



January 6, 2010

Dr. Jane Lubchenco
National Oceanographic and Atmospheric Administration
1401 Constitution Ave, NW
Washington, D.C. 20230

RE: Request for an Extension on Proposed Rules RIN 0648-AW72 and RIN 0648-XS55

Dear Dr. Jane Lubchenco:

The Association for Professional Observers (APO) is a non-profit organization with the mission to strengthen fishery observer programs through advocacy and education. The APO strongly supports robust, scientifically based fisheries monitoring programs that provide sound science to support sustainable fisheries management and reduced bycatch in our nation's fisheries.

We are corresponding with you today to request an extension of the Amendment 16 proposed rules for the Northeast fisheries (RIN 0648-AW72 and RIN 0648-XS55). We request that these proposed rules be extended to April 10th, 2010, for the following reasons:

- There are over 4100 pages of associated documents with these proposed rules, and only 21 days have been made available for comment.
- These proposed rules were published after the Draft NOAA Catch Share Policy, and the comment period for both are planned to close nearly three months prior to it (on April 10th, 2010). These rules implement this Policy and may not comply with the Final NOAA Catch Share Policy if rushed through prior to establishing national policy.
- Both proposals were published during the holidays. NMFS staff and other important contacts were out of the office or have had less availability, thereby limiting us from being provided critical background information necessary to prepare our comments.
- The Northeast Regional Office has declined to respond to our inquiries¹.

Catch share programs may help to reduce overfishing and empower fishers to take more responsibility in managing the resources that they are permitted to harvest, however monitoring programs must be carefully designed with adequate peer and public review and should include transparent accountability measures that utilize the "best scientific information available" (BSIA). Our major concerns with Amendment 16 proposed rules are as follows:

- Amendment 16 and associated proposed rules create the Fisheries At-sea Monitoring and the Dockside/Roving Monitoring Programs. These new programs undercut national standards established by NOAA Fisheries² and conflict with existing Catch Share design standards³.

¹ We were informed that NMFS could not respond to our inquiries "at this time": Mark Grant, NMFS, pers. Communication, 5 Jan 2010. A full list of our inquiries is attached to this letter.

² NMFS Policy 04-109; August 6, 2007. US National Observer Program (NOP) minimum eligibility requirements, require that Observer candidates need a bachelor's degree from an accredited university (with math/statistics and data-entry experience), unless these requirements are waived because candidates have "acquired the required skills to be considered eligible for observer training through a NMFS authorized alternative training program" (in addition to Observer Training). Both of the new programs require a high school diploma or GED equivalent, no biology background, and one shortened training class. http://www.st.nmfs.noaa.gov/st4/nop/documents/Eligibility_Procedural_Directive.pdf

³ The monitoring of Community Development Quota in Alaska, using data collected by the North Pacific Observer Program, is a good example of a successful Catch Share monitoring program that

- It appears that these proposed rules are contrary to the Policy and Purpose of the Magnuson Stevens Act⁴ and that NMFS is relinquishing much of its authority over the management of this array of fisheries.
- NMFS guidelines on public access to fisheries monitoring information remain ambiguous, especially in light of the consolidation of fishing activity into sectors versus individual vessels. Throughout both proposed rules, references are made to agency oversight and “NMFS approval”, yet it’s unclear what guidelines NMFS will use.
- If the US Northeast regional programs are structured as indicated in the proposed rules, by implementing additional accountability measures intended to preserve the independence/integrity of the information being collected, we believe that the costs associated with administering these two new programs will increase.⁵

We feel that the implications of Amendment 16 are far-reaching and therefore require more time to adequately review the proposed measures, Sector Operation Plans, Environmental Assessments, and the host of exceptions to federal regulations that are being proposed for those operating in Sectors. Most importantly we feel that the details surrounding the management of these two monitoring programs should be fleshed out publicly *before* proposing their implementation - not after they’re promulgated into regulation. We are aware that an extension (to April 10th, 2010) may delay the expected implementation date of May 1, 2010, but feel that these rules are too important to the future of fisheries management in the United States (and beyond) to rush on through.

Sincerely,

Keith Davis
APO Secretary

Elizabeth Mitchell
APO President

CC: We are attaching an “Copy List APO letter to Dr. Lubchenco (010610)” that includes all those we are electronically copying when sending this letter.

Attachments (2): “APO Inquiries for Clarifications on Amendment 16 Proposed Rules”, and “APO letter to Dr. Lubchenco (010610) Copy List”

complies with the existing regional and national observer program standards. Like the proposed Northeast catch share program, the CDQ program requires individual vessel accountability and much more monitoring and training of the current observers. There is also more pressure on these observers to collect higher quality data than what would be collected on ‘common pool’ vessels.

⁴MS Act 2007, Section 2b (*Purposes*), 101-627 (5) to establish Regional Fishery Management Councils to exercise sound judgment in the stewardship of fishery resources through the preparation, monitoring, and revision of such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; Section 2c (Policy), 101-627, 101-297 101-627, 104-297 (3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; considers efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; considers the effects of fishing on immature fish and encourages development of practical measures that minimize bycatch and avoid unnecessary waste of fish; and is workable and effective.

⁵ The creation of the new Fisheries At-sea Monitoring Program and the continued established Fisheries Observer Program is duplicative and complicates oversight of data quality. The roles and duties under the current observer program are essentially the same as to those of the proposed at sea monitors. Creating a separate program for at-sea monitors would be fiscally irresponsible and less efficient than augmenting the current observer program.