned in their written contracts with clients. However, since there are some logistical problems associated with the contractor being responsible for all verification (last-minute assignments to boats with no access to fax machine, etc.), there should be some allowance for observers to verify the decal and pass this information on to the contractor verbally.

**The APO is strongly in favor of Option 2 for Alternatives 2 and 3, which would grant NMFS the authority to place staff and other qualified persons on any federally permitted groundfish fishing vessel and at processing plants. This provides important opportunities for troubleshooting sampling issues and creating vessel-specific sampling profiles, and would ultimately benefit observers, industry, and contractors by helping potential problems to be resolved in a timely and professional manner. We also feel that NMFS staff would benefit from occasional exposure to observer working environments.**

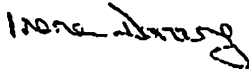
The following are possible changes (some from NMFS' original Working Draft) that we feel would benefit observers:

- 1) First-time observer trainees should be required to show proof of a signed contract addendum before attending training classes. Currently, many trainees travel to Seattle and Anchorage and begin classes without ever having seen a written contract. We do not consider this necessary for returning priors, although we do advise all observers to acquire a written addendum specifying the agreed upon time commitment for each deployment.
- 2) NMFS had suggested requiring contractors to assign only prior observers to flatfish factory trawlers, due to the inherent difficulty associated with sampling on these vessels. After consulting with observers and debriefers, it became clear that there are specific vessels of various gear types that are known to be very difficult to sample on. The overall opinion was that NMFS should designate just those vessels as "prior-only" boats, rather than choosing an entire gear-type, and should determine ahead of time what measures to take should an injury or other emergency situation leave only trainees available for such an assignment.
- 3) Occasionally (albeit rarely) we hear of incidents in which observers boarded boats with insufficient lifeboat capacity. While the contracts cover this scenario by stating that vessels taking observers must meet USCG requirements, we would like to see the lifeboat capacity issue emphasized again by being specifically addressed in each vessel contract. This would

act as a reminder to vessel operators, and would take the onus off of observers by making it obvious that it is a contractor-specified requirement. While this issue may be less of a problem in the Alaska fleet than in some other programs it is extremely important nonetheless, especially since the Alaska program tends to set the stage for observer conditions throughout the U.S.

The APO is glad to see the OAC back on track for working out a long-term plan for restructuring the NPGOP. The current situation creates an interesting dichotomy, with NMFS in the position of trying to shift from employer towards client status from the viewpoint of observers, while at the same time finding it necessary to implement more regulations in order to achieve the goals of high data quality and improved working conditions for observers. We appreciate the time and effort that NMFS and Council staff and members of the OAC have put into designing and reviewing the current proposed changes, and would like to see the Alaska program continue to be at the forefront of positive trends in observer programs nationally.

Sincerely,




Irene Dorang  
Executive Director

Cc: Dan Ito, Program Leader, Groundfish Observer Program  
Jim Balsiger, Regional Administrator, Alaska Region  
Doug DeMaster, Science and Research Director

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Acting Executive Director

DATE: January 30, 2002

SUBJECT: Observer Program

ESTIMATED TIME 3 HOURS
---------------------------

**ACTION REQUIRED**

- (a) Initial review of regulatory analysis.
- (b) Review Observer Advisory Committee report.
- (c) Discuss status of long-term program adjustments.

**BACKGROUND**

(a) Initial review of regulatory analysis

The regulations that authorize and implement the North Pacific Groundfish Observer Program (Observer Program) expire December 31, 2002. This regulatory analysis package (EA/RIR/RFAA) addresses alternatives to extend and improve the Observer Program beyond 2002. The three primary alternatives are as follows: (1) allow the regulations and the Observer Program to expire (no action alternative); (2) extend the regulations indefinitely with the expectation that they would be amended periodically to maintain or increase the effectiveness and efficiency of the Observer Program; and (3) extend the regulations through December 31, 2007.

In addition to the alternatives above, two complementary options for improving the existing regulations are proposed. The options would: (1) increase NMFS' management controls over observer providers and observers by strengthening the regulations governing the relationship between NMFS and the observer providers and observers; and (2) increase the ability of NMFS to interact effectively with observers, fishermen, and processing plant employees by granting NMFS the authority to place NMFS staff and other qualified persons aboard groundfish and halibut vessels and at groundfish plants.

The regulatory actions under consideration were developed in response to the agency's need to analyze methods of strengthening the regulations governing the relationship between NMFS and the observer providers to ensure sufficient management controls. NMFS has long recognized a need to change the service delivery model under which the Observer Program operates. The difficulty of replacing the current service delivery model has been demonstrated, with the major obstacle to any such change being perceived or actual increases in the total cost of the program and changes in the distribution of that cost. This proposed rulemaking would represent a first step in revising the overall program in order to meet the needs that have been identified by the agency, the Council, and the Observer Advisory Committee (OAC).

The Observer Program developed the alternatives and options under consideration in consultation with the OAC. Initial review of the draft analysis is scheduled for this meeting, and final action is currently scheduled for April 2002. The draft analysis was sent to the Council on January 23.

(b) Review Observer Committee report

The Observer Advisory Committee convened on January 7 - 8 in Seattle to review the agency's goals and objectives for the Observer Program and the draft regulatory analysis discussed above. Several revisions were made to the alternatives and options under consideration as a result of the OAC's recommendations. Overall, the committee recommended moving forward with the analysis, given several recommendations and clarifications. The committee report is attached as Item C-7(b)(1).

(c) Discuss status of long-term program adjustments

The committee recommended that the Council write a letter to Dr. Bill Hogarth, NMFS Asst. Administrator for Fisheries, requesting support for full Federal funding of the North Pacific Groundfish Observer Program in the NMFS budget (FY04 budget initiative).

The committee had limited discussion of long-term changes to the program, recognizing that the proposed regulatory package will be the main focus of the agency and the Council until after final action. The committee recommended meeting in May 2002 to address the next steps to making long-term changes to the program. As reflected in the January 2002 meeting minutes, the committee also recommended that the OAC should meet annually to review an Observer Program report, developed by the agency, which would address, among other elements, program costs and agency progress toward meeting the goals and objectives.

