

**December 27, 2013**

## **A.I.S., Inc. Recommendation for Observer Funding Omnibus Amendment**

### Introduction

A.I.S. Inc. has been a provider of fishery observers, endangered species observers, dredging observers and inspectors for federal and state programs, and private industry since 1988 on the Atlantic, Gulf of Mexico and Pacific coasts. We have current contracts with NOAA for the At-Sea Monitoring Program (ASM), Industry Funded Scallop Program (IFS), and the North Pacific Groundfish Observer Program (NPGOP). We are also a certified Dockside Monitoring provider. A.I.S. Inc. held the Northeast Fishery Observer Program (NEFOP) contract from 2002 through 2012 and has been an IFS observer provider since the program began in 1999.

### Funding Source Arguments

From our experience over many years in contracting directly with both the government and the fishing industry for observer and monitor services, we are very familiar with the many issues which may arise. We feel that the best method to fund the monitoring requirements for the Northeast fishing fleet is through direct federal government funding as is done in the Northeast, Southeast and Pacific Islands observer programs. Currently, the Northeast fisheries industry is experiencing significant financial difficulties. Having the federal government pay for observer, monitor and sea sampling needs will help to alleviate the fishing industry's cost of doing business. Many other natural resource based industries receive federal monetary support to assist their regular business operations and, more importantly, during natural and economic disasters similar to what the Northeast groundfish fleet is experiencing.

If the Northeast fishing industry is required to fund observer coverage by paying observer providers who will bill either individual vessels or individual sectors rather than the federal government, the following describes possible ramifications of this action.

- The cost of the observer is not equitable. Vessels that land similar quantities of fish but of lower values due to the species being sought, will have a higher percentage of observer costs on a per trip basis. This may impact fishing behavior when an observer is assigned (i.e. the "observer effect") and will increase bias.
- Due to the burden of the costs of an observer, the resentment from fishing vessel crews will increase when the cost of the observer is being paid by the vessel's revenue, but are not actually assisting with the crew's workload.

- There will be increased pressure from the captain and crew for observers to perform fishing related work (other than their observer duties) while on the vessel since captain/crew are incurring direct loss of income while the observer is onboard.
- The education standards under the current Framework for the Industry Funded At Sea Monitor Program have been lowered from a Bachelors of Science degree (which is required of most observers in all other U.S. observer programs) to a High School diploma. Based on our experience, this will lead to fewer observer candidates passing training, greater attrition, and a decrease in data quality.. This will also cause higher costs to train additional observers if they fail to pass training or do not stay with the program for an extended period of time. Additionally, since data quality is the key component to observer programs, lowering the education standards will yield lower data quality and will only hurt the program's already fragile reputation with the fishing industry.
- Lower education requirements and increased pressure from the financially depressed industry to decrease observer sea day rates will ultimately reduce observer pay and further contribute to less job satisfaction as well as lower data quality. This will also increase the probability that observers may try to recoup lost income by accepting offers of pay from vessel crews to assist in fishing work aboard the vessel which is a conflict of interest. Once they accept money from a vessel, the observers become more vulnerable to data falsification as pressure from the crew may influence them.

The Atlantic sea scallop fishery has been industry funded since 1999 (except 2004 – 2006 when NEFOP provided funding). This requirement was instituted when NMFS allowed the fishery to access the Closed Areas (Access Areas). However the vessel which takes an observer receives compensation of either scallop meats (currently 150 lbs. per day) or additional Days at Sea (.08 DAS per 24 hours with observer onboard) depending on whether it is an Access Area or Open Area trip. This helps to offset the cost of an observer and it also relieves some of the resentment from the vessel's captain/crew of having to absorb the observer cost. The NE groundfish fishery does not have large enough quota to support the current participants in addition to setting aside quota for observer compensation. There are six regional fisheries observer programs in the U.S.A. which receive funding to operate from multiple sources. Below are the programs and source of funding.

