

**Statement by Jonathan Lee Combs**

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I, Jonathan Lee Combs, was a Fisheries Observer for the National Marine Fisheries Service (NMFS) Pelagic Observer Program (POP), from 2006 to July 28, 2011. The NMFS program manager, coordinator and support staff for this program were, respectively, Lawrence (Larry) Beerkircher, Kenneth Keene and Sascha Cushner. I was contracted by IAP Services, Inc. and my immediate supervisor at IAP was Chad Lefferson. I have made 33 trips comprising of nearly 400 sea days for the POP. I also have prior experience in the North Pacific Groundfish Observer Program, the Hawaii Observer Program and the Shark Observer Program out of the Panama City Lab. My primary complaint, below, is with the POP, relating to how I was improperly fired, or rather eliminated from any future deployments in the POP. My secondary complaints, listed below, concern numerous events where I believe laws were broken, the POP was being mismanaged and/or Fisheries Observers were asked to make unsafe or illegal choices. In these instances NMFS and/or IAP Services, Inc. either broke the law, allowed fishing vessels to break the law, attempted to coerce Fisheries Observers to break the law, pressured Fisheries Observers to take unsafe assignments and neglected medical support to Fisheries Observers.

**1. Fired without cause; NMFS ignored it's own performance evaluation protocols**

I will start with my primary complaint. I was told in an e-mail, dated July 29, 2011, from Mr. Lefferson that NMFS POP would no longer be using me in that program because of "*the difficulties (email) in working with you*"<sup>1</sup>. The e-mail Mr. Lefferson referred to was one I sent to Ms Cushner<sup>2</sup>, on July 20, 2011, asking her why NMFS allows vessels to break the law regarding observer safety and accommodations. I asked very simple specific questions by e-mail, directly to her, and I did so in a non-threatening, non-offensive way. Instead of working with me to provide answers to my questions, I was essentially fired by NMFS staff with no discussion or cause. I was given no reason for this decision by NMFS staff, other than having sent the attached e-mail. I wasn't told who at NMFS had made the decision. I wasn't given any warning, informed of any wrongdoing, or told my performance was subpar. I had gone through debriefing after my e-mail to Ms. Cushner and wasn't informed of anything wrong with my performance. They simply told Mr. Lefferson that they would no longer be using me for the POP and he stated it was because of my July 20, 2011 e-mail to Ms. Cushner. This is in direct conflict with the POP's recent performance evaluation protocols, which we were informed of in another e-mail from Mr. Lefferson<sup>3</sup> on July 25, 2011. This e-mail stated that we would be "evaluated during debriefing on data quality, if you "work well with the program" and that the protocol includes a "3-strikes, you're out" policy, where observers "might get a verbal, written warning and if it is something more serious,

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<sup>1</sup> E-mail (attached), July 29, 2011, from Chad Lefferson to Jon Combs

<sup>2</sup> E-mail (attached), July 20, 2011, from Jon Combs to Sascha Cushner

<sup>3</sup> E-mail (attached), July 25, 2011, from Chad Lefferson to large "cc" list including all observers and NMFS OP staff.

dismissal.” I was neither informed of any wrongdoing on my part during any deployment as long as I’ve been working with the POP, nor was I given any warning.

After receiving the above-mentioned protocols in the 25 July 2011 e-mail from Mr. Lefferson, I requested clarification from NMFS (Ms. Cushner), to which I never received a reply. We received nothing from NMFS regarding these protocols, only our contractor. I merely wanted to express the need for transparency and fairness in our performance evaluations. This was met with complete dismissal by NMFS (no response).

