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# *Mail Buoy*

A publication of the Association for Professional Observers  
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## STATUS OF THE UNIONIZATION EFFORT (KD and Mark Coles)

Many of you have received a blue union membership and information card from the Alaska Fishermen's Union (AFU) while you were in the field, from other observers, or in the mail. Most likely you were contacted through your contractor or directly at your home address. If we are uncertain of your current address, mailings are sent to your contractor as a default.

First, I'd like to thank all of you who have supported the APO and the unionization effort. The AFU has received approximately 95 of these cards to date. I know there are many of you who remain uncertain as to whether support is the right decision. To you I must ask, can the situation (wages & benefits) get any worse and when was the last time you negotiated yourself a higher wage? You have nothing to lose by supporting the Union at this time. I also know you may be afraid that you are "signing your life away" and that there are some common misconceptions floating around the observer corps regarding the whole unionization process. I'd like to address some of these misconceptions so that everyone is operating with the same information and can make an educated decision.

The AFU and the APO haven't been able to reach everyone through our various mailings, so a little review may be in order. Previously discussed issues:

- **Dues:** Observers can expect to pay dues. The AFU has a range of \$75-\$225/year depending on expected income and other factors such as benefits gained. Dues will not be collected until you have worked under a union negotiated contract for 30 days. Monetary gain will far outweigh any dues paid.
- **Contractors may respond negatively,** but they will benefit too. Everyone will be on a level playing field. Competition among contractors for vessels will occur based on other business-related factors and the quality of observers (i.e. increased experience) which they can provide. Under the current system, contractors have had to be extremely competitive to maintain their profit margin. Unfortunately, the only cost they seem willing to cut is observer wages and

benefits. There has been a steady decrease of observer wages and benefits since the inception of the Domestic Groundfish Observer Program in 1990.

- **Strike?** Yes, it is a possibility you should consider. The AFU and observer representatives will exhaust all peaceful means to settle any differences with contractors and negotiate a contract amenable to all involved parties. YOU will choose the observer representatives.

### Issues discussed at previous APO meetings:

- **What does the AFU gain?** The AFU gains the obvious monetary benefits. They also gain membership which benefits their political effectiveness. And finally, there is the satisfaction of fulfilling a mission the union believes strongly in which is assisting workers in asserting their rights to organize to collectively bargain for better wages and working conditions.
- **What are the goals/benefits of organizing?** Increased wages and benefits is priority number one. The Union has available a number of medical plan options from a basic plan to a comprehensive major medical. A plan could include dental and vision coverage. Of course, the better the plan the higher the cost. The type of plan we might receive is an issue of money. The plan would be the subject of bargaining between the AFU and the contractor.

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- ***What are the various contractors points of view on the unionization issue?*** I don't know at this time but within the next 2 months will try to come up with a better answer.
- ***Has the APO discussed other options that may raise observer status (i.e. for insurance purposes) under the Magnuson Act or Marine Mammal Protection Act? Is a legal battle necessary before unionizing?*** Observer status under the above Acts does not need to be defined (or standardized) in order to unionize. Observer status continues to be an issue (see Observations about "observer" injury compensation by Gabrielle LeDoux on page 4) and the APO continues to be concerned. The APO will maintain efforts to follow Magnuson changes and amendments relating to observers and try to facilitate observer comment on those changes as we have done in the past. We may be able to address status in the future with AFU assistance.
- ***Has the APO discussed what types of guarantees (if any the AFU can offer to observers who join the AFU, who then may be discriminated against in hiring, wage status, contract lengths, contract specific clauses, etc. by the contractors?*** Once a contract is in place the Union is obligated to represent those working under the Union contract. Any breach by the employer would be grievable and vigorously pursued by the Union.
- ***Does the APO believe that NMFS will within the next 3 years redefine the role of observers by reducing the overall number of observers and then make this a permanent, year-round government position? If this were to become the situation, how would the AFU and APO address this issue?*** I can't predict what action NMFS will take in the future. My educated guess is that they will not be able to make observers federal employees. They could, however, initiate a system of greater oversight of the contractors which may include a direct contract with the contractors. If this were to occur, the Service Contract Act (SCA) wage determination would most likely apply to observers employed by those contractors.
- ***What is the "collusion clause"?*** Under the present system contractors are legally barred from discussing standardization of observer wages. Such discussions are considered collusion, a serious offense. If observers unionize, contractors sitting at the same table discussing wages and working conditions would no longer be illegal. Labor laws grant this exclusion exclusively to unionized businesses. In fact, observers unionizing will allow contractors to form an association of their own. An employer association will benefit contractors by allowing them to look out for their combined interests in the negotiating process. The association could be formed as soon as observers are officially part of the union or any time thereafter. Even though employers would have the right to form an association for collective bargaining purposes they will not be legally bound to. They could choose to bargain individually.
- ***"I will never observe again. I'm in grad school or have a full time job."*** Your support still counts. You will help the observers of the future by returning the membership

card. You have nothing to lose and observers have everything to gain.

- ***"Why are Teresa and Kim involved? They aren't even observers any more."*** First, I (KD) don't think it is feasible for any observer working full time to dedicate the time we have. Second, I spent 8-9 months out of the first 2 years I observed on the water. Once I started working for a contractor, I went out my allowable 1 month/year every year and would have gone out more had NMFS allowed it. I started observing in 12/90. Teresa hasn't observed since 1995 but has voluntarily maintained close ties to observers and the observer program. She volunteers for APO because she cares about the observer program as a whole and is available for meetings while most observers are at sea. We both expect you to communicate with us if you feel we are on the wrong track.

#### **The Process and (approximate) Timeline:**

1. Union membership cards must be signed BEFORE an official vote can be initiated by the National Labor Relations Board (NLRB). They are due by May 1, 1997.
2. The AFU will submit these cards to the NLRB and request an election. If the NLRB determines >30% of the observers are represented by the membership cards, the NLRB will conduct an election. One area of potential conflict is whom is eligible to vote in the Union election.
3. Once the eligibility question is resolved official ballots will be sent to all observers deemed eligible. In order for the Union to prevail more than 50% of the responders to the NLRB vote must be positive. We would like to have this vote completed by August 15, 1997.
4. If we join the AFU, we'd like negotiations to begin as soon as possible after 8/15/97 so that contractors have enough forewarning to negotiate 1998 contracts with vessels.
5. Our goal is to have observers working under a Union negotiated contract by 1/1/98.

The system is kind of a Catch 22. We need to show membership support before we vote and I know it exists. Please send in your cards ASAP. Mark Coles, Teresa Turk and myself are always at your disposal to discuss the union issue or any other observer-related issues on your mind.

#### **AN APPEAL TO THE FISHING INDUSTRY'S SECOND CLASS CITIZENS**

**Editorial** by Greg Olewiler

Labor Union? For Observers? Never happen. This seems to be the most popular response among observers when I bring up the subject of a labor union. I've been an observer for close to 13 years now (once or twice a year) and although I've seen many changes in the program and in observers themselves, one thing does remain unchanged. Observers have always considered themselves to be second class citizens. Why is this exactly and can we overcome this feeling and save the Observer Program?

When I was observing in the foreign fisheries I thought observers were intellectual, liberal, and quite arrogant. They were proud yet reluctant to admit in the Unisea Inn (Dutch Harbor) that they were observers. I've often seen observers in the airport wait until they were alone to go pick up their baskets from the baggage claim. I must admit that I've been guilty of this high regard for anonymity as well, perhaps for a different reason. I didn't want to enter into a political discussion about the government, prohibited species, or to explain that, yes, I did eat meat. Observers were practically the only college educated people in port, which set us apart from the rest. We were different and most of us were perhaps uncomfortable with that feeling. We wanted to fit in, to prove we were one of the guys.

