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Testimony on the Reauthorization of the Magnuson Stevens Fishery Conservation
and Management Act

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Natural Resources Committee
United States House of Representatives

Mr. Chairman and Members of the Committee:

My name is Elizabeth Mitchell and I am president of the Association for Professional Observers (APO). The APO is a non-profit association of biologists who advocate strong data collection programs for our national fisheries and a support network for the biologists who collect the data. In addition, I have over 25 years of experience working as a fisheries observer, primarily in the North Pacific Groundfish Observer Program (NPGOP). The underlying principle behind all of the APO's activities is the belief that collection of high quality, unbiased data is essential to sustainable management of resources and that well prepared professional biologists are necessary to articulate this course of action.

I had the opportunity to listen to the archived version of this hearing after it was held. I wanted to add written testimony to those panelists who presented. Since all but one panelist were exclusively from members of the fishing industry, and some of the discussion involved fisheries observers, I felt it was important to provide a fisheries observer's perspective regarding several issues raised at this hearing.

What Does a Fisheries Observer Do?

Some of the discussion at the hearing was on the topic of replacing observers with electronic monitoring (EM) and ensuring that the next reauthorization pushes this forward aggressively. When changing technologies, we should proceed with caution to ensure that EM will provide us with the necessary information to effectively manage our marine resources. I thought I would provide an outline of just some of the observer duties but I would encourage a detailed outline specific to regions and fisheries of what information fisheries managers require, and a comparison of what observers now provide with what EM is capable of doing. We cannot sacrifice for the sake of convenience data and specimen collection that is necessary to manage our nation's public fisheries resources in a sustainable way.

Observers gather unbiased, objective data on daily fishing effort, including, but not limited to:

- Total catch quantification by species, weight and number
- Identification of all organisms using scientific taxonomic keys
- Record incidental catch of protected species

- Record interactions of protected species with fishing gear
- Conduct rehabilitation of injured protected species
- Make observations of seabird and marine mammal bycatch reduction mitigation measures
- Conduct randomized samples of total catch to determine species composition of both target fish and bycatch
- Determine disposition of catch by weight
- Conduct a variety of randomized biological data collections and tag recoveries for basic research on age distribution, prey species and genetics studies.
- Monitor vessel compliance to US fishery regulations as well as other regulations such as MARPOL (the International Convention for the Prevention of Pollution from Ships).
- Conduct safety checks of vessels prior to boarding

Observer-collected data is used for in-season management of fish stocks and quotas and are essential for fishery management councils to write fishery management plans (FMP), which must comply with the Magnuson Stevens Act (MSA). Among other requirements, the MSA requires the use of the best scientific data available and efficient use of marine fisheries resources.

Access to Observer Data and Information, Including Electronic Monitoring

One of the sections of the last reauthorization of the MSA in 2007 caused a lot of consternation for users of observer data and information. The confidentiality provisions added in the 2007 reauthorization placed a blanket of secrecy over all information that observers collect, and specifically added electronic monitoring (EM) in the definition of observer information, assuming future trends toward the replacement of observers with EM. As mentioned above, observer data is essential for a whole suite of analyses to ensure sustainable management of our public marine living resources. The confidentiality provisions of this Act remained in limbo for five years, as National Oceanic and Atmospheric Administration (NOAA) grappled with its implementation. Discussions, working groups, workshops and task teams languished behind closed doors, despite a MSA mandate to be inclusive of stakeholder input.

In 2012, NMFS issued a proposed rule that appeared to go beyond the requirements of the MSA and in many ways conflicted with the Act's mandates, including being "responsive to the needs of interested and affected States and citizens" and drawing "upon Federal, State, and academic capabilities in carrying out research, administration, management and enforcement". It included not only protection of identity of the fisherman, but also the protection of the fishermen's business information. This included everything that is needed to study fishery impacts on the marine environment. The rule neglected to inform the public how the data would be aggregated for public disclosure and a future decision on this would have been made behind closed doors without public input. It placed ownership of the data in the hands of the fishing industry, which is a direct conflict of interest, since this could enable the fishermen to release the data or not, according to their own exclusive benefit.