## **2. NMFS ignored safety regulations in place to protect Fisheries Observers.**

On 9 October 2010, I was sent to Charleston, SC on an assignment for a trip. In order to be deployed on this particular vessel, I had to bring a Valise Pack 4-man life raft, as the vessel only had enough life raft capacity for the captain and its three crewmembers. Fisheries Observers in this program conduct a pre-trip safety inspection, using guidelines established by the U.S. Coast Guard. There are certain critical safety features on vessels, which are deemed “deal breakers” and a “no-go” if the vessel does not meet the safety standards of these particular features. A “no-go” means that the Fisheries Observer does not get deployed on that trip due to safety reasons. While conducting the safety inspection prior to departure, I saw that the hydrostatic release on the vessel’s life raft had expired. The proper maintenance of the hydrostatic release is a critical safety feature and, as such, all observer programs in the United States have labeled this as a “deal breaker”.

Since their life raft’s hydrostatic release had expired and my life raft only had a 4-person capacity, I immediately called the office and informed Mr. Keene of the situation. He thought about it for a minute and then told me I should still be able to make the trip. I want to be clear that, at this point, I felt it would have been “me refusing the trip”, not “me not being allowed to make the trip due to safety concerns”. This is in direct violation of national safety protocols for all observer programs in the United States and a Fisheries Observer should not feel bad for following these protocols.

After this trip I drove to Wanchese, NC to take the raft back to storage. The morning I was leaving to drive home, October 18<sup>th</sup> 2010, Mr. Keene called me and asked me to make a trip on another vessel which he said had just called in to say they were leaving that day. This vessel was docked in Wanchese so I agreed to meet the vessel. While doing the safety inspection I noticed the hydrostatic release on the life raft of this vessel had also expired. I immediately called Mr. Keene to inform him of this. He asked me if anything else on the safety check was amiss. I told him I stopped the inspection when I noticed the expired hydrostatic release, which should have triggered a “no go”. He asked me to finish the inspection, which I interpreted as pressure to, again, ignore the expired hydrostatic release. I went back to continue the inspection and noticed that the hydrostatic release on the EPIRB had expired as well. I called Mr. Keene again and informed him of this. He still insisted that NMFS really wanted to have this vessel monitored and then thought about it for a few moments and said that he guessed that I should not take the trip. His words were- “I gotta be able to sleep at night”.

Once again, I still felt pressured to take the trip and was left feeling that it was my fault for refusing the trip. The “deal breakers” are protocols written into national standards that all observer programs in the US follow. The protocols of a “deal breaker” are supposed to be exactly that, absolutely a “no go” if the vessel’s equipment isn’t complying with the

standards. Bypassing this protocol is not supposed to be at the discretion of Fisheries Observers, POP Staff or Contractors. They are set protocols to be followed.

In addition to these instances, I often noticed hydrostatic releases that were not marked with an expiration date at all and was “allowed” to make those trips. In these instances, and those with expired releases, Mr. Keene and Ms. Cushner put the onus upon Fisheries Observers to tell the captains to fix whatever we found wrong and told us just to tell them to scratch in a date if there was no expiration date. In my experience, I have never seen vessel personnel fix anything I have suggested get fixed. From all appearances, Fisheries Observers in this program appear to have no authority supporting them. Fishermen generally only take Fisheries Observers reluctantly and if a Fisheries Observer is also seen as the enforcer of the laws that protect their welfare, this sets the stage for a negative experience by all. This could be somewhat ameliorated if NMFS showed some support for Fisheries Observers by enforcing the laws that are meant to protect Observers, instead of making the Fisheries Observers attempt to do it. Without this sort of support from NMFS, it has the effect of making me reluctant to raise a safety issue when I see one.

### **3. NMFS ignores 72-hour notice required by vessels prior to departure:**

This law is in place to give NMFS notice in order to line up the logistics necessary to place an observer on a vessel. It doesn't appear that the vessel in the example given above, gave NMFS the required 72-hour notice prior to their trip because Mr. Keene told me that they had just called and were leaving that day, which is less than 24 hours. Yet nothing happened to this vessel for having broken the law. Instead, NMFS passed this pressure on to me to catch the vessel in time for departure. This type of disregard for Fisheries Observers leaves us no other choice but to live our lives in between assignments completely on standby, and yet with no pay.

