

January 30, 2002

David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

Dear Chairman Benton:

The Association for Professional Observers (APO) would like to thank NMFS and Council staff for the effort that has gone into the Draft EA/RIR for proposed changes to the regulations authorizing the North Pacific Groundfish Observer Program (NPGOP). We believe that many of the changes will have a positive effect on observers and the quality of their data. Below you will find our comments on a few of the proposed alternatives, based on the language in the Draft EA/RIR distributed to the Observer Advisory Committee (OAC) in January 2002. We apologize if some of these items have been addressed in the current draft.

The APO approves of the modified version of Alternative 3 that was discussed at the OAC meeting, which would extend the current program until December 31, 2007 (rather than 2005, as written in the Preliminary Draft). Alternative 2, which would effectively institutionalize the status quo by extending the regulations indefinitely, is based on the "expectation that the regulations would be amended periodically as necessary" but contains no provision to ensure that this would occur. While it is true that sunset dates cannot provide that guarantee, in reality they create considerable incentive for action and in the past have consistently resulted in programmatic changes. NMFS currently envisions creating a long-term plan for restructuring the NPGOP; we believe that a 2007 sunset date allows adequate time to accomplish this objective without creating an undue administrative burden, while still providing a mechanism for accountability should the agency be delayed in meeting its objectives.

Overall, the APO supports Option 1 for Alternatives 2 and 3, which would increase NMFS' management controls over observer providers and observers.

We have the following comments regarding the proposed changes to the observer certification criteria and standards of conduct (Item B):

B1. Adding a criterion so that individuals who have been convicted as an adult for a crime involving dishonesty or false statements within the last ten years would be ineligible for observer certification. Our concerns are the following: a) The agency needs to define exactly what crimes fall into this category. b) Since observer providers would not conduct background checks, it would be entirely dependent upon the applicant to provide this information. c) Since the intent is to eliminate applicants whose integrity is in question, it seems reasonable to include some other crimes in this criterion, i.e., those involving violence. d) The ten-year period seems overly long; it could potentially eliminate a high-quality applicant with a strong work history who committed a minor infraction eight years previously. e) We would like the agency to grandfather currently active observers, unless a reasonable argument can be made against this suggestion.

B3. Changing the standards of behavior to make each contractor responsible for misuse of alcohol and drugs by their employees. We believe that NMFS should set minimum standards for contractors' drug and alcohol policies, including making possession of illegal drugs a violation. This would establish a basic framework of acceptable behavior common to all observers.

Overall, the APO approves of replacing the observer contractor certification and decertification process with an APA-compliant permitting process (Item C). However, we are concerned that the permits, once issued, would remain valid indefinitely. We believe that an annual review of contractors' performances is necessary in order to hold them accountable to the standards they committed to in their initial applications. Based on opinions voiced at numerous APO meetings, the idea of NMFS providing an annual evaluation of contractors has been strongly supported by observers for years.

The APO supports many of the changes to the application criteria and the responsibilities of contractors (Item D). Specific comments on a few of the proposals follow:

D8. Requiring observers to complete in-person mid-deployment data reviews unless specifically exempted by NMFS. We understand the need to establish preventative measures designed to catch mistakes early. However, more clarification regarding deadlines is necessary, and some leeway should be built into this regulation to allow for uncertainties involved in the logistics of scheduling around vessel assignments.

D16. Requiring contractors to meet their own minimum requirements for candidate interviews. The APO would like to see NMFS establish minimum guidelines for interviewing that would be a required part of each contractor's screening process. We have requested that the NPGOP create an informational brochure describing the hardships of observing in order to better prepare applicants for challenging conditions.

D18. Requiring contractors to verify that a vessel has a valid USCG safety decal before placing an observer onboard. The APO supports the idea of giving contractors more responsibility regarding the safety of the vessels to which they assign observers, and would like to see the USCG decal specifically mentioned in their written contracts with clients. However, since there are some logistical problems associated with the contractor being responsible for all verification (last-minute assignments to boats with no access to fax machine, etc.), there should be some allowance for observers to verify the decal and pass this information on to the contractor verbally.

The APO is strongly in favor of Option 2 for Alternatives 2 and 3, which would grant NMFS the authority to place staff and other qualified persons on any federally permitted groundfish fishing vessel and at processing plants. This provides important opportunities for troubleshooting sampling issues and creating vessel-specific sampling profiles, and would ultimately benefit observers, industry, and contractors by helping potential problems to be resolved in a timely and professional manner. We also feel that NMFS staff would benefit from occasional exposure to observer working environments.

The following are possible changes (some from NMFS' original Working Draft) that we feel would benefit observers:

- 1) First-time observer trainees should be required to show proof of a signed contract addendum before attending training classes. Currently, many trainees travel to Seattle and Anchorage and begin classes without ever having seen a written contract. We do not consider this necessary for returning priors, although we do advise all observers to acquire a written addendum specifying the agreed upon time commitment for each deployment.
- 2) NMFS had suggested requiring contractors to assign only prior observers to flatfish factory trawlers, due to the inherent difficulty associated with sampling on these vessels. After consulting with observers and debriefers, it became clear that there are specific vessels of various gear types that are known to be very difficult to sample on. The overall opinion was that NMFS should designate just those vessels as "prior-only" boats, rather than choosing an entire gear-type, and should determine ahead of time what measures to take should an injury or other emergency situation leave only trainees available for such an assignment.

- 3) Occasionally (albeit rarely) we hear of incidents in which observers boarded boats with insufficient lifeboat capacity. While the contracts cover this scenario by stating that vessels taking observers must meet USCG requirements, we would like to see the lifeboat capacity issue emphasized again by being specifically addressed in each vessel contract. This would act as a reminder to vessel operators, and would take the onus off of observers by making it obvious that it is a contractor-specified requirement. While this issue may be less of a problem in the Alaska fleet than in some other programs it is extremely important nonetheless, especially since the Alaska program tends to set the stage for observer conditions throughout the U.S.

The APO is glad to see the OAC back on track for working out a long-term plan for restructuring the NPGOP. The current situation creates an interesting dichotomy, with NMFS in the position of trying to shift from employer towards client status from the viewpoint of observers, while at the same time finding it necessary to implement more regulations in order to achieve the goals of high data quality and improved working conditions for observers. We appreciate the time and effort that NMFS and Council staff and members of the OAC have put into designing and reviewing the current proposed changes, and would like to see the Alaska program continue to be at the forefront of positive trends in observer programs nationally.

Sincerely,

Irene Dorang
Executive Director

Cc: Dan Ito, Program Leader, Groundfish Observer Program
Jim Balsiger, Regional Administrator, Alaska Region
Doug DeMaster, Science and Research Director