North Pacific Fishery Management Council

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July 1, 2014

Ms. Eileen Sobeck
National Marine Fisheries Service
1315 East West Highway
Silver Spring, MD 20910-3282

Dear Ms. Sobeck:

At its April meeting, our Council received public testimony requesting that the Council consider initiating an amendment to the North Pacific regulations governing observer provider insurance coverage requirements. It is our understanding that there are inconsistencies around the nation with respect to the regulatory requirements for insurance coverage for Federal observers. The Council is interested in removing unnecessary insurance requirements from the North Pacific regulations, in an effort to reduce observer costs, and to maximize the efficiency of the Observer Program. Our staff has discussed this issue with our Regional office of NMFS, but it remains unclear whether our request should be directed to the National Observer Program Office or to the NOAA Office of General Counsel; therefore, we are directing our inquiry to your office.

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The Council is requesting guidance regarding the apparent inconsistencies among regions, and the legal requirements for observer provider insurance coverage, in order to determine the appropriate path for a potential North Pacific regulatory amendment. The detailed letter from Mr. Michael Lake of Alaskan Observers, Inc., which explains the particulars of the insurance coverage issue, is attached. On behalf of the North Pacific Council, thank you for assisting in our efforts to resolve this important issue.

Sincerely,

Chris Oliver
Executive Director

CC: Dr. Jim Balsiger
Mr. Martin Loefflad
Ms. Lisa Lindeman
Mr. Michael Lake

encl

March 25, 2014

Via E-mail: npfmc.comments@noaa.gov
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Via E-mail: lisa.lindeman@noaa.gov
Lisa Lindeman, Alaska Section Chief
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Re: Proposed Amendment to Observer Provider Insurance Coverage Requirements
For Discussion at Council Meeting on April 7-15, 2014 / Anchorage, Alaska

Dear Chairman Olson and Ms. Lindeman:

Alaskan Observers, Inc. (AOI) has been an observer provider in the North Pacific since 1988, and is writing to request the guidance of the North Pacific Fishery Management Council (Council) to amend the observer insurance requirements as set forth in 50 C.F.R. § 679.52 (the regulations governing the North Pacific Groundfish Observer Program). AOI first brought this issue to the Council's attention at the February 2014 Council meeting in Seattle. At that time, the Council directed AOI to frame this issue and return with a letter of explanation and proposal.

AOI can provide more than full insurance coverage needed to compensate observers for all (on and off vessel) work-related injuries under Maritime Employer's Liability (MEL) and States Worker's Compensation policies. Because this level of insurance fully covers observers, AOI urges the Council to take the necessary steps to amend the current requirement of buying insurance policies that cover claims arising under the Jones Act and Longshore and Harbor Workers' Compensation Act (LHWCA).

In short, given how observers are categorized under the law, as well as by the work activities observers perform, the current observer insurance requirements for the North Pacific are excessive or inapplicable.

I. NORTH PACIFIC OBSERVER INSURANCE REQUIREMENTS

There are currently no uniform national standards for observer insurance coverage. In fact, of the eight U.S. Regional Fishery Management Councils, five of the Councils have not promulgated any observer insurance regulations.[1] The three Councils that have implemented

[1] None of the following Councils have implemented any fisheries observer insurance regulations: Caribbean Council, Gulf of Mexico Council, South Atlantic Council (50 C.F.R. § 622 et seq.); Western Pacific Council (50 C.F.R. § 665 *et seq.*); and Mid-Atlantic Council (50 C.F.R. § 697 et seq.).

observer insurance regulations have varying levels of required coverage. The North Pacific regulations are the most onerous and costly for observer providers. A comparison of those regulatory provisions supports this finding.

Comparison of Management Councils' Observer Insurance Regulations		
NORTH PACIFIC COUNCIL	**PACIFIC COUNCIL**	**NEW ENGLAND COUNCIL**
50 C.F.R. § 679.52(b)(11) –	50 C.F.R. § 660.17(e)(vii) –	50 C.F.R. § 648.11(h)(3) –
(vi) *Certificates of insurance*. Copies of "certificates of insurance" that name the NMFS Observer Program leader as the "certificate holder" shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions: (A) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum); (B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum); (C) States Worker's Compensation, as required; and (D) Commercial General Liability.	(C) Copies of "certificates of insurance," that names the NMFS Catch Monitor Program leader as the "certificate holder", shall be submitted to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled. (1) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum). (2) States Worker's Compensation as required. (3) Commercial General Liability.	(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is $5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

When comparing the North Pacific Council's observer insurance regulations with those of the Pacific and New England Councils, notice that the obligation to provide coverage for claims under the Jones Act is only required for the North Pacific and ***is not*** required in the Pacific or New England regions. Both the Pacific and New England Councils appear to acknowledge that Jones Act coverage is not applicable or necessary to fully insure observers in the course and scope of their work duties.