### **4. NMFS ignored it's own Fisheries Observer accommodations regulations:**

Fisheries Observers in this program often have to sleep on the floor or at the galley table, even though regulations stipulate in this fleet that Observers get at least equal accommodations to the crew. To my knowledge this has never been mentioned to the vessels by NMFS staff when deploying observers. The following is my most current experience with this problem. On January 28<sup>th</sup> 2011, I was assigned to a vessel in Pompano Beach, FL to meet the vessel. Ms. Cushner told me when she assigned me the vessel that I would not have a bunk to sleep in and that I would be sleeping at the galley table. Ms. Cushner has frequently told us that we will not have a bunk as the boats have informed her. This not only shows a lack of support for Fisheries Observers but also encourages vessels to continue to ignore the equal accommodations rule.

### **5. NMFS doesn't follow Safety Training protocols to prepare its Fisheries Observers:**

The first time I received Safety Training in the Southeast was in 2006 with the Panama City Program. All programs that are part of the Southeast Fisheries Science Center require Fisheries Observers to receive “refresher courses” every three years. I had missed the most recent refresher and briefing while I was deployed on a vessel in December 2009. My safety training had lapsed for some or all of that trip and this was acknowledged by Ms. Cushner before the trip. Instead of requiring that my Safety Training “refresher course” be completed, Ms. Cushner, again deployed me on January 18<sup>th</sup> 2010, on another vessel. Although my 2006

Safety Training certification expired, Ms. Cushner stated that I could just attend the next available training.

#### **6. POP managers joke about punishing observers with unsafe assignments:**

There are notoriously unsafe vessels in the fleet that have been joked about by Ms. Cushner and Mr. Beerkircher as “punishment trips”. There are two that immediately come to mind, one out of Dulac, LA and one out of Wanchese, NC, which burnt and sank the trip after I was deployed on it. The one from Dulac, LA was referred to as punishment regularly by Mr. Beerkircher and Ms. Cushner during the 2009 BFT project. Unsafe vessels are not a laughing matter for those of us who have to make trips on them. However, any observer can tell you what happens when you start refusing trips the office staff feels you should take. Not only that, managers should have a random system in place for Observer placement to avoid conflict of interest and nepotism to seep into the program.

#### **7. NMFS instructs Fisheries Observers to ignore violations:**

We were never instructed during our original training on protocols to follow, should we witness a violation. POP has never trained me on how to write an affidavit. Nor were we instructed during any subsequent briefings. I was never asked during debriefing if I witnessed a violation and have never written an affidavit concerning any trip I have taken. We have no place designated in the data forms to record fisheries violations, other than possibly listing them in the field diary. I witnessed several violations, listed below, with no response from POP managers.

**MARPOL Violations:** I saw MARPOL violations nearly every trip since I first started with the POP. Plastics, light sticks, oil, oil and fuel filters, and large amounts of monofilament line are consistently thrown overboard while I was onboard the vessels. These violations are not in my data because Mr. Beerkircher, the POP manager at the time, told us during our first training in 2007 that these violations were not the concerns of POP. Most trips I noticed that no trash at all was brought back to the dock.

**Shooting Seabirds:** In December 2008 (approximate date), I was sent to Wanchese, NC to make a trip. During the first or second set the captain came in from the deck complaining about seabirds diving on his bait. He proceeded to get a shotgun and started shooting at the seabirds. I know he hit at least two seabirds. He also shot at them the next day during the set. I don't know if he killed any more. The trip was only 2-3 sets. I was not instructed on how to deal with this sort of violation. We have protected species forms but they are only for interactions with the fishing gear. When I returned to port I called Mr. Beerkircher and asked how I was supposed to record these violations. He instructed me to write it in my field diary. His said the field diary is part of my data and it would legally cover me in reporting the incident. He also pointed out that it was, in effect, hidden there and that he was not going to bring any attention to the issue and nothing would happen unless someone outside the program took the time to look and find it in the field notes. I mentioned it again during debriefing, but received no other instructions.

