



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910
THE DIRECTOR

MAY 28 2015

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, AK 99501-2252

Dear Mr. Oliver:

This letter responds to your request for guidance on a March 25, 2014, letter from Alaskan Observers, Inc. (AOI) to the North Pacific Fishery Management Council (Council). In this letter, AOI provides information supporting its position that some of the observer provider insurance requirements at 50 CFR §679.52(b)(11)(vi) are excessive or inapplicable and should be revised. Specifically, AOI states that the requirements for coverage for claims under the Merchant Marine Act of 1920 (also known as the Jones Act), General Maritime Law (GML), and the U.S. Longshore and Harbor Workers Compensation Act (LHWCA) are unnecessary and therefore should be removed. AOI's letter includes a proposed amendment to these regulations. In addition, AOI noted differences in observer provider insurance regulations in other National Marine Fisheries Service (NMFS) regions. Some regions have few regulatory requirements while others, like the North Pacific, require a broad range of insurance endorsements.

AOI proposed amending the North Pacific Observer Program regulations to: 1) remove requirements for insurance coverage under the Jones Act, GML, and LHWCA; 2) broaden insurance requirements to include coverage for duties conducted during training, briefing, debriefing, and work at shore plants; and 3) remove the requirement to obtain Commercial General Liability insurance and replace that with requirements to obtain Marine General Liability, Maritime Employer's Liability, and state Workers' Compensation insurance with a \$2 million minimum coverage level.

By letter dated July 1, 2014, you requested guidance on the issues raised in AOI's letter to determine the appropriate path for potential action by the Council. The following is NMFS' assessment of AOI's views and guidance that the Council could consider regarding insurance requirements for observer providers.

On AOI's primary concern—regulatory requirements for Jones Act, GML, and LHWCA insurance coverage—NMFS agrees that insurance endorsements for claims under these authorities are unnecessary. In summary, observers do not meet the "status" requirement for the Jones Act or GML and are not within the definition of an "employee" for purposes of the LHWCA. Because fisheries observers are unlikely to recover under the Jones Act, GML, or LHWCA, removal of regulations that require observer providers to obtain coverage for claims under these authorities will not adversely affect observers. The Council therefore could take action to remove these requirements.



In addition, observers deployed on vessels under the Magnuson-Stevens Fishery Conservation and Management Act are considered federal employees for purposes of the Federal Employees' Compensation Act (FECA) and in some cases are covered under state Workers' Compensation programs. Therefore, even in regions that have no mandatory insurance coverage requirements, FECA, and possibly state programs, provide coverage.

Although observers perform many of their duties when deployed on a vessel, some of their work is conducted onshore in the circumstances noted in AOI's proposal—in training, at debriefings, or on duty at shoreside processing plants. FECA applies to observers only when deployed on a vessel. Therefore, having broader insurance coverage requirements could reduce risk to observer providers and provide more comprehensive coverage for observers. Our initial review did not identify any reason to disagree with AOI's proposal to replace the requirement for Commercial General Liability insurance with a requirement for Maritime General Liability insurance. Maritime General Liability insurance may provide better coverage for observers than Commercial General Liability insurance. In addition, Maritime Employer's Liability insurance could help supplement coverage provided under FECA and state Workers' Compensation programs. If the Council decides to reassess observer insurance requirements, it could further assess the appropriate supplemental insurance requirements in the analysis prepared for Council deliberation and through public comment.

AOI noted that the North Pacific and Pacific Council regulations currently require \$1 million minimum insurance coverage and the New England Council regulations require \$5 million minimum coverage. AOI suggests that the North Pacific regulations be amended to apply the minimum insurance coverage requirements to Marine General Liability, Maritime Employer's Liability, and state Workers' Compensation coverage, and increase the minimum coverage to \$2 million. At this time, NMFS does not have a recommendation about the appropriate minimum insurance coverage levels. This element of the regulations also could be reassessed by the Council in a more thorough analysis.

We look forward to assisting the Council with any reassessment of observer insurance requirements that it deems necessary. Please contact Chris Rilling, Alaska Fisheries Science Center, at (206) 526-4195 if you have any additional questions on this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eileen Sobeck', written over a horizontal line.

Eileen Sobeck
Assistant Administrator
for Fisheries