Report of the NPFMC Observer Advisory Committee

January 7 - 8, 2002 – Seattle, Washington

Committee: Joe Kyle (Chair), Julie Bonney, Kim Dietrich, Susan Robinson, Paul MacGregor (for Trevor McCabe), John Gauvin, Bob Mikol, Kathy Robinson, Paula Cullenberg, Arni Thomson

Not present: Francine Bennis, Jeff Stephan

Staff: NPFMC - Nicole Kimball, Chris Oliver  
NMFS-AFSC - Dan Ito, Martin Loefflad, Shannon Fitzgerald, Joe Terry, Todd Loomis, Bob Maier  
NMFS AK Region - Bridget Mansfield  
NMFS National Observer Program - Vicki Cornish  
NOAA GC AK - Tom Meyer

Other participants: Dave Money, Stacey Hansen, Greer Cowan, Lori Swanson, Michael Lake, Henry Brashen, Duke Bryan, Bryan Belay, Gillian Stoker, Irene Dorang

Overview

The Observer Committee met January 7 - 8 to review the agency's goals and objectives for the North Pacific Groundfish Observer Program (NPGOP) and the draft regulatory analysis (EA/RIR/RFAA) to extend and improve the Observer Program beyond 2002 developed by NMFS. The goals and objectives, March committee report, and OAC comments on a previously developed white paper outlining the proposed elements in the draft analysis were enclosed with the draft analysis and sent to committee members Dec. 21. Three appendices to the analysis were provided at the meeting. **Overall, the committee recommended moving forward with the analysis, with several recommendations and clarifications.** These will be addressed as discussion points under each of sections below.

Goals and Objectives

The agency emphasized that the goals and objectives provided represent the agency's perspective on the mission of the NPGOP, but any substantive comments by the OAC would be forwarded to the Regional Administrator for consideration. Staff reported that a national mission statement does not exist for NOAA's observer program, and each region has a different set of goals and objectives. The committee was interested in learning whether the NPGOP's goals and objectives mirrored those of other regions.

**The committee had no major concerns with the agency's goals and objectives as presented, but the following represent individual members' recommendations:**

- NEW OBJECTIVE: Address cost-effectiveness of the program
- ADD under Objective 2: Maintain effective communication and coordination on compliance issues with appropriate government agencies and industry organizations and ensure responsiveness to compliance concerns raised by observers.
- NEW GOAL: Create an observer program that fosters professionalism and safety among observers.  
Objectives: Improve observer work hours and conditions  
Provide safety via clear policies and procedures  
Train observers well
- ADD under Objective 4: Provide an annual program report to the OAC, industry, and observers
- MODIFY activity 1 under Objective 2: Work with enforcement personnel to monitor regulatory compliance.

### Draft Regulatory Analysis

Agency staff provided an overview of the draft EA/RIR/RFAA, which includes three primary alternatives regarding the expiration (12/31/02) of the regulations that authorize and implement the Observer Program. Two additional options are proposed to: 1) grant NMFS the authority to place NMFS and other qualified staff on vessels and in processing plants, and 2) increase NMFS' management controls over observer providers and observers. The OAC did not address these issues in the order provided in the analysis. Staff noted that observer contractors are referenced as "observer providers" in the analysis, thus, this report is consistent with that terminology.

#### EXPIRATION OF THE NPGOP REGULATIONS (Alternatives 1-3)

**A large majority of the committee supported extending the regulations which implement the Observer Program indefinitely with the expectation that they would be amended periodically as necessary to maintain or increase the effectiveness and efficiency of the program (Alternative 2).** Two committee members did not support eliminating the sunset date but thought that the sunset date proposed in Alternative 3 (2005) should be extended until 2007. No one on the committee endorsed Alternative 1, which would allow the program to expire.

The primary objections to extending the program regulations indefinitely (Alt. 2) were based on members' desire to make major changes to the program, the opportunity for which is typically at the time of reauthorization. They contended that a sunset date provides a mechanism to hold the agency accountable, and that without it, there is nothing to force programmatic changes. Some discussion followed regarding whether a sunset date truly influences the agency to take action or precludes action from being taken, given the ability to roll-over the program regulations at expiration.

Most members agreed that the sunset date is unnecessary and forces the agency to undertake the administrative burden of rulemaking to extend the Observer Program authority every few years. The Committee also agreed that support for removal of the sunset date is based upon creating a long-term plan for restructuring the NPGOP. This long-term perspective would include several elements developed and implemented in a step-wise process, including but not limited to, developing an alternate funding mechanism and reviewing observer coverage levels and placement. This approach would de-link the more controversial issues from the more straightforward needs, such as administrative improvements included in the proposed action, and would increase the likelihood that workable components could be developed, agreed upon by affected parties, and implemented in a timely manner. The OAC also recommended that the committee should meet annually to review a program report which would include program costs, agency progress toward meeting the goals and objectives, etc.

#### INCREASE NMFS' MANAGEMENT CONTROLS (Option 1 for Alt. 2 and 3)

NMFS outlined the four primary elements (A-D) of Option 1. NMFS also provided a general explanation of the importance of becoming compliant with the Administrative Procedures Act. Discussion points are provided below:

##### **A. Changing the observer certification/decertification process to ensure that it is compliant with the APA**

The committee generally supports the changes outlined in this element. The committee discussed the significance of the APA and the importance of having an adjudication process regarding determinations of an observer's certification or decertification. Staff clarified that under this action the providers' process for hiring an observer would not change, however, an observer would be required to submit an application to NMFS to be certified. If the agency does not certify the observer, this action would provide for an appeals process outside of the Observer Program Office that would reside in the Office of Administrative Appeals. The committee asked NMFS to consider grandfathering current observers in the program so that they would be exempt from the application process to become certified. The committee also noted that they were unable to comment on the actual application process without more detail on the application and the eligibility criteria.

##### **B. Changing the observer certification criteria and standards of conduct to clarify and strengthen these regs**

The committee generally supports the changes outlined in this element, with the concerns and clarifications noted

below. The committee also expressed a major concern that overall, the changes proposed may serve to exacerbate the confusion about who the observer works for and/or weaken the relationship between NMFS and the observer. The committee felt strongly that support for the observer should come from both the agency and the provider. Two general issues dominated the committee discussion:

Adding criteria so that individuals that have been convicted as an adult of a crime involving dishonesty or false statements within the last 10 years would not be eligible to be certified as an observer (B1) - NMFS clarified that observer providers would not be expected to perform background checks, but the application for observer certification would solicit this information. The committee noted that they need further details from NOAA GC regarding what constitutes a crime of dishonesty, and that these details should be included on the observer's application for certification. The committee was also concerned that the 10-year provision, while consistent with a Federal rule with respect to testimony or admission of evidence, was too onerous on new or current observers. The example used was that of a quality observer who had been working for 8 years but was convicted of shoplifting 10 years ago; the committee thought it unreasonable that this would be cause for ineligibility.