**Shark Finning:** I witnessed the finning of sharks on a Bluefin Tuna Special Study trip during a NOAA research trip on a vessel participating in the Weak Hook Survey. When I reported it to my debriefer, Mr. Beerkircher, he chuckled at the fact that the boat did it while I was on

board and while they were working under a government contract. As far as I know this was not reported to NMFS Enforcement.

**Illegal Fishing:** In 2007, during the Bluefin Tuna Special Study, I recorded in my field notes that the vessel I was assigned to stopped and fished for snapper at an oilrig on their steam out. I did not realize this was illegal at the time, but now know that it was. I was not asked to fill out any form or make any statement for enforcement, even though I described the event to my debriefer, Larry Beerkircher.

**NMFS tolerates illegal drug use on vessels:** During debriefing we used to be asked if “we felt unsafe due to drug use on the vessels” but were never asked specifically during debriefing if there was any drug use during the trip. Later POP debriefers stopped asking us about it at all. On several occasions, Ms. Cushner, discussed, in an “off the record” and joking kind of way, drug use when assigning us to or debriefing us from a trip in which the vessel is widely known for their drug use. It even came up at my safety refresher in Galveston in February 2010. Mike Harrelson of the Galveston Lab was discussing drug use on vessels with some new employees and suggested that they would see it and that it was common. His suggestion was for the observer to request that the captain and crew to go out on the deck to do it and to ask them not do such things during wheel watches.

**8. NMFS lacks permits and protocols for collection of protected species samples:** On January 5<sup>th</sup> 2011, I made a trip out of Wanchese, NC. One of the swordfish that was caught on this trip regurgitated some seabirds that appeared to be puffins. I thought this to be very interesting as I had never seen a puffin off North Carolina and had never seen one in a swordfish. I kept the birds as samples and immediately called the office when we returned to shore on a Friday evening, January 7<sup>th</sup>, to ask what I should do with them. Ms. Cushner instructed me to keep them as samples because she personally thought they were interesting and valuable. I could not leave for home until Monday because I had to return the valise life raft I had taken for the trip. Ms. Cushner instructed me to ask the fish house to store the seabirds in their freezer and then FedEx the seabirds to the office on Monday or after I returned home.

The next week, when I attempted to ship the samples there was a problem: Mr. Keene told me I was illegally in possession of the seabirds because the program did not have a permit to retain them. Ms. Cushner was adamant that I keep the seabirds instead of throwing them away, as I wanted to do. Mr. Keene told me I could not ship them to the program and Ms. Cushner instructed me not to remove them from my personal freezer. I was very anxious to do this because I now knew that I was illegally in possession of carcasses of protected species. Mr. Keene told me I could not ship them because if, for some reason, they were found, the responsibility would be on me as the shipper. After POP did some negotiating with a researcher from the Florida Museum of Natural History, Dr. Tom Webber, I was told by Ms. Cushner that my possession of the seabirds would be covered by Tom’s permit and that I should ship the birds directly to him. I do not know if any of this is legal or if it ever happened but I shipped the birds to him on January 25<sup>th</sup>, 2011.

**9. NMFS instructs Fisheries Observer to avoid declaring protected species sample with US Customs:** On September 20<sup>th</sup>, 2008 I made a trip out of Bay Bulls, Newfoundland. During the trip, I took samples of several loggerhead sea turtles according to POP protocols. When I returned to port, I knew that I would have to clear U.S. Customs when flying back from Canada and that I was carrying samples from endangered species. I called the POP lab

to ask for instructions on protocols to carry endangered species samples through U.S. Customs. Mr. Beerkircher instructed me to just pack the samples in my bags and to not declare them with U.S. Customs to avoid any hassles. This sounded illegal to me but it was the first trip I had done for POP outside of the BFT study. I did not want to challenge Mr. Beerkircher and risk my job, so I did as instructed. This continued to be POP policy when I again had to clear customs after a subsequent trip in July/August 2010. This time I chose to disobey their unwritten policy and declare the samples at U.S. customs. I did this because I was then aware of the consequences of breaking laws concerning importation of protected species. I also was not confident that NMFS and POP would support me if I were charged with a crime as a result of this unwritten policy. Clearing customs was very stressful, as I was left to explain the situation myself with no training or direction from POP staff. Ms. Cushner accepted what I had done when I told her, and admitted it was probably better than the other way. However, I do not recall any notification in a policy change at our briefing that year.

