

Appendix 8: Interview Questions for Mr. Combs

- 1) Can you please provide an example of when you were asked to deploy on board a vessel that had not passed the pre-deployment safety checklist.

Answer: Mr. Combs cited several examples that were provided in his written statement.

- 2) In the two instances where you describe an expired hydrostatic release sticker - did you have a valise life raft?

Answer: No, only on one vessel [vessel name provided]. On second trip Mr. Combs did not deploy [vessel name provided].

- 3) Did the valise life raft have sufficient capacity for you and the crew? If not, did you inform the POP staff and/or document this in any way? In other words, how many crew were there and what was the capacity of the liferaft?

Answer: No, the liferaft did not have sufficient capacity. Mr. Combs had to drive out of his way to get a valise liferaft in order to go on the vessel because the vessel's liferaft had insufficient capacity. This was before he discovered the expired hydrostatic release date. Mr. Combs provided several examples.

- 4) In the instance where you describe an expired EPIRB sticker - did you deploy? If so, were you able to determine the expiration date of the EPIRB prior to deployment?

Answer: An expired hydrostatic release date is a No-Go item (observers cannot deploy). An unscratched sticker is a gray area which was never fully addressed. The SEFSC observer program managers told the fishermen to scratch in the date.

- 5) Please provide a specific instance(s) in which you were not provided a bunk space when the crew had such accommodations - i.e. date, vessel name, trip ID etc.

Answer: Mr. Combs provided several specific vessel names.

- 6) In the case you cited where you were forced to sleep on the galley table, was the galley table designed to serve as a spare bunk space? Were there cushions that could be placed on it to make it into a bed?

Answer: To some degree although it was much too small for him.

- 7) Did you inform the observer program staff that there was no bunk space available before deployment?

Answer: The programs did not make it clear that you could refuse a trip due to lack of bunk space. This requirement should be put on the vessel not the observer. There is no transparency on how observers are assigned to vessels.

notes if they wished. No observer's field notes were ever altered to remove mention of trash being thrown overboard, nor were any observers ever instructed that they should discontinue noting this practice in their field notes.

Specifically, in response to the allegation that other observers had reported witnessing finning, a data query of the POP database indicates that since 2007 (the year Mr. Combs started with the program) 18 different observers documented 30 individual cases (i.e., 30 individual animals) of sharks being finned, according to the definition of finning as returning a shark carcass to the water and retaining one or more fins from that individual. Since the total number of sharks observed during this same time period was 39,079 individuals, the percent of sharks observed finned was 0.08%. A number of POP observers reported MARPOL violations during debriefing or in their field notes; however this information is not digitized. We would have to go through hundreds of notes to obtain this number. The POP will yield the point that it is factual that more than two observers reported MARPOL violations.

According to the letter "Mr. Combs also witnessed crewmembers shooting seabirds two days in a row. When Observers reported these violations during their debriefing, Mr. Beerkircher told them, again, that writing the details in their field diary was sufficient but that the violations would not be pursued unless someone requested the information."

Response: Mr. Combs was deployed on a trip that he reported seagulls being shot, although the language of the PEER complaint makes it appear that Mr. Combs was forced to report the violation verbally during debriefing. In fact, the circumstances surrounding the violation were noted in Mr. Combs' field diary when the POP received the data, exactly as he had been instructed to do during training. The seabird shooting was also further noted and written in independently on the debriefing form by POP debriefing staff. No specific action to alert OLE was taken by the POP, according to the standard procedure detailed previously.

According to the letter "When Mr. Combs reported shark-fining on a vessel that was contracted by NMFS for a bycatch mitigation study on hook design, Mr. Beerkircher "chuckled at the fact that the boat did it while [the observer] was on board and while they were working under a government contract."

Response: Mr. Combs' data did indicate that two sharks, dead upon gear retrieval, had their fins removed and kept by the crew subsequent to discarding the carcasses. POP animal log data forms have a numeric code associated with finning; the observer documented this occurrence in his data as instructed. NMFS OLE was not notified as per procedure described previously. Mr. Combs' portrayal of his debriefing with Mr. Beerkircher is misleading. The context of the conversation was about how some practices are so embedded in certain cultures (in this case, retaining fins by ethnic Vietnamese crewmen, for personal consumption) that a fisherman would not consider it in violation to take the fins, even while an observer was on board.