Furthermore, a closer inspection of the New England Council's regulations also reveals no requirement for observer providers to obtain USL&H coverage. The current version of the New England Council's regulation is a clear acknowledgement that USL&H coverage is not needed to fully insure observers. Instead, the New England Council mandates MEL and States Worker's Compensation coverage at a minimum of $5 million.[2]

II. PROPOSED AMENDMENT

In lieu of implementing national standards for observer insurance requirements, AOI asks for the Council's direction in an effort to amend 50 C.F.R. § 679.52(b)(11)(vi) to remove the requirements for obsolete and/or inapplicable insurance coverages and insert a requirement – similar to the New England Council's regulation – that observer providers be required to obtain a specified level of coverage. Accordingly, AOI makes the following proposed amendment:

(vi) *Certificates of insurance*. Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training, briefing, debriefing, and work at shore plants), via c~~C~~opies of "certificates of insurance" that name the NMFS Observer Program leader as the "certificate holder", shall be submitted to the Observer Program Office by February 1 of each year. Marine General Liability, Maritime Employer's Liability, and States Worker's Compensation insurance coverage must be provided at a $2 million minimum. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled. ~~and verify the following coverage provisions:~~

~~(A) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law ($1 million minimum);~~

~~(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act ($1 million minimum);~~

~~(C) States Worker's Compensation, as required; and~~

~~(D) Commercial General Liability.~~

This proposed amendment not only eliminates the excessive costs of providing "over-insurance," it provides a regulatory structure that will not become obsolete in short order due to ongoing changes in the insurance industry.

III. STATEMENTS IN SUPPORT OF THE PROPOSED AMENDMENT

The proposed amendment is designed to resolve a significant problem that currently hinders North Pacific observer providers' ability to obtain insurance coverage that complies with 50 C.F.R. § 679.52(b)(11)(vi). As set forth in greater detail below, insurance policies covering

[2] Although AOI agrees that MEL and States Worker's Compensation coverage is all that is needed to provide full insurance coverage to compensate observers, AOI does not suggest that a minimum of $5 million primary coverage is necessary. For instance, as a practical matter, AOI typically obtains umbrella coverage to insure observers for liabilities that may exceed the levels of primary coverage.

claims under the Jones Act and the LWHCA are not necessary to provide adequate injury and liability coverage for observers.

A. Observers Cannot File Suit under the Jones Act or Maritime Law Because They are Not "Seamen".

The Jones Act authorizes a claim for negligence against a "seaman's" employer when the employee is injured or killed during the course of employment, by the negligence of the employer or another employee.[3] The Jones Act extends the provisions of the Federal Employers' Liability Act (FELA)[4] to provide similar remedies for seamen. Thus, an injured seaman can recover damages from the employer when its or a co-worker's negligence causes an injury.[5]

To recover under the Jones Act, the worker must show that the defendant employed him or her at the time of injury.[6] More importantly, for purposes of the Jones Act, ***there can be only one employer***.[7] Under circumstances in which the Jones Act and/or Maritime Law would *potentially* come into play for observers, such observers are deemed to be federal employees who are otherwise protected by the Federal Employee Compensation Act.

1. Observers are Federal Employees While on the Vessel.

The 1996 re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Sustainable Fisheries Act make clear at 16 U.S.C. § 1881b(c):

> **An observer on a vessel and under contract to carry out responsibilities under this chapter or the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) shall be deemed to be a Federal employee for the purpose of compensation under the Federal Employee Compensation Act (5 U.S.C. 8101 et seq.).**

The Federal Employee Compensation Act (FECA) coverage for observers under the MSA is explicitly limited to work on a vessel. The intent of Congress, as evidenced by 16 U.S.C. § 1881b(c), was that observers while serving on vessel are not entitled to claims under the Jones Act or Maritime Law for injuries arising from the performance of their duties. It is also clear that observers working in shore plants, during training and debriefings, and other off-vessel assignments, are not covered by the FECA. Congress apparently intended for observers under

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[3] *See* 46 U.S.C. § 30104 (personal injury to or death of seaman).

