

North Pacific Groundfish Observer Program (NPGOP) Rule Finalized November 10, 2010

RIN 0648-AW24

<http://edocket.access.gpo.gov/2010/pdf/2010-28325.pdf>

This rule changed rules of the NPGOP:

1. Takes away the appeal process from Observer applicants and Observer provider permit applicants who fail to gain certification.
2. Releases NMFS from responsibility from enforcing Observer professional conduct.
3. Allows for Observer provider contractors to hire Observers for research purposes.
4. Changes “fishing day” definition.
5. Makes contractors reveal how much Observers cost.

APO has concerns with:

- 1) Observer Providers are regulated under 50 CFR 679.50(i)(2) and (i)(3), which requires that Observer Providers “not have a direct financial interest, other than the provision of Observer services, in a North Pacific fishery...”, which in itself is a direct conflict of interest.
- 2) Observers are considered a *business expense* to the vessel and are considered a *business asset* to the Observer Provider. If, in the course of carrying out their duties, an Observer becomes a liability or otherwise becomes an inconvenience to either party, it makes sense from a business perspective to remove the liability. NMFS oversight is one check in this cog of treating Observers entirely in terms of a business calculation.
- 3) It would follow that, in such a business arrangement, without any NMFS oversight, this could allow the potential for both parties to collude against the “offensive” Observer by making false accusations of misconduct. NMFS claims that federal regulations include protection from harassment, “which would include making false accusations against an Observer.” However, by removing their authority over this subject, how can they possibly enforce it? Moreover, NMFS enforcement of Observer harassment cases is notoriously slow and inconclusive.
- 4) The very *perception* of a *potential* conflict of interest between the Vessel Operator and Observer Provider, at the possible expense of the Observer, is likely to have an adverse effect on Observer behavior, such that the Observer may be less likely to “make waves” while carrying out their duties, if they believe there is a lack of support from NMFS in protecting their job and protecting them from the above form of harassment.
- 5) Likewise, if an Observer engages in unprofessional behavior, but the behavior is convenient for the vessel (and thus for the Observer Provider), this compromises the integrity of the Observer Program as well. This rule removes NMFS from enforcing “Observer conduct standards that are unrelated to the collection of quality data for fisheries management.” NMFS should require that the Observer behave professionally *and* collect quality data. It doesn’t make sense to remove itself from enforcing standards of

professional conduct when Observers are representatives of NMFS. For NMFS to remove itself from responsibility of offensive and dangerous alcohol and drug-related behavior shows its lack of concern for both Observer welfare and the integrity of their own program.

See the following resources for background (cut and paste into browser if the link doesn't work):

North Pacific Groundfish Observer Program federal regulations (lists Observer Provider Regulations), November 10, 2011:

<http://www.fakr.noaa.gov/regs/679e50.pdf>

NMFS Final Rule on the NPGOP, November 10, 2010:

<http://edocket.access.gpo.gov/2010/pdf/2010-28325.pdf>

APO Comments to the Proposed Rule:

http://www.apo-Observers.org/docs/APO_NPGOP_Regs_2009_Comments.pdf