Adding criteria so that misuse of alcohol/drugs by observers would be handled by the observer provider (B3) - The committee had concerns with losing some of the rehabilitation and support services previously provided by NMFS to observers, although it was noted that state law mandates that a provider must allow employees to seek treatment without being fired. The committee also noted that the current regulations which forbid observers to be physically involved with vessel or processing facility personnel should be revised to apply only to personnel on the same vessel or in the same plant as the observer. Likewise, the committee recommended that NMFS clarify the meaning of "physically involved" in the regulation.

#### **C. Replacing the observer provider certification/decertification process with a permitting process**

The committee generally supports this element, which would allow providers to appeal a permit decision by the Observer Program Office to the Office of Administrative Appeals. Some members expressed interest in simplifying the application process for known entities or grandfathering current providers, while other members did not support this proposal. Some members also expressed interest in making the interim permits issued to existing providers indefinite until the agency makes a final decision on their applications, versus allowing the interim permits to expire after 3 months. The committee also requested more specificity with regard to the actual application criteria and process and further recommended that NMFS include a standard evaluation process by which they would provide an annual evaluation of the providers' performance (some concern was expressed about this information being public, as all documentation by NMFS is subject to FOIA).

#### **D. Changing the application criteria and responsibilities of the observer providers**

The agency presented proposed revisions to 15 of the existing regulations and 5 new regulations applicable to observer providers. Generally the committee supported these actions, with some concerns and requests for clarification. The following represent only those changes that received significant discussion by the committee:

Require that observers complete in-person mid-deployment data reviews unless exempted by NMFS (D8) - Committee concerns focused on the logistical difficulty of completing reviews in person when NMFS staff may only be available in major ports. The committee questioned whether phone reviews had previously been unacceptable, and whether a more reasonable solution would be to require data be sent both by fax and phone. NMFS emphasized that in-person data reviews would not be requested of every observer and that generally situations presenting logistical problems for vessels would be exempted. The committee requested specificity on the timing and process for exemptions.

Require that providers report instances of observer illness, injury, and code of conduct problems to NMFS (D14)

The committee agreed providers would need guidelines on the reporting process and what level of illness or injury needs to be reported. The committee also expressed concerns regarding the current regulation which requires that



harassment of an observer be reported to NMFS; this discussion focused mainly on the confidentiality aspect of the observer-observer provider relationship. The committee also requested specificity on what constitutes harassment and what is included in the 'code of conduct' referenced in the proposed change.

Require that providers must meet minimum requirements for observer interview and screening process (D16) -

Some committee members were concerned with this provision being overly burdensome to providers, while others agreed that this would help ensure observers are adequately screened and qualified. The committee agreed that if NMFS wants the providers to meet some minimum level in the recruiting and interview process, those minimum requirements should be developed and provided by NMFS. It was clarified that this would not prevent an individual provider from establishing a more rigorous process beyond what is required by NMFS, but that the provider would only be held to the minimum requirements required in regulation.

Require that providers must maintain and enforce their drug and alcohol policy (D17) -

The committee questioned the need for this regulation if the provider's alcohol/drug policy is specified in the provider's permit application to NMFS. There also remains confusion about whether a provider is responsible for an observer who is on-call but not currently on a vessel. The committee expressed interest in developing a standardized minimum drug policy, since the situation currently exists that two observers on the same vessel but employees of two different providers may be subject to different drug policies. Observer providers on the committee generally agreed that the providers should work with the observer union to develop some minimum alcohol and drug policy requirements that could be provided to NMFS to publish in regulation.

AUTHORIZE NMFS TO PLACE STAFF ON VESSELS/PLANTS (Option 2 for Alt. 2 and 3)

**The majority of the committee supported the concept of authorizing NMFS to deploy NMFS staff and other qualified persons aboard vessels and in processing plants in order to increase the ability of NMFS to work with industry, observers, and observer providers to resolve specific data, sampling, and compliance issues, develop sampling regimes, and conduct special projects.** This option would also keep NMFS staff, observer trainers, and observer de-briefers up to date on the working environment of the observers. While the OAC expressed significant concern about using this authority to force a vessel into port during a regular rotation, NMFS clarified that it is their intent to work with the vessel to avoid this situation. Specific discussion points included:

When would staff deployment satisfy observer coverage requirements? The context of this issue is that the analysis states that about 350 annual deployments (or 1% of the total observer days) would count as vessel/plant observer coverage and 150 days would not. The days that do not count as observer coverage represent deployments outside of, or in addition to, when an observer is required by regulation. The OAC supported the concept of receiving observer coverage (for the 350 days) as long as the person deployed is qualified and performing observer duties on a vessel that normally receives observer coverage.

Should vessels have to pay when a staff person is providing observer coverage? A fairly extensive discussion ensued on this topic. NMFS included a suboption in the analysis which would make vessels pay observer providers for 80% of the cost when a staff person is providing observer coverage, as opposed to the coverage being free to the vessel as proposed under Option 2. The 80% payment would be "banked" with a provider and used to provide an observer on another vessel of NMFS' determination at a later time. Given that a 20% savings to vessels represents about \$115,000 over 350 deployment days annually, the committee generally agreed that the administrative burden of tracking those funds among several providers is not likely to be cost-efficient. In addition, there were several questions regarding the use and timing of the "banked" payments. The committee noted that there may be costs to providers, given logistical and observer availability concerns, of providing observers to NMFS at a later time that would exceed the savings "banked" for use by NMFS. The committee recommended removing this suboption and placing it in Appendix C as an alternative considered but rejected.

The committee generally agreed that the 350 days of observer coverage provided by NMFS staff should be at no direct cost to the vessel, meaning instead of paying for an observer, vessels that have their observer replaced with a staff person who performs observer duties will receive that coverage at no cost (Option 2). While this may elicit equity concerns regarding which vessels would receive free coverage, the committee agreed that an annual report detailing the use of this provision may mitigate some of those concerns. The committee reiterated that NMFS would be making the decision to place observers where there are scientific and sampling problems, which should prevent this action from evolving into an incentive for vessels to get free observer coverage.

