

June 17, 2002

**STATUS OF MCR RECOMMENDATIONS
TASKED TO THE ALASKA MARINE MAMMAL OBSERVER PROGRAM
(Formerly known as the Cook Inlet Marine Mammal Observer Program)**

The following is a summary of the tasks that have been completed to date to implement the recommendations tasked to the Alaska Marine Mammal Observer Program (AMMOP) in the Management Control Review (MCR) of NMFS Observer Programs. This status report refers to pages 49-87 of the September 2000 MCR. Items having no recommendations are not listed in this status report.

The National Marine Fisheries Service, Alaska Region, Protected Resource Division (PRD) contracts observer recruitment, observer deployment, and collection and delivery of data to a single contractor. The contract is competitively bid and is a cost plus fixed fee contract (CPFFC) awarded on the basis of experience, data quality, past performance, and best value to the government. AMMOP generally contracts to one observer provider company for a fishery-specific two-year period. At the time of the MCR, AMMOP was contracting for coverage of the Cook Inlet set and drift gillnet fisheries. In 2002-2003, AMMOP will complete observer coverage of the Kodiak set gillnet fishery under a new contract.

A. Risk: Funds for the observer program may be unavailable for obligation consistently and on time.

A. Recommendations:

The Chief, Protected Resource Division, Alaska Region should inform the Chief, Office of Protected Resources of the difficulties incurred in the CIMMOP due to untimely funding.

Completion Date: September 30, 2001 and ongoing

Responsible Official: Chief, Protected Resource Division, Alaska Region

The Chief, Protected Resource Division, Alaska Region should ask the Chief, Office of Protected Resources to consider simplifying the funding process to ensure funding is timely. One possibility would be to secure funding from sources other than the internal competitive funding system and establish the program through stable funding.

Completion Date: September 30, 2001 and ongoing

Responsible Official: Chief, Protected Resource Division, Alaska Region

The Chief, Protected Resource Division should inform the Chief, Office of Protected Resources of NMFS's need to seek additional funding to meet its MMPA obligations.

Completion Date: September 30, 2001 and ongoing

Responsible Official: Chief, Protected Resource Division, Alaska Region

If sufficient base funding is obtained the NMFS should consider long-term contracting to provide observer services.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

A. 2002 Status: Funds are still allocated to AMMOP through an internal competitive process from the Washington D.C. Office of Protected Resources (OPR). The funding mechanism for this program is still labor-intensive, complicated, and unpredictable which makes it difficult for the COTR to predict the timing or the amount of funding to be received. Planning for the program can only occur after the COTR has received the funding and knows the amount.

An alternative funding process has not been made available. For example, through an MMPA task base, where funding could be secured for an Alaska Region MMPA Category II Observer Program. This would allow for a more stable funding process, allow the program managers to know funding levels well in advance of seasonal openings, and allow more time to plan for each year's tasks. There are currently sufficient funds for 2002 and funds to continue the Kodiak coverage in 2003, however the program will suffer considerably with lack of funds in ensuing years.

In developing this past contract, the COTR assumed the responsibility over development of the data forms, manual, database, training agenda, outreach to fishing industry and related agencies, selection methods, coverage levels, fishery descriptions, and analysis. The COTR tailored the Statement of Work (SOW) and specified deliverables to allow for an efficient evaluation and selection of the observer provider. Separate contracts were written for a statistical consultant, an outreach and feasibility study, a database developer, and a key entry position. This reduced the amount of effort required in a response from interested contractors to the Request For Proposals (RFP). The COTR developed training aides and guest lecturers for the training class so that would not have to be rushed once a contract had been assigned. The COTR developed a website for AMMOP so announcements, letters to the fishermen, goals, related regulations, and mandates could be posted. The COTR also purchased and inventoried the majority of the sampling and safety gear that would be required by the observer program through out the year, so that would not have to wait until a contractor had been assigned.

B. Risk: The costs of providing observers may be excessive or mis-allocated within government and industry.

B1. Recommendation: The COTR should request WASC to spot check observer reports received from the contractor and compare them to the contractor's invoices. If anomalies are discovered, the WASC may wish to initiate an audit of the contractor.