2. Subjecting Fisheries Observers to Unsafe Conditions.

According to the letter "However, Mr. Combs' reports that NMFS POP staff and his contractor [employer], Mr. Chad Lefferson, IAP Services, Inc., pressured him to take assignments that had indicated a "no-go" status. In two instances he found expired stickers

for hydrostatic releases and one expired sticker for an Emergency Position-Indicating Radio Beacon (EPIRB). The POP program manager, Mr. Kenneth Keene, pressured him to take the assignment regardless.”

Response: This is untrue. The SEFSC abides by its own policies and procedures to ensure observer safety and does not pressure observers to work on a vessel determined to be unsafe. The SEFSC safety check-off list is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain to remedy deficiencies). If in doubt, the program staff contacts USCG for clarification and guidance. While rare that the USCG Examiner does not detect it during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. According to Mr. Combs’ historical vessel safety checklists, he has documented 1 expired life raft hydrostatic release, multiple unmarked EPIRB hydrostatic releases, and a few expired EPIRB registrations. The expired life raft hydro in question was a judgment call made by POP staff. The judgment call was made based on the fact that Mr. Combs was carrying our valise raft with him. Expired EPIRB NOAA registrations are not a “no go” issue for the POP. In any case, if Mr. Combs was concerned with these matters, he could have indicated his discomfort with the scenario, and like any observer he would have the ability to refuse the trip without repercussion.

According to the letter “Instead of the program coordinators contacting the vessels to enforce observer safety laws, other observers have reported that they were instructed by NMFS POP staff to either fix the problem themselves or talk the captain into fixing the problem. For example, Mr. Combs disclosed that some vessels’ hydrostatic releases did not have any expiration date at all. A properly maintained hydrostatic release to a vessel’s life raft could mean a matter of life or death in a vessel sinking and its proper maintenance shouldn’t be dismissed. This is why it is considered by all US Observer Programs to trigger a “no-go” if it doesn’t follow the Coast Guard’s protocol. In those instances, he was instructed by POP staff to “tell the captain to scratch in a date” – in other words: to lie.”

Response: This is untrue. SEFSC staff does not pressure observers to go on unsafe vessels. The safety check-off listed is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain/owner to remedy the deficiencies). If in doubt, we contact USCG for clarification and guidance. While rare that it is not detected by the MSO during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. As observers are carrying out a vessel’s safety check with a representative of the vessel, they are trained to notify that person of any deficiencies. This courtesy invites a way to alleviate the deficiency before the vessel departs. However, the SEFSC staff will become involved if for any reason the observer has a problem relaying the proper information, or requests the office to explain to a vessel captain/owner why it is not in compliance. Regarding “fix the problems themselves,” this is false. Observers are trained to not touch the equipment during a vessel safety check. Observers are trained to ask a representative of the vessel to handle any and all safety equipment during the vessel safety check. Most hydrostatic releases are sold by retail stores, and come unmarked. When the POP coordinator approached multiple USCG Examiners about the circumstances when they find releases unmarked, they state that they try to rebuild the time frame of when it was bought and/ or installed (month), which is the expiration (2 years from that month and year), then have the installer mark it.

According to the letter “During the Gulf of Mexico BP oil spill in 2010, observers felt pressured to take assignments right in the middle of the oil spill, exposing them to hazardous levels of toxic fumes and liquids. These assignments were made by NMFS POP staff even after one observer had reported becoming ill because of his exposure to the spill. IAP Services initially denied this Observer access to medical attention for an entire week upon his return. POP and IAP staff pressured other Observers into taking assignments in the same area as the spill, dismissing the Observer’s illness and giving them false safety information to marginalize the actual risks.”