Cost - OAC discussions centered on the costs this action may impose on both vessel/plant owners and observer providers. Firstly, observer providers would be losing about 1% of their annual business, as NMFS staff would be displacing observers on about 350 deployment days. Vessel owners were concerned that displacing a productive crewmember with a staff person in the case that the staffer does not replace a regular observer would increase costs to the vessels. The specific example used was the limited space available on freezer longliners. In addition, many members expressed concern that regardless of the agency's efforts to limit staff deployments to the beginning of a normal observer rotation, circumstances will at times occur that cause an observer to be replaced mid-rotation, resulting in increased costs to the provider and vessel. If a staff person replaces an observer mid-rotation, there will be costs associated both with transporting and housing the observer while the staffer is on board and transporting an observer back to the vessel once the staff deployment is completed. In addition, a staff person may not be available at the port of the vessel's choice, causing increased transportation costs. NMFS anticipates that the great majority of the staff deployments would be at the request of the vessel, thus NMFS would work with the vessel to ensure that the staffer would be deployed on a normal rotation and thus eliminate additional airfare costs. However, there does remain the potential for staff to be deployed outside of a regular rotation in some cases.

How would NMFS choose vessels on which to deploy staff? Some members were concerned with not knowing the criteria NMFS would use to decide which vessels to board, especially those vessels that are not required to have observer coverage (i.e., halibut boats, vessels <60'). There was a suggestion to develop a list of vessels that would volunteer to take a staff person as part of the 150 days. NMFS staff responded that placing observers or staff on vessels that do not normally require observers would usually be in the case of a discretely defined project. In the case of replacing the observer with a staff person, whereby the vessel does receive coverage, the majority of the deployments would be by industry request to address sampling issues and improve observer functions onboard. The committee agreed that this authority should only be used to address observer protocol issues and not to verify or validate bycatch or PSC management by individual vessels.

Number of staff deployment days - Some committee members expressed concern with the absence of a cap to limit the number of staff deployments. While the number of staff deployments is initially estimated at 500 days (350 of which would replace regular observers), this could potentially increase in the future, thus taking away additional business from the observer providers.

#### Long-term Plan

The committee discussed the next steps for the program and the desire to schedule another meeting as soon as possible to address these issues, recognizing that the regulatory package proposed will be the main focus of the agency and the Council until after final action (currently scheduled for April 2002). Several big picture issues were discussed, including but not limited to, the need for a Federally funded program, a review of appropriate observer coverage levels, and the need for a standardized data system. The committee proposed to schedule the next meeting in May 2002. The starting points for the next OAC meeting were summarized as follows:

- How do you pay for observers and the program in a fair way?
- How do you get observers (service delivery model)?
- What are you trying to accomplish with the program?
  - Where do you put observers?
  - What do you have them do?

**Data  
Contractors  
Incorporated**

January, 2002

Attn: David Benton  
Chairman  
North Pacific Fishery Management Council  
(907) 271-2817

**COMMENTS & CONCERNS REGARDING  
OBSERVER PROGRAM REGULATORY ADMENDMENTS**

**RECEIVED**  
JAN 29 2002  
N.P.F.M.C.

As we begin the third year of the new millennium, an old issue returns to the Council. The regulations that authorize and implement the Observer Program in the North Pacific will expire on December 31, 2002. It is clear that the Observer Program is a vital part of the successful management of the North Pacific fisheries. Expiration of the program is not a viable alternative to maintain the goals of the fishery. NMFS has identified two other alternatives, extend the expiration date through December 31, 2005 or extend the program indefinitely. Data Contractors Inc. (DCI) supports the extension of the expiration date, although, DCI agrees with the OAC's opinion that the expiration date should be December 31, 2007.

DCI cannot support the indefinite extension of the program. DCI is concerned about the direction (or lack of direction) guiding NMFS North Pacific Observer Program. DCI agrees the program's current service delivery model has some problems. Cost to industry continues to increase. Communication between NMFS and interested parties is poor at best, adversarial at worst. Some improvements have been made. The Anchorage and Dutch Harbor Observer Program field offices have improved information flow and support of observers. Bob Maier strives to resolve contractor issues in a timely manner. Debriefings have become more timely and complete, resulting in improved data quality.

NMFS has stated that the proposed regulatory changes are the beginning, not the solution, to a revised observer program. However, NMFS has not clearly defined the long-term objectives of the program. This lack of definition makes it difficult to evaluate the proposed regulatory changes.

DCI questions whether the proposed regulatory changes will have the effect NMFS desires. NMFS views the NMFS/observer provider relationship as a client/vendor relationship. Observer data is the product. However, NMFS does not pay the observer providers for the product, industry does. NMFS argues that in this relationship they do not have a mechanism to penalize the providers for poor performance. NMFS's solution is to change the current certification process for observer providers to a permit process similar to a fishing permit. With this change, NMFS argues, they will be able to correct contractor performance problems quickly via NMFS enforcement.

DCI would argue that the perceived problems are correctable without this relationship change. The existing program can be much improved by the honest exchange of information when problems are encountered. The permitting process creates an adversarial relationship between the providers and NMFS rather than one that encourages communication. DCI is concerned that observer providers may be financially penalized in the future for something that is a result of NMFS's lack of direction and focus. If the observer providers are to accept some of the responsibilities currently carried by NMFS, then NMFS must provide the proper level of management and direction to allow the observer providers to comply. This requires regulations that are not ambiguous, that realistically reflect NMFS Observer Program Policy and the expectations to be upheld.



4606 Garfield Street  
Anchorage, Alaska 99503  
(907) 561-2210 Phone (907) 563-7817 Fax

An example of DCI's concerns from the January 7-8<sup>th</sup>, 2002 OAC meeting in Seattle: NMFS proposes to amend the Observer Standards of Behavior regulation decertifying observers for "Becoming physically or emotionally involved with vessel or processing facility personnel." NMFS would remove the word 'emotionally' from the regulation due to its ambiguity. At the OAC meeting John Gavin argued that physically involved is ambiguous also. He suggested saying what is really intended, 'sexual relations with vessel or processing facility personnel.' This raised another question. Does this apply to all vessel and processing personnel everywhere, only in the North Pacific, only in the observed fishery, only on the assigned vessel? One NMFS staff member present answered that policy has been to only decertify for cases involving sexual relationships with personnel on the vessel the observer is currently assigned to. Another NMFS staff member then spoke up to say that the regulation would be enforced as written, which would include any relationship with any vessel personnel. This raises tremendous concern for DCI. It became painfully obvious that the program has not defined a commonly understood goal, that communication within the same office, much less the entire Observer Program is insufficient, and the standards to which NMFS will hold the observers and observer providers accountable, have been poorly thought out. Does NMFS intend the above regulation to prohibit an observer from continuing a career if they meet and fall in love with a fishers in Seattle? Of course not. The intention is to avoid conflict of interest problems that occur when sexual relations occur on a vessel between the observer and crew. If a change is to be made to the regulation, lets say what we mean, "When assigned to a vessel or processing facility, observer will not becoming sexually involved with the vessel personnel or processing facility personnel."