Completion Date: September 30, 2001

Responsible Official: COTR

B1. 2002 Status: The COTR personally inventoried, organized, and re-stocked the observer gear. The COTR purchased the majority of the gear that would be needed for the program, including new computers, printers, fax machines, depth sounders, range finders, coolers, packs, foul weather gear, and additional sampling and safety equipment. With help from NMFS staff in Anchorage, a new storage facility has been leased in a secure, controlled environment with limited staff access in a centrally located area. Items that are purchased by cost-reimbursement from the contractor are first approved by the COTR, then added to the gear inventory and become government property. The COTR reviews the individual observer gear issue sheets (at time of checking out and checking back in), and the contractor compiles a summary of the gear they have checked out and in. This is given to the COTR, property controller, and AKR purchasing representatives. The COTR reports all gear purchases, inventory lists, and damaged gear to the CO (WASC).

B3. Recommendations: The NMFS should explore options and develop a policy for handling vessels which refuse mandatory MMPA observer coverage.

Completion date: September 30, 2001 and ongoing

Responsible Official: Program Leader, NOP

The NMFS should hold the contractor accountable for random observer placement as stated in the SOW. This includes maintaining a logistical support system to achieve this.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

The NMFS should educate all Category II fisheries participants of mandatory coverage requirements.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

B3. 2002 Status: The COTR has been working closely with NMFS enforcement, NOAA General Counsel, U.S. Coast Guard, fishermen, and observer program participants to inform them of the mandates, obligations, requirements, and penalties for violations associated with AMMOP. Several meetings have been held with fishing associations and the COTR. The COTR has sent informational brochures and descriptive letters to the fishing permit holders. The COTR receives emails, telephone inquiries, and visits from fishermen. Inter-agency meetings have been held by the COTR to review program policies, response measures, and documentation processes of potential violations under the Marine Mammal Protection Act and Magnuson-Stevens Act.

The COTR, also holding the title of Program Coordinator and Principle Investigator, organized a feasibility study in 2001 to collect current and relevant information regarding the operation and management of the to-be-observed fishery (Kodiak set gillnet). The study explored observer deployment options, collected site-specific safety concerns, pinpointed fishing effort, and described stratification challenges. The study mapped and noted animal presence to prepare for

training and potential interactions. During the study, meetings were held with fishermen, introductions and informal discussions took place, helping to educate fishermen, observers, community members, and the COTR in what needed to be addressed in the development of the program.

The contractor is held accountable for the statistically sound observer placement as stated in the SOW, however it is not entirely up to the contractor. A separate contract for a statistical consultant was put in place in 2002 to assist the COTR and observer contractor with selection measures that are statistically valid. The selection process (of fishing sites to be observed) was clearly documented before the season began and a meeting was held for several days to address program design. Having done the feasibility study the previous year, provided a very detailed description of the fishing operations, geographical boundaries, and available resources to house and transport observers. Having this information before the commencement of the fishery allowed the contractor to then focus on monitoring fishing effort and deployment of observers when the season started. The potentials for biasing data were also addressed in training so observers would have an understanding of the importance of the sampling scheme. The COTR will be taking the statistical consultant to the fishing sites during this season so they can witness the data collection and fishing techniques first hand. The statistical consultant will work with the COTR on any final reports and technical summaries.

Much effort has been put into assuring that selection and observer coverage is done fairly, equitably, equally, and with statistical validity, among and within fisheries, as required under the MMPA.

C. Risk: Qualified observers may not be recruited and/or retained.

C2. Recommendation: NMFS should require that lead observer qualifications include experience supervising people and coordinating tasks, or require training in these areas.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

C2. 2002 Status: This was included in the latest SOW. The resulting lead observers are responsible, experienced observers with excellent supervisory and conflict resolution skills and capable of multi-tasking, prioritizing, and communicating. The contractor's selection of lead observers had to be approved by COTR. All in-season clarifications to task assignments etc. are documented in "Administrative Notes" from/to the contractor and COTR. The COTR makes these notes available to the observers via an ftp site.

C4. Recommendations:

The COTR should inform the Chief, Protected Resource Division via memo of the difficulties staff encountered in fulfilling NMFS responsibilities in monitoring the CIMMOP contract.

Completion Date: December 31, 2000

Responsible Official: COTR

The NMFS should prioritize time and resources to ensure staff can fulfill their responsibilities to monitor any future Alaska Region Category II fishery observer program contracts.