[4] *See* 45 U.S.C. § 51 et seq. (a statute that provides remedies for injured railroad workers).

[5] Under the FELA, an employee may recover damages "for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carriers[.]" *See* 45 U.S.C. § 51.

[6] *See* ***Cosmopolitan Shipping Co. v. McAllister***, 337 U.S. 783, 791, 1949 A.M.C. 783 (1949) (The U.S. Supreme Court stated that it had "no doubt that ***under the Jones Act only one person, firm, or corporation can be sued as employer***," and added that "[e]ither Cosmopolitan or the Government is that employer," but not both.) (emphasis added).

[7] *See* ***Glynn v. Roy Al Boat Management Corp***., 57 F.3d 1495, 1500, 1995 A.M.C. 2022 (9th Cir. 1995).

these situations to be covered by another compensation mechanism, such as states worker's compensation acts.

2. Numerous Courts have Concluded that Observers are Not Seamen.

The Jones Act applies only to workers who have "seamen" status. The essential requirements for seaman status are: (1) "the employee's duties must contribut[e] to the function of the vessel or to the accomplishment of the vessel's mission"; and (2) the employee "must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature."[8] Since 1996, courts have consistently found that observers are not seamen. Among such cases are:

- In ***Bank of America, N.A. v. PACIFIC LADY***, 2001 A.M.C. 727 (W.D. Wash. 2000), the Court found that an observer aboard a fishing vessel was not a member of the crew of the vessel or a seaman. The Court noted that, pursuant to 50 C.F.R. § 679.7(g)(7), observers could not be "require[d], pressure[d], coerce[d], or threaten[ed] . . . to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the store of the finished product." The Court noted that this regulation "strongly suggests that observers cannot be fairly regarded as seamen or crew of a vessel." Next, the Court cited the language of 16 U.S.C. § 1881b(c) that observers are Federal employees while on the vessel. The Court, therefore, concluded that the **observer was not a seaman**.

- In ***Mason v. Alaskan Observers, Inc***., 2003 A.M.C. 2555 (W.D. Wash. 2003), the legal question at issue was whether an observer was "a 'Seaman" for purposes of the Jones Act and General Maritime Law." The Court began by recognizing the two essential requirements for seaman status,[9] and concluded that the **observer was not a seaman**. The Court reached this conclusion by reasoning that an observer's voluntary assistance to the crew in no way alters the fact that "an observer is not in service to the vessel and therefore may not be considered a seaman."

- In ***Chauvin v. FURGO-GEOTEAM SA***, 2007 WL 2265233 (E.D. La. 2007), the Court dismissed a plaintiff's Jones Act lawsuit. There, the vessel at issue was "required by the government to have persons certified as Marine Mammal Observers (MMO) aboard. The sole function of these MMO personnel is to search for whales, porpoises, dolphins, and other marine animals, and if necessary, to stop the seismic testing while these animals are within the ship's range." The Court then noted that the plaintiff observer "was hired and acted solely in the role of an MMO, recording the locations and descriptions of certain marine mammals and warning the crew if these mammals were in range of the [vessel]."

[8] *See* ***Harbor Tug & Barge Co. v. Papai***, 520 U.S. 548, 554, 1997 A.M.C. 1817 (1997) (quotations and citations omitted).

[9] "First . . . an employee's duties must contribute to the function of the vessel or to the accomplishment of its mission . . . . The Jones Act's protections, like the other admiralty protections for seamen, only extend to those maritime employees who do the ship's work." ***Chandris, Inc. v. Latsis***, 515 U.S. 347, 368 (1995) (quotations and citations omitted). "Second, . . . a seaman must have a connection to a vessel in navigation (or to an identifiable group of such vessels) that is substantial in terms of both its duration and its nature." ***Chandris***, 515 U.S. at 368.

The Court concluded that because plaintiff, as merely an **observer** on a scientific vessel, **she was not a seaman**.