The following are DCI's concerns and recommendations regarding the 15 proposed regulation changes, the five new proposed regulations, and the regulation to place NMFS staff on vessels. These comments are based on the changes as proposed at the January 7-8<sup>th</sup>, 2002 OAC meeting in Seattle.

- 1) 679.50(i)(2)(i) - No Concerns
- 2) 679.50(i)(2)(ii) - No Concerns
- 3) 679.50(i)(2)(iii) - No Concerns
- 4) 679.50(i)(2)(iv) - No Concerns
- 5) 679.50(i)(2)(v)(c) - No Concerns
- 6) 679.50(i)(2)(vi) - No Concerns
- 7) 679.50(i)(2)(viii) - NMFS proposes to remove the words "In cooperation with vessel or processing facility owners" from the regulation. NMFS would place the responsibility of ensuring the catch message transmission solely on the observer provider. DCI argues that this regulation has never functioned well. NMFS has made it clear that observer providers are not to handle data. DCI does not have a way to verify directly if a message has been sent. Making the observer provider responsible for message transmission is not a valid solution to the problem.

NMFS has direct communication with most observers through Atlas or via field office staff. The majority of late transmissions are a result of communication device malfunctions. DCI is concerned that the proposed regulation places an unrealistic expectation on the observer provider. NMFS needs to define more clearly the Agency's role in the transmission and receipt of data. NMFS is the only party that can directly determine if a transmission has been received. DCI feels it is NMFS' responsibility to provide management protocols that ensure catch messages are submitted in a timely manner. As an observer provider, DCI will gladly do everything in its power to ensure that messages are resent when notified by NMFS of missing data. However, observer providers should not be held solely responsible by NMFS, when usually the problem is caused by equipment, which is not under their control.

- 8) 679.50(i)(2)(ix) - NMFS proposes to add in phrases "in-person" and "as required, unless specifically exempted by the Observer Program" to the regulation regarding mid-deployment data reviews. DCI is concerned about the logistical implications of this regulation change. A majority of DCI's observers are



4606 Garfield Street  
Anchorage, Alaska 99503  
(907) 561-2210 Phone (907) 563-7817 Fax

deployed to ports such as Seward, Yakutat, King Cove, Akutan, and Adak, which do not have Observer Program field offices. Staff members are limited in Kodiak and Dutch Harbor field offices. The cost required to ensure that observers are available for in-person 'mid-cruise' data checks will be substantial. This change may cause vessels to be delayed, observer contract length to shorten, and increase the number of observers required to cover the same number of boats. This will increase costs to vessels, especially to those vessels not working in ports with a NMFS field office.

Currently observers are required to perform a mid-season data review with Observer Program staff. Many of these are in person when possible (Dutch Harbor and Kodiak). In other cases the observer faxes the data to a field office and calls the appointed program staff member at a scheduled time to complete the data review. Experienced, prior observers with a history of good data collection are exempted by NMFS from 'mid-cruise' requirements at debriefing. The observer provider has access to this information on the observer's final debriefing evaluation. DCI estimates that 35% of our deployed observers were 'mid-cruise' exempt in 2001.

The proposed regulation change will further complicate a very difficult logistical situation. Observers will need to disembark vessels in mid-season, travel to field office locations, and then be redeployed if possible. Replacement observers will be required in many situations. This will increase transportation costs to industry. Vessels may be forced to wait for new observers if flights are delayed by weather. The average length of observer contracts will be reduced, even though the same amount of work will be available, observer providers will need to use more observers to fill the same need.

NMFS has indicated that the phone interview method is not sufficient. NMFS believes that data quality issues can be more completely addressed 'in-person.' DCI proposes that NMFS strengthen their interview process. NMFS needs to re-evaluate the questions asked during data reviews, train staff to recognize common sampling problems more readily, and increase the time and energy spent during data reviews to ensure that all problems have been addressed. DCI can produce numerous examples of observers who have completed 'in-person mid-cruise' data checks in which the sampling problems were not fully identified. In these cases where these problems were not identified in the mid-cruise data check, but later identified in the final debriefing, much of the affected data was not usable. This indicates serious problems in NMFS's mid-cruise and debriefing protocols.

DCI believes the negative effects of this regulation change outweigh the benefits. DCI proposes NMFS strengthen the protocols for the 'mid-cruise' data reviews. NMFS should make program staff available in remote ports to encourage 'in-person' data reviews. NMFS should explore ways to identify sampling problems prior to data reviews, via in-season ATLAS advisors and cadre staff. If NMFS identifies an observer with suspect data, DCI would strive to make that observer available for an 'in-person mid-cruise.' DCI feels strongly that it is NMFS's management responsibility to identify and maintain a list of observers required to have a 'mid-cruise' data review and provide the staff to facilitate timely completion of the data reviews. DCI proposes the revised regulation read "Ensuring that observers complete mid-deployment data reviews, in-person if requested, unless specifically exempted by the Observer Program."

9) 679.50(i)(2)(x) - No Concerns

10) 679.50(i)(2)(xi) - No Concerns

11) 679.50(i)(2)(xiii) - No Concerns

12) 679.50(i)(2)(xiv)(A) - No Concerns

13) 679.50(i)(2)(xiv)(E) - No Concerns

14) 679.50(i)(2)(xiv)(H) - NMFS proposes adding "observer illness and injury" and "code of conduct" problems to the list of performance issues to be reported to NMFS within 24 hours. DCI is concerned about the intent and enforcement of this change. NMFS must define "observer illness and injury." NMFS has proposed that observers that report illness or injury would require medical approval before embarking



4606 Garfield Street  
Anchorage, Alaska 99503  
(907) 561-2210 Phone (907) 563-7817 Fax



on a vessel. DCI does not send observers to sea that are unable to work due to injury or illness. However, DCI may send an observer to sea that has an injury or illness that will not hinder the observer's duty. NMFS must elaborate on what will be considered a reportable injury. NMFS should set guidelines that are clear and unambiguous concerning what constitutes medical approval. Physicians may not be available in some ports or at sea.