Completion Date: September 30, 2001

Responsible Official: Chief, Protected Resource Division, Alaska Region

C4. 2002 Status: The Chief of the Protected Resources Division has provided the COTR with sufficient travel funds and flexibility to make site visits as needed. The COTR spent 3 weeks with observers during the feasibility study in 2001 as well as completing several trips to meet with the fishing industry. The COTR participated in the entire 2 week observer training and will be spending a couple more weeks on site visits during this fishing season.

D. Risk: Observers may not be properly trained to perform their duties.

D1. Recommendations:

The NMFS should contract observer training for this program with the NPFOTC.

Completion date: September 30, 2001 and ongoing

Responsible Official: COTR

The NMFS should ensure that performance standards are established for both the training course and the trainees.

Completion date: September 30, 2001 and ongoing

Responsible Official: COTR

D1. 2002 Status: NMFS has contracted with the NPFOTC to provide the training. The COTR designed the initial training agenda, required homework exercises, a final exam, and evaluations. The COTR was active in the training - presenting many topics, answering questions, addressing areas of concern, and providing training materials and handouts.

D2. Recommendations:

The NMFS should ensure that the NPFOTC incorporates the experience of 1999 observers in future training courses.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

The NMFS should clarify the responsibilities of lead observers and ensure they are trained appropriately.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

The NMFS should provide the NPFOTC trainer and independent consultant with a summary of the post season observer survey used to evaluate the training classes. The COTR should meet

with the trainer and independent consultant to discuss issues encountered in the fishery and consider ways these issues could be resolved.

Completion Date: September 30, 2001 and ongoing

Responsible Official: COTR

D2. 2002 Status: Approximately 80% of the current observer class had participated in the 1999-2000 Cook Inlet Observer Program and all had prior observer experience. Approximately a third of the class had participated in the 2001 feasibility and outreach study. The lead observers attended a pre-training session and pre-briefing on new data collection policies. Lead observers are associated with the Observer Cadre (NPGOP) and the North Pacific Fisheries Management Council and were encouraged to attend Fish Expo and ComFish to represent AMMOP. They participated in and attended all of the training, and presented some sections of it. Lead observer positions were defined in the SOW, RFP, and observer contracts and the contractor provided responsibility diagrams. Each lead observer position is accompanied by an assistant lead, to be able to fill in or assist for short periods of time, or eventually be trained as a lead.

The COTR no longer has the help of an independent consultant. The COTR holds meetings and provides updates and training materials to the NPFOTC on a regular basis.

E. Risk: The health and safety of observers may be impaired.

E1. Recommendations:

The NMFS should resolve the conflicting regulations and prepare a brief that can be distributed to all observer programs concerning the issue.

Completion date: April 30, 2001 and ongoing

Responsible official: Program Leader, NOP

The NMFS in consultation with the USCG, should document procedures for responding when an observer determines that a vessel is unsafe while at sea. These procedures should be distributed widely.

Completion date: September 30, 2001

Responsible official: COTR

The NMFS should clarify and document the roles of the contractor, lead observers, and the COTR regarding safety issues.

Completion date: September 30, 2001

Responsible official: COTR

The NMFS should require observers to complete a safety checklist on each observed vessel. This checklist should be retained as a permanent record.

Completion date: September 30, 2001

Responsible official: COTR

E2. Recommendation:

The NMFS should develop procedures which address what to do in the event that an observer identifies that a vessel or set-net site is unsafe.

Completion date: September 30, 2001

Responsible official: COTR

E. 2002 Status: The COTR consulted with the National Observer Program and General Counsel on conflicting regulations and clarifications of such were provided to the observer contractor and fishing associations. Applicable regulations were added to the AMMOP web page and included in outreach materials. The COTR defines a trip refusal in the manual and discussed trip refusals at fishermen's meetings, with NMFS Enforcement, and during observer training.

The COTR has worked closely with local and national U.S. Coast Guard (USCG) representatives on safety issues relating to the applicable fisheries and locations where AMMOP is working. Safety was addressed in the re-writing of the SOW and contract evaluation factors to ensure they would not promote cheap and unsafe practices. Minimum requirements were given for vessel sub-contracts and the COTR required copies of all vessel sub-contracts and leases. Some vessel safety concerns were alleviated by completing most of the observer coverage from program vessels instead of having to rely on placing observers on commercial skiffs. Observers are issued their own safety equipment. Safety was a major emphasis in the training, including bear biology and defense, wilderness survival, small boat safety, hands on skiff handling, fisherman demonstration addressing potential hazards around gillnets, and weather recognition.