Response: No SEFSC observer was ever pressured to take an assignment in the middle of the oil spill. However, PEER may be speaking in temporal terms rather than spatial terms in this context. Certainly, observers were assigned to vessels that would be fishing in the Gulf of Mexico during the time period that oil was flowing from the Deepwater Horizon site. However, all vessels actively engaged in commercial fishing were kept clear of the immediate spill site by a closed fishing area that was continuously enlarged by NMFS based on projected surface oil trajectories. The observers’ concerns, particularly highlighted by a single observer’s alleged respiratory condition on his return from a trip on 5/20/2010, led to a request by the POP addressed to the SEFSC Environmental, Safety & Health Compliance Officer regarding proper Personal Protection Equipment (PPE) and training. Subsequent refusals of a trip by multiple observers on 5/22 lead to the Observer Program contacting senior SEFSC leadership. The guidance provided back to the POP was that the supplied PPE and training was considered appropriate for the level of exposure, but that the SEFSC should continue to support the policy that the observers had the ability to refuse trips if they felt uncomfortable. Finally, guidance from the NMFS HQ Environmental Safety officer received on 6/1/2010, concluded that the 4 hour HAZWOPER course that all observers had been put through was considered adequate for observers deployed into the Gulf if there was no intention of conducting fishing operations within the closed area, and that the only protective gear needed were chemical safety goggles, nitrile gloves, and rubber boots, all items the observers were in fact equipped with. The safety information that was provided by the POP came directly from NMFS safety and environmental officers, upon direct and frequent inquiries by POP staff. Presumably the PEER/APO complaint is relying on Mr. Combs’ statement that he later learned that NMFS had required 24 hour HAZWOPER training for employees and contractors deployed into the Gulf, rather than the 4 hour training IAP had put them through. However, this is incorrect. In reality, both HQ and SEFSC environmental safety staff determined that the NMFS Deputy Assistant Administrator’s directive requiring 24 hour training did NOT apply to fisheries observers deployed on vessels that would be fishing outside the closed areas⁴.

According to the letter “Because of the other observers’ health reaction to the exposure, these observers requested that POP staff require that vessels must take the Observers back to port if they begin to feel ill. Mr. Beerkircher refused, saying that NMFS “can’t tell fishermen where and when to fish”, which is completely untrue. Instead, he instructed Observers that their only option would be to call the Coast Guard to rescue them if they felt that was necessary.”

Response: This statement is incorrect. A certain number of observers, including Mr. Combs, required a guarantee that the vessels they were assigned to would fish well away from outer boundaries of the closed area during their trips. The vessels in question were fishing under contract to NMFS to conduct weak hook research. Under the contract, the vessel captains had the choice to fish in any location currently declared open to commercial fishing by NMFS. During DWH, large areas were closed to fishing and no contracted vessels from this study fished inside these closed areas. In matters

of medical emergency, the POP believes that only the USCG has the authority to terminate a vessel's voyage. In cases of extreme seasickness the POP has in fact asked USCG to take action; this usually results in a flyover by USCG aircraft, who radio the vessel, evaluate the observer's condition, and either suggest a heli-vac if the case is extreme enough, or instruct the vessel to make for the nearest port, but these actions are at the USCG's discretion. The situation described in the PEER/APO complaint would be no different; any observer who became ill and felt their continued presence on board the vessel would jeopardize their health could either contact the POP or the USCG directly via satellite phone or EPIRB if the sat phone was not functioning.

According to the letter "When observers still refused to take the assignments, IAP Services and NMFS increased the pressure, requiring them to sign a legal document describing their reason for refusing the assignments."

⁴See attachment 2, email to Dr. Theo Brainerd, Deputy Director SEFSC

Response: According to material on POP safety policies provided to all observers "It is also the POP's policy to allow observers to refuse to board a vessel for documented health and safety concerns, even if the vessel has a current USCG decal and passes the POP pre-trip safety checklist. However, in these cases the POP will require a written statement by the observer documenting the concerns." The statements referenced by the PEER complaint were not subject to any format requirements, other than that we asked observers to be as detailed as possible as to why they were refusing the trips. As to if these statements constitute "legal documents", we would defer to the opinion of General Council; of the four refusal documentations for trips due to DWH-related health concerns, most arrived via email, and did not have a signature.

