



P.O. Box 933  
Eugene, Oregon 97440  
Tel: (541) 344-5503  
Web: [www.apo-observers.org](http://www.apo-observers.org)  
E-mail: [apo@apo-observers.org](mailto:apo@apo-observers.org)

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

RIN 0648-BB42: Funding and Deployment System for Observer Coverage to the Existing North Pacific Groundfish Observer Program – Amendments 76 and 86: NMFS Proposed Rule and Request for Comments

June 18, 2012

Glenn Merrill  
Assistant Regional Administrator  
Sustainable Fisheries Division  
Alaska Region, NMFS

Attn: Ellen Sebastian

Dear Mr. Merrill,

Thank you for the opportunity to comment on the proposed regulation changes concerning the restructured North Pacific Groundfish Observer Program (NPGOP). I'm very pleased that NMFS is moving forward with efforts to create a more unbiased Observer Program to monitor Alaska's groundfish and halibut fisheries.

**A. Lack of VMS Requirement for the Groundfish and Halibut fleet**

First and foremost any monitoring system of a fishery should begin with vessel

monitoring system (VMS). Most of the vessels in the Partial Coverage Category covered by this rule don't have one. This is a problem for a few reasons:

- a) Through this rule, NMFS intends to “address longstanding concerns about statistical bias of observer-collected data..” using “randomized design to generate statistically representative estimates of total and retained catch and catch composition.” However, there is no system to monitor where the entire fleet is fishing. This seems to be a statistical problem. NMFS intends to sample the fleet but hasn't a way of monitoring where the rest of the fleet is fishing. Vessels could be fishing in one area and reporting it as having been caught in another;
- b) Observer safety is a concern: VMS gives rescuers a “last known position” in the event of a vessel sinking and could improve chances of survival;
- c) VMS is an important tool for enforcement of laws that protect observer welfare and other fisheries laws. This is of particular concern with previously unmonitored vessels. The combination of the cramped quarters, no prior monitoring, and potentially long monitoring periods (vessel selection pool), are likely to give rise to tensions between crew and the observer. This also puts pressure on the observer to “get along” for longer periods than are normally required in life. This can be extremely stressful and could contribute to increased alcoholism, among a host of other problems, experienced by observers. The potential for harassment and interference is high, especially if the behavior is the result of an observer witnessing a violation. With VMS, NMFS Enforcement would be able to cross reference positions with observer reports, offer increased support and better track observer harassment.

I'm hoping that NMFS will move swiftly to make this the next order of business for monitoring these fisheries.

## **B. Need to Increase Special Outreach to Observers Prior to Briefings**

NMFS has not given specific outreach to fisheries observers to explain how the restructured program will impact their work environment, yet this is essential for a smooth transition.

Without consulting the observers who carry out the protocols, it is likely to result in total chaos in the field and a significant loss of data. We witnessed this in the field with changes in sampling protocols in 2008, where we were given no warning and all the changes were crammed into a four-day briefing. Observers were threatening to quit in the field and there was a significant loss of data from errors as a result.

A four-day briefing is not the place to introduce major changes to observers, because the schedule is already packed with presentations from multiple departments – Office of Law Enforcement, US Coast Guard, Pacific International Halibut Commission, as well as fish, marine mammal and seabird lectures. This only leaves minimal time to go over protocol changes and this is given in small segments between guest speakers and required yearly reminders. Now we are

six months away from implementation and NMFS has yet to discuss major logistical concerns with the observer community.

### **C. Observer Pay Structure and Stand-by Pay Concerns**

Adequate pay and professional treatment of observers from observer providers and NMFS is critical to the success of this program and NMFS has a vested interest in this issue. Yet NMFS remains aloof on observer welfare issues. Pay is an obvious concern of observers, especially the ambiguity surrounding stand-by pay, which observers will likely encounter in the Partial Coverage Category. Observer pay remains below that of other technicians performing comparable duties and most cannot make a livable wage without sacrificing the basic desires for family and relationships. This contributes to the high turnover of observers, requiring an increase in cost to NMFS in extra training and debriefing and loss of data.

This also raises legitimate concerns about the pay structure of the Full Coverage Category, which remains in the status quo, with vessel/plant owner/operators under direct contract with the observer provider. Any negotiations in pay through the Union could go on for years. Will observers be able to choose employment between the two programs and will the observer provider be alternating observers from one program to the other within one contract? NMFS has mentioned in almost every paper on the subject of restructuring and elsewhere: "High quality observer data is the cornerstone of Alaska fisheries management". As such, NMFS should find a mechanism that links the agency with the welfare and professional standards of its observers, in spite of the employment arrangement.

### **D. Hygiene Issues**

An observer recently expressed to me a concern about hygiene on some of the boats. He reported a vessel with mold infestation in the observer stateroom. The vessel also had plumbing problems, where the toilets consistently sprayed human waste out of the toilet and onto the seats and floor. He reported it but nothing was done. I also experienced this and reported it. None of the regulations deal with hygiene and it appears that neither the observer provider nor NMFS is addressing this type of observer accommodation issue, yet solutions to the problems are fairly routine.

