



P.O. Box 30167  
Seattle, Washington 98103  
[www.apo-observers.org](http://www.apo-observers.org)

January 20, 2010

**APO Comments on Amendment 16 Proposed Rule RIN 0648-AW72, Document ID NOAA-NMFS-2009-0186-0030**

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 welcome the opportunity to provide comments on the Amendment 16 Proposed Rule, RIN 0648-AW72.

The proposed new Northeast Regional monitoring program, the “Northeast Fisheries At-Sea Monitoring Program” (NEFAMP), appears to be designed exactly how many observer programs start out (with minimal objectives and basic duties). In reviewing Document ID NOAA-NMFS-2009-0186-0030, it is clear that the roles and the duties of At-Sea Monitors (ASM) would be very similar to those of Northeast Fisheries Observers, yet ASM standards would be significantly lowered in several respects:

- **LOWER ELIGIBILITY STANDARDS:** ASMs recruits would require a high school education (or GED), with no science background required<sup>1</sup>.
- **LESS TRAINING:** ASMs would receive less training than fisheries observers who are required to have an advanced science and math education.
- **LESS PROFESSIONAL SUPPORT:** ASMs would be paid and supported less than fisheries observers.
- **LOWER DATA QUALITY/INTEGRITY:** NMFS authority and management would be undercut by a host of waivers and exemptions, and it appears that the fishing industry would gain much of the authority over fisheries monitoring.
- **HIGHER COST:** Although daily costs of ASMs might be less than for fisheries observers, overall costs would likely increase due to complications in data oversight and accountability measures and with the overall loss of data integrity.
- **LESS PUBLIC ACCESS TO OBSERVER DATA:** It is unclear how Amendment 16 will impact public access to fisheries monitoring data, though it is

---

<sup>1</sup> See pages 277 and 278 of Document ID NOAA-NMFS-2009-0186-0030.

likely that it may be more restrictive with vessels operating under sector (co-op) management - with more sector (industry) control over monitoring and more rules to protect the confidentiality of sectors.

ASMs would have the same dangerous working conditions as fisheries observers, yet be less protected and supported. They would be less qualified/ trained to deal with situations of conflict, and have no mechanism for addressing grievances. They would be paid and supported less, with less NMFS control, oversight and accountability. The proposed At-Sea Monitor profession undermines the established Fisheries Observer profession (not only in the Northeast Region, but nationally and internationally).

The proposed new Northeast Regional monitoring programs (the “Northeast Fisheries At-Sea Monitoring Program” (NEFAMP) and the Northeast Dockside Monitoring (DSM) Program) would:

- Provide a loophole that circumvents proper notification to NMFS for the placement of observers (with the necessary biological and math education), allowing for vessel operators/owners to arrange for substandard monitoring (with at-sea or dockside/roving monitors).
- Lack adequate NMFS authority to provide oversight of the data.
- Place an emphasis on dockside monitoring, which cannot alone provide reliable discard calculations<sup>2</sup>.
- Not provide the necessary biological data necessary for the rebuilding of overfished stocks and stocks subject to overfishing.

Creating new monitoring programs, alongside the established Northeast Fisheries Observer Program (NEFOP), is duplicative and complicates oversight of data quality. This would be fiscally irresponsible and less efficient. The new monitoring programs outlined in this proposed rule are likely to be the basis for future catch share monitoring programs, potentially providing substandard substitutions among existing, new and developing Fisheries Observer programs.

Creation of substandard monitoring programs would put the integrity of future fisheries science and fisheries management in jeopardy and it is contrary to regional, national, and international policies and best practices:

- The DOC Office of the Inspector General<sup>3</sup>
- The Magnuson-Stevens Fishery Management and Conservation Act<sup>4</sup>

---

<sup>2</sup> Discard calculations are a necessary component for rebuilding programs. Industry has responded to a NEFOP questionnaire regarding their observers’ performance and most replied that identifying fish was a problem for fisheries observers. These are observers who have an education in biology, education in the use of a biological key and have over a third more training beyond their university education than at-sea monitors, who would be entering into the program with no biology required. The likelihood of misidentifications of marine species is high and a loss of data is likely to be significant.