Now that we work more closely with American fishermen, the myth of a working class hero has begun to fade I suspect. Fishermen, particularly on smaller vessels, should be referred to as white collar, not blue collar, workers. I was never greedy, but I did take note early on that most deckhands made my monthly salary in a few days of fishing, and they usually were not working harder than I did. The true blue collar worker has always been the processor on a factory ship. They work very hard for little, and have very little political clout. Observers could be next in line for blue collar status.

It is important to understand how observers think first, if we are to understand why they are so typically apathetic about their own future. Most observers have a low regard for what they do these days. Morale is low. Most observers don't consider observing a "real job". They often say "I'll never do this again." Interestingly enough I don't believe that I've ever said this until this year, not because I have a low regard for what I do, but because I can no longer afford to observe. I like observing. This has always been a job I could fall back on, a way to get out of the rat race for a while, or a means to the end of going on an exotic vacation in some tropical paradise (mine was always Thailand).

It's beginning to look like those good days are over. I just returned from an observer trip with less pay than I earned in 1988 when I was a joint venture rep for the Japanese. I've been making \$100/day throughout the 90's. It's bad when you don't make enough to account for an increase in cost of living or inflation, but I rarely complained about this. Now, I'm no longer even guaranteed \$100/day. The boats say they're paying more but this is suspect according to Teresa Turk. What I do know for sure is that we're being paid less. All the contractors have their little perks and bonuses but the salaries are about the same at the end of the month. I've worked for all of the current contractors except Data Contractors and several which no longer exist.

Well, it looks like I'm rambling on. I need an attention grabber. Think about that tropical vacation. Wouldn't you like to be able to afford it on your observer salary? I've been affording this for years and I'm not ready to give it up. Don't fall into the trap of under-valuing yourselves. Like it or not we are part of the fishing industry now. We're here to stay and we really aren't that different from anyone else in the industry.

"Oh, but observers are so transient. They'll never stick together in a Union." Well, let me ask you how we are different from so many fishermen or processors. The representative from the Alaska Fishermen's Union doesn't seem to think we're any different. Don't be concerned about conflict of interest in the Union either. We would become part of the AFU who in turn is a member of the AFL-CIO, but the Union and observer representatives would be concerned solely about the welfare of observers. Contractors would be permitted to communicate with each other and minimum observer salaries would be met. Contractors may benefit as well since there wouldn't be so much pressure to underbid the other guy. If, heaven forbid, we ever did go on strike it is unlikely observers' concerns could be ignored for long. Steve Pennoyer would have the authority to allow vessels to fish without coverage but this seems unlikely and he would undoubtedly receive pressure from the "Green" organizations as well as from the fishing industry.

Please don't wait for NOAA to solve your problems. They've been trying to get us to leave the nest for quite some time now. Did you know that NOAA used to issue rain gear, gloves, glove liners, boots and sleeping bags? Wasn't too long ago and they still have the gear to give us. It's been transferred to the RACE division of NMFS. NMFS is worried about conflict of interest and don't want us to appear as government employees. According to Cheryl (trainer/debriefer), NOAA is aware of the problems observers are facing and has been looking for alternatives to the present funding methods. The problem is that none of the alternatives have proven acceptable.

**It's up to us to take care of ourselves.** Take interest in your own welfare and stop waiting for the government to solve your problems. They never will. Sounds a bit Republican, doesn't it? OK, I admit it. I'm a Republican, and if a Republican can support a labor union, things must be pretty sad in the observer program, wouldn't you say? If you don't care about your future, rest assured nobody else will either. Overcome apathy! Get involved! Send in your Union membership card today. We need approximately 125 to proceed toward an official vote. At last count we only had about 85 cards. We have until May 1 to reach our goal. *One final question: What have you got to lose?*

## OTHERS ORGANIZE--WHY NOT OBSERVERS?

**Editorial** by Bill Monheimer

This year, 1997, could be and should be a monumental year for observers. Hopefully, you're aware that the AFU is interested in organizing observers. Whether or not this happens is in your hands. I mean you as an individual. We need you to sign a membership card expressing your interest in voting on unionization and then we need you to vote "yes" for unionization.

I can't express enough how important your participation is. Because of the nature of observers and the observing business there are a large number of observers who can't be contacted in a timely fashion or on a regular basis. Yet, these "fugitive" observers are considered active by NMFS

and may be part of the pool of eligible voters should a vote ever be authorized by the NLRB. We're going to need a 50% +1 'yes' vote in favor of unionization. Your signature on a membership card and later on a ballot is important.

**Why unionize?** This seems pretty rudimentary to me but I understand that some observers have been expressing concern about their loss of individual freedom. True enough. *We will be giving up the right to be treated like migrant laborers subject to the whims of the Council, NMFS, contractors and the fishing industry.* In exchange for this lost freedom we'll be gaining the right to collective bargaining, a Union legal department, access to a pension plan and the opportunity to buy into a full-time health plan.

All sorts of professionals belong to Unions: teachers, policemen, airline pilots, all State of Alaska employees, etc. Whether they're called unions, associations, guilds or organizations, the bottom line is they work on behalf of their membership to improve working conditions, protect members rights and set standards of professionalism. Even doctors (AMA) and layers (BAR, Trial Lawyers Assn.) are organized (though these aren't unions). The point I'm trying to make is that Unions aren't some Communist plot from the 1930's, **Unions are for working people like us.**

Organizing isn't just about more money and safer working conditions. An effective observer program cannot exist without experienced, dedicated observers. Many in the fishing industry are perfectly happy with demoralized and/or inexperienced observers. Unionization would go a long way toward creating a stable corps of experienced observers.

Becoming unionized is only the first step. The fishing/observing industry isn't going to cave in and give us whatever we ask for just because we're organized. They'll stall, talk, form advisory panels and do anything they can to maintain the status quo. There is no free lunch, job actions may be necessary.

**We need you and your vote. Even if you have no intention of ever observing again** (how many times have I heard that), **friends you trained with need your support.** APO's asking you to invest a few minutes of your time, a couple of postage stamps, maybe even a phone call to APO if you have questions. If you know any "fugitive" observers spread the word. This will only happen if we all get involved.

observers, and provides that observers under the Magnuson Act and the Marine Mammal Protection Act are deemed federal employees for the purpose of compensation under the Federal Employee Compensation Act (FECA).

This provision attempts to clarify the compensation scheme for these two categories of observers for work related injuries. Unfortunately, the provision falls short of its intended purpose, and results in an even more ambiguous observer injury compensation scheme. Moreover, the provision is not applicable to observers involved in state regulated fisheries which have their own observer programs.

Prior to the passage of Section 403(c), observers injured on fishing vessels in Alaska were usually compensated under the Alaska Worker's Compensation System. However, it is debatable whether observers were ever legally under the jurisdiction of the Alaska Worker's Compensation Board since Alaska Worker's Compensation is generally only available to land based workers and is not generally available to crew members on a vessel. See discussion infra concerning crew member status of observers. Observers under the Magnuson Act and the state observer program also were probably entitled to sue the owners of vessels to which they were assigned for injury or death.<sup>1</sup> Although there is a split of authority on this issue, the majority of courts in the Pacific Northwest which have considered the issue have concluded that under maritime law observers are crew members vis-à-vis the vessels to which they are assigned. As crew members they are able to sue their employers, the observer contractors, for negligence (which would include such things as assigning an observer to a hazardous vessel) under the Jones Act, and the owners of the vessels to which they are assigned for unseaworthiness (if the vessel or its equipment is defective).