### **E. Conflict of Interest in the Status Quo Still Present**

A long-standing issue that has been raised by two independent reviews<sup>1</sup> and by the NPGOP, since the beginning of these discussions (1995) was the need to eliminate the potential for conflict of interest between a vessel/plant owner/operator and the observer provider. This will continue to exist in the Full

---

<sup>1</sup> MRAG Americas. 2000. Independent review of the North Pacific Groundfish Observer Program. Prepared for NMFS. May 2000.

NOAA. 2004. NMFS observer programs should improve data quality, performance monitoring and outreach efforts. Final Audit Report No. IPE-15721/March 2004.

Coverage Category, where the vessel or plant owner/operator is a business client of the observer provider. In this environment, observer providers are competing for the vessel or plants' business and may prioritize this over observer welfare and/or data quality issues and standards. NMFS could help in this regard by conducting yearly performance reviews of observer providers and summarizing observer complaints. Otherwise observers feel their complaints are left unresolved.

#### **F. Vessel Operators/Owners Should Not Be Allowed to Influence Observer Assignments**

Observer providers are required to "assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed." However, one observer recently reported four instances where an observer provider appears to have recently violated this law.

Because observer providers are now responsible for observer conduct, there is the danger of a vessel or plant operator/owner to make false claims of observer misconduct as a means to pressure the observer provider to replace an observer they don't agree with. Because the observer provider risks losing business if their client doesn't get their wish, they are likely to be amendable to them and these instances show how the current law encourages this. The observer said that, without any conclusive investigation, the observers in all four instances were removed from their assignments at the behest of vessel operators and then placed on another assignment. Without malicious intent from the observer provider, removing an observer is just the easiest thing to do sometimes. But it happens to be against the law. If these allegations are true, this observer provider clearly broke the law in allowing three vessels and a shoreside plant to remove one observer in favor of another, when nothing was proven against the observers.

Regardless of the validity of the claims against the observers, observer providers should be required to report to NMFS within 24 hours instances of *any* claims of observer misconduct. An investigation should ensue, not only of the observer but the one making the claim, with methods, appeal process and results reported to NMFS in all cases. To sweep these instances under the rug is unfair to the falsely accused, is likely to foster a culture of false accusations and unfair pressure on observers from vessel personnel who may have the impression that their relationship with the observer provider gives them power over the observer, especially if the observer is removed from the boat. If the claims are true, the behavior of the observers reflects poorly on the observer program and the observer profession. Obviously maintaining observer conduct standards and ensuring random observer placement is in the observer program's best interest.

#### **G. Electronic Monitoring is Not Ready**

Electronic monitoring is a very promising technology that has obvious applications in the Partial Coverage Category under this rule. Observer and crew

safety is a concern to all. However, I'm pleased that NMFS has maintained some reserve in granting EM applications as an automatic waiver for observer placement. EM has much to prove in terms of replacing observers and providing NMFS with the necessary data and specimens it needs to adequately monitor these fisheries. NMFS cited a lack of performance standards and technical specifications for it's broad application. EM has also proved insufficient in the species identification, biological data collection and specimen collection needed to adequately monitor these fisheries. In this regard, discussions are already circulating in professional circles regarding what data we are willing to sacrifice for the sake of the convenience of EM application. This is a discussion that requires scientific peer review, so I applaud NMFS' caution in the premature application of EM, while investigating research into resolving these limitations.

#### **H. NMFS Must Not Authorize Contractors to Release Vessels from Observer Coverage Mandate.**

NMFS is considering authorizing observer providers to make "routine" observer waivers to release vessels from their mandate for observer coverage. This program was to be a solution to a long-standing problem that an independent review of the NPGOP<sup>2</sup> cited: the need for observer providers to maintain "an arm's length from industry". After all the work that has been done to reach this objective, NMFS shouldn't go backwards on this. The authority to release vessels from observer coverage must lie solely in the hands of NMFS. Vessels already have an overly familiar relationship with their observer providers under the current system. This won't change if the observer provider is the one who has previously had a cozy relationship with its clients. I urge NMFS to NOT authorize contractors to administer observer waivers, no matter how routine.

#### **I. Monitoring Progress of the Restructured Program**

NMFS described in the PR how they and the Council would monitor the success of the restructured program. Can you explain to what level the public will be involved in the following monitoring activities?

- a. Drafts and consultation reviews from OAC, the Groundfish Plan Teams and Scientific and Statistical Committee, of the Annual Report (to be submitted to the Council on September 1). Will the public have access to these notes or be able to attend consultation meetings?
- b. The September 1 Annual Report to be submitted to the Council.
- c. Consultations with the Council on Deployment Plans for the upcoming year and annual report consultation meetings. Will the public be able to attend these meetings and have access to the notes?
- d. Council revisions to the reports and deployment plans. Will this be a public review process?
- e. Please describe the Council process for it's 5-year review and to what level the public will be able to follow this review.

---

<sup>2</sup> MRAG Americas. 2000. Independent review of the North Pacific Groundfish Observer Program. Prepared for NMFS. May 2000.