<sup>3</sup> U.S. Dept. of Commerce. 2004. NMFS Observer Programs Should Improve Data Quality, Performance Monitoring and Outreach Efforts. Final Audit Report No. IPE-15721, Office of the Inspector General, Washington D.C. Page 1: <http://www.oig.doc.gov/oig/reports/2004/NOAA-IPE-15721-03-04.pdf>

<sup>4</sup> MS 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

- NOAA Fisheries standards<sup>5</sup>
- Catch Share design standards<sup>6</sup>.
- The Mission and Goals of the International Fisheries Observer and Monitoring Conference<sup>7</sup>
- The observer program guidelines established by the Food and Agriculture Organization (FAO) of the United Nations<sup>8</sup>

The Food and Agriculture Organization (FAO) of the United Nations has recognized that the monitoring of bycatch and discards cannot be achieved without fisheries observers (Nolan, 1999)<sup>9</sup>. The FAO later published guidelines for the development of an observer program, which recommended that agencies review the pool of qualified observers and first hire trained biologists (Davies 2002). These recommendations were written in reference to developing countries attempting to seize control from foreign exploitation of their national fisheries. However, the United States has over 30 years of fishery observer program development for its own fisheries and its population is generally regarded as

---

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), (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.

<sup>5</sup> 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](http://www.st.nmfs.noaa.gov/st4/nop/documents/Eligibility_Procedural_Directive.pdf)

<sup>6</sup> The monitoring of Community Development Quota and Alaska Fisheries Act vessels in Alaska, using data collected by the North Pacific Groundfish Observer Program (NPGOP), is a good example of a Catch Share monitoring program that complies with the existing national observer program standards. Like the programs in Alaska, the proposed Northeast sector management requires individual vessel accountability and much more monitoring. However, the training of Alaska CDQ/AFA observers is more extensive because of the expectation for higher data quality. In contrast, the NE monitoring program requires less training and less stringent oversight. The problem with catch share monitoring (both in Alaska and the proposed Northeast programs) is an increased pressure on observers because the observers' sample data is now reflective of the individual vessel rather than aggregated with the fleet's catch. For this reason, observers in catch share monitoring programs should receive increased training and pay and afforded more protection against vessel interference and harassment.

<sup>7</sup> IFOMC website; Vision, Mission, and Goals of Conference: <http://www.st.nmfs.naa.gov/ifomc2009/confProgram.html>. "Improve the training and safety of at-sea fisheries observers"; "Advance the development of the observer profession"; "Improve the quality of fishery monitoring data...".

<sup>8</sup> Davies, S. L.; J. E. Reynolds (ed.). 2002. Guidelines for developing an at-sea fishery observer programme. FAO Fisheries Technical Paper. No. 414. Rome, FAO. 116 pp. <ftp://ftp.fao.org/docrep/fao/005/y4390e/y4390e00.pdf>

<sup>9</sup> Nolan, C.P. (ed.). 1999. Proceedings of the International Conference on Integrated Fisheries Monitoring. Sydney, Australia, 15 February 1999. Rome, FAO. 1999. 378p. <http://www.fao.org/docrep/x3900e/x3900e00.htm#topofpage>

## **Association for Professional Observers (APO)**

wealthy and highly educated by international standards. Surely this should result in higher eligibility standards than those set for entry-level observer program design in developing countries. Creating a monitoring program that doesn't even meet these international standards, even in the presence of an already established observer program, is unconscionable.

This proposed rule was released just prior to the holidays (along with proposed rule RIN 0648-XF55) with comments for both due January 20 and 21, respectively. We feel that this is not adequate time to review the implications of Amendment 16. On January 6<sup>th</sup>, 2010, we requested an extension to this proposed rule (until April 10, 2010)<sup>10</sup>, for the following reasons:

- **NOAA Fisheries should not implement the Northeast's Catch Share Program prior to Finalization of its National Catch Share Policy<sup>11</sup>:** This rule implements NOAA Catch Share Policy and may not comply with the final Policy if it is rushed through prior to finalizing national policy. Rushing through this proposed rule could undermine NMFS Catch Share authority on a national level.
- **Lack of Public Review in the Fishery Management Process:**
  - There are over 5000 pages of associated (Amendment 16) documents to review in relation to this proposed rule, and this proposed rule was published in its final form (Document ID NOAA-NMFS-2009-0186-0030) on December 29, with only 23 days to comment.
  - Summaries were conspicuously missing key details of the new substandard monitoring programs that are being proposed<sup>12</sup>.
  - Because the comment period was during the holidays, we did not have adequate access to NMFS personnel and other important consultants to help us and other interested parties to adequately understand the implications of this proposed rule.
  - Comments for the FEIS were due on December 22. The FEIS lacked details on sector monitoring requirements and it wasn't until the day after the FEIS comments were due that the sector operation plans and contracts were released.
- **Lack of NMFS Response to our Inquiries for Clarification<sup>13</sup>:** We found that the details of the monitoring aspect of sector management were grossly vague and required clarification from NMFS ("APO Inquiries for Clarifications on Amendment 16 Proposed Rules" is attached to these comments). On January 5, we were informed by NERO that they could not respond to our inquiries "at this