It is important to note here that when the observers refused these trips, they were working on a project that provided 8 hours a day, 7 days a week pay (the 16 hours on the weekends were paid at an overtime rate), single occupancy hotel room, daily meal and incidental reimbursement, and access to a rental car for the duration of the project when not deployed on a vessel. The refusals happened on or about 5/22/2010 and the project was scheduled to last at least until 6/11/2010. On 5/24/2010, the POP coordinator was told the following by the NMFS COTR on the IAP contract: "if an observer does not believe it is safe to work around the oily water, there is no contractual reason to retain that individual. It is costly to keep an observer on standby in Houma and the oil situation is not likely to change before the expected end date of your BFT program. This is not a punishment for reporting what the observer feels is a safety issue, it is just prudent spending to only retain those individuals who can support your program and provide the data that is so badly needed."⁵ However, the POP decided to keep all observers on standby as described above, through the regularly scheduled end of the project, including the four who had refused the trips. If the POP wished to "pressure" observers into taking trips, there would have been no better method than to dismiss one or all of those who had refused trips, as suggested by the COTR. That the POP continued to retain these individuals on expensive standby for the remote possibility that the oil situation would resolve quickly and the bulk of the fleet would begin to fish again, does not seem to support the PEER/APO complaint of "pressure". Finally, of the four observers who refused trips in May 2010, only one was a current "full time" POP observer (Mr. Combs). Mr. Combs remained with the POP for another year, making 10 more trips including two on "distant water" vessels; of the other three observers, one left the POP for graduate school (although offered a full time slot as a POP observer), another was hired by IAP for

DWH work where she remains to this day, and the final was re-hired by the POP for next year's GOMEC project. This is strong evidence that the POP and IAP did not harbor any vindictive feelings towards observers who had refused trips; the picture painted of the POP and IAP by PEER/APO/Combs is simply not substantiated by these facts.

According to the letter “Mr. Combs states that POP staff knows of specific vessels that engage in heavy drug use, yet they show little concern for the observers’ safety on those vessels. He reported POP staff joking about it when observers are assigned to those vessels and also joking about “punishment trips” – vessels with known hardships safety problems and disregard for fisheries laws that were assigned to some observers as “punishment”.

Response: In the fishery monitored by the POP, captains and crews change, in some cases rather frequently, from vessel to vessel. Further, substance abuse by any individual aboard these vessels is not a predictable behavior. However, during pre-trip briefings the logistics/ deployment coordinator will read the recent debriefing notes for that vessel’s conditions if the observer being assigned to the vessel is not familiar with it. At this point the observer has the option to decline even traveling to the vessel. If the observer arrives at a vessel and finds that the captain and crew are either engaged in substance abuse or the observer recognizes crew that he/she has known in the past to engage in substance abuse, the observer can still decline the trip. If during the trip, an observer fears for his/her physical safety for any reason (including heavy drug use) POP observers are issued a satellite phone and instructed to call the office to request an extraction, or if the office cannot be reached, calling the USCG directly. If the satellite phone does not function, as a last resort observers are provided a personal EPIRB and told to activate it. The actual decision to evacuate the observer, terminate the vessel’s voyage, or do nothing, is ultimately up to the USCG.

“PUNISHMENT TRIPS”:

The POP deploys observers in the regular fishery according to a general rotational model; as vessels notify POP staff about an upcoming departure, observers at the top of the list are deployed, and the observers at the bottom of the list move up. Observers who return from trips are placed at the bottom of the list. However, since POP observers may live anywhere on the US Gulf or East Coasts, and vessels may depart to anywhere on those coasts and also to more remote locations like Canada, Puerto Rico, and Trinidad, the POP will deviate from the rotation if it is in the interest of wise use of funding. For example, if a vessel is leaving from NC and the second in line observer lives in NC, that observer may be deployed instead of the first in line who lives in the FL Panhandle, particularly if latest vessel intelligence indicates that a vessel may depart from the panhandle in the near future. For the 100% coverage projects in the Gulf of Mexico, a different system was used. Observers were assigned to vessels for the duration of the project based on the experience of the observer and the likelihood that the vessel would fish frequently during the project. The goal was to get as much accurate data as possible by attempting to insure that observers with the greatest amount of experience monitored the majority of fishing effort.

