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**MAIL BUOY**

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(P.O. Box 30167, Seattle, WA 98103 206-547-4228)

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### **THIRD PARTY ALTERNATIVE - Delayed AGAIN...**

by Kim Dietrich

Council discussion of the Third Party (or modified pay-as-you go) alternative to the Research Plan was put on hold yet again at its September, 1996 meeting in Sitka, AK. The Council is waiting for more information from NMFS regarding costs. NMFS knows that under the proposed plan and also under the Research Plan scenario, provisions for wages under the Service Contract Act apply. On September 12, 1996, NMFS requested the Department of Labor (DOL) to create a federal job description for observers and determine a minimum wage scale. The DOL recently returned a minimum wage of \$9.55/hour but did not elaborate on how the minimum wage should be applied. For example, would total salary be based on an 8 hour/5 day work week? Would there be hazard, travel pay? Would there be a cost of living allowance due to the location of the job? NMFS will not pursue the DOL for further definition but will leave the salary and benefits package issue to be resolved through the solicitation process (when, and if, this occurs).

The Observer Advisory Committee (OAC, formerly the Observer Oversight Committee) will meet in the spring and hopefully come up with some recommendations for the Council. The Council will take up the Observer Program after the OAC meets. The APO will keep you updated regarding the OAC meeting date. Remember, all of the meetings are open to the public and comments are accepted.

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### **1997 INTERIM OBSERVER PROGRAM (KD)**

The observer program will remain more or less the same in 1997. The final draft of the Interim program was published in the Federal Register on November 1, 1996. I haven't seen the final draft, however, there have been a couple of suggested changes which will affect observers. First, in 1996 if you worked in any North Pacific fishery (this includes salmon, halibut, crab & groundfish), there is a new rule stating that you will not be allowed to observe for 12 months following that employment. Secondly, the NMFS has increased educational qualifications to include one math and one statistics course. This change will not affect current observers but will affect new trainees.

If you would like a copy of the 1997 Interim Observer Program, contact Kim Rivera at (907) 586-7228 or write to:

Ron Berg  
Chief, Fisheries Management Division  
Alaska Region, NMFS  
P.O. Box 21668  
Juneau, AK 99802

Bill Karp  
Alaska Fisheries Science Center  
NMFS  
7600 Sand Point Way, NE  
Seattle, WA 98115



## **MAGNUSON ACT CHANGES**

The new version of the Magnuson Fisheries and Conservation Act was passed on October 11, 1997 when it was signed by President Clinton. Within the act observer status is discussed. The Act states observers "shall be deemed to be a Federal employee for the purpose of compensation for work injuries under the Federal Employee Compensation Act [FECA] (5 U.S.C. 8101 et seq.)." This statement appears to standardize insurance for work-related injuries but doesn't set up a mechanism for this insurance to be purchased or define who will pay for this insurance. It could be interpreted as the cost for insurance will be incurred by the federal government (which I hardly think was the intent), or the vessels and/or contractors will need to somehow buy this type of insurance.

The second paragraph discussing observer status is even more ambiguous. It states that FECA "does not apply if the observer is engaged by the owner, master, or individual in charge of the vessel to perform any duties in service to the vessel." This statement too is open to wide and differing interpretations. Does this mean an observer will not be insured for work related injuries if he or she is being monetarily compensated for providing "service" to the vessel? Or could it be interpreted more liberally to mean the observer will not be insured if injured while helping out (with or without being asked) with the day to day chores which need to be accomplished on the vessel. There are some currently unresolved problems with insurance for 1997.

One positive change is that "claims for observer wages shall be considered maritime liens against the vessel and be accorded the same priority as seamen's liens under admiralty and general maritime law." In layman's terms this means that if a contractor isn't paid by a vessel, they will be at the top of the list of debtors instead of the bottom.



## **ADF&G PROPOSES CHANGES TO THE SHELLFISH OBSERVER PROGRAM(KD)**

Alaska Department of Fish and Game (ADF&G) has submitted a proposal to the state Board of Fish which would create state positions for observers. They propose to make observers permanent, seasonal employees which would eliminate contractors. The total compensation package being discussed is between \$5000-\$5500/month which is equivalent to a Fishery Biologist 1 in Dutch Harbor. The state would fund the additional employees through a cost recovery fishery of king and/or tanner crab.

There are some potential problems. State residency may be a requirement. The draft proposal contains no safeguards to guarantee current certified observers get hiring priority. Since the use of contractors will be eliminated, expect to see significant resistance from the contractors.