Transparency is the cornerstone of a democratic society and observer data has long been considered to be the cornerstone of fisheries management. Observers risk their lives to collect this data for public good, not just for those we're monitoring. The ocean belongs to us all. The fisheries are a public resource, an inheritance given to us for simply being born. Since not all of us have the capacity to fish for ourselves, we entrust our government to take care of these resources on our behalf and those of future generations. We request your consideration in re-examining the confidentiality provisions of the MSA to ensure adequate public access to observer data and information, including electronic monitoring information. Without access to observer data and information, other provisions of the MSA would be impossible to carry

out, including the ability to monitor the effectiveness and efficiency of our monitoring programs.

The Committee Must Treat its Citizens with Respect

US citizens have a right to expect respect and consideration from our Congressional representatives. I was appalled by the comments of Congressman Don Young about observers. He said: "I argue that observers are probably the worst thing that can happen to the sustainable yield rationalization. The observer is human. He can be corrupted. He can be put into the trawl net to solve some problems. He can be a drunk."

Observers are recognized worldwide to be an essential component to fisheries managers so that they may make the difficult objective decisions in order to sustainably and fairly manage public marine resources. Observers believe in this role and are extensively trained for it, so to hear a US Congressman marginalize observers at a "public" hearing, where only fishermen are invited, is contemptable.

I understand his point – that humans sometimes come with negative variables. So do cameras, with much more ease and likely with less consequence, not to mention less oversight. So too are fishermen and politicians corruptible. In Mr. Young's home state, small boat fishermen are the recipients of the first time observer coverage this year that he was referencing. It was one of these fishermen who served in powerful political positions in Alaska who influenced fisheries policies in Alaska and the nation. He was then vetted to become the head of the National Marine Fisheries Service (NMFS) until it was discovered that he had been fishing illegally for five years.

Jesting in front of a bunch of fishermen that killing observers would solve the problem of having them on board is beyond contemptable given the reality of our already risky and vulnerable situation. Harassment, assault and interference with our duties is a regular and serious problem for observers. Rationalization actually exacerbates this, so his statement about rationalization is the other way around – rationalization is the worst thing to happen to observers. Observers' data is no longer pooled with other observers sample data in the fleet. Instead it is used to monitor the individual vessel's quota. When the observer's data is directly impacting a vessel's quota on which he/she is monitoring, observers are often faced with additional pressures from fishermen to "match" their data with the vessel's quota accounting. It's not uncommon for fishermen to make attempts to subtly (or outright) influence the observers' sampling protocols. Additionally, fishermen in Alaska tripled many observers' already heavy workload with rationalization – demanding that NMFS implement complex randomized and larger sample schemes of an impossibly small population – the individual vessel. What the fishermen want is actual accounting against their quota, not a sample. However, we just don't have that technology yet. That's the cadillac version. So rather than insult observers and feed the resentment, we need to pull together to accept them as an essential component of fishing sustainably. It is reprehensible for a politician to joke in front of fishermen about killing us. With an expected rise in harassment and interference that accompanies a new program, we'll know who to partially blame.

EM is not Proven to be Cost Effective

Another panelist at this hearing, Bob Dooley, stated that observer costs (in the NPGOP) went up from \$300/day to over \$1000/day "once the government got involved". However this is misleading because the 300/day figure only includes cost to industry and the 1000/day includes costs to industry *and* for NMFS program management. Because contractors consider observer charges for service fees proprietary information, this makes it impossible to accurately analyze ways to save costs to industry or the government – only total cost after

the service is completed. Since cost effectiveness is a driving force for many, transparency about these costs should be of the first order.

In addition, costs of enforcement of EM regulations is not included in cost analyses. Nor are non-compliance fee schedules. Non-compliance fee schedules should be a part of any cost analysis. Fines sometimes become the “cost of doing business” for some industries, so depending on the cost of non-compliance fines, these may not be effective in deterring EM violations.

Thank you,

Elizabeth Mitchell