Moreover, as vessel crew members, observers, including Marine Mammal Protection Act observers, also could sue their employers, the observer contractors, for maintenance, cure, and unearned wages. These exclusively maritime remedies are a saltwater variety of worker's compensation which basically provide, without a showing of fault, medical expenses, a subsistence living stipend while the crew member is undergoing medical treatment, and wages until the end of his or her contract. An interesting facet of the maintenance/cure/unearned wages remedy is that it is available even if the illness or injury is not job related. Moreover, it is also available when the crew member is between trips and not actually on the vessel as long as he is obligated to return to the vessel.

The language of Section 403(c) has apparently not yet been interpreted by any court. It does not appear, however, to alter any rights that an observer may have vis-à-vis a vessel owner.

The provision, however, may alter the rights that a crew member has with respect to his employer, the observer contracting company. If the observer is injured while working

<sup>1</sup> Observers under the MMPA, however, are specifically prohibited from bringing any action for injury or death against a vessel or its owners except in certain limited circumstances.

## OBSERVATIONS ABOUT "OBSERVER" INJURY COMPENSATION by Gabrielle LeDoux

On October 11, 1996, after much debate and fanfare over issues such as IFQ's, President Clinton signed into law Senate Bill 39 reauthorizing the Magnuson Act ("Act"). One section of the Act which received little public attention, however, is Section 403. Section 403 relates to fishing vessel

on a vessel, he is not clearly able to collect federal worker's compensation payments just as if he were a federal employee. Under FECA, a worker is entitled to a partial payment of his salary during periods that he may be temporarily disabled. He is also entitled to benefits if he is permanently totally or partially disabled. These payments and benefits are available without any showing of fault or negligence on the part of the employer. Workers under FECA, however, are only entitled to recover compensation for work-related injuries. Moreover, benefits are only available pursuant to Section 403(c) when an observer is on a vessel. Thus, in some ways the FECA remedy is more limited than the maintenance/cure/unearned wage remedy which covers virtually any illness or injury while an observer is assigned to (although not physically on board) a vessel.

It is questionable whether an observer still has the right to obtain maintenance/cure/unearned wages from the observer company. These benefits are the obligation of a crew member's employer. The observer companies will likely argue that since the federal government is not deemed the observer's employer, as opposed to the observer contracting companies, such benefits are no longer available to the observer. Moreover, the FECA is supposed to be the only remedy that a federal employee has against his employer the federal government. In other words, a federal employee cannot sue the federal government. It is thus possible that Section 403(c) might be construed to also bar an observer from suing the observer company. Assuming that an observer is still entitled to maintenance/cure/unearned wages from the observer contracting company, any award, of course, would be subject to an offset for benefits obtained under the FECA.<sup>2</sup>

The observers' ability to bring negligence claims against their employers, the observer contracting companies, may also be affected by Section 403(c). In addition to the claims bar discussed *supra*, claims for negligence under the Jones Act, like maintenance/cure/unearned wages, may only be brought against a crew member's employer. To the extent that the federal government, and not the observer company, is considered the observer's employer, the observer is barred from bringing a Jones Act negligence claim. However, even under this interpretation of Section 403(c) the observer should still be able to bring a general negligence claim against the observer company. The major difference between the two types of negligence claims (Jones Act versus general negligence) is the standard of proof. The standard of proof for negligence under the Jones Act is much less stringent than under general negligence standards.

Any limitation restricting an observer's right to sue either the vessel owner or the contracting company has a potentially adverse effect on observers. For minor injuries, the FECA, which provides for benefits without fault, is probably adequate. But FECA benefits for permanent disability are very small as compared to benefits available under maritime

<sup>2</sup> It might be argued, however, that the language of Section 403(c) which refers to observers "on a vessel" would be interpreted to mean observers "assigned to a vessel".

law for unseaworthiness or negligence. For severe injuries, an observer is much better off with maritime remedies.

If all of the above sounds extremely confusing, that is because it is. Section 403(c) will unfortunately prove fertile ground for litigation.

*Gabrielle LeDoux is a partner in the law firm of Beard, LeDoux, Stacey & Trueb. Her practice consists almost exclusively of injury and death claims involving the fishing industry. Ms. LeDoux welcomes any questions or comments you may have about this article. She may be reached as follows: 219 Mill Bay Road, Kodiak, AK 99615; (907) 486-4082; email: blstkd@ptialaska.net.*

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## NMFS ENFORCEMENT AND THE OBSERVER PROGRAM

by Todd DuBois, Special Agent (NMFS)

Over the past few years, I have had the privilege of working with many members of the National Marine Fisheries Service (NMFS) observer program staff and numerous NMFS certified groundfish observers. Through these interactions, I have gained a sincere appreciation for the work done by observers as well as the critical importance of observer data on the effective management of the fisheries resources off of Alaska. The unbiased data collected by observers every day is relied upon by the NMFS, the public and the fishing industry to ensure that proper management measures are taken to ensure a continuing supply of fishery resources. With such tremendous responsibility, it is surprising that many observers, including many "priors," aren't fully aware of a potentially valuable tool available to them - the NMFS Office of Enforcement.

The NMFS Office of Enforcement in Alaska Region consists of 25 Special Agents and Fishery Patrol Officers along with 7 enforcement support staff members. The agents and officers of NMFS Enforcement are federal law enforcement personnel responsible for enforcing the many laws and regulations used to manage and protect the living marine resources of the United States. The main statutes enforced by NMFS Enforcement personnel in Alaska are the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), the Marine Mammal Protection Act (MMPA), the Endangered Species Act (ESA), the North Pacific Halibut Act and the Lacey Act. To enforce the provisions of these Acts, enforcement personnel board fishing vessels, visit fish processing plants and conduct investigations into alleged civil and criminal violations of federal laws and regulations.

So how can NMFS Enforcement help observers?  
While the vast majority of commercial fishers in Alaska are doing their best to comply with the myriad of fisheries related

regulations and will not pose any challenges for observers, there is a minority who may intentionally interfere with an observer's ability to do their job. There are a variety of methods and reasons why vessel or plant personnel would attempt to interfere with observers but the bottom line is that 50 CFR 679.7(g) prohibits vessel/plant personnel from interfering with, harassing or biasing samples and/or sampling procedures of an observer in any way. I would encourage observers and vessel/plant personnel to be familiar with the prohibitions applicable to the groundfish observer program (50 CFR 679.7(g)), as well as the groundfish observer program section of the regulations (50 CFR 679.50) which includes a section on vessel/plant responsibilities to observers and standards for observer conduct.