This proposed regulation causes another reason for concern. Observers may decide not to inform observer providers of injury or code of conduct issues for fear of NMFS involvement. For example, an observer develops a cold a few days prior to embarking a vessel for A-season. The observer does not report the cold to the observer provider knowing that the provider must inform NMFS. The observer fears that they will be withheld from work by NMFS until the cold gets better. The fear of loss of work caused the problem to escalate. The same problems will occur with code of conduct issues, for the fear is greater, decertification and permanent loss of work could be the consequences.

DCI perceives that this regulation change will decrease the level of trust between observer providers and observers. Observer providers already find that observers are less likely to inform providers of potential problems for fear of NMFS involvement. DCI sees this in particular with minor harassment and potential sexual harassment issues. Observers often do not want NMFS enforcement involved in minor issues. Enforcement often exacerbates the problem. However, if an observer provider receives a report from the observer, we must notify NMFS. The issue is now out of the observer's hands.

As a final note, DCI feels that off-duty observers should not be held to higher standards of conduct than those to which NMFS holds their own staff. Problems that arise in company bunkhouses should be handled by the company involved. The observer position is a high stress job. Conflict and isolation are everyday issues for observers at sea. NMFS is naïve if they expect observers to perform day in and day out without the ability to release this stress.

#### 15) 679.50(ii) – No Concern

Proposed Regulation #1 – *“Each observer contractor must meet the minimum requirements for an observer candidate interview specified by the contractor in its permit application.”* DCI does not feel that the government should regulate our hiring practices. In the Rationale for Change for regulation 679.50(i)(2)(i), “NMFS does not give guidance on how to recruit or evaluate potential observer candidates” seems in contradiction to this proposal. It is in our best interest to hire the best candidates available for the observer position. If a candidate can meet NMFS qualifications, pass the three-week certification course, and still not perform the job to NMFS specifications, perhaps the standards NMFS has set should be examined. If NMFS is concerned about the information provided to candidates, DCI will be glad to distribute and post on our website any additional information that NMFS would like to provide on the subject.

Proposed Regulation #2 – *“Each observer contractor must maintain and enforce the written employee drug and alcohol policies specified by the contractor in its permit application.”* Substance abuse is a difficult and problematic issue. NMFS and the contractors must work together if it is to be solved. If NMFS becomes aware of a conduct issue, the observer provider must be informed within the same 24-hour time frame (bi-directionality of information is key to the success of this program) that they require if the situation is reversed. Additionally, NMFS should train debriefing and Cadre staff to recognize signs of abuse and need for counseling. The observer lifestyle can contribute to a wide range of problems from substance abuse to depression to dealing with sexual assault. NMFS should have at least several staff members available with the skills to counsel these problems.



4606 Garfield Street  
Anchorage, Alaska 99503  
(907) 561-2210 Phone (907) 563-7817 Fax

Proposed Regulation #3 – *“Observer contractors must verify that the vessel has a valid USCG safety decal before placing an observer onboard.”* DCI believes that this is not an effective solution to the problem at hand. Often the observer provider cannot inspect the vessel. Observer providers can include USCG safety decal requirements as part of the contractual agreement between the provider and vessel. DCI can inform its employees to verify the sticker is current. However, it is ultimately the observer’s responsibility to check the safety of the vessel. A safety decal does not ensure the vessel is currently safe. Decals are valid for two years! The regulations should be strengthened on the backside of the issue: What steps does the contractor take if an observer reports an unsafe vessel? DCI’s policy has always been to support the observer should he or she decide not to board a vessel due to safety concerns.

NMFS should focus on improving the communication between NMFS, providers, USCG, and vessels, to create a database of safety issues. NMFS must notify contractors if observers or NMFS’s staff raise safety concerns about a vessel. NMFS should develop training protocols to ensure observers can verify vessel safety. As stated, this regulation change does not improve the issue and will be difficult to enforce.

Proposed Regulation #4 – *“Contractors must allow observers on shoreside pollock vessels the time necessary to complete their sampling at shoreside plants.”* DCI agrees with the intent of this regulation. DCI would request that the phrase “unless exempted by the Observer Program” to this regulation. This would allow for some latitude when dealing with extreme logistical problems.

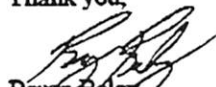
Proposed Regulation #5 – *“Contractors must ensure that their observers complete their vessel and/or plant surveys before performing other jobs or duties which are not part of NMFS groundfish requirements.”* DCI agrees with this regulation. This is the proper solution to these issues.

DCI believes with the current level of interaction between NMFS and the observer providers, the proposed changes may result in numerous and expensive disputes with NMFS enforcement. Issues arise hourly, 24 hours a day, seven days a week. NMFS staff is currently available on an extremely limited basis outside of the federal work schedule. DCI understands that the average response time for an in-season advisor is over a week. In order to positively address the concerns NMFS has raised in the discussion above, NMFS must communicate in real time. Relying on NMFS enforcement to prosecute and uphold the new regulations could be problematic. Currently NMFS enforcement often charges individuals or vessels well over a year after their alleged offense occurs. If NMFS’ goal is to improve their ability to control provider performance, perhaps a timelier manner of enforcement should be considered.

DCI’s major concern is that NMFS will implement unrealistic expectations of providers and enforcement of these unrealistic regulations will increase. Second, DCI is concerned that the increased information provided to NMFS will not be utilized. DCI does not oppose additional reporting and compliance with new regulations. However, if this data is not being used in a timely manner what benefit is gained? Finally, in order to improve relations with observer providers, NMFS must be willing to devote time and resources to improving the lines of communication. Some ideas include designing an interactive website that contractors can access to gain real time data about previous safety or harassment issues on a vessel, a contractor liaison that is available 24 hours a day, and increased utilization of the observer cadre to support observers in the field and resolve conflicts.

If you would like additional information or clarification, please contact Bryan Belay at (907) 561-2210.

Thank you,

  
Bryan Belay  
Operations Manager



4606 Garfield Street  
Anchorage, Alaska 99503  
(907) 561-2210 Phone (907) 563-7817 Fax

C-7

**Re: Comments on the Draft Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Act Analysis (EA/RIR/IRFAA) Extending and Improving the North Pacific Groundfish Observer Program Beyond 2002**

Dear Mr. Chairman,

February 4, 2002

This letter is a joint effort of Saltwater Inc. and Alaskan Observers Inc., two observer contractors which jointly have provided about 70% of the observer coverage in the North Pacific over the past five years.

