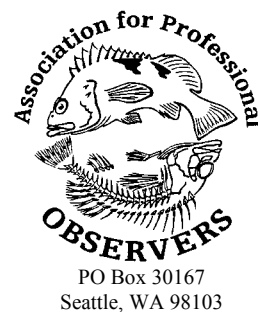


September 10, 2007

Patricia A. Kurkul
NMFS Northeast Regional Office
One Blackburn Drive
Gloucester, MA 01930



Dear Ms. Kurkul,

The Association for Professional Observers (APO) is a non-profit organization with the mission to strengthen our nation's observer programs through advocacy and education. The APO strongly supports robust, scientifically-based fisheries monitoring programs that provide sound science to support sustainable fisheries management and reduced bycatch in our nation's fisheries. We appreciate the opportunity to provide comments on the proposed rule to implement the Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment (72 FR 46588) for the Northeast region.

Our greatest concern regarding the proposed rule is the language that would allow a multiple provider (i.e., contractor) service delivery model under an industry-funded observer program. The proposed service delivery model has not worked well in Alaska under the North Pacific Groundfish Observer Program (NPGOP) for the following reasons:

- It has introduced bias in observer deployment when there is less than 100% observer coverage. In our view this has significantly compromised the integrity of the data collected over the past 17 years.
- In the NPGOP model, NMFS does not have a direct contractual relationship with the service providers and therefore has limited legal and timely management authority over their activities. The only binding contractual relationship occurs between the service provider and the vessel, placing the onus of providing the observer coverage upon the vessel. This results in the vessel being the only client to the service provider, essentially making the observer/fisher relationship more direct, which may result in conflicting scenarios (real or perceived).
- Although regulations prohibit observer harassment (including interference, intimidation, etc.), the current NPGOP service delivery model allows undue interference by the fishing industry (e.g., f/v Rebecca Irene pre-sorting case¹). This undermines the entire program.
- Because the program is industry funded, industry maintains most of the control. All NMFS-proposed revisions to regulations pertaining to observers must be vetted through the North Pacific Fishery Management Council (NPFMC) resulting in modifications to the original intent of those proposed by NMFS. NMFS does not have control over whether program objectives are achieved.
- There are currently no annual performance evaluations by NMFS that assess the service provider's compliance with the NMFS-permitted requirements under which they employ observers. All programs should evaluate the performance of observer service providers on an annual basis.
- The NPGOP observers have the lowest compensation and one of the highest turnover rates in the United States as a result of the multi-provider service delivery model.
- In 1993, at least 20 observers were not paid while performing NPGOP observer duties in Alaska. Over \$300,000 remains outstanding to these individuals and there was virtually no agency support due to the lack of a contractual arrangement between the service provider and NMFS. Although there were indications that the service provider was having financial difficulty, NMFS

¹ <http://www.fakr.noaa.gov/newsreleases/2006/halibutpresort.pdf>

did not decertify this company until it went out of business leaving several observers out at sea and even more without pay.

- Finally, there are inequities in the cost of observer coverage among different sectors of the fleet (ranging from 0.1% - 8% of ex-vessel value).

All U.S. fisheries observers are deployed on to U.S. fishing vessels under the mandates set forth by the National Marine Fisheries Service (NMFS), under the authority of the Magnuson Stevens Fisheries Conservation and Management Act (MSFCMA), Marine Mammal Protection Act, and Endangered Species Act. All data and biological samples that US Fisheries Observers collect are delivered to NMFS. Thus, NMFS, who is charged with managing our nation's public resources, bares the responsibility of the quality of the outcomes of observer services and products.

Three independent reviews of the NPGOP multi-provider service delivery model concluded that this model does not ensure that NMFS maintains control or oversight of their observer program. Lack of control and oversight potentially undermines the quality and scientific integrity of the data. For instance, the "Independent Review of the North Pacific Groundfish Observer Program" performed by the Marine Resource Assessment Group (MRAG) stated that

“The weight of evidence collected during this review leads us to the conclusion that the service delivery model of the NPGOP is one such model which should be avoided and needs to be changed.” (MRAG 2000, p.55)

The "Management Control Review of National Marine Fisheries Service Observer Programs/Service Delivery Models" declared that “this service delivery model has serious consequences for data quality, vessel bias, observer morale, and agency control” (NMFS 2000, p. xxiv). It also states that lack of management controls in programs that do not have direct contracts between NMFS and the observer service provider do not provide assurance that program objectives are being met. In addition, lack of adequate observer support affects observer performance and morale and affects the quality of data collected. Alternatives to the multi-provider service delivery model should be established and a national policy should be issued that prevents the multi-provider service delivery model from being implemented in other programs.

Finally, the Office of the Inspector General recommended that

“the Assistant Administrator for Fisheries take appropriate steps to: (1) **Develop and implement** statistically valid, unbiased vessel selection procedures for observer programs **with contractual relationships with observer providers** and continually monitor the implementation to ensure that the vessel selection process is properly implemented” (emphasis added; NOAA-IPE 2004, Report #15721, p.41).

We believe there are other viable alternatives that need to be considered. These alternatives will not undermine NMFS ability to provide a high-caliber observer program that ensures fair compensation, heightened employee retention, and provides robust scientific data for managing our nation's fisheries. Possible alternatives include:

- Increased federal funding.
- No-cost contract between NMFS and service providers to ensure NMFS has adequate control to meet its data quality and quantity objectives.
- Create an independent non-profit organization to collect funds equitably from fishers, provide financial oversight, and build an arms-length relationship between industry, NMFS and service provider.

- Utilize a current non-profit to perform as suggested above (e.g, Northeast Consortium or Atlantic States Marine Fisheries Commission).
- Utilize authority under the MSFCMA to modify the appropriate fishery management plans and collect fees to provide observer services. Discretionary provisions under Section 303(b) states “Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—
 - (1) require a permit to be obtained from, and fees to be paid to, the Secretary, with respect to—
 - (A) any fishing vessel of the United States fishing, or wishing to fish, in the exclusive economic zone [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone [or areas]*;
 - (B) the operator of any such vessel; or
 - (C) any United States fish processor who first receives fish that are subject to the plan.”

The multiple provider service delivery model under an industry-funded observer program, as showcased in the NPGOP, exhibits decreased NMFS management control and increased industry control, while frequently exhibiting lower wages, fewer benefits, and inferior employee retention – all of which ultimately affect the quality of the data collected by the observers and the resulting science based upon observer data. Public funds are utilized to fund a portion of the observer coverage and all data analysis. We feel this data cannot be compromised in any way and that other alternatives need to be explored. We find it unconscionable and a detriment to the management of our nation’s public resources that this service delivery model is being considered in the Northeast region.

Thank you for the opportunity to comment.

Sincerely,

Keith Davis and Liz Mitchell
APO Board

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