If you encounter a problem while on a vessel or in a plant, attempt to resolve the situation through the vessel master or plant manager. They are the ones ultimately responsible and they cannot fix what they are not aware of. *You also need to document the incident(s), even if it is resolved.* As soon after the incident(s) as possible, write down as many facts (who, what, when, where, how, why) as you can for future reference. By writing it down immediately following the incident, you ensure you have the clearest and most accurate recollection of the events as possible. If the situation was minor and it stops after you bring it to the master's/plant manager's attention, that will likely be the end of it. But what if it isn't resolved or what if previous observers encounter the same problems? By writing it down, you protect yourself and others involved by ensuring that you have the most accurate account possible documented. Your log entry can also serve as a "memory refresher" if/when you are asked to make a written statement or speak with enforcement personnel regarding an incident(s) which occurred some time ago. While we would like to be able to respond to every report of violation regardless of severity, we are often constrained by our enforcement resources which require us to focus on the most severe violations first. This is another reason your documentation is critical because it often develops a pattern of violations. Although you may feel that NMFS will not respond to a minor incident during your contract, it may be part of a continuing, more serious situation. The NMFS does periodically review logbook entries for evidence of continuing trends and does develop violation cases based on repeated "minor" incidents which show a trend to commit violations against observers. If the situation is serious (harassment, interference, sample biasing, etc.) and you are encountering difficulty resolving it quickly, report it immediately to NMFS and obtain their assistance. NMFS Enforcement has, and will continue to, investigate/prosecute those who interfere with an observer's ability to do their job. There have also been some unfortunate incidents involving misconduct by NMFS certified observers (falsifying data, "cook booking", etc.) with one recent case involving a criminal prosecution of a former observer. As you know, observer data is crucial to fisheries management measures and the NMFS, the public, and the fishing industry expect and demand integrity in observers. With so much at stake, NMFS Enforcement will also continue to pursue cases of observer misconduct.

Occasionally, I hear "prior" observers say that enforcement hasn't responded to their reports in the past. Although I don't know the details which have led to all of these complaints, I know that many cases can not be pursued due to a lack of supporting documentation. So how do observers get the best response possible? Provide solid, detailed documentation of the incidents, report the violations to NMFS and cooperate with Enforcement. Write down the details of the incident as soon as possible after it occurs, document your efforts to resolve the situation and the results of your efforts and make a complete, detailed statement to NMFS. You should also include contact information (i.e. phone number and/or address) with your report so that you can be reached by Enforcement if additional information is necessary. By taking these steps and providing good "input", you provide NMFS with the information necessary to evaluate and/or investigate the violations. Although enforcement resources may limit our ability to respond to every report, your efforts may become part of a "bigger picture" when combined with previous or future observers statements. Many situations must be evaluated on a "case by case" basis and one such area which is often raised by observers is vessel accommodations. By regulation, observer accommodations shall be similar to "management level" personnel on the vessel. In cases where observers feel they have inadequate accommodations, their documentation/ description of the quarters along with vessel specific factors(size of vessel etc.) will all be taken into account by NMFS to determine the appropriate action. Again, NMFS Enforcement in Alaska is committed to responding to observer related violations and observers must "meet us halfway" by providing the documentation and cooperation necessary to pursue and investigation.

Recently, several concerns have been raised by observers related to vessel safety issues. As you are probably aware, fishing vessel safety regulations are enforced by the US Coast Guard (USCG) and my experience has been that the Coast Guard's marine safety offices throughout Alaska have been very responsive to safety concerns raised by NMFS observers. Unsafe conditions or unsafe practices observed on fishing vessels should be documented and reported so that the information can be passed on to the USCG. In addition, federal fisheries regulations also include a requirement for fishing vessels carrying a NMFS certified observer to maintain safe conditions by adhering to USCG safety regulations. Observer reports of safety violations are taken seriously and cases have been initiated by both the Coast Guard and NMFS Enforcement based on observer safety concerns.

Most commercial fishermen as well as most observers I have had contact with are professional men and women doing their jobs to the very best of their ability. Likewise, the NMFS Office of Enforcement is made up of law enforcement professionals striving to ensure a "level playing field" for commercial fishers while ensuring a continuing supply of marine resources for the future. If you are aware of or witness violations of marine fisheries regulations or if you have questions regarding fisheries enforcement issues, please contact the nearest NMFS Enforcement office. You may also report violations 24 hrs/day, 7 days/week through the National

Fisheries Enforcement hotline at 1-800-853-1964. If you have any questions or if I can be of assistance to you, feel free to contact me at the Kodiak, AK Enforcement office at (907) 486-3298.

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## **OBSERVER-RELATED COUNCIL BUSINESS:**

### **THE COUNCIL DELAYS DISCUSSION OF OBSERVER PLAN UNTIL THE JUNE MEETING**

Discussion of a new groundfish observer plan which was originally scheduled for the April Council meeting in Anchorage has been delayed until the June Council meeting in Kodiak. The meeting will occur during the week of June 16, 1997. All observers who are Kodiak residents are urged to attend. (It's a great learning experience and networking opportunity.) NMFS has been researching various coverage schemes and alternate payment plans. A fee-based system (like the Research Plan) may be revisited as well. Teresa Turk will be present for the Advisory Panel (AP) meeting and will try to keep you updated on specific times when the Council and AP will be discussing observer issues. Any observers (in Alaska or Washington) willing to testify at this meeting should contact Teresa at (206) 685-2104 or via email: [turk@fish.washington.edu](mailto:turk@fish.washington.edu).

### **OBSERVERS SUBMIT PLAN AMENDMENT PROPOSALS**

Two observers have submitted plan amendment proposals to the Council. Both plans contain modifications, suggestions, and/or ideas which the Council will evaluate when discussing a new groundfish observer program. Andrew Craig has suggested a funding system similar to the State of Alaska's proposal to fund the shellfish observer program which would raise money for observer pay or as a supplement to observer pay either by selling retained prohibited species or by actually conducting a target fishery to fund the observer program. Kim Dietrich proposed as a bridge to some future plan that NMFS mandate a no-cost contract with the current contractors so that there is oversight of their operations and so that Service Contract Act wages apply to observers. For further details you can contact Andrew or Kim via the APO. For more info. on submitting proposals, contact the Council office in Anchorage.

### **NMFS PREPARES SUPPLEMENTAL EIS**

NMFS announced in the 3/31/97 Federal Register its intention to prepare a supplemental environmental impact statement

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(SEIS) on the Federal action by which total allowable catch (TAC) specifications and prohibited species catch limits in the groundfish fisheries that are conducted in the BSAI and GOA are annually established and apportioned. In addition, the SEIS shall include all amendments to the groundfish fishery management plans (FMP) and the public processes in place for implementing new regulations, revising existing ones, and incorporating new information.

Under the Magnuson Act, the U.S. has exclusive fishery management authority over all living marine resources, except for migratory species, found within the exclusive economic zone between 3 and 200 nautical miles. The management of these marine resources is vested in the Secretary of Commerce and in 8 regional management councils. The North Pacific Fishery Management Council has the responsibility to prepare FMPs for the marine resources, which it finds require conservation and management, in the Alaska region.

NMFS will hold scoping meetings to provide for public input into the range of actions, alternatives, and impacts that the SEIS should consider. The meetings are in 7 locations including Anchorage, Dutch Harbor, Kodiak, Sitka, Seattle, and Portland. In addition to holding public meetings, NMFS is accepting written comments. For more information contact Tamra Faris at 907-586-7645 or check the Federal Register for the full announcement.

**COUNCIL STAFF PREPARE SUMMARY OF BSAI FISHERY MANAGEMENT PLAN** For a concise sampling and history of the BSAI FMP request this document from the Council at 605 West 4th Ave, Suite 306, Anchorage, AK 99591 or call 907-271-2809.

**DIETRICH ON OAC** Kim Dietrich replaced Teresa Turk on the Observer Advisory Committee (OAC). Turk will remain as an alternate. The OAC is composed predominately of industry and contractor representatives who are charged with the responsibility of researching, discussing and formulating recommendations to the Council on observer program related issues. The OAC, formerly known as the Observer Oversight Committee (OOC), was initiated to address observer issues relating to the North Pacific Fisheries Research Plan. They have only met once since the Research Plan was repealed in November of 1996. The OAC is scheduled to meet in May. The meetings are open to the public and observers are encouraged to attend. (I want your feedback.) If anyone is interested in being on the OAC as an alternate, please contact Kim or Teresa.