The COTR enforced the regulations in the Magnuson-Stevens Act stating that all commercial vessels must have a safety decal for the observer to board. The fleet that AMMOP must cover are generally small, state-registered vessels, in near shore waters and not familiar with the decal. By not having the decal, the vessel can not meet the observer requirements if selected to take an observer. It is prohibited for a selected vessel to continue to fish without getting a decal, thereby refusing an observer. The COTR sent certified letters to permit holders and held a public meeting to address the safety decal requirements. Since most skiffs were kept at remote fish camps, it can be challenging, costly, and dangerous for the fishermen to bring their skiff to town for the inspection. The COTR initiated and helped coordinate five USCG trips to administer the commercial vessel safety exams so skiffs located at remote sites would have a chance to obtain the decal. Through the use of helicopters, float planes, and skiffs, the USCG issued approximately 100 new safety decals in the fishery AMMOP is covering this year. With the cooperative effort of the USCG, fishing associations, observer contractor, and NMFS, many boats received safety information, got the decal, and avoided potential violations.

NMFS clarified and documented the roles of the contractor, lead observers, and the COTR regarding safety issues in the SOW. The COTR drafted Safety Requirements and a Safety Checklist used by AMMOP. The safety section of the observer manual was tailored towards small boat fisheries. NMFS and the contractor developed procedures which address what to do in the event that an observer identifies that a vessel or set-net site is unsafe. Keeping NMFS

Enforcement well-informed about the program benefits AMMOP in that it would increase response time if need and keeps everyone prepared. Emergency evacuation policies and radio codes were also put in place as safety measures. Considerable funds and effort were put into communication technology, including satellite phones and email, cell phones, VHF radios, and mail schedules, to keep the observers, leads, vessel operators, operation manager, and program coordinator in touch.

F. Risk: Insurance coverage and legal remedies for observers who are injured at sea may be inadequate.

F1. Recommendations:

The NMFS should analyze observer insurance issues at a national level. National policy should be issued, or legislation enacted, to clarify the standing of observers under both the Jones Act and FECA.

Completion date: September 30, 2001

Responsible Official: Program Leader, NOP

The NOP should work with insurance experts to create a pamphlet summarizing observer insurance issues. This pamphlet should be distributed to all observer program offices, observers, contractors, and the fishing industry

Completion date: September 30, 2001

Responsible Official: Program Leader, NOP

F1. 2002 Status: NOP held an insurance workshop in 2001. The COTR of AMMOP listened via conference call and received the meeting minutes and summary. No pamphlet has been issued by the NOP, and if it was it would have to be specific to MMPA observer programs to be applicable to AMMOP. Standard insurance language supplied by WASC was included in the SOW.

G. Risk: Observer coverage, deployment, and data collection may not be well-coordinated within the NMFS or with other federal, state, or intergovernmental agencies.

G1. Recommendations:

The COTR should inform the Chief, Protected Resource Division via memo of the difficulties encountered in the CIMMOP program due to the loss of expertise.

Completion Date: December 31, 2000

Responsible Official: COTR

The NMFS should develop and consider management options that would retain expertise within the NMFS on the management of Alaska Region Category II observer programs. One option would be to place the Alaska Region Category II observer programs under the management of the North Pacific Groundfish Observer Program.

Completion Date: September 30, 2001

Responsible Official: Chief, Protected Resource Division, Alaska Region

G1. 2002 Status: The suggested option has been discussed and is not considered a feasible or desired option at this point. AMMOP and the NPGOP are built on very different and even contrasting foundations, the former being science-based, the later being reporting-driven for compliance and harvest levels. AMMOP needs to be adaptive, reactive, and unbiased. Often the fishing seasons are so short, informed decisions have to be made quickly. There is still only 1 NMFS staff managing AMMOP, with other responsibilities as well. AMMOP absolutely needs more FTE's working as a team. The Alaska Region is currently over it's FTE allotment and hiring new staff is extremely difficult. Having more NMFS staff working on the project would retain expertise and consistency in the policy decisions, quality standards, and management of AMMOP.