The APO would like to contribute public comment on the proposal. We need your comments and experience. If you are interested in reviewing the proposal and commenting, please contact Kim Dietrich (206-547-4228) or Laird Jones, Board of Fish, Alaska Department of Fish and Game, P.O. Box 25526, 1255 W. 8th Street, Juneau, AK 99802 (907) 465-6098, [lairdj@fishgame.state.ak.us](mailto:lairdj@fishgame.state.ak.us) for a copy of the document.



## **COMMENTS ON THE HAWAII LONGLINE OBSERVER PROGRAM-- AN OBSERVER'S PERSPECTIVE**

by Liz Mitchell

In the last issue of *The Mail Buoy*, the Hawaii Longline Observer Program was mentioned as a source of observer employment. I would like to share some of my experiences with this program. The program was mandated by Congress in 1994 to investigate the interaction level of protected species (primarily sea turtles) with the longline fishery for tuna and swordfish. It was based in Honolulu and was managed by the Southwest Region (SWR) of the National Marine Fisheries Service (NMFS). By written directive, observer priorities were (in order of importance): sea turtles,

marine mammals, seabirds, swordfish, tuna and sharks.

We were told that it was against observer protocol to discuss our observations with each other or with outside agencies, such as the U.S. Fish and Wildlife Service (USFWS) for seabird mortality data or the Coast Guard for MARPOL violations. We were also forbidden to discuss observations with NMFS scientists for whom our data and specimens were collected. Four months into the program, there was still "no protocol developed" for the release of data to the USFWS. Some observers informed the USFWS anonymously of the high mortality rate of the Layson's and black-footed albatross and that tags were being recovered by observers. This prompted the USFWS to press for the data. After one year into the program, the SWR responded, charging \$15,000 to the USFWS. A biologist at the USFWS then contacted the Pacific Seabird Group. This conservation group received some of the data by a request through the Freedom of Information Act (FOIA). The Pacific Seabird Group turned the data over to the USFWS.

There was also "no protocol developed" by SWR to bring back marine mammal specimens if any mortalities of those animals occurred. Interactions with marine mammals had not been known to occur with the longline fleet since the fleet had been banned from fishing close to shore. However, in 1994, an observer reported an entanglement of an unidentified medium-sized cetacean which had begun to actually pull the vessel over to one side, but had snapped free, still entangled by the line. Because the observer neglected to record on the species description form that the whale had flukes, this data was thrown out by supervisors at SWR and the whale went into the data base as unidentified object.

The SWR instituted this observer program and yet continued to raise the allowable take of sea turtles based entirely on how many sea turtles were being caught at the current levels of fishing. In 1991, NMFS estimated 25 sea turtles would be taken that year and authorized the same number of takes. In 1993, even though the fishing effort had only increased by about five percent, the estimate jumped to 749 with an authorization of 752 takes. In 1994 they estimated 847, and again authorized an increase in take of 849 sea turtles. By the end of 1994, the fishery had exceeded the allowable take of the loggerhead and leatherback sea turtles combined. To the best of my knowledge, no revised Incidental Take Statement has been written since.

Our immediate supervisor demonstrated a lack of concern for the quality and integrity of the observers' data. Upon return from my trips, I was debriefed in a perfunctory manner without being questioned about my sampling regime. A similar attitude was reflected by our supervisors at the SWR. We were told that our priorities were with sea turtles, but were also told that the amount of data and specimens collected from swordfish would be compared with other observers. The emphasis was on quantity rather than quality of data.

Instead of designing a sub-sampling regime, we were expected to monitor the retrieval of every hook for turtles (50 miles of gear) without a break. We were required to be on deck 12+hours/day during which time we were also asked to collect data and specimens. The fishermen took turns to eat and to go to the bathroom. If we stepped inside for any reason, we would have been absconding from our duties. When we were on deck taking samples and could not see the line, we were told to rely on the cue of the vessel slowing down to know if a turtle was on the line. However, the vessel didn't always slow down.

There is a direct association between good swordfish grounds and high turtle takes. So, during a time when the most sea turtle takes might have occurred, we were required to be on the deck taking samples of fish. When I discussed these concerns with my supervisor I was told sarcastically that if I could not trust the fishermen, I should not collect any data on the fish. One observer noted that skilled fishermen successfully avoid areas of high turtle interaction which resulted in a substantial reduction of catch. They could afford to avoid these areas while observers were on board, given the meager 5% observer coverage that year (1994).