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## OBSERVER PROGRAM UPDATE:

**Revisions To Groundfish Observer Manual - Any Ideas?** The groundfish observer sampling manual is getting a facelift. In addition to updating the instructions, the page layout will be improved this year. We are also considering changing the way the document is organized. The objective of the manual is to provide all the information an observer needs to accomplish their task (in any circumstance), in an easy to use format. We would like to include more specific instructions by fishery and vessel type but we don't want to make it even bigger and harder to carry! If you have some improvement suggestions you would like us to consider, you can drop by my office (in Seattle), room 1057; e-mail me at [karen.teig@noaa.gov](mailto:karen.teig@noaa.gov); or send written comments to:

K.Teig, F/AKC2  
Bin C15700  
Seattle, WA 98115-0070

[Also, my apologies to A-season observers who went without a Table of Contents for their manuals. A Table of Contents as well as an Index is now available from any Observer Program office.]

## TURK AND KARP EXCHANGE Q & A

On January 22, 1997 Teresa Turk wrote to Dr. Bill Karp asking him to respond to several questions regarding the 1997 Interim Observer Plan. A few of the questions (italics) and answers (normal print) follow:

*The APO and other observers were surprised to learn of a new NMFS regulation which bars a person from being an observer if they have worked for a fishing company operating in the North Pacific in the last year. Please clarify this regulation.* Final rule for the 1997 Interim Groundfish Observer Program was published in the Federal Register on November 1, 1996. The conflict of interest standard codified at 50 CFR 679.5 (h)(2)(i)(A)(4) reads "Observers...may not serve as observers during the 12 consecutive months immediately following the last day of the observers employment in a North Pacific fishery." The term "North Pacific fishery" is defined as "any commercial fishery in state or Federal waters off Alaska."

*What prompted this change and why was the former regulation not sufficient to prohibit concerns about data integrity? Does the agency have any evidence of widespread data problems from observers who desire a job with a fishing company or had previously worked for a fishing company?* NMFS included this requirement for several reasons. Observers must be able to collect data in an independent and objective manner and we do not believe it is reasonable to expect individuals who have associations with fishing companies involved in North Pacific fisheries to be able to act independently. Observers have significant professional

responsibilities which may not be consistent with the goals of fishing companies who have employed them or may wish to employ them in the future. Since data quality and program integrity are of paramount importance, we think it preferable to recruit observers who have interests in science and conservation rather than those interested in careers with fishing companies. These requirements were intended to address data quality and program integrity issues, not to penalize current or prospective observers.

*Many fishing companies have vessels operating in Puget Sound, off the West Coast or in foreign waters (Canada). Where is the geographic boundary in terms of this regulation?* The regulation includes Alaskan waters only.

*How does NMFS plan to monitor or enforce this new regulation? Will background checks be conducted by the contractor or NMFS? Are background checks prohibited from being conducted by a governmental agency or a private company? What privacy safeguards do observers have in this instance?* When the final rule was published, I sent each certified contractor a letter enclosing a copy of the regulation so that they would be aware of this and other new requirements. None of the contractors have indicated that they have encountered problems in finding new or prior observers to meet their 1997 contractual obligations.

Since the Observer Program is not responsible for enforcement of fishery regulations, I cannot answer questions concerning enforcement of the conflict-of-interest standard. You may wish to contact the Office of Enforcement, but you should be aware that the Agency generally does not comment on its enforcement procedures.

*Are there any current avenues in which observers can give NMFS insight and feedback regarding some of these new guidelines? Has NMFS ever rescinded a regulation based on observer input in the past? If so, when and what was the regulation?* NMFS always welcomes comments and suggestions regarding regulations. The best avenue for comment is during the public comment period which occurs after publication of a proposed rule. Comments on proposed or final regulations should be sent to the individual named in the Federal Register notice. Comments can also be provided during public comment periods at meetings of the Council. The current interim program is effective through 1997. A new regulation must be promulgated before the groundfish fisheries open in 1998. We expect to have extensive discussions with the Council regarding the future observer requirements [at the June meeting].

## NMFS IMPLEMENTS POLICY CHANGE REGARDING THE OTC

The University of Alaska, Anchorage, Observer Training Center (OTC) has demonstrated an ability to provide quality training for North Pacific groundfish observers. As demands on the NMFS Groundfish Program have increased and staff levels have decreased, it has become necessary to take full advantage of all available resources. The recently

reauthorized Magnuson Act requires that NMFS make use of university and nonprofit organization training facilities, where possible, in providing for observer training. Therefore, all 3-week training classes will be held in Anchorage with the exception of training that occurs in preparation for the major BSAI pollock fishery openings. Most groundfish briefings will occur in Anchorage as well.

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## **SWORDFISH DRIFT GILLNET OBSERVER PROGRAM STATUS** by Dean Portman

Although not widely publicized, an observer program in a California fishery has been in effect for approximately 10 years. It was initiated by the NMFS Southwest Region, and was administered directly by the Southwest Region without private observer contractors until the latest season, when Frank Orth and Associates was awarded an experimental try at the program. Currently, the contract to provide logistics and staff (i.e. observers) for the next season is being put out for public bid to observer contracting & consulting firms.

The reason for observers in the fishery is to monitor the incidental take of marine mammals. The legal foundation for the mandatory presence of observers on a percentage of swordfish drift gillnet trips is the Marine Mammal Protection Act of 1972, as amended. In the late 1960's a doctoral student, seeking tropical dolphin specimens, visited tuna canneries at San Pedro and San Diego, California. He discovered what seemed to be an excessive take of dolphins by the tuna seiners; 350,000 killed per year was the estimate he made. Public disgust with whaling was the other prominent motivating force in creating the MMPA.

The swordfish drift gillnet fishery is one of the rare methods of commercial fishing which does have a regular, but occasional, incidental take of marine mammals; nothing like the special case of tuna seining. The take is not well documented or known. There are also potential problems with endangered or threatened species. After working at applying these legal and ethical concerns to commercial fishing, NMFS is now turning over some of the data collection responsibility to observer contractors, in the interest of reducing federal government costs.

Swordfish drift gillnet observers concentrate on marine mammals, both in training and at data collection. A good deal of fishery management and fish biology is involved as well, but it is not at all like the bulging catch a groundfish observer in Alaska must make sense of. Because of the nature of the net (20" mesh) and where it is placed to fish (near the surface in pelagic water), one can usually count individually and even hold and measure every fish or other life form which

comes on board. Dissection and specimen collection, from mammals and fish, is common. The Southwest Fisheries Science Center, in La Jolla, is the destination for observer collected specimens. On an uneventful day the observer's duties are easily done, with hours to spare. However, even one mammal is a big job to work up; and should many thresher sharks be caught, for example, the observer will have to work fast and nonstop for most of the day.

A typical drift gillnet boat would be a steel multipurpose vessel a little less than 60' long, a big fish hold with a blast freezer, big fuel and water tanks, a stand-up engine room, and sophisticated electronics including a personal computer which receives sea surface temperature and pictures directly from NOAA satellites. Living space is extremely limited on the boats. There might not be a bunk for the observer. There might not be a shower or even a toilet. Not all boats are in good shape. There are boats in the 40' range which are not safe far offshore; the observer must be able to refuse a dangerous boat. There are serious accidents, and even capsizing due to weather every year in this fishery. Most activity occurs 75-200 miles offshore, and some boats will not run in for bad weather. Container ships not paying attention are another real danger on the open ocean.