To begin, we support continuing the observer program beyond December 31, 2002. Alternative 3 appears to provide a psychological deadline for putting together a restructured observer program. We don't want to go through the process of commenting every year any more than NMFS wants to go through the process of rule making every year so if Alternative 3 provides a clear date when we will return to this issue (whether to restructure or extend the existing program) we support it.

We also support the general idea of NMFS staff providing observer coverage (Option 2) aboard vessels and at plants provided it does not disrupt existing observer employments and coverage. At the OAC meeting many questions were left unanswered by NMFS: would NMFS staff time count as observer coverage? would vessels pay for it? how would NMFS determine which vessels it would cover? would NMFS take into account the affect on contractors in assessing how to assign observers? why would NMFS prioritize the pollock fishery? NMFS needs to provide a clear plan in advance about how this would be done. Another option would be to have NMFS staff available 24/7 as a resource to everyone rather than to one vessel at a time. In addition, contractors need 60 days notice to ensure our prior observers opportunity to work and allow us to recruit any trainees we may need to hire. It would be unfair to contractors and observers to ask us to rescind existing contracts to make room for NMFS staff in the field.

We find it more difficult to support Option 1 which represents what NMFS apparently sees as a first step in restructuring its working relationship with observer providers. We are disappointed to find little here that will improve working relationships, coordination, or communication between observer providers and NMFS. We believe the approach outlined in Option 1 represents a shift from the attitude of "we're all in this together trying to make a difficult program work" to something quite different, where providers will be managed by NMFS Enforcement. Observer costs will increase as a result, and NMFS Enforcement will find itself sorting out disputes in an effort to enforce regulations that, no matter how well written, will always run the risk of holding providers responsible for events over which they have no control.

The remainder of this letter focuses on this last point. We've put an asterik next to the items that we feel are particulary crucial.



### Observer Certification Process

We're concerned about the language in Option 1 that changes the observer certification process to make it APA compliant. It is not clear when the applications of potential observers would be reviewed. This concerns us because this review would need to happen in a timely fashion. We often need to deploy observers the day after training, but the regulation is written in a way that indicates it is possible that a trainee could pass training and then see his application for certification rejected. Delays in deployment and an increased failure rate of trainees both have costs which will, again, be passed on to industry-and again, we don't see what will be gained in exchange for these costs.

### Standards of Observer Behavior

Option 1 also addresses standards of observer behavior. One change will prohibit observers from having sex with employees of the vessel or plant where they are assigned, which is a change from the current language prohibiting emotional and physical involvement. After this change is in place, exactly nothing about the current situation will have changed. We already know observers are not permitted to have sex with employees of the vessels and plants where they are assigned, and it is already extremely difficult to identify whether they are doing so, and with whom, and whether it would be making a difference in their work if it were true. Vessels already make lurid allegations about observers they want to see replaced; they will continue to do so; and these allegations will continue to be difficult to address. What do we suggest? We suggest that NMFS continue to handle these matters on a case-by-case basis, being careful to credit only credible evidence, and most often disappointing the accusers. It distresses us to see time and energy being spent on fiddling with the wording of this regulation as if it will somehow make any difference.

### \* Observer Fit for Duty

Option 1 will also modify provider responsibilities by stating that only observers "fit for duty at time of embarkation" can be assigned to vessels. NMFS has not defined what "fit for duty" means, but in section 3.4.4 they include flu, sinus problems, and ear infections as illnesses that would prevent an observer from going to sea. We suspect that fishing companies, whose vessels are equipped with antibiotics and who maintain contracts with on-shore physicians services (and who make these resources available to sick observers), don't disembark everyone with a sinus infection before heading to sea. Also, while NMFS acknowledges that this regulatory change will bring with it some increased costs to industry, it fails to acknowledge that it will result in a loss of work for some observers. If we have to scramble to get someone into the field to replace an observer who is down with a sinus infection for five days, no one should assume we'll have work for that observer five days later. If we have extra people in the field, someone has to come out of the field.

### Signed Vessel Contracts

As things work now, contractors do what they can to meet vessel coverage needs no matter the situation. If a vessel drops out of the opilio fishery ten days early and wants to begin pollock fishing, the contractor tries to provide an observer ten days early-even if the vessel provides only two days' notice. But if we fail, have we failed to perform on our contract? As things work now, the boat might wait an extra day. With this responsibility re-defined, another path is available to the vessel: inform NMFS Enforcement that the contractor has failed to perform on its contract. Vessels might do this in hopes of getting relief from NMFS in the form of an exemption, but in any case they could be sure that by informing Enforcement they were bringing more pressure to bear on their contractor.

That the prospect of being fined for failing to provide coverage would give us pause shouldn't be a surprise if one considers a few examples of actual observer coverage problems and their causes. For instance, at the start of A season 30% pollock boats are reluctant to take observers because they have yet to identify where the best roe fish are located. This is because if the roe fish turn up in the crab savings area, by NMFS regulation 30% vessels need 100% coverage to fish there. A skipper who knows his vessel might turn into a 100% vessel in (for instance) mid-February isn't going to take coverage in late January. Of course, if roe fish turn up in the crab savings area January 22, then every 30% boat clamors for an observer on January 23. If we can't come up with six or eight or ten observers on January 23 for all the boats we have "signed and valid contracts" with, are we going to be subject to Enforcement action?

Or consider the effect of the way NMFS manages vessels fishing cod as part of an inshore cooperative. Bycatch rates for a coop can be established in a current season by carrying an observer. As a result, 30% vessels are reluctant to take an observer until they see how their bycatch is. When bycatch is low they all want observers-and we mean right now--to help them "establish a bycatch rate." When we can't produce half a dozen observers to vessels with whom we have "signed and valid contracts" with, are we going to be subject to Enforcement action?

Or consider that at the start of 2002 NMFS issued an emergency regulation requiring 2 observers on vessels fishing Atka Mackerel. By the time this regulation fell into place, we had no way to hire any more observers--trainings and briefings were already in process or had been completed. So observer providers shifted observers they had intended to devote to 30% coverage over to Mackerel boats. But this inevitably compromises our ability to satisfy coverage requests from 30% vessels (see above examples).