Observers also reported that a large percentage of hooks were missing upon retrieval. The line was 400-pound test and we were dealing with turtles (leatherbacks) known to be in excess of 700 pounds. All of these sources of potential bias were ignored by supervisors.

With regard to the issue of safety, one observer was reprimanded, first verbally and then in writing, for having gone to the Coast Guard regarding his own safety concerns. In this program, the observer has no right to refuse an unsafe vessel. My supervisor had assigned me to a vessel which he had never been on and knew nothing about, so I went to the dock to make a quick inspection myself. A crew member explained to me that someone was continually on bilge pump watch to operate the pump. This indicated to me that the vessel was taking on water. I felt unsafe going out to sea on

that vessel and asked for another assignment, explaining my reasons. The following day, I was given an ultimatum to take the assignment or get fired. When the vessel returned from the trip I was to go on, they required Coast Guard assistance to de-water their vessel and one year later, while another observer was on board, the vessel sank. Fortunately, there were no mortalities.

As mentioned previously, reporting fisheries and MARPOL violations was also against observer protocol and this, I believe, was ultimately the reason for my dismissal. Most of the observers in the program, if not all, were upset with the amount of plastic going overboard--all the bait bags, light sticks, garbage, snarls of monofilament line, etc. Our hands were tied. We were not permitted to put the violations in our reports. I went to the Coast Guard on my own cognizance to discuss the violations and the observer program's policy of specifically not reporting them. I was told one month before my termination that I could expect negative repercussions for having done so.

I am not keeping up on the issues of the Hawaii longline program as much as I used to but do receive bits of news from different sources. NMFS is now apparently working with the USFWS regarding the seabird data. The SWR continues to use erroneous logbook data to report on protected species interactions. I have heard that the Program Chief has been promoted out of the observer program. All but two of the original twelve have left the program. I am unsure of the current hiring status.



## MISCELLANEOUS NOTES & TIDBITS

### APO SPEAKS...

APO was included in a panel discussion sponsored by the Women's Fisheries Network focusing on the Observer Program along with Martin Loefflad, NMFS Observer Program, on October 15, 1996.

**University of Alaska-Fairbanks offers college credit for observer experience:** The University of Alaska Fairbanks School of Fisheries has approved observer training and experience for credit. The course is entitled "Practicum in Fisheries: Fisheries Observer Program" and is numbered Fish 493. It is applicable to either an undergraduate or graduate fisheries degree. A pass/fail grade will be given and the course will be worth 3 credits. For further information, contact the North Pacific Observer Training Center in Anchorage at (907) 272-2704.

**Check out the APO's new HOME PAGE on the INTERNET.** The address is <http://www.tc.umn.edu/nlhome/m121/puk/APO.html>. Thanks again to John Pukite (author of "The Field Guide to Cows") for all your time and effort in setting up the website!

**NEW MEMBERSHIP:** if you want to become a member of the APO, please write to the above address or contact Kim Dietrich at (206) 547-4228. An annual donation of \$10 is recommended but not required. Donations are used to publish and distribute the Mail Buoy and to pay for costs of testifying at NPFMC and Board of Fisheries meetings out of state.

### APO T-SHIRTS ARE AVAILABLE AGAIN...

...for those of you who missed the first opportunity. Color option is black; size options are large and extra large. Send a donation of \$15 and state size preference to APO, P.O. Box 30167, Seattle, WA 98103.



**APO IS STILL LOOKING FOR PROJECT VOLUNTEERS.** The scope of the APO and the time it takes to seriously research issues are becoming larger than I'm sure anyone anticipated. If any of you are interested in volunteering when in Seattle or even while at home, the following projects could use some enthusiastic minds:

- 1) Insurance follow-up; 2) Publicity campaign; 3) Fishery updates for crab and groundfish in Alaska and the WOC; 4) Council regulatory action updates; 5) Magnuson Act updates; and any thing else you'd like to work on.

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**EMPLOYMENT OPPORTUNITIES**

**FISHERIES OBSERVER, EAST COAST**, Fisheries Observer Program. Manomet Observatory, Inc. Applicants sought for Fisheries Observer Training Course tentatively scheduled to start December, 1996 in Woods Hole, MA.

Qualifications: \*Bachelor's degree in a relevant field, such as biology or marine sciences, is ordinarily expected. \*Experience in commercial fishing or marine research. \*Knowledge of finfish, invertebrates, marine mammals and fishing technology. \*Ability to work independently. \*Ability to lift and carry heavy items. \*Tact and diplomacy to cultivate and maintain a cooperative relationship with the fishing industry. \*Willingness to travel, sometimes on trips lasting several days. \*Availability to work in difficult at-sea conditions throughout the year. \*Reliable transportation. \*U.S. citizenship. \*Prior observer work desirable.

