

Observer Provider Insurance Update

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1 Introduction

The National Observer Program is working on a proposed rule to establish uniform, nationally applicable minimum insurance requirements for companies that provide observer or at-sea monitor services for federally managed fisheries subject to vessel or shore side monitoring requirements. This action would remove outdated, duplicative, or inappropriate regulatory insurance requirements thereby easing the regulatory and cost burden for observer/at-sea monitor providers. Additionally, this action would reduce observer and at-sea monitor deployment risks for vessel owners and processors.

This document provides a summary of actions completed and next steps. Questions about the ongoing development of this proposed rule and regulatory impact review should be directed to Dennis Hansford, 301-427-8136 or dennis.hansford@noaa.gov.

2 Background

Correspondence between an observer provider company, the North Pacific Fishery Management Council (Council), and NOAA Fisheries during 2014-2015 identified that certain regulatory requirements could be rescinded by the Council and NOAA Fisheries through an amendment to federal regulations, since the agency determined that some requirements were redundant, costly, or inapplicable. However, the correspondence did not identify insurance coverage(s) that could be added as requirements to replace insurance coverages that would be rescinded from regulations, nor did it identify minimum coverage amounts for applicable requirements. Therefore, NOAA Fisheries' National Observer Program (NOP) hosted an Observer Provider Insurance Workshop in Washington, D.C. on November 8-9, 2016.

NMFS published a request for information from the public to support a national initiative to reform and streamline observer program insurance requirements. This was published in the Federal Register on July 16, 2018 (83 FR 32830), and stated the reform effort goals to include: easing of the regulatory burden and reduction of costs for private companies that provide observer staffing to NMFS observer programs through more efficient, nationally applicable insurance requirements; elimination of outdated and/or inappropriate regulatory requirements; reduction of observer deployment risks for vessel owners and shore side processors; and identification of insurance that could improve observer safety and facilitate full compensation for observer occupational injuries. To proceed with this effort, NMFS sought technical information on the types of insurance and minimum coverage amounts (in dollars) that would minimize observer deployment risks to the extent practicable considering costs and other factors. Additionally, NMFS sought public comment on Federal Employees Compensation Act (FECA) claims and benefits processing for observer occupational injuries and whether observer companies should carry private insurance to supplement FECA benefits for observers.

Comments received in response to the request for information as well as information included in the 2016 workshop report are being used to inform the development a proposed rule and regulatory impact review to implement national minimum insurance standards. These national minimum insurance standards would

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also be incorporated into contract language for observer providers under the direct contract service delivery model.

NMFS is considering the following minimum insurance standards and associated coverage amounts:

- Marine General Liability (\$1 million any one occurrence)
- Marine Employers Liability (\$1 million any one occurrence) unless the applicant only seeks to provide shoreside observer or monitoring services.
- State Workers' Compensation as required by each state in which the applicant intends to provide observer or monitoring services.
- U.S. Longshore and Harbor Workers' Act, either as a stand-alone policy or as a State Workers' Compensation Policy endorsement, if required by the respective state(s) in which the applicant intends to provide observer or monitoring services.
- Excess or umbrella coverage (\$2 million any one occurrence)

NMFS notes that information obtained through the RFI confirmed that there is a gap in FECA coverage; specifically it does not compensate observers who are injured at-sea for overtime. NMFS appreciates that this gap can adversely affect observers. However, NMFS does not believe it can mandate a private insurance product that would fill that gap as part of the minimum insurance standards.

3 Timeline and Milestones

2014	AOI (North Pacific observer provider) Proposal to Amend Insurance Requirements ²
2014	North Pacific Fishery Management Council Letter to NMFS Regarding Insurance Amendment ³
2015	NMFS Response to North Pacific Fishery Management Council Amendment Proposal ⁴
2016	November 8-9, 2016 Observer Provider Insurance Workshop in Washington D.C.
2017	Observer Provider Insurance Workshop Report ⁵
2018	February - NOP presentation to the FMAC (OAC) ⁶
2018	Request for Information on National Reform of Regional Observer Program Insurance Requirements ⁷
2019	NMFS HQ (in coordination with regional observer programs) drafts a proposed rule and regulatory impact review.
2019	Publish proposed rule and request comments.
2020(T)	Publish final rule and response to comments.

² Available from: <https://www.npfmc.org/wp-content/PDFdocuments/CM/071114/ObserverInsuranceLtr070114.pdf>

³ Available from: <https://www.npfmc.org/wp-content/PDFdocuments/CM/071114/ObserverInsuranceLtr070114.pdf>

⁴ Available from: <http://npfmc.legistar.com/gateway.aspx?M=F&ID=50eba36c-acc3-482c-85eb-1641bcb09146.pdf>

⁵ NMFS-F/SPO-176 Available at: <http://spo.nmfs.noaa.gov/tech-memos>

⁶ Available from: <https://npfmc.legistar.com/gateway.aspx?M=F&ID=04d93f47-ec19-43bb-91cc-0a047bed36c8.pdf>

⁷ Federal Register Notice published July 16, 2018. Available from: <https://www.govinfo.gov/content/pkg/FR-2018-07-16/pdf/2018-15057.pdf>