## **J. Public Oversight to Prevent Loopholes**

To maintain public oversight of the success of this program, it is critical that loopholes to the system are identified. This can only happen with close monitoring of how vessels designate themselves in what they enter into the Deployment System.

What sort of public reporting will be done in this regard to maintain oversight over how permit holders designate their vessels. Some vessels are obviously one or the other category. Others are more borderline and part of the annual report should characterize the fleet, in as fine resolution as possible, to identify vessels that are using loopholes to avoid observer coverage. Obviously vessels are going to do everything possible to avoid 100% coverage and any observer coverage at all. Some vessels previously cut their bow a few feet to avoid 30% coverage under the current scheme, yet they had plenty of room for an observer. There needs to be more clear understanding of how vessels move from full to partial coverage.

I urge NMFS to track and provide to the public details on the fleet in its annual report, including vessel size categories, tonnage, LOA, full or partial coverage category, patterns of vessels alternating between the two, and level of compliance to the program.

## **K. Remaining Questions**

- a. What financial aspects of the program will be included in the Annual Report (p. 23327)
- b. Are there any catch share programs that do not have prohibited species catch limits? (p. 23329)
- c. How many catcher/processors and motherships are currently in the 30% coverage category?
- d. How did NMFS arrive at a 57.5 foot cutoff in vessel length.
- e. Where will NMFS describe its randomized observer deployment process and will this be peer reviewed? (p. 23331)
- f. At what point will NMFS summarize how vessels entered into the Deployment System. What data will be available to the public and what will not? (p. 23332)
- g. Can you explain how many CDQ vessels will not be in the Full Coverage Category and where they'll be fishing? (p. 23332)
- h. How does NMFS avoid having the "observer effect" on monitoring in the Partial Coverage Category (p. 23332). For example, if a vessel is planning to go to a high bycatch or difficult area and gets selected through the Trip Selection Pool, could the fisherman wait the maximum 48 hours to trigger being dropped from the system until the following trip. When he gets dropped could he go fishing where he doesn't want a record and go to a more "observer friendly" area for the next trip on which he knows he'll have to take an observer. Likewise in the Vessel Selection Pool, couldn't a vessel minimize fishing time if they were chosen for a quarter and find

some excuse about a change of plans? How will NMFS monitor compliance to observer placement?

- i. Can a vessel change where they were planning on fishing once selected? This could contribute to “observer effect” (p. 23333)
- j. Will observers receive standby pay when the observer is monitoring a vessel in the Vessel Selected Pool in between trips? Observers need a clear outline in all the situations where they will be required to be on standby and how the observer provider intends to pay for this time (p. 23333).
- k. Will NMFS be describing in its annual report each situation where a vessel made an excuse for refusing an observer and the outcome of that situation (i.e. EM placement if appropriate, observer waiver). (p. 23334)
- l. What level of demand does NMFS see for the need to send NMFS out to view accommodations, in case vessels claim they cannot take an observer (p.23334).
- m. How does NMFS monitor protected species interactions of catcher vessel delivering to motherships? (p. 23337)
- n. What vessels currently fish without a Federal Fisheries Permit? (p. 23337)
- o. Will the public be able to review the same documents as the Council and Council teams (OAC, Groundfish Plan Team, Scientific and Statistical Committee) as they review the program annually and at 5 years? (p.23344)
- p. This rule mentions the possibility of NMFS staff being placed in lieu of an observer. NMFS NPGOP staff used to be required to regularly go out to sea on vessels as somewhat of a reality check to understand what observers face. Will that still be the case and, if so, how often will they be required? (p. 23348)
- q. The regulations seem to imply that we only work 12 hours/day. Exactly what are NMFS expectations of observers on this? (p.23351-52)
- r. Can you describe the situation(s) in the last year when a vessel participated in a “voluntary cooperative and exempted from this regulation? (p. 23352)
- s. How many situation(s) in the last year has NMFS approved “an alternative fishing plan, authorizing the vessel to carry only one lead level-2 observer”? (p. 23352)
- t. How many observers are required on the Amendment 80 C/P Dredge boats fishing for scallops? (p. 23352)
- u. If an observer requests that NMFS come out to help improve sampling issues and data quality on a particular vessel, do they have to go through the observer provider or can they make the request directly to NMFS? (p. 23353)
- v. Please define “individual authorized by NMFS” if NMFS sends someone to board the vessel. What qualifications will this person have?
- w. Who is on the Observer Provider Applicant Review Board? (23354)
- x. Where can we monitor performance ratings of federal contractors chosen by NMFS?
- y. Please specify on pg. 23355, under “Provide observer salaries and benefits” the following: Standby pay, travel *from briefing or training* to

- initial location of deployment (vs. just “to the initial location...”)
- z. Please outline the NMFS process that will be followed if a vessel or plant makes a complaint to the contractor about the observer assigned to them and the difference in NMFS responsibility in this regard under the Partial Coverage Category.

Again, thank you for allowing comment. Congratulations on all the hard work to get this far.

Sincerely,

Liz Mitchell