

July 25, 2000

Ms. Kimberly Dietrich
Association for Professional Observers
P.O. Box 30167
Seattle, WA 98103

Dear Ms. Dietrich:

Thank you for your letter of February 5, 2000, in which you provide suggestions for improvement of the North Pacific Groundfish Observer Program (NPGOP) structure and policies. Your primary suggestion to address difficult issues facing the NPGOP is to revise and implement the North Pacific Fisheries Research Plan (Research Plan). You acknowledge that this will involve substantial time to achieve and therefore provide suggestions for near term resolution to several specific issues.

The National Marine Fisheries Service (NMFS), the North Pacific Fishery Management Council (Council), and the Alaska fishing industry rely heavily on the observer data collected under the management of the NPGOP. The program is large and complex, and the NPGOP continues to achieve high standards in data quality despite the many challenges it faces. However, we agree that fundamental issues facing the NPGOP could best be addressed through a comprehensive restructuring of the program. Several aspects of the Research Plan, as developed and implemented in 1996, prevented industry and Council acceptance of the overall program structure and it was repealed. The Research Plan was followed by an attempt to address many of the same issues through the Joint Partnership Agreement, which also failed in 1998. Since then NMFS and Council staff, together with the Council's Observer Advisory Committee (OAC), have reinitiated efforts toward program restructuring under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Changes to Alaska fisheries management resulting from the American Fisheries Act (AFA), the Western Alaska Community Development Quota (CDQ) Program, and other issues require us to reevaluate the current relevance of old Research Plan components and revise as appropriate, as well as to develop new initiatives to address new issues. An independent review of NPGOP structure and effectiveness is complete and supports this initiative.

The current interim program expires at the end of 2000. NMFS is pursuing rulemaking to extend this program through 2002. No

other changes to the program will be included in this rulemaking to facilitate its timely review and implementation prior to 2001.

Near-term changes to regulations supporting the NPGOP that were adopted by the Council at its June 2000 meeting will be pursued through separate rulemaking as soon as practicable. Pending Council action and adequate statute support, a revised program structure could be implemented in 2003.

You also raised the following specific issues that you would like to see addressed as soon as practicable and offer suggestions for resolving them.

1. *Modify the current certification arrangement between NMFS and observer providers.* You expressed concern that NMFS has exhibited minimal oversight of observer providers and question whether NMFS has authority or has chosen not to exercise authority of such oversight. To clarify, NMFS's oversight of observer provider services is limited to the regulatory responsibilities of the provider companies. When the agency has become aware of instances of an observer company failing to meet those responsibilities, NMFS has pursued available avenues to correct such problems. While the option of decertification of an observer company is available to the NMFS, this option would be used to remedy only the most extreme problems. We agree that more effective approaches likely exist for managing routine problems.

You proposed an alternative oversight process through "no cost" contracts between observer provider companies and NMFS. As stated above, the agency is assessing options for program restructuring, including alternative observer procurement and funding mechanisms. NMFS believes that implementing a "no cost" contract could be a positive step toward shifting contractor oversight from a regulatory framework to the statement of work of a binding contract. We intend to pursue a pilot "no cost" contract that would be limited initially to the AFA mothership and catcher/processor sectors of the fishery.

2. *Establish protocol for observer refusal of assignment for safety reasons.* The NPGOP instructs observers that their first priority upon embarking a vessel is to check for a valid U.S. Coast Guard safety inspection decal, as required under §50 CFR 679.50(f)(1)(ii)(B). Observers are instructed in training to disembark the vessel immediately if a valid decal is not present. They are instructed to then notify NMFS, who in turn notifies the Coast Guard. NMFS also encourages the observer to notify the NPGOP when he or she identifies a potentially serious safety

issue even if a current decal is present. NMFS policy when no decal is present is to notify the Coast Guard. In each instance when the NPGOP was made aware of observer safety concerns, it notified the Coast Guard, who in turn responded in a timely fashion and evaluated the safety of the vessel in question.