<sup>10</sup> APO Letters, 2010. APO letter to Dr. Lubchenco (010610). [http://www.apo-observers.org/docs/APO\\_Lubchenco\\_letter\\_01\\_06\\_10.pdf](http://www.apo-observers.org/docs/APO_Lubchenco_letter_01_06_10.pdf).

<sup>11</sup> Comments on Draft NOAA Catch Share Policy are due by April 10, 2010: [http://www.nmfs.noaa.gov/sfa/domes\\_fish/catchshare/docs/draft\\_noaa\\_cs\\_policy.pdf](http://www.nmfs.noaa.gov/sfa/domes_fish/catchshare/docs/draft_noaa_cs_policy.pdf)

<sup>12</sup> Amendment 16 Proposed Rule Summary, 12/17/09: [http://www.nero.noaa.gov/nero/hotnews/mulamend16pr/Am16%20Proposed%20RuleSummary12\\_17\\_09.pdf](http://www.nero.noaa.gov/nero/hotnews/mulamend16pr/Am16%20Proposed%20RuleSummary12_17_09.pdf)

<sup>13</sup> APO Letters, 2010. APO Inquiries for Clarifications on Amendment 16 Proposed Rules. Sent as an attachment to APO letter to Dr. Lubchenco (010610): [http://www.apo-observers.org/docs/APO\\_Inquiries\\_for\\_Clarifications\\_Amend16.pdf](http://www.apo-observers.org/docs/APO_Inquiries_for_Clarifications_Amend16.pdf). This document is also included as an attachment to these comments.

- time”, making it impossible to adequately review the implications of the directives outlined in this proposed rule, restricting our capabilities of commenting.
- **Incomplete Sector Operational Plan documentation provided:** 2 of the 19 sectors neglected to provide the necessary Operation Plans or Contracts, which prevents the public from adequately reviewing their impact. NMFS should be clear (to the public) on how it intends to manage these two sectors.
  - **Adequate review needed for all requested and granted exemptions and the transfer of authority from NMFS to Sector Managers:** Buried in these documents were dozens of pages of exemption requests from sectors and transfers of authority from NMFS to Industry Sector Managers. The implications of the transfer of fisheries management authority of a public resource from NMFS to private industry sectors require full explanation to the public. We also would like to see an explanation for each exemption request clearly outlined.
  - **Electronic Monitoring (EM) systems criteria unclear:** The criteria for approving at-sea Electronic Monitoring (EM) systems as an alternative to At-sea Monitoring are unclear. If these criteria are still being developed, it is unclear how the public would be included in NMFS determining EM approval criteria.
  - **Ambiguities of Public Access to Monitoring Data in Sector-Managed Fisheries:** 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). None of the documents released explain how Amendment 16 and Sector-managed fisheries will impact public access to fisheries monitoring data. NMFS guidelines on public access to monitoring information remain ambiguous, especially in light of the consolidation of fishing activity into sectors versus individual vessels. This could further restrict public access to this data, further preventing public participation in fisheries management, which would be contrary to the purpose of the MS Act.

Catch share programs should not be pushed through at the expense of lowering fisheries observer program standards, lowering the scientific integrity of collected fisheries information, and meanwhile lowering the public’s scrutiny and trust. Creation of the proposed Northeast Fisheries At-Sea Monitoring Program (NEFAMP) and Dockside/roving Monitoring (DSM) Program may put the integrity of future fisheries science and fisheries management in the US and beyond in jeopardy and is irresponsible. We highly recommend that you abandon the creation of the proposed At-Sea Monitoring Program and Dockside/Roving Monitoring Program in the Northeast region, and that you work with the established NEFOP (and the established national, and international observer program standards) for fulfilling the increased monitoring needs of the region.

Sincerely,

Elizabeth Mitchell, APO President

Keith Davis, APO Secretary

**Association for Professional Observers (APO)**