- In ***Belcher v. Sundad, Inc.***, 2008 WL 2937258 (D. Or. 2008), the Court dismissed an observer's Jones Act and Unseaworthiness claims. When applying the two-part test for seaman status, the Court concluded that the **observer was not a seaman** under the rationale that: "Despite plaintiff's claim that the observer program is legally required for the vessel to operate, ***she did not contribute to the function of the vessel and she did not have a substantial connection either in its nature (commercial fishing or navigation) or in duration (she was only assigned to the [vessel] briefly). Simply because the law requires the observer, it does not grant seaman status to plaintiff.***" (emphasis added).

Prior to 1996, the Eleventh Circuit Court of Appeals was the (only) highest level federal court to have addressed this issue. In ***O'Boyle v. U.S.***, 993 F.2d 211 (11th Cir. 1993), an observer on a foreign vessel argued that he was a seaman because, as the vessel could not fish without his presence, he was essential to the vessel's mission. The ***O'Boyle*** Court rejected this argument, noting that although the vessel could not fish without an observer, the observer's duties concerned gathering scientific information and reporting his observations to the NOAA. Ultimately, the Eleventh Circuit concluded that the **observer was not a seaman**. *See* ***O'Boyle***, 993 F.2d at 213.[10]

3. Observers Cannot File Suits for Maritime Negligence Against Vessel Owners.

In ***Bauer v. MRAG Americas, Inc.***, 624 F.3d 1210, 2011 A.M.C. 2537 (9th Cir. 2010), the Ninth Circuit Court of Appeals affirmed a trial court's ruling to dismiss an observer's maritime negligence lawsuit against a vessel owner, as the MSA and Marine Mammal Protection Act (MMPA)[11] make vessel owners immune from such litigation. In relevant part, the Ninth Circuit reasoned:

- "***The observers are considered federal employees, not employees of the vessel owner***. Having thrust these observers on board private vessels, however, Congress limited the vessel owners' liability to the observers. As a general rule, an observer ' that is ill, disabled, injured, or killed from server as an observer on that vessel may not bring a civil action . . . against the vessel owner.'"[12]

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[10] Other pre-1996 court cases that have considered and concluded observers were not seamen, include the following: ***Key Bank of Puget Sound v. F/V ALEUTIAN MIST***, Cause No. C91-107 (W.D. Wash., Jan. 10, 1992) (**observers were not seamen**, they were independent scientific personnel who did not perform crew functions or duties); ***Arctic Alaska Fisheries Corp. v. Feldman***, Cause No. C93-42R (W.D. Wash., Mar. 5, 1993) (**observer was not a seaman** because observer had not been engaged to perform duties in service to the vessel); ***Coyne v. Seacatcher Fisheries, Inc.***, Cause No. C93-510Z (W.D. Wash., Feb. 1, 1994) (**observer was not a seaman** and was barred from bringing suit against vessel owner under the MSA); ***Key Bank of Washington v. F/T PACIFIC ORION***, Cause No. C93-806Z (W.D. Wash., Feb. 1, 1995) (**observers were not seaman** and not entitled to a preferred maritime wage lien).

[11] *See* 16 U.S.C. § 1361 et seq.

[12] *See* ***Bauer***, 624 F.3d at 1211 (*quoting* 16 U.S.C. § 1383a(e)(1)) (emphasis added). The immunity provision of the MMPA further provides:

- "'Service as an observer on that vessel' means exactly what it says – during the period the individual is on the vessel in the capacity of an observer. Hence, if the injury arises from a period of service as an observer, then the immunity provision comes into play."[13]

- "We conclude that this immunity provision precludes a negligence suit by a federal observer who was injured while taking a restroom break."[14]

As the Ninth Circuit Court of Appeals made abundantly clear in the ***Bauer*** case, vessel owners are immune from observers' maritime negligence lawsuits, so long as the observer was on the vessel in his/her capacity as an observer.

Observer providers should not be required to obtain insurance coverage for Jones Act claims and general maritime law claims. First, vessel observers are not seamen as a matter of law, as evidenced by the tide of court decisions. Second, vessel owners are immune from observers' maritime negligence lawsuits. Finally, unlike seamen, if an observer is injured on a vessel, his/her immediate remedy is the FECA, not a Jones Act or maritime negligence lawsuit. There is no need for observer providers to obtain redundant insurance coverage that cannot, in the end, achieve its intended purpose.