⁵ See attachment 3, email from Gayla Fornea.

The POP staff does employ humor as a device during training sessions. However, no punishment trips as referred to by PEER/APO or in the statement by Mr. Combs ever occurred. The POP invites the NOP to interview or survey all observers ever deployed on the specific two vessels mentioned by Mr. Combs in his statement; we are confident that other than possibly Mr. Combs himself, no observer will report that they believe they were assigned to these vessels as a punishment for

something. Perhaps even more importantly, a review of the fate of observers who actually did refuse trips on these particular vessels will show that these observers were subsequently deployed on other vessels that met their standards. One would assume that if they had been deployed to a “poor” vessel as a punishment, and then refused that trip, that further punishment would not include being deployed subsequently on a “nicer” vessel, which is what a review of the facts will show.

According to the letter “Mr. Combs was told during a “safety refresher” course (safety training recertification every three years) regarding what to do if he should witness drug use on a vessel. He was told by Mike Harrelson of the NMFS Galveston lab to “request the captain and crew to go out on deck to do it and to not do such things during wheel watches”.

Response: What was presented in training, as in all trainings, is that if the observer suspects possible drug/or abusive alcohol use, they inform the captain/crew that they do not want to see it; and if it in anyway effects observer’s safety it will be reported immediately to the observer coordinator. This is emphasized in the pre-boarding interview as well.

3. Tolerance for Improper Accommodations for Observers

According to the letter “Mr. Combs reported that the rule regarding the equal accommodations for fisheries observers which states that the owner/operator of a vessel must “provide accommodations and food that are equivalent to those provided to the crew” is regularly violated. Observers are sometimes forced to sleep at the galley table or on the floor, while crewmembers all have bunks. This means the observer would lack any personal space and be forced to attempt to sleep where crew members were watching movies, smoking cigarettes and stepping over the observer. In another instance, he met resistance from crewmembers when he requested that they move equipment out of a bunk that was only being used as storage. Observers believe that these violations are region-wide.”

Response: We require that the vessels provide a safe place to sleep. Due to the small nature of many commercial fishing vessels in the southeast US, bunk space may not always be available. Observers are allowed to refuse a trip, without reprisal, if no bunk space is available. Specific to the POP, staff verifies the availability of a bunk before contacting the observer. If the vessel does not have bunk space, the observer is notified and has the option of declining the trip. If an observer declines a trip for this reason and the vessel departs without an observer, that vessel may be submitted to enforcement. The POP has submitted vessels to OLE for enforcement actions when they have not provided adequate accommodations for an observer. Thus, the decision to make a trip on a vessel where a dedicated bunk will not be available is the choice of the observer.

According to the letter “Mr. Combs believes that NMFS has never informed the vessels of this regulation or suggested to the vessels that they are required to comply. Observers in at least two Southeast programs report that vessels are allowed by NMFS to refuse female observers, which is against federal law, and that NMFS just sends a male observer to accommodate them.”

Response: For all SEFSC observer programs, vessels are notified of the requirement to carry a female observer and the accommodation regulations upon receipt of selection letter or during initial contact with program staff. The POP believes that a review of the deployment data would show that

in the POP, and the SEFSC programs in general, female observers got at least as much work, if not more, than their male counterparts, when the comparison is controlled for similarly qualified observers. Finally, the SEFSC has pursued compliance cases against vessels that refused to take female observers.

Other concerns raised in the Statement by Jonathan Combs

This section focuses only on those items not already covered above under the complaint filed with the OIG.

1. Fired without cause; NMFS ignored its own performance evaluation protocols

According to Mr. Comb's statement "They [NMFS] 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 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 "3strikes, you're out" policy, where observers "might get a verbal, written warning and if it is something more serious, 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.