Or consider the situation that developed in 2000 when ADF&G delayed the Opilio fishery by several months. Crab vessels moved over to the groundfish fishery en masse, and while all the contractors did their best to try and meet the sudden demand for observers, some vessels went uncovered. Should observer providers be subject to Enforcement action in a situation like this?

The prospect of getting fined for failing to provide coverage will have several consequences that go unmentioned here. First, providers may grow reluctant to enter into contracts with 30% coverage vessels, instead preferring to say, in effect, "We'll let you know if we can cover you when the time comes." Secondly, contractors are going to have to put a price on this regulatory change. After all, no one can forecast the length of an opilio fishery or the number of observers who might come down with the ear infections in Dutch Harbor in January or countless other unforeseeable developments that can compromise a provider's ability to have an observer in ready when and where a given vessel wants him. Fines will be viewed as a cost of doing business; this will get factored into daily rates; observers will cost more. How much more is hard to say, but the increase will be unnecessary. The vast majority of coverage comes off without incident, and we don't need any further incentives to accomplish our jobs. NMFS does not need to develop a regulatory response to address every outlying event, but that's what's happening in this case.

It should also be pointed out that the language about "signed and valid contracts" will not solve any real coverage issues, one of which is that 30% coverage is (as NMFS and the Council have agreed) not random. The quarterly approach to coverage requirements for 30% boats has remained unchanged since 1990 in a fishery that has seen myriad management and regulatory changes—a act that seems negligent at best. We think the problems of lack of observer availability faced by 30% vessels (for this is where the problem really exists) should be addressed after NMFS completes a comprehensive review of coverage needs for all fisheries that takes into account all scientific, management, and compliance needs.

#### \* Observer Data Transmission

Option 1 also continues to make contractors responsible for data transmission. We want to point out that this regulation, in whatever version, has never functioned very well. Our experience has repeatedly been the following: First, NMFS staff are inclined to presume that if they didn't get a message, it was not sent. We then contact the observer, asking them to re-send the message. Observer assures us it has been re-sent. NMFS staff report back that said message still has not been received. We then contact observer . . . and so on. This circular activity sometimes continues until the observer leaves the field and heads to debriefing. NMFS has direct communication with many observers via Atlas and sees many observers at NMFS field offices, and has made clear that we are not to be handling data. The reality is that NMFS has moved away from relying on the contractor to get messages in over the last several years. This is the right way to go—because we have no way of verifying directly that a message has been sent, making us responsible for message transmission is not the best approach to the problem.

#### \* In-person Mid-deployment Data Reviews

Option 1 also requires in-person mid-deployment data reviews. NMFS should consider how difficult insuring an in-person mid-deployment data review will often be. Here's a not-untypical example: A vessel might be expected in Dutch

Harbor on a Friday when on Wednesday morning, a vessel manager lucks into an opportunity to do a partial offload in Adak on Wednesday evening. The boat goes into Adak and is ready to leave again by Thursday mid-day. If the observer on the boat was required to have an in-person data review, then we would have to fly him from Adak to Anchorage on Thursday. Assuming we could get a replacement freed up in Dutch Harbor (a big if, since until Wednesday morning we wouldn't have had any idea that we had to replace the observer), that person would have to fly to Anchorage on Thursday and on to Adak on Friday. If all the flights came off on schedule (which happens in Adak once in a while), the boat would only have been held up about twenty-four hours and incurred a tremendous airfare bill.

We also deploy observers out of King Cove, Akutan, Sand Point, Seward, Cordova, Yakutat, St. Paul, Chignik, Adak, Homer, and Juneau where no NMFS field staff are based. If we have to pull observers out of these ports for an in-person, mid-deployment data review it will not only increase costs but potentially put observers out of work.

#### Monitor Observer Performance

Option 1 also contains language requiring us to monitor observer performance of duties. Since we have no access to observer data, much of our response to this language will be to monitor how well NMFS is monitoring observer performance of duties, since to NMFS we must turn to find out how someone is doing in the field. What will be gained by this redundancy? Apparently further opportunities to levy fines upon us.

#### \* Reporting Observer Problems

We are concerned about the vague language in the proposed regulations that contractors would have to report observer illness and injury, and observer performance, standards of behavior, and conflict of interest problems. It is unreasonable to assume that contractors are notified about every incident that arises while observers are on contract. We also believe with these increased reporting requirements that the observers will tell the contractors less about their problems and will degrade the relationship between the observers and their contractors.

#### Interviewing Observer Applicants

NMFS requires the contractors to recruit, evaluate and hire observer candidates. With the high cost of training new observers and the potential logistical problems, it is in the contractors best interest to hire the best possible candidates for the observer positions. All candidates are currently approved by NMFS and meet the minimum qualifications for observer training. As with any industry each company has its own corporate culture and observer contractors are no exception. Therefore, it's only logical that each contractor has developed their own interview process to meet the needs of their applicants, the observer program, and the contractors themselves. We do not agree with the proposed additional regulation that would require contractors to have the same interview and standard information packet for applicants.

Safety Decals

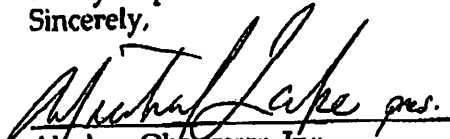
We support the intention of NMFS to increase observer safety, but we don't believe making a contractor responsible for verifying the safety condition of a vessel that may be several hundreds or thousands of miles away from the contractor is reasonable. We also fear that some observers may be lulled into a false sense of security and neglect to complete their own safety evaluation of the vessel if the contractor tells the observer a vessel has a current Coast Guard safety decal.

\* Monitoring Observer Providers

Option 1 would put NMFS Enforcement and not the Observer Program in charge of monitoring observer provider responsibilities (see number 9 of section 2.4.3), and we think this is the wrong way to go. Monitoring contractor performance is a difficult task, but that's no reason for the Observer Program to pass it off to Enforcement. In the past, observer providers and the Observer Program have at times been guilty of viewing one another with suspicion and resentment. We believe what we see here will put more distance between us, and observers will be the losers should that happen. As the observer program is restructured, we want the focus to be on improving the working relationship between NMFS and observer providers.

While we are not opposed to changing the current regulations, we do not feel that the proposed regulatory changes in their current form are written in a way that addresses the concerns of the observer program. We believe with more collaboration between the NPGOP and contractors that we can find solutions to satisfy all parties.

Sincerely,

  
Alaskan Observers, Inc.

  
Saltwater Inc.