It is also worth noting that, despite this immunity provision, vessel owners are currently required to provide insurance coverage for observers under their Protection and Indemnity (P&I) policies. Essentially, vessel owners are obligated to provide comprehensive insurance coverage for everyone on the vessel, regardless of employment status and the person's ability to qualify for such coverage. A change in the regulation would therefore benefit the vessel owners, as well, by eliminating the requirement that they purchase additional insurance that serves no actual or useful purpose.

B. 50 C.F.R. § 679.52(b)(11)(vi) is Overly Broad as It Requires Observer Providers to Obtain Insurance Coverage that is Mutually Exclusive.

"It is well-settled that the Jones Act and the LHWCA are 'mutually exclusive compensation regimes.'"[15] Thus, if a worker satisfies the criteria for being a seaman, he/she is covered by the Jones Act and not the LHWCA. However, if the worker does not meet the status as seaman, he *may* be protected by the LHWCA. Under this compensatory framework, the current version of 50 C.F.R. § 679.52(b)(11)(vi) forces observer providers to obtain two separate insurance coverages that by definition cannot apply at the same time.

> An observer on a vessel . . . that is ill, disabled, injured, or killed from service as an observer on that vessel may not bring a civil action under any law of the United States for that illness, disability, injury, or death against the vessel or vessel owner, except that a civil action may be brought against the vessel owner for the owner's willful misconduct.

[13] *See* ***Bauer***, 624 F.3d at 1212.

[14] *See* ***Bauer***, 624 F.3d at 1211.

[15] *See* ***Becker v. Tidewater, Inc.***, 335 F.3d 376, 389, 2003 A.M.C. 1653 (5th Cir. 2003) (*quoting* ***Harbor Tug & Barge Co. v. Papai***, 520 U.S. at 553).

At a minimum, the Council should amend 50 C.F.R. § 679.52(b)(11)(vi) to strike out subsection (A) – the Jones Act and General Maritime coverage requirements. However, the following section explains why both subsection (A) and (B) should be stricken.

C. The Requirement for USL&H Coverage Should Also Be Eliminated.

Notwithstanding the large and expensive burden that providing USL&H coverage places on observer providers, this requirement should also be eliminated because observers do not qualify as employees under the LHWCA. Moreover, there are few remaining insurance carriers that will even write an USL&H endorsement.

1. USL&H Coverage is Inapplicable Because Observers are Neither Longshore *Nor* Harbor Workers.

The LHWCA was originally created in 1927 because states were without power to regulate maritime employment.[16] An employee's coverage under the LHWCA is determined under a two-pronged test composed of a "status" requirement and a "situs" requirement.[17] The *status* prong is satisfied if the employee was "engaged in maritime employment" at the time of his injury.[18] The LHWCA defines "employee" as "any person engaged in maritime employment, including any longshoreman or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and ship-breaker," but does not include a "master or member of a crew of any vessel."[19] While the *situs* prong is met if the employee's injury occurred "upon the navigable waters of the United States (including any adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel)."[20]

Observers do not meet the "status" requirement of the LHWCA. This is clearly the case because the work observers perform is nothing like the work performed by longshoremen or harbor workers. As this Council may be aware, observers' collect scientific, management, compliance, and other data at sea through observations of fishing operations, interviews of vessel captains and crew, photographing catch, and measurements of selected portions of the catch and fishing gear. More specifically, observers' responsibilities include: (1) conducting pre-trip safety inspections; (2) communicating observer duties and data collection needs with vessel crew; (3) collecting operational information, such as trip costs (i.e., price of fuel, ice, etc.); (4) collecting fishing gear information (i.e., size of nets and dredges, mesh sizes, and gear configurations); (5) collecting tow-by-tow information (i.e., depth, water temperature, wave height, and location and time when fishing begins and ends); (6) recording all kept and discarded catch data on observed hauls (species, weight, and disposition); (7) recording kept catch on unobserved hauls (species,

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[16] *See* ***Parker v. Motor Boat Sales, Inc.***, 314 U.S. 244, 249-50 (1941) (explaining that Congress passed the LHWCA to give longshoremen a national workmen's compensation law to fill the void created by court decisions that longshoremen could not come within state compensation laws.).

[17] *See* ***Director, Office of Workers' Compensation Programs v. Perini North River Assocs.***, 459 U.S. 297 (1983).

[18] *See* 33 U.S.C. § 902(3).