NMFS acknowledges that these policies do not relieve the observer of the burden of notifying NMFS of a safety concern when a valid Coast Guard decal is present. This situation involves a subjective assessment by an observer who may be reluctant to notify NMFS for fear of being perceived as the cause of an unnecessary delay in a vessel's departure, or of jeopardizing his or her continued employment with an observer provider. We acknowledge your suggestion to prohibit any observer from boarding a vessel of concern until the situation is resolved. However, the NPGOP would like to open a dialogue with interested parties to discuss this and other possible solutions to this dilemma. The NPGOP also intends to raise this issue with the National Observer Program Advisory Team, because the observer safety regulations in question are national in scope.

3. *Establish equity for observers in the decertification process.* You expressed concern that no time limit exists for the NPGOP to conclude an observer decertification investigation and make a determination. NMFS acknowledges that undesirable delays in completing decertification processing have occurred over the past year due to staff resource constraints. The resulting backlog now has been resolved and efforts to minimize such a re-occurrence include a re-prioritization of staff tasking. The NPGOP expects the majority of decertification cases to be resolved within ninety days of the observer being notified of the proceedings. The NPGOP makes every effort to process all cases expeditiously, however, more complex cases may take longer to resolve. The program considers these investigations seriously and attempts to proceed judiciously to ensure that an observer is not unfairly decertified. Several observers have been exonerated due to this thorough review.

NMFS must balance the inconvenience to an observer of not being allowed to work during this process with the public's interest in the collection of quality fisheries data. The data observers collect are critical for NMFS's management of the Alaskan groundfish fisheries. The integrity of these data must be beyond reproach. To protect that integrity, and because grounds for decertification may implicate the data, an observer under review for decertification may not be allowed to resume observer duties until the issue is resolved.

4. *Decrease the turnover rate of observers.* NMFS is fully supportive of retaining experienced observers who are able to collect high quality data. The debriefing process has shown that experienced observers generally collect higher quality data when compared to less experienced observers due, at least in part, to a natural learning curve. As the need for extremely high quality data grows with the implementation of programs such as the CDQ and AFA programs, the need for more experienced observers grows.

As we work with the Council and industry on the overall program restructuring, we intend to give serious consideration to implementing the means necessary for encouraging quality observers to remain in the program.

5. *Distribution of personal information about observers.*

Alternatives to resolve this issue are included in an analysis for proposed rulemaking that was presented to the Council for final action at its June 2000 meeting. The Council recommended that personal information such as address, phone number, social security number, employment history, and other information that may be found on a resume not be distributed to industry clients by observer companies. However, the Council also recommended that observer deployment evaluations and rating scores be made available to industry pending a determination from NMFS that the release of this information would not pose confidentiality concerns. NMFS will assess the impact of the Council's action on individual observer privacy and on legal concerns about releasing this information relative to confidentiality issues, as well as potential uses of the information by industry.

6. *Sampling stations regulations.* Sampling stations currently are required aboard some vessels participating in CDQ and AFA fisheries. We currently do not have plans to require sampling stations aboard other vessels. Vessels interested in voluntarily installing a sampling station may use the current requirements for CDQ and AFA vessels for guidance or may contact NPGOP staff for further individual guidance. Observers are advised of known sampling problems and possible solutions aboard specific vessels prior to embarking on that vessel via review of NPGOP's vessel profiles. Discussion of solutions to sampling problems can be discussed with NPGOP in-season advisors while at sea via ATLAS. Additionally, NPGOP cadre staff will be expected to work in the field with observers and vessel personnel to resolve any such issues.

7. *Flexibility to place observer cadre staff on vessels.* NMFS intends to place cadre staff aboard vessels to assist observers and vessel personnel with resolution of sampling problems and

other issues. However, as you point out, a regulatory framework must be developed to provide the authority for this use of NMFS staff. To this end, NMFS staff will determine a protocol establishing how and under what circumstances cadre personnel will be deployed at sea. Although these details have not yet been worked out, we cannot preclude the possibility of cadre staff replacing paid observers, because circumstances may warrant this to resolve some at-sea problems. NMFS understands that this is a sensitive issue and would like to interface with affected parties on the relative costs and benefits of cadre staff working at sea to resolve the more complex sampling issues facing observers.

Your thoughtful suggestions for improving Observer Program policies and operations are welcomed, and we look forward to working with you through the OAC during the program restructuring process.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

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