**10. NMFS and Observer Provider contractor, IAP Services, Inc. ignore dangers of BP Oil spill to Fisheries Observers:** The Deepwater Horizon oil spill in April 2010 created and brought to light many problems concerning observer safety and POP protocol. I was deployed on a vessel in Louisiana on the Bluefin Tuna Special Study for the Weak Hook Project when the Deepwater Horizon oilrig caught fire on Wednesday, April 21, 2010. NMFS coordinators and my contractor, IAP Services, Inc. disregarded a very serious health and safety hazard when they tried to pressure myself and other Fisheries Observers to take trips into the oil spill.

I was deployed on the vessel when the oilrig caught fire and we returned to shore just before the oilrig sank. After the spill began, the entire Vietnamese fleet stopped fishing. Charlie Bergman was the NMFS Principal Investigator for the weak hook study. After the two vessels participating in the study did not immediately depart, Mr. Bergman put pressure on them to go fishing because he wanted the data. No other vessels were fishing. The other vessel participating in the project made a trip and came back before the vessel I was assigned to departed for its first trip after the spill had begun. The observer on that vessel ("X") reported that the vessel had encountered oil on its gear and might have possibly been fishing in the area that was closed by NMFS and the USCG because of the spill. "X" was not sure if they were fishing inside the closed area because the location of closures shifted numerous times. "X" reported that the vessel did not seem concerned about it either way. "X" and myself reported this to Mr. Beerkircher but he showed little concern about the possibility that they may have fished inside the closed area.

"X" also reported being sick with a sore throat and cough for the duration of the trip. When "X" asked Mr. Lefferson to see a doctor he was initially told no but was finally allowed to see a doctor a week later. When Mr. Lefferson came to Houma to attend the 8-hour HAZMAT course with us, he was asked by another observer about the health status of "X". The observer was told to not to worry about it. Mr. Lefferson told the observer that "X" was constantly making complaints and dismissed his illness as insignificant. This was something that was not for Mr. Lefferson to discuss and it was completely untrue.

"X's" illness, his report of the crude oil on the fishing gear, and my own research on the possible health hazards of the spill caused me concern for the safety of my coworkers and myself, if we were deployed into the oil spill. I expressed my concerns to Mr. Beerkircher and Mr. Lefferson but didn't receive any response. On Saturday morning, May 22, 2010, the captain called me to say he wanted to leave that day. I called the POP hotline and Mr.

Beerkircher's work mobile phone and left messages to ask for direction. I also called Mr. Lefferson and then the IAP emergency contact for that day. I also called Mr. Bergman. Later, when Mr. Beerkircher returned my call, he casually said he had spoken with someone he knew and that he was told that any oil I might encounter would have been on the surface for a couple of days and no longer toxic in any way. This sounded very unofficial to me and was contrary to my own research.

Later I spoke again with Mr. Lefferson and his solution was to deploy us with "garden dust masks and latex gloves". This didn't sound like a safe solution. I knew from my research that crude oil can deteriorate the protective barriers of latex and that multiple avenues of exposure are possible and that the effects can be lingering. I also called OSHA and was told that as a result of the oil spill the absolute bare minimum for anyone to be working in the Gulf of Mexico at that time was the 8-hour HAZMAT certification. "X" and I asked for the office staff and Mr. Bergman to tell the vessels they could not fish in the closed areas and be part of the weak hook study. Mr. Beerkircher told us that it was NMFS policy to not tell vessels when or where to fish. However, Mr. Bergman had been pressuring the vessels to go fishing for the project. Not only was NMFS exposing Fisheries Observers to potentially hazardous materials, but they were pressuring the fishermen to become exposed, as well.