The simple principle of swordfish drift gillnet fishing is to unwind the net, shaped like a banner, 6000 feet long and 150 feet deep, in the right area, and drift all night with it, then reel it in the next day. Crews of 2 people are the norm. Fishing takes place off Oregon to the Mexican border, depending on the month and ocean temperatures. The primary season is the 5 1/2 months from August 15 to January 31. The observer must be prepared for long trips, and long waits in small ports due to weather or equipment problems. One needs also to cooperate and have a genuinely friendly relationship with 2 people in a limited space.

It will be interesting to see changes caused by private contractors to swordfish drift gillnet observing. One of the first changes I experienced was a pay cut. It is a challenging fishery to observe; conditions are harsh. Fabulous sea creatures and the vast offshore environment are unusual benefits for the observer who adapts to the work.

*Note: If you have worked in this fishery in the past or if you are interested for the future, contact the Southwest Region (Long Beach, CA) in early June to obtain the name and number of the contractor who will be hiring for the 97-98 season.*

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## **PROPOSAL FOR A STATE-FUNDED OBSERVER PROGRAM** by George Pappas\*

The ball started to roll after the Proposal for a State-funded Observer Program was released to the public on October 17, 1996. This proposal was created to maintain or enhance the management and research abilities of agencies involved with the shellfish fisheries which take place in the Westward Region of Alaska's waters. The Alaska Board of Fisheries (BOF) is reconsidering the levels of observer coverage in certain shellfish fisheries. One of the important driving forces involved with this reconsideration could be attributed to the concerns expressed by sections of the fishing industry. At this time, the members of the fishing industry participating in fisheries which require shellfish observer coverage solely bear the financial burden associated with the required observer coverage. Because some of the current fisheries seem to be financially marginal for the industry, it is possible for the cost of observer coverage to be equal to or greater than the vessel's profit margin. One of the goals of the proposal is to lift the financial burden of observer costs from the vessel and draw funding from alternative financial resources. The BOF is expressing concern with the cost associated with observer coverage noted in the fisheries which require 100% observer coverage.

The Proposal for a State-funded Observer Program could be considered a solution to the aforementioned potential problem. The proposal suggests using a cost-recovery fishery as a financial alternative. This cost-recovery fishing program would target king and Tanner crab stocks in Westward region waters. This method of generating funds could potentially be a more equitable way to distribute costs across the industry than a landing tax or other "user fee." The proposal also discusses potential options involving handling the funds generated by proposed cost-recovery fishing activities.

The establishment of a State-funded program could consider making shellfish observers employees of the State of Alaska Department of Fish and Game (ADF&G), a logical progression due to the increasing integration of current shellfish observers into the Westward Region ADF&G Shellfish Program. The proposal outlines the benefits of having shellfish observers become ADF&G employees to eliminate certain troubled areas of the current observer program system. The benefits outlined in the proposal include but are not limited to the increase of control ADF&G could maintain involved with the hiring, deployment, and performance evaluation of the observer work force. These issues could improve the overall quality of the observer work force. The method of increasing the overall quality of the observer work force could be achieved by the reduction of the high annual turnover rate noted since the inception of the Shellfish Observer Program in 1988. The high annual turnover rate could potentially be reduced by offering observers a satisfactory salary, health coverage, retirement

benefits, and career opportunities available to permanent seasonal ADF&G employees.

The proposal also presents the option of creating a 'prime contractor system' in lieu of making shellfish observers employees of the State of Alaska. The prime contractor system option would create a single contractor which would work directly with the State and the fishing industry. This prime contractor would allocate shellfish observer contracts to 3rd party contractors.

The proposal also outlines what would be involved with developing a "State Employed Observer Corps" and includes subjects ranging from establishing a job class for observers to the proposed budgets involved with the implementation of the proposal.

I foresee several potential effects upon the parties involved with the Shellfish Observer Program if this proposal is implemented:

1. The observer work force could be potentially rewarded with increased salaries, improved benefits, elevated job security and broadened opportunities.
2. The vessels requiring observer coverage could potentially have the financial burden of having to pay for observers lifted. A potential increase in participation by vessels in certain fisheries where observer coverage costs could be cost prohibitive. The increased possibility of having an experienced professional observer aboard each deployment.
3. The 3rd party private shellfish contractors could potentially be replaced by the State-funded Shellfish Observer Program.
4. ADF&G could potentially see an overall improvement in the quality of the Shellfish Observer Program data by reducing the noted high turnover rate which could negatively effect program continuity. ADF&G's ability to gather fisheries management and research information could potentially increase with an experienced professional observer work force. ADF&G could increase the ability to flex and adapt observer deployments to acquire necessary information per fishery, vessel, and deployed observers needed to manage the shellfish fisheries to eventually prevent over exploitation of the shellfish stocks in Westward Region waters.

As it stands the Shellfish Observer Program will continue under the status quo until at least the Spring, 1999 BOF meeting on statewide king and Tanner crab. "Continuing with status quo" means:

- The observer program will continue under the present pay-as-you-go system;
- 100% coverage in the Aleutians brown king crab fishery will continue by regulation;
- Observer coverage may continue to be included as a condition for participation in the Westward Region special-permit fisheries, including those for Bering Sea Korean hair crab and deep-water king and Tanner crab. Recognizing that the coverage in these fisheries may be only 0% and 100% under the pay-as-you-go system, mandatory observer coverage may continue at 100% for these fisheries.

\* Note: this article was written for the last issue of the *Mail Buoy*. If facts have changed significantly, I apologize.

It is the goal of ADF&G to develop the state-funded Westward Region crab fisheries observer program for implementation beginning with the 1999/2000 seasons on September 1, 1999.

Between now and the 1999 Spring BOF meeting on statewide king and Tanner crab, ADF&G will work to develop a program to fund the observer deployments and develop the administration of a state-funded observer program for the crab fisheries in the Westward Region. ADF&G will report to the BOF on an annual basis to apprise them on the progress towards development of a state-funded observer program.

If you have any questions, please contact the Shellfish Observer Program at (907) 581-1239.

## SHELLFISH OBSERVER PROGRAM GETS A NEW COORDINATOR

The State of Alaska Shellfish Observer Program has hired a new Program Coordinator. Larry Boyle was chosen for this position. Larry has worked for or been involved with the Shellfish Observer Program in Dutch Harbor since 1992. Congratulations and Good Luck!

### THOUGHTS ON PROPOSED SHELLFISH OBSERVER PROGRAM by Reisa LaTorra

The APO solicited comments from several observers regarding the proposed state-funded shellfish observer program. Most comments were verbal and were similar to Reisa's. These were the only comments received in writing. The APO would like to write a letter including all comments to the Board of Fish. All observers who have specific comments should do the same. A summary of Reisa's comments follow:

1. In this proposal ADF&G indicates that the Shellfish Observer Program originated primarily to regulate compliance, although it now asserts that the data collected by observers is critical for both research and management of the fisheries, and "virtually every consideration of regulations by the BOF pertaining to area closures, season openings, size limits, gear restrictions, and gear conflicts has been directly informed by presentation of observer data." I believe that this should be the primary duty of observers, and management decisions regarding the fishery should be made based on the biology of the stocks, not on political considerations or the cost of observers. Collecting this critical data should be the primary goal of the program, not an added benefit. Regulating compliance, whether the original intention or not, has proven difficult and I believe that observers are inadequately supported to perform such a function.
2. In some fisheries (Aleutian brown king crab and Westward C. tanneri fisheries), the participants have described the costs of observer coverage as prohibitive to participating in the fishery. I feel that if the fishery cannot operate while providing for a method of monitoring and

managing that fishery to ensure the continued health and availability of the stocks, then that fishery should not operate. Relative even to such highly subsidized occupations as farming and ranching, fishermen do not pay overly much for the right to fish the ocean's waters, since it is a common property resource. They do not bear any cost for the fish themselves, for the food the fish eat, care of the fish, etc.