Duties: Gathering information onboard fishing vessels regarding catch, location, gear, vessel economics, and marine mammal interactions. \*Taking biological samples from finfish, invertebrates, and marine mammals.

Contact: Ron Larsen or Steve Drew at P.O. Box 1770, Manomet, MA 02345: (508) 224-6521; FAX (508) 224-9220; email: rlarsen550@aol.com.

Closing date: Ideally 11/15.

**California Gillnet Observer, Longbeach, CA.**

Contact: Frank Orth Observers, 10900 NE 4th St, Suite 930, Bellevue, WA 98004 206-455-9693

**OREGON DEPARTMENT OF FISH & WILDLIFE Observers, Newport, OR.**

Contact: Keith Matteson, ODFW, 2040 SE Marine Science Drive, Newport, OR 97365, 541-867-4741 or fax to 541-867-0311.

**The East Coast Observer Program** contract (currently held by Manomet Observatory) will be open to competitive bid. A Request for Proposals (RFP) is expected to be publicized by Thanksgiving.

Contact: Lynne Phipps, Department of Commerce, NOAA, Eastern Administrative Support Center, 200 World Trade Center, Room 209, Norfolk, VA 23510-1624; (757) 441-6881.

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**IMPORTANT PHONE NUMBERS:**

Teresa Turk	(206) 860-5828	Bill Karp	(206) 526-4194
Steve Copps	(206) 706-1793	Shannon Fitzgerald	(206) 526-4553
Tracy Mayhew	(360) 379-8410	Martin Leofflad	(206) 526-4194
Kim Dietrich	(206) 547-4228	Heather Weikart	(206) 526-4213

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**UPCOMING BRIEFING AND TRAINING SCHEDULE (SUBJECT TO CHANGE)**

<u>Date</u>	<u>Type</u>	<u>Location</u>	<u>Date</u>	<u>Type</u>	<u>Location</u>
11/12-13	2-day	Anchorage	12/23-1/14	3-wk	Seattle
11/12-15	4-day	Seattle	12/23-24	2-day	Seattle
11/19-22	4-day	Anchorage	12/27-1/16	3-wk	Anchorage
11/25-26	2-day	Anchorage	12/30-31	2-day	Anchorage
12/2-20	3-wk	Anchorage	1/7-8	2-day	Seattle
12/3-4	2-day	Anchorage	1/14-15	2-day	Seattle
12/3-4	2-day	Seattle	1/14-17	4-day	Seattle
12/10-11	2-day	Anchorage	1/21-22	2-day	Seattle
12/17-18	2-day	Anchorage	1/28-29	2-day	Seattle
12/17-20	4-day	Seattle			

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**FISHING OPENERS AND COUNCIL MEETINGS**

- Nov. 18-22      Plan teams meet to discuss final draft of Stock Assessment and Fishery Evaluations (SAFE) for BSAI and GOA. The meetings are open to the public and will occur at the Alaska Fisheries Science Center, Bldg.4, Rm 2079.
- Dec. 9-13        NPFMC meeting. Anchorage. For more information, call 907-271-2809 or visit their home page at <http://www.fak.afsc.noaa.gov/npfmc/npfmc.htm>.
- Jan. 1            Pacific cod opens for fixed gear in BSAI
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**CORRECTIONS FROM LAST MAIL BUOY:** In the article "NMFS begins new evaluation system - what does it all mean?" I mistakenly printed in my example of observer pay grade that cruise 5 would be pay grade 4. If you follow the criteria for advancement, cruise 5 would be at pay grade 3. In addition to acquiring 600 points, one must also have had an exemplary performance rating for at least 2 out of 3 of the observer's most recent cruises to be at pay grade 4. (KD)

What to expect in the next *Mail Buoy*.... more information on the New Evaluation System. Observer responses to the ADFG Proposal. Update on Insurance issues relating to Magnuson Act changes. Tentative publishing date will be January 15, 1997.

The APO continues to be interested in your ideas- if you have an idea for an article or story, would like to respond to a previous article, or think the APO has overlooked some issues, drop a letter or call Teresa Turk, Tracy Mayhew or Kim Dietrich the next time you're in Seattle. Thanks again to all who contributed to this issue. Your efforts are greatly appreciated.

Those people who are in town prior to "A" season should give a shout as well so that we can organize another meeting prior to everyone scattering.