	<b>Percent NOAA FISHERIES Funded</b>	<b>Percent Industry Funded</b>	<b>Comments</b>
<b>Northeast Fisheries Observer Program(NEFOP)</b>	100%	0%	Observer contractor fully funded by government
<b>NEFOP Industry Funded Scallop Program</b>	0%	100%	Industry is compensated as follows: Access Area = 150 lbs./ day of scallop meats. Open Area = .08 DAS reimbursement for each 24 hour period observer is onboard
<b>NEFOP At-Sea Monitoring (ASM)</b>	100% (2010-2013)	0%	Currently being proposed as partially industry funded
<b>Southeast Fisheries Science Center Observer Program (Pelagic Longline, Shark Gillnet &amp; Longline, Shrimp Trawl and Reef Fish)</b>	100%	0%	Observer contractor fully funded by government
<b>Pacific Island Region Observer Program (PIROP)</b>	100%	0%	Observer contractor fully funded by government
<b>NPGOP Alaska Partial Coverage Fleet Gulf of AK and Aleutian Islands (40' - 125- vessels)</b>	0%	100%	Program funded by 1.25% ex-vessel price fee on landed catch. Program administered by NMFS NWFSC
<b>NPGOP 100% Coverage (vessels &gt;125')</b>	0%	100%	Observer contractor fully funded by industry
<b>Southwest Fisheries Science Center Observer Program (Longline and Drift Gillnet)</b>	100%	0%	Observer contractor fully funded by government
<b>Northwest Fisheries Science Center West Coast Observer Program Catch Shares Program</b>	Cost Share with NMFS	Cost Share with NMFS	Program funding is administered through Pacific States Marine Fisheries Commission as both industry and NMFS share costs

### Recommended Observer Funding Approach

Most observer programs are government funded while fewer are either partially or fully funded by the fishing industry. The observer programs that are currently industry funded are high volume or high value species fisheries. If full government funding is not possible then an equitable industry wide fee based system is the best alternative. Under the current Magnuson-Stevens Act (MSA) the mechanism (see addendum) to create an ex-vessel landing fee for vessels in an entire fishery is not authorized except in the Gulf of Alaska FMP and the Bering Sea and Aleutian Island FMP which will support the North Pacific Groundfish and Halibut Observer Program (NPGOP). A.I.S. Inc. is currently contracted by NMFS to help manage the NPGOP. From our experience with this observer program, some of the issues that are normally inherent with Industry Funded Observer Programs are not evident since the cost is shared by the Alaska groundfish fishery as a whole. The Magnuson Stevens Act authorizes the federal government to assess an ex-vessel fee of up to 2% to covers costs of this program. The North Pacific Fishery Management Council (NPFMC) has decided to use this mechanism to fund the new NPGOP partial coverage program. In this new program NMFS will deploy the observers according to coverage needs to assure all fisheries are being monitored. With the Magnuson- Stevens Act in the process of being reauthorized, now would be the time for NOAA Fisheries, the NEFMC and its stakeholders to seize the opportunity to include this as a funding mechanism for the At Sea Monitor Program in the upcoming reauthorization.

### Concluding Remarks

Observers collect data at sea which is essential to meeting the standards set by the MSA under the same difficult and at times dangerous conditions faced by the fishing industry. They also have to contend with the pressure from both the industry and NOAA Fisheries to ensure the data they collect is accurate and representative of the vessel they are observing on. A.I.S. Inc. has always promoted the fisheries observer position as a professional occupation as observers are required to collect accurate data, have high integrity, act professionally, and be diplomatic as a NOAA Fisheries representative while working under harsh conditions as an often unwelcome individual on the vessel. Observers should be compensated accordingly, and receive benefits that are similar to other professional occupations. The costs associated with deploying an observer by a provider are extensive and include the following:

- Training, debriefing, and briefing costs
- Observer salary which includes substantial overtime hours worked
- Benefits including health, dental, federal taxes, life insurance, disability insurance, holiday pay, sick and vacation pay, unemployment insurance, and retirement contributions
- Travel expenses to and from deployments (mileage reimbursement, other transportation costs such as parking fees and public transportation)

- Sampling equipment
- Insurance: Maritime Employers Liability Insurance (MEL), Longshoreman's and Harbor Workers Insurance, Workman's Compensation Insurance)
- Administrative costs
- Overhead costs (program management, office, etc.)

