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Penelope Dalton  
The Assistant Administrator for Fisheries  
U.S. Department of Commerce  
NOAA/NMFS  
1315 East-West Highway  
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Dear Ms. Dalton:

Thank you for your prompt response to our last letter concerning observer safety in the Hawaii Longline Observer Program (HLOP). We appreciate these steps but have some additional concerns as the National Marine Fisheries Service (NMFS) draws near to choosing a contractor to hire out observers for this program. It appears there were no steps taken to simply augment the existing federal program. This is somewhat disturbing because the federal program was growing and improving. With regard to your letter, as well as the apparent direction of this program, there remain some uncertainties:

1. Lack of definitive U.S. Coast Guard (USCG) involvement in determining vessel safety for observers.

In your letter there is a noticeable absence of definitive USCG involvement in determining vessel integrity. In fact, this responsibility is placed on the observer, who may not have experience in making such a judgement. The USCG has publicly admitted that their minimum requirements for awarding the safety sticker (required for observer placement) are not sufficient to assure safety of the vessel. The USCG, ironically, will only inspect a vessel for watertight and stability requirements at sea during at-sea boardings, which are rare. Furthermore, there is no incentive for a vessel to make critical repairs because they are not charged for rescues by the USCG and they are not required to carry insurance, which require regular vessel maintenance.

The chances of an observer boarding an unsafe vessel in this fleet are fairly high. NMFS and the USCG should jointly inspect the vessel before an observer even steps on board. Observers are marine biologists and generally don't have experience in marine surveying. In addition to providing observers the safety check list and a review of prior vessel records, a joint inspection would help alleviate the awkward situation of an observer holding up a vessel for repairs, which might contribute to a hostile environment at sea.

2. Switching oversight of observer welfare from NMFS to the contractor.

You mentioned that, "In addition, the Statement of Work currently being developed to contract for observers services in the HLOP will contain a section dealing exclusively with safety issues." The very first sentence of this section reads, "The Contractor is responsible for providing a safe work environment for their employees." This is hardly comforting. NMFS is transferring over the responsibility of observer safety and other observer program responsibilities to a private for-profit business. This has the potential to further erode, not only observers' rights and safety, but the integrity of the program.

A federal program is preferred over a contract system. This is not only the APO's perspective, but that of other NMFS committees (Observer Advisory Committee, National Observer Program) and the conclusion of an independent review of the North Pacific Groundfish Observer Program (NPGOP). NMFS has been struggling for years to regain control over the NPGOP that they lost with the contract system. Why would NMFS repeat this mistake when the infrastructure of a federal program already exists with the HLOP.

Because of NMFS' lack of control over the contractors and contractor abuses in the NPGOP, observers found it necessary to unionize. After 3 years of negotiations, observers are still far from their objectives. Compensation is still below the GS-5 level, there are no benefits and observer safety is still an unresolved issue, even with the new regulations. This is largely because the responsibility of observer welfare is placed in the hands of for-profit business.

### 3. Southwest Region of NMFS (SWR), Long Beach, California, providing oversight of the contractor.

Not only will the contractors be responsible for observers' welfare, but contractor oversight will be at a distant port. If an observer has a conflict over the contractors' definition of a "safe working environment" or other concerns, how will the Contracting Officer's Technical Representative (COTR) in Long Beach be able to see a vessel in question or assess the situation? There already exists a trained COTR at the PIAO in Honolulu and your personnel there have day to day contact with both the vessels and the observers. They can quickly respond to problems that are bound to arise with the increased coverage.

### 4. Observer support.

You have acknowledged that the Hawaii longline fishery "presents more difficult challenges because of the nature of the fishery and the type of vessels involved." It is not the type of vessels, but rather the condition of the vessels that present challenges for NMFS. The problem has partly been the nature of the fishery, but more the lack of observer support from the SWR. Subsequent to the transfer of management of the program to the PIAO, some improvements have occurred, though safety problems still persist. Observers now have e-mail, telephone access and special training to expand their expertise and field skills. This kind of support, as well as substantive safety protocol, is needed so that observers are treated as employees, rather than "warm bodies" to place where needed. There is a direct relationship between good working conditions and quality data collection. Observer support is paramount to maintaining a core group of professional observers because the job is extremely stressful, arduous and hazardous. It is likely that this kind of support would be lost under the contract system.

### 5. Future of the federal observers' union.

NMFS is currently in negotiations with the federal observers through the Inland Boatman's Union of Hawaii (IBUH). The IBUH has filed two charges of Unfair Labor Practices against NMFS, largely because of management decisions made by the SWR. Conflicts between NMFS and observers are likely to occur with increased frequency, given NMFS' current safety standards. Why is NMFS switching the program from federal to contracted services for this very risky fishery, while transferring the oversight of the contractor away from local NMFS managers in Honolulu? This may be perceived to be a direct attempt by NMFS to bust the federal union currently in place with existing federal observers, while at the same time, insulating NMFS from legal responsibility for observers. Was this NMFS' intent? What will happen to the existing federal observers? Are there plans to reinstate the federal program and, if so, when?

Of course APO's main concern is to prevent the further erosion of observers' rights and safe working conditions, which ultimately threatens the integrity of the program. I hope you will also consider the

potential for chaos from hiring a contractor who may not have experience in this particular fishery, which you have acknowledged as unique. Your field personnel in Honolulu have devoted years to this program and know it well. I hope you will review the points of this letter and reconsider the direction that the HLOP appears to be heading. From APO's perspective, augmenting the existing federal program seems the most sensible, simple and cost-effective solution. We would appreciate a response to the above questions as well as an outline of the protocol between NMFS and the USCG to ensure observer safety and also a time-line for it's implementation.

Again, thank you very much for your timely response to our last letter. It is a tumultuous time for this program, but I think the time is ripe for making some positive changes.

Sincerely,

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