ADF&G's plan to fund the program through cost-recovery fishing is fine, but I feel that the fisheries should bear some of the cost of ensuring their own future. Since finding new fisheries resources would be an advantage to all fisheries (by reducing competition within fisheries and allowing new participation opportunities) perhaps some of the costs of the less lucrative fisheries could be partially subsidized by existing profitable fisheries.

3. I agree with ADF&G's assessment that partial observer coverage in those fisheries designated by the BOF would be logistically difficult, if not impossible, and more importantly would be inadequate to allow sufficient data to be collected.
4. Under "Considerations for Partial Observer Coverage" ADF&G has included "the variability of fishing practices between vessels." I believe this factor to be even more of an issue under partial observer coverage, not only due to inherent variability between vessels, but to variability as a result of whether or not the vessel is carrying an observer! If vessel personnel know that carrying an observer this month means not carrying one next month, it is not unlikely that fishing practices may be affected by this knowledge.
5. Under "Potential for ADF&G employees as observers," ADF&G notes that observers "would be subject to probationary employment standards identical to those applied to other ADF&G employees. During the first six months of continuous employment, dismissal of those individuals failing to meet job performance standards would be at the discretion of their supervisor." I have trouble with this standard, because an observer's supervisor is not out on the boat and on the job with them, as with most other employer/employee situations. I do not think an observer should be dismissed based solely on the "discretion of their supervisor." Also, what constitutes "six months of continuous employment?" Observers are rarely deployed for six months continuously.
6. Additional questions regarding State-employed observers.
  - Will there be sufficient numbers of qualified and trained shellfish observers who would be willing to be stationed in Anchorage or pay for their own transportation from Seattle (or elsewhere) to Anchorage?
  - If observers are only on salary from the time they leave Anchorage until they return, will the benefits (such as health insurance) only apply to the time they are deployed?
  - Will Alaska state residents have priority for hiring, and will it be required to be a state resident in order to be hired, and will it be required to reside in the state?
  - Will observers be able to "move up" to other state positions? (As of now, there is really nowhere for observers to "go" career-wise.)

- How will observers be assured of a minimum, and perhaps maximum, employment period?
- It is my sense that the pay scale, considering that only \$3425-\$3933 is salary, is probably insufficient to draw enough observers if, indeed, they are paid and receive benefits only at sea and are required to reside in Alaska.

For more information regarding this proposal, contact ADF&G.

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## **Changes & Challenges in Oregon's Enhanced Data Collection Program**

by Keith Matteson

Evolution can take place in big spurts given the right conditions, and that's what has been happening here in Newport with the Groundfish Enhanced Data Collection Project (EDCP). After development of our field sampling procedures late in 1995, we moved forward with vessel recruitment and the hiring of observers to cover those boats that wished to carry them. During the first few months, we encountered the usual unforeseen problems and circumstances, which resulted in revisions and changes that strengthened our abilities to collect data in most situations.

In late March, 1997, we hosted three meetings in Newport, Charleston, and Astoria where we discussed the project's accomplishments during its first year, and gathered input from industry and the public about where this project ought to go from here. Though attendance at these meetings was low, many sound ideas were presented, and several action items were identified.

The number of vessels participating by recording discard information in their logbooks needs to be increased. A universal request was made for a separate logbook, as trying to fit discard info into the present log is a tough fit, and there is nothing to jog a persons memory to record the information. We have already developed a prototype which will be distributed to some of the boats in early April. By the time you read this, we will have a working version in place. We need to at least double the number of boats keeping logbook discard data, and tripling it would be best. We hope the separate logbook will be a strong tool to enable increased discard data.

More vessels need to be recruited to carry observers. We were able to show some preliminary discard estimates, which created concern about how representative the estimates are. It is hoped that industry will take note and realize that value represents only a few skippers, and we need far more

coverage to decrease the variances associated with the data collected thus far. As one skipper noted, "The only way to get your dot on the chart is to carry an observer!"

For vessels keeping logbooks and carrying observers, incentives will be developed to make participation more desirable. Suggestions were made that vessels be given hardbound editions of quality fish identification books when they begin, and then be given rewards for steady participation at semiannual intervals. In view of the cost of collecting the data, money spent on this seems trivial, but it could have a powerful effect on participation rates, plus reduce dropout rates.

I believe we came away from the meetings with a better mutual understanding between industry and project staff. All came away with a much improved perception of what is needed from each group to make this project successful; no one denied the need for this type of work. I believe that with better communication with industry, we can lift the participation rate substantially, and continue to improve the project. Changes are underway.

We are pushing very hard to increase observer coverage. Many have been in contact with me about working on this program. It is often difficult to keep observers interested while finding vessels to assign them to. I have found myself in the situation where I suddenly have a boat, but no observer because the observer could wait no longer and took an assignment elsewhere. All the observers I have hired thus far are NMFS certified observers who have needed a break from up north or desired to live down here. An observer can work as many vessel assignment as they wish on this project.

Those of you who are interested in working on this project, or those who wish to know more about what we are doing, are encouraged to call me in Newport at (541) 867-4741, or send e-mail to: [odfwmfp@ccmail.orst.edu](mailto:odfwmfp@ccmail.orst.edu).

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## **HEADS UP! ON THE SEABIRD REGS**

by Liz Mitchell

Alaska longliners late last year requested that new gear modification regulations be implemented for the fleet to reduce seabird bycatch. It went through the Council in December and with a few revisions the final draft was released by NMFS on March 5 of this year for a 15-day public comment period.

If observers have an interest in participating in the groundwork of designing a research plan to test the effectiveness of the proposed regulations, now is the time to start collecting your observations. Most of the

deterrents are used during the setting of gear, however, which is often the only time an observer has to rest. Although a special project might be designed by the Observer Program at another time, sampling part of the setting operations at this time would be completely voluntary especially for those who are interested in seabirds.

For observers interested in making observations of bird deterrents the most important information requested is:

1. What deterrents are they using, if any?
2. Do birds take bait less when this deterrent is used?
3. Are fewer birds caught when this deterrent is used?
4. Information on design and deployment of the deterrent is important.

Your observations will have to be made during setting operations to determine what gear they're using and during hauling to see the results. Answers to these questions will help researchers develop tests for regional methods that may not have been mentioned in the proposed regulations.

The proposed regulations are based on those of the Commission for the Conservation of the Antarctic Marine Living Resources (CCAMLR) imposed in 1994 on longliners fishing in the southern oceans for Patagonian toothfish and southern bluefin tuna. These seabird deterrent methods were later developed into regulation for longliners fishing within territorial waters of Australia and New Zealand.

Those regs include such deterrents as setting at night, thawing bait and adding weights to the line to increase sinking speed of the hooks, dumping offal on the opposite side of the vessel from where hauling or setting is occurring; returning live birds to the sea (with instructions on how to remove a hook properly); and, most importantly, rigging streamer lines above the longline as it is set so that it trails above the longline and extends aft of where the hooks sink.

The streamer line (or a similar line called a tori) is suspended from a pole off the stern with a weight attached to the end of the line to produce drag in the water at 150 meters off the stern. On this line is attached streamers which are designed to dip in and out of the water around the hooks so that they periodically and unpredictably (this is the main concept) flail about, scaring the birds. This method seems to work well and models are being developed by the Seattle Marine Fishing Supply Company (1-800-562-2810) in Seattle to fit the needs of Alaskan longliners.