Fisheries observer data is an essential part of the fisheries management process and government funding or an equitable industry wide fee based system will assist the Northeast groundfish industry to survive through the current rebuilding process and also remove any additional resentment toward the observers thereby enhancing data quality which is the goal of observer programs.

### **ADDENDUM- Relevant Sections of the Magnuson-Stevens Act**

#### **SEC. 313. NORTH PACIFIC FISHERIES CONSERVATION 16 U.S.C. 1862**

##### **104-297**

**(a) IN GENERAL.--**The North Pacific Council may prepare, in consultation with the Secretary, a fisheries research plan for all fisheries under the Council's jurisdiction except salmon fisheries which--

(1) requires that observers be stationed on fishing vessels engaged in the catching, taking, or harvesting of fish and on United States fish processors fishing for or processing species under the jurisdiction of the Council, including the Northern Pacific halibut fishery, for the purpose of collecting data necessary for the conservation, management, and scientific understanding of any fisheries under the Council's jurisdiction; and

(2) establishes a system of fees to pay for the costs of implementing the plan.

##### **102-582**

**(b) STANDARDS.--**

(1) Any plan or plan amendment prepared under this section shall be reasonably calculated to--

(A) gather reliable data, by stationing observers on all or a statistically reliable sample of the fishing vessels and United States fish processors included in the plan, necessary for the conservation, management, and scientific understanding of the fisheries covered by the plan;

(B) be fair and equitable to all vessels and processors;

(C) be consistent with applicable provisions of law; and

(D) take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

(2) Any system of fees established under this section shall--

(A) provide that the total amount of fees collected under this section not exceed the combined cost of (i) stationing observers on board fishing vessels and United States fish processors, (ii) the actual cost of inputting collected data, and (iii) assessments necessary for a risk-sharing pool implemented under subsection (e) of this section, less any amount received for such purpose from another source or from an existing surplus in the North Pacific Fishery Observer Fund established in subsection (d) of this section;

(B) be fair and equitable to all participants in the fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(C) provide that fees collected not be used to pay any costs of administrative overhead or other costs not directly incurred in carrying out the plan;

(D) not be used to offset amounts authorized under other provisions of law;

(E) be expressed as a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(F) be assessed against all fishing vessels and United States fish processors, including those not required to carry an observer under the plan, participating in fisheries under the jurisdiction of the Council, including the Northern Pacific halibut fishery;

(G) provide that fees collected will be deposited in the North Pacific Fishery Observer Fund established under subsection (d) of this section;

(H) provide that fees collected will only be used for implementing the plan established under this section; and

(I) meet the requirements of section 9701(b) of title 31, United States Code.

**(c) ACTION BY SECRETARY.--**

(1) Within 60 days after receiving a plan or plan amendment from the North Pacific Council under this section, the Secretary shall review such plan or plan amendment and either (A) remand such plan or plan amendment to the Council with comments if it does not meet the requirements of this section, or (B) publish in the Federal Register proposed regulations for implementing such plan or plan amendment.

(2) During the 60-day public comment period, the Secretary shall conduct a public hearing in each State represented on the Council for the purpose of receiving public comments on the proposed regulations.

(3) Within 45 days of the close of the public comment period, the Secretary, in consultation with the Council, shall analyze the public comment received and publish final regulations for implementing such plan.

(4) If the Secretary remands a plan or plan amendment to the Council for failure to meet the requirements of this section, the Council may resubmit such plan or plan amendment at any time after taking action the Council believes will address the defects identified by the Secretary. Any plan or plan amendment resubmitted to the Secretary will be treated as an original plan submitted to the Secretary under paragraph (1) of this subsection.