[19] *See* 33 U.S.C. § 902(3).

[20] *See* 33 U.S.C. § 902(a).

weight, and disposition); (8) collecting actual catch weights whenever possible, or weight estimates derived by sub-sampling; (9) collecting whole specimens, photos, and biological samples (i.e., scales, ear bones, and/or spines from fish, invertebrates, and incidental takes); and (10) recording information on interactions with protected species, such as sea turtles, porpoise, dolphins, whales, and birds. None of these activities are done by longshore or harbor workers.

AOI's research has found no court orders or opinions categorizing observers as longshore or harbor workers. Thus, similar to the unnecessary coverage for Jones Act claims, coverage for USL&H is not useful to protect observers. Finally, pursuant to the Magnuson Act observers are entitled to FECA and as such not entitled to longshore workers benefits while on a vessel.

2. Few Insurers Will Endorse USL&H Coverage.

It is important to note that as of late, only two companies would write an USL&H endorsement for observer coverage. AIG, which had underwritten the USL&H endorsement as part of AOI's States Worker's Compensation coverage for more than 20 years, gave notice in Fall 2013 that it would no longer underwrite USL&H endorsements.

It is also significant to note that AOI has *never* had an USL&H claim in more than 25 years of its observer provider service. This is because all of AOI's claims over the deductible amount are covered by AOI's MEL policy. The few Jones Act lawsuits AOI has faced in the past have been summarily dismissed in court. Therefore, Jones Act and USL&H coverages are simply unnecessary to fully protect observers injured on the job.

D. AOI's Observers are Fully Covered by MEL and States Worker's Compensation.

Eliminating the Jones Act and USL&H coverage requirements will not leave observers inadequately protected from work-related accidents and injuries. As discussed above, in addition to FECA, AOI currently provides the multiple layers of insurance to fully cover observers, including: Maritime Employer's Liability (MEL) ($1 million minimum) and State Worker's Compensation ($1 million minimum).

AOI's MEL policy covers all work-related injuries and illnesses that exceed AOI's deductible. Specifically, this MEL policy covers observers while they are on field duty or deployment – (i.e., from the time they leave Seattle until they return). AOI's State Worker's Compensation policy insures observers while working at shore plants of each particular state, and during training, briefing, and debriefing. Put simply, AOI's current insurance coverage fully protects observers in all of the workplace situations they encounter.

As noted above, vessel owners are under a similar, economically wasteful requirement to provide insurance coverage that will not serve its intended purpose. Vessel owners are currently obligated to pay thousands of dollars for additional P&I premiums to cover observers, yet vessel owners are *immune* from observers' maritime negligence lawsuits. This requirement for vessel owners, like the insurance requirements for observer providers, simply reflects another aspect of the maritime industry that need to be changed in order to adapt to modern practices.

E. The Observers' Union Strongly Approves of This Amendment.

In discussions with the Association for Professional Observers (APO), union representatives acknowledged the need for change to the insurance coverage regulations and the importance of this proposed amendment. Significantly, APO representatives have indicated their strong support for this amendment.

IV. CONCLUSION

The current insurance requirements as set forth in 50 C.F.R. § 679.52(b)(11)(vi) are outdated, redundant, and prohibitively expensive. Not only is this wasteful and a grossly inefficient use of the industry's resources, observer providers are facing increasing difficulty with complying with this insurance regulation, despite the fact that observers already are fully protected by MEL and States Worker's Compensation policies.

The fact remains that observers are not seamen under the law and as such do not receive any benefit from insurance coverage for Jones Act claims. Vessel owners are immune from observers' maritime negligence lawsuits. Observers also do not benefit from USL&H coverage because they do not perform the same types of work tasks that would qualify them s as longshore or harbor workers. Acknowledging these principles, the New England Council has previously concluded that insurance coverage for Jones Act and USL&H claims is unnecessary.

Now is the time for the Council and the industry to address this pressing matter. AOI therefore ask the Council to undertake the steps necessary to amend 50 C.F.R. § 679.52(b)(11)(vi) so that observer providers will be allowed to obtain insurance that fully covers observers whenever and wherever they work, and eliminate the requirements to obtain unnecessary insurance coverage that cannot and does not benefit observers.

Respectfully Requested,

ALASKAN OBSERVERS, INC.

Michael Lake

Michael Lake
President