

July 14, 2000

Rod McInnis
NMFS WASC Route: F/SWR
501 West Ocean Blvd, Rm: 4200
Long Beach CA 90802-4213

Dear Mr. McInnis:

As an advocacy group for fisheries observers/biologists nationwide, the Association for Professional Observers (APO) was interested to learn about the recent ruling to require 100% observer coverage of the Hawaii longline fleet. Although we support Judge Ezra's ruling that NMFS must comply with NEPA, we have been aware since 1995 of chronic safety problems associated with this fleet. Even with only 1-4% coverage, observers have experienced life-threatening situations beyond the normal, occasional occurrence. We are spreading the word to our membership that there is potential for future opportunities with the Hawaii Longline Observer Program (HLOP) but we are also advising observers to proceed with caution

Though "safety and integrity" are the watchwords of the HLOP, we feel the Southwest Region has been negligent with regard to responding to observer concerns for their personal safety. I'm sure you are aware of the following examples of the problems which the Southwest Region and HLOP staff have ignored and/or actively resisted correcting these situations or problems:

**Recent legislation (May 18, 1998 Final rule on Observer Health & Safety (FR 27213)) allows for observers to refuse unsafe vessels and yet the Fall, 1999 HLOP training manual states: "Refusing assignments is grounds for dismissal".

**In 1994, Elizabeth Mitchell was fired for refusing an unsafe vessel. After repeated problems that were well documented during the ensuing year, NMFS placed another observer, Stuart Arcenau, on board with no investigation by NMFS as to the repair of these known problems. The vessel sank with him on board.

**In 1998, Louis Van Fossen, had a knife placed against him, not just pulled on him, which is clearly not only a criminal act but a violation of the Magnuson-Stevens Act. The captain and crew were also under the influence of illegal narcotics during the entire fishing trip. When he reported it, NMFS fined the vessel \$10,000, with an agreement that the captain would not go out to sea when there was an observer on board. If NMFS really supported their observers, criminal charges would have been filed against this man.

**In 1998, Eric Sandberg, received a permanent, debilitating injury on the F/V Red October that had numerous safety problems which were well documented by the U.S.

Coast Guard. Tom Shearer, former port coordinator for the HLOP, wrote a memo to his supervisor, Tim Price, prior to his departure from the program recommending that this vessel be removed from the sampling pool because of safety problems and was deemed “un-observable”. This request was granted. However, when the subsequent port coordinator took over, the F/V Red October was re-activated. Observers continue to be placed on this vessel.

**In 1999, an observer was on board the F/V Seabird and had to experience de-watering at sea by the Coast Guard because the boat was taking on water. He reported it to the HLOP, but NMFS continued to place an observer on board 6 months later without any investigation regarding the status of repairs. NMFS had knowledge about the vessel's problems before the first de-watering incident as well. The third time was a charm and the boat sank.

These are but a few examples of problems experienced by observers and with this new change in coverage the APO as well as HLOP observers would like to see some changes in the administration of this observer program. We wish to have your assurance in writing of the following:

1. According to a 1996 article in the Honolulu Star Bulletin, the U.S. Coast Guard admitted that their requirements do not mean the vessels are safe and observer testimony reflects this. Before an observer is assigned to a vessel in the HLOP, NMFS and Coast Guard vessel safety inspectors must review records of past problems and require that the vessel show proof of repairs done to address those problems. The aforementioned regulation supports this: **“A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.”**
2. We request a change to the HLOP training manual and managerial protocol to reflect existing legislation regarding observers' right to refuse an unsafe vessel. In light of Judge Ezra's ruling, NMFS must develop a protocol with the US Coast Guard to deal with this highly probable situation.
3. Before every deployment make available to each observer, a Coast Guard and HLOP record of vessel safety problems/concerns and violations incurred on each vessel for up to two years prior to observer deployment. Coordinate efforts to develop an inter-agency database to include this information.
4. Program Supervisors should communicate with NMFS Enforcement and Coast Guard Officials regarding drug enforcement issues. If there is an investigation relating to large scale drug trafficking or other violations, observers should not be placed in those situations and those vessels should not be allowed to fish.
5. Redesign sampling protocol to allow breaks for observers to go to the bathroom and eat a meal during retrieval of gear. Require vessels to stop the gear when observers are

taking fish samples or processing turtle or other protected species specimens. For the past 6 years, there has been no protocol for these problems, and the data continues to unrealistically reflect that observers are watching every hook when it is virtually impossible to do so.

Thank you for addressing these issues. We look forward to receiving your response either by e-mail or by surface mail. The APO's email address is: *APO_obs@hotmail.com*.

Sincerely,

Kimberly S. Dietrich
Executive Officer

cc: Senator Inouye
Congresswoman Mink
Lono Kane, IBU
Penny Dalton
Vicki Cornish
Charles Karnella
John Kelly
Don Petersen
Steve Copps
James Stellflug, USCG