The proposed Alaska regs (they're not final yet) say the same but are essentially options not regulations. The "regulations" will become more specific as tests are done to assure the effectiveness of the methods. Halibut and research vessels are currently exempt. Separate regs are being developed for halibut vessels.

Only federally permitted longline vessels would be required to:

- 1) Use hooks that when baited, sink as soon as they are put in the water. [Added weights and thawing bait has been suggested but no specific method is required. How thawed bait would work with autobaiters, I don't know. It has been suggested that the hooks may rip through the bait and that they would drop off at a greater rate, which would increase the troubles.]
- 2) Avoid dumping offal to the extent practicable while gear is being set or hauled. If discharge of offal is unavoidable, the discharge must take place aft of the hauling station or on the opposite side of the vessel to that where gear is set or hauled. [CCAMLR require offal to be dumped on the opposite side. Seabirds are attracted to offal more than bait. However, when offal is not available, birds may go after baited hooks. This is where your observations and crew comments would be insightful. Enter STREAMERS--they're only \$250.00. A combination of methods would surely be more effective.]
- 3) Make every reasonable effort to ensure that birds brought on board alive are released alive and that wherever possible, hooks are removed without jeopardizing the life of the bird. [This regulation was written primarily for pelagic fisheries, such as tuna and swordfish where birds may come to the surface and survive. Most of the birds get killed during the setting operations though. In the swordfish fishery I observed a few birds that came on deck alive but I believe this happened during the hauling. In the groundfish fisheries birds get hooked, dragged down and drown. On the rare occasion that a bird gets hooked during hauling operations, though, you may encounter a live bird. DON'T REMOVE A HOOK BACKWARDS--it will do more damage. Please ask seabird trainers how to remove a hook properly.]
- 4) Vessels would also have to do one of the following:
  - a) Tow a streamer line. [There were no specifications required but the same design required by CCAMLR was offered as a suggestion. This is another area where observers could REALLY help in coming up with a design that works for the varied vessels in Alaska. If one of your vessels chooses this method, record the design specifications they used, the distance of the setting station from the water, how far out the line went, how far it went past where the hooks sink, speed of the vessel during setting operations, weather conditions, behavioral variables of different species in reaction to the streamers, color of streamers, how effective streamers were in variable weather conditions and anything else you can think of. **Sound like a lot of work? Don't do it! This is only if you have the time and an interest in participating in the formative stages of an international move to solve a global problem with methods for regional use. NO PRESSURE.** [If you are

interested but this is too much, remember the most important information needed as listed above.]

b) Tow a buoy or stick, or other device, at a distance appropriate to prevent birds from taking hooks. Multiple devices may be employed. [This is a regional method used by vessels in Alaska which has also been used in other fisheries in the southern hemisphere. Many claim it works--recording specifications used and their effectiveness would be extremely valuable.]

c) The \$35,000 method--a tube attached to the hull to deploy hooks underwater.

d) Night setting during specified times listed per month. [Not applicable during June and July. NMFS debriefers may have the table of specified times and zones that night setting would be possible as well as streamer design suggestions, if you're interested]

And that's it! So keep those peepers open, especially during setting operations (again, ONLY if you have time and interest) because that is when most of the mortality occurs.

particular coverage levels between the insurance industry and the employer, and create a binding contractual agreement to ensure oversight of carrying appropriate insurance coverage by the employer.

- Monitor regulatory amendments pertaining to the Fishery Management Plans at the regional and Congressional level and comment on the ramification of these proposals for potential impact on observers duties or the observer program.
- Increase participation and lobbying efforts at the North Pacific Fisheries Management Council.
- Develop a whistleblowing and grievance procedure through the appointment of an observer liaison to the particular administrative agency.
- Increase publication frequency of the *Mail Buoy* from quarterly to monthly and expand on number, quality, and scope of articles.
- Continue to support efforts for increased wages and benefits to a level commensurate with that of a professional field biologist.
- Increase efforts to educate observers on NPFMC actions, provide supplementary materials to improve sampling efforts, and make available other job opportunities.

#### APO WOULD LIKE COMMENTS ON REVISED GOALS (KD)

The APO is trying to revise some of its goals. We'd like your comments on what we have so far:

- Create a national association for all observers throughout the United States, including private, state, and federally supported observer programs.
- Formulate an "Observer Bill of Rights" that applies to all observers independent of their particular program or region.
- Develop a national vessel safety protocol for vessels that carry observers.
- Work to standardize the inconsistencies in Federal law regarding observer status, insurance and duties.
- Initiate a partnership with the administrative agency and scientific community to enhance biological sampling protocol and data quality.
- Play a more integral role in identifying appropriate insurance levels for observers, facilitate discussion of

#### MISCELLANEOUS NOTES & TIDBITS

**Call for Observers Interested in Sperm Whale Special Project.** A special project is being developed for observers within the National Marine Mammal Lab at NMFS to examine the association of sperm whales with the longline vessels in the GOA. Basically, we are just asking for more detailed behavioral observations and photos. Observers have varied interests and strengths and we are taking names and contact numbers/addresses of observers who have worked on longline vessels in the GOA and are interested in this association. The project is in its early stages and has not yet been approved but if anyone is interested, please contact Scott Hill at NMML (206) 526-6554 or Liz Mitchell at c/o NWO, P.O. Box 217, Sisters, OR 97759.

Cool websites:

-[www.psmfc.org](http://www.psmfc.org)      -[www.pond.net/~fish1ifr/bycatch1.htm](http://www.pond.net/~fish1ifr/bycatch1.htm)

-Email of Seabird Bycatch Project: *birdbycatch-request@pond.net*

**NEW MEMBERSHIP:** if you want to become a member of the APO, please write, email or call Kim Dietrich. 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 Council meetings out of state.

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 us a letter or call any time. Thanks again for all of you who contributed article and especially to those who helped with editing. I really appreciate your efforts. (KD)

**APO T-SHIRTS** are still available. Contact Kim. There are only a few large black ones left. If there's interest, I'm willing to place another order. The price is \$15.

**LOOKING FOR SOMETHING TO DO WHILE IN SEATTLE?** There are two fisheries related organizations who are always looking for volunteers.

The **Women's Fisheries Network** (WFN) sponsors monthly dinner meetings on various fisheries related topics. The next meeting is April 15, 5:30-8:30 p.m., at Ray's Boathouse, 6049 Seaview Ave, NW. The program topic is *Women Who Fish*. Attendance is not limited to women. Meetings are the 3rd Tues of each month. Contact the WFN office @ 789-1987 for more information.

The **Youth Maritime Training Association** (YMTA) is a non-profit organization dedicated to serving the youth of WA state. They seek to open new pathways to maritime employment and build awareness of the maritime industry's contribution to Pacific Northwest communities. For more information, contact Norm Manly @ 281-3821.

**IMPORTANT PHONE NUMBERS/email**

Teresa Turk      206-860-5828/*turk@fish.washington.edu*  
Kim Dietrich      206-547-4228/*kdiet@aa.net*

Mark Coles, AFU 206-441-3425

NMFS staff:

Bill Karp	206-526-4194
Shannon Fitzgerald	206-526-4553
Martin Loefflad	206-526-4194
Heather Weikart	206-526-4213

OTC	907-257-2770
Council	907-271-2809

**MEETINGS & OPENINGS**

4/14-20 Council meeting in Anchorage  
6/15-20 Council meeting in Kodiak