**(d) FISHERY OBSERVER FUND.**--There is established in the Treasury a North Pacific Fishery Observer Fund. The Fund shall be available, without appropriation or fiscal year limitation, only to the Secretary for the purpose of carrying out the provisions of this section, subject to the restrictions in subsection (b)(2) of this section. The Fund shall consist of all monies deposited into it in accordance with this section. Sums in the Fund that are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

**(e) SPECIAL PROVISIONS REGARDING OBSERVERS.--**

(1) The Secretary shall review--

(A) the feasibility of establishing a risk sharing pool through a reasonable fee, subject to the limitations of subsection (b)(2)(E) of his section, to provide coverage for vessels and owners against liability from civil suits by observers, and

(B) the availability of comprehensive commercial insurance for vessel and owner liability against civil suits by observers.

(2) If the Secretary determines that a risk sharing pool is feasible, the Secretary shall establish such a pool, subject to the provisions of subsection (b)(2) of this section, unless the Secretary determines that--

(A) comprehensive commercial insurance is available for all fishing vessels and United States fish processors required to have observers under the provisions of this section, and

(B) such comprehensive commercial insurance will provide a greater measure of coverage at a lower cost to each participant.

**(f) BYCATCH REDUCTION.--**In implementing section 303(a)(11) and this section, the North Pacific Council shall submit conservation and management measures to lower, on an annual basis for a period of not less than four years, the total amount of economic discards occurring in the fisheries under its jurisdiction.

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**(g) BYCATCH REDUCTION INCENTIVES.--**

(1) Notwithstanding section 304(d), the North Pacific Council may submit, and the Secretary may approve, consistent with the provisions of this Act, a system of fines in a fishery to provide incentives to reduce bycatch and bycatch rates; except that such fines shall not exceed \$25,000 per vessel per season. Any fines collected shall be deposited in the North Pacific Fishery Observer Fund, and may be made available by the Secretary to offset costs related to the reduction of bycatch in the fishery from which such fines were derived, including conservation and management measures and research, and to the State of Alaska to offset costs incurred by the State in the fishery from which such penalties were derived or in fisheries in which the State is directly involved in management or enforcement and which are directly affected by the fishery from which such penalties were derived.

(2) (A) Notwithstanding section 303(d), and in addition to the authority provided in section 303(b)(10), the North Pacific Council may submit, and the Secretary may approve, conservation and management measures which provide allocations of regulatory discards to individual fishing vessels as an incentive to reduce per vessel bycatch and bycatch rates in a fishery, *Provided*, That--

(i) such allocations may not be transferred for monetary consideration and are made only on an annual basis; and

(ii) any such conservation and management measures will meet the requirements of subsection (h) and will result in an actual reduction in regulatory discards in the fishery.

(B) The North Pacific Council may submit restrictions in addition to the restriction imposed by clause (i) of subparagraph (A) on the transferability of any such allocations, and the Secretary may approve such recommendation.

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**(h) CATCH MEASUREMENT.--**

(1) By June 1, 1997 the North Pacific Council shall submit, and the Secretary may approve, consistent with the other provisions of this Act, conservation and management measures to ensure total catch measurement in each fishery under the jurisdiction of such Council. Such measures shall ensure the accurate enumeration, at a minimum, of target species, economic discards, and regulatory discards.



(2) To the extent the measures submitted under paragraph (1) do not require United States fish processors and fish processing vessels (as defined in chapter 21 of title 46, United States Code) to weigh fish, the North Pacific Council and the Secretary shall submit a plan to the Congress by January 1, 1998, to allow for weighing, including recommendations to assist such processors and processing vessels in acquiring necessary equipment, unless the Council determines that such weighing is not necessary to meet the requirements of this subsection.

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**(i) FULL RETENTION AND UTILIZATION.--**

(1) The North Pacific Council shall submit to the Secretary by October 1, 1998 a report on the advisability of requiring the full retention by fishing vessels and full utilization by United States fish processors of economic discards in fisheries under its jurisdiction if such economic discards, or the mortality of such economic discards, cannot be avoided. The report shall address the projected impacts of such requirements on participants in the fishery and describe any full retention and full utilization requirements that have been implemented.

(2) The report shall address the advisability of measures to minimize processing waste, including standards setting minimum percentages which must be processed for human consumption. For the purpose of the report, 'processing waste' means that portion of any fish which is processed and which could be used for human consumption or other commercial use, but which is not so used.