We also asked for the vessels to be told to bring us to shore or leave the area they were fishing if we felt we were getting sick from exposure to crude oil or its fumes. Mr. Beerkircher said he would not comply with our request and told us that we could call the Coast Guard to rescue us if we thought it necessary. Later we also asked for personal air quality monitors and were denied. Despite the safety concerns I expressed and information I collected, including the conversation I had with OSHA, I was still asked to make the trip and was told I would have to formally refuse the trip, which included writing a letter<sup>4</sup> stating why, if I chose not to be deployed. I, of course, refused the trip, as did every other observer they offered it to. However, I felt very pressured by both Mr. Lefferson and Mr. Beerkircher to make this trip, even when I had pointed out legitimate safety concerns and been told by OSHA that I did not have the minimum training to legally be deployed. Later, when NMFS had taken time to look at the facts and possible hazards of the situation, it was decided that any NMFS employee or contractor in the Gulf must receive at a minimum the 24-hour HAZMAT certification. This confirmed to me that I had made the right decision. However, I never heard one word from NMFS or IAP to acknowledge I had made a good decision or might have been correct. A year later, in an e-mail dated April 1, 2011, Mr. Lefferson chastised me for having refused this trip<sup>5</sup>.

## **11. NMFS "blackballs" Fisheries Observers who ask questions:**

Even with all this information I was still asked to take the trip and felt very pressured to comply. I believe that my refusal of this trip hurt my status with the POP. Refusing the trips of an important research project was a very tough decision for each of us. We all felt that our refusal to accept the trips put our future work status in jeopardy. Myself and other (more than ten that I have spoken with) observers have expressed to each other the fear that if you do not accept the trips or even if you question any protocols, you can easily be "blackballed" (not be invited back for projects or be offered future trips, if you happen to work with them full time). The threat of not getting work or getting unpleasant assignments and NMFS actions such as my recent termination prevents others from speaking up when issues arise.

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<sup>4</sup> Statement of refusal to board a vessel due to the BP oil spill

<sup>5</sup> E-mail (attached), 01 Apr 11, Chad Lefferson to Jon Combs

**12. NMFS lacked standards for Fisheries Observers participating in the Bluefin Tuna Special Study research project:** My first, last, and only full training, not including safety training, was completed in 2006 at the Panama City Lab with the POP when I was hired to work on the BFT special study. Each year, NMFS briefs Observers by phone in the POP program. In two of the three years they had a meeting in Miami for this but I could not attend, as I was deployed. I was never asked to Miami for a separate briefing. The only time I have been to Miami since working for the program was in 2008 when they brought the entire BFT group down to tell us to not go camping during the BFT special study. Our original training was a bit of a joke as Mr. Beerkircher appeared desperate for Fisheries Observers to cover trips, as they had been recently required to cover 100% of the trips. When asked if the species ID portion of the test was difficult and if it was possible to fail that portion or any other part of the class, he laughed and said no. He made a comment to the effect that if you were physically able to get on a boat then you would be deployed. I cannot comment on other training classes as I have only attended that one.

**13. NMFS manipulated observer coverage to accommodate a TV reality show filming.** I was deployed on a vessel for a Grand Banks trip in 2008 even though I was told it had not been selected. Larry Beerkircher told me that a sister ship had actually been selected. However, since that vessel was going to carry a camera crew for a TV reality show a deal was made between POP and the vessel's owner to put an observer on a different vessel that he owned. I am unsure whether or not this is legal. I do know that the captain of the vessel I was deployed on was not involved in this decision and that he does not like to take observers, especially when his vessel was not selected. Thus my job was made more difficult by a deal made by POP bending the rules for fishermen.

**14. Fisheries Observers in the POP have no appeal process, nor any avenue to express their concerns:** In general I felt that the POP managers bullied Fisheries Observers into making unsafe and uncomfortable decisions about deployments. I asked very simple questions in my e-mail of July 20, 2011 in a non-threatening manner. Instead of working with me or providing answers, I was simply fired.