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October 30, 2009

Ms. Sue Salveson  
Assistant Regional Administrator  
Sustainable Fisheries Division, Alaska Region, NMFS  
P.O. Box 21668  
Juneau, AK 99802  
Attn: Ellen Sebastian

Re: RIN 0648-AW24

Dear Ms. Salveson:

We, the Association for Professional Observers (APO), would like to provide comments on the proposed rule to amend regulations supporting the North Pacific Groundfish Observer Program (NPGOP), published September 30, 2009 (FR 74(188): 50155-50161).

Our specific comments are as follows:

**Issue 2. Observer Conduct**

Before NMFS further reduces their responsibility to the welfare and conduct of observers, the agency should clarify exactly why it has been impractical and why they have been unable to enforce observer conduct. Many fishing vessel companies have a zero tolerance drug and alcohol policy that is enforced from the moment they leave the home-port until the moment they return, flight time included. If one is caught drinking or doing drugs, that person gets fired. This is appropriate for a sometimes hostile and dangerous environment such as Alaska, and for the conduct of a professional observer. While many observers are able to control their alcohol use, there are too many reports of those who absolutely ruin the reputation of the observer profession. Alcohol abuse has been especially responsible for disgusting, dangerous, and sometimes deadly behavior during “off” time. It has resulted in completely unprofessional behavior, (slovenly apartment upkeep, vomiting in an observer housing bathroom sink, urinating on another observer while she slept in observer housing bunks, etc., etc.). Clearly, leaving this responsibility to the contractors hasn’t worked. Since the fishing companies and observer contractors are, first and foremost, engaged in business relationships, and assignments are mostly for convenience, enforcing adherence of observers to a professional code of conduct becomes secondary.

NMFS should hold annual performance reviews of contractors to ensure there is no collusion or conflict of interest with the fishing industry and also to ensure contractors are abiding to

performance standards set forth by NMFS, including the observer conduct standards. The reviews should include a publicly available list of complaints made by observers against the contractors and how NMFS responded to these complaints, as well as a summary of claims against observers.

NMFS should have enforceable conduct standards for observers that all contractors are required to enforce. Placing this responsibility on contractors is likely to produce a “don’t ask, don’t tell” policy, depending on how the contractor thinks it’s enforcement of violators will effect it’s business relationship with the vessel in question. Furthermore, it would give the fishing industry even more power over observer placement than it already has. It could potentially allow the fishing company and/or contractors to invent false claims against an observer, who, in the course of carrying out his/her duties, causes an inconvenience for either the vessel or the contractor.

Conflict of interest between contractors and fishing companies already exist under the current service delivery model, since they are engaged in a business relationship. Under the current system, a contractor can simply not rehire an observer. This proposed rule would further weaken the protections for observers and their ability to carry out their duties to NMFS standards. Conflicts between vessel personnel and legitimate observers attempting to do their jobs with integrity are only likely to increase with quota-based sampling schemes. This proposed rule will weaken the integrity of the observer program. Just because it has been inconvenient for NMFS to enforce observer code of conduct, that is one of the prices NMFS pays for sourcing out observers.

### **Issue 3      Providing Observers for Research Activities**

If NMFS is going to expand the definition of observer placements to include scientific research vessels, the same standards of contractor conduct and observer conduct should apply and be enforced. Currently, a researcher can place pressure on the contractor to not hire a certain observer or reversely, hire a specific observer. Since much of the EFP and scientific research has fishing industry implications, and is often partially funded by industry, this could be perceived as a conflict of interest. These activities should be treated with the same code of conduct as in the observer program, including random placement of observers and public access to the data.

### **Issue 5      Observer Cost Information**

We agree that NMFS should have accurate information for observer services and providing invoices is one way to do this. Invoices should also be included for research and other activities that involve observers and observer programs.

Thank you very much for your consideration.

Sincerely,

Elizabeth Mitchell, President; Keith Davis, Secretary  
Association for Professional Observers

cc : Dennis Hansford, Dr. Jane Lubchenco

Submitted electronically via [www.regulations.gov](http://www.regulations.gov). Comment Tracking Number: 80a4ed3e