Response: Project managers either verbally or by email notify IAP with any concerns on an as needed basis. Moreover, in 2011, SEFSC observer programs implemented an observer evaluation system based on quantitative spreadsheets/records/documentation from written and verbal debriefs, sampling percentage, quarterly tests grades, and events both excellent and below average. These evaluations are provided to IAP on a quarterly basis to enable them to better assess their employees. For the POP, the performance evaluation Mr. Combs speaks of is by request from IAP and was neither designed by nor requested by NMFS. Due to the process of discussing how the evaluation system would work, the POP had not implemented this performance evaluation system prior to 11/7/2011; therefore, Mr. Combs is inaccurate in his view that the specific protocols he cites were ignored. In fact they were not in place, whatever information IAP told him. Prior to the IAP system, POP observers were evaluated by debriefers on a subjective basis, and feedback was provided during debriefings and routine operational phone conversations with POP staff. Once again, the lack of an objective evaluation system by the POP should not be compared with other, larger, North American observer programs. The POP has a single debriefer and only about 10 observers normally on staff. Further, observers have frequent conversations with the POP coordinator and the other two POP staff members. Therefore, the POP coordinator and debriefer have the ability to subjectively evaluate any POP observer relative to the whole POP observer group that would be impossible in a larger program.

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

According to Mr. Comb's statement "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.”

Response: The expired life raft hydro and capacity in question was a judgment call made by POP staff. The judgment was made based on the fact that Mr. Combs was carrying the program’s valise raft with him, as well as an USCG Authorization letter to use a program-supplied valise⁶.

According to Mr. Comb’s statement “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.”

Response: This is false. The SEFSC does not pressure anyone to go on an unsafe vessel. The SEFSC safety check-off list is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain to remedy the deficiencies). If in doubt, we contact USCG for clarification and guidance. While rare that the USCG does not detect it during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. Since the observer is completing the safety check with a representative of the vessel, the onus is in fact on the observer to convey deficiencies to the vessel rep. By explaining the deficiency at the time of inspection, the vessel’s crew has time to repair any safety issue. In this particular case, hydrostatic releases can be purchased at retail stores.

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

According to Mr. Comb’s statement “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 F/V Watersport, 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.”

⁶ See attachment 4, USCG Memorandum 16711

Response: Mr. Combs is incorrect, the reef, shark and shrimp programs require 48 hours notification and the POP selection letter actually states the requirement for notification is for 5 business days; this is stated in the selection letter but is not in the regulations. For all SEFSC observer programs, if a vessel gives less than required notification, and no observer can make it to the vessel in that time frame, and the vessel departs without an observer, that vessel will be reported to enforcement. However, if an observer can make a vessel’s desired departure date and time, the POP sees no reason to make a vessel wait the entire notification period before they depart. In the case of many, small, weather dependent vessels, such as the one referred to in this allegation, a 5-business day notification is practically impossible for any specific departure date. The only way these vessels could comply with the stipulation in the

selection letter, is to tell NMFS that sometime in the next 5-15 days, they hope to go fishing if the weather, fishing catch reports, and market price are favorable. In that case, the POP would have to deploy an observer to that port, and pay the observer's wages, per diem and hotel costs for up to 10 days of standby, for what would normally turn out to be a 2-3 day fishing trip. While this would be an attractive deployment for an observer, it is not in the best interest of using taxpayer funds to monitor the fishery. The POP should continue to be good stewards of public funds even if it occasionally inconveniences observers. Mr. Combs, like all observers, had the option of declining the trip he cites; he mentions "pressure", but we do not see the evidence. POP observers frequently do decline trips that come up with very short notification, there are no negative repercussions associated with such refusals.

4. NMFS ignored its own Fisheries Observer accommodations regulations.

Response: Already discussed in the letter to OIG.

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

According to Mr. Comb's statement "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 18th 2010, on the F/V Whitewater II in 2010 (trip ID T03 021). Although my 2006 Safety Training certification expired, Ms. Cushner stated that I could just attend the next available training."

Response: While the observer is correct that the policy of the POP is to have an observer go through a safety refresher training every three years, the policy does not describe what would happen if an observer was beyond the three years. Mr. Combs' assumption that someone who was one day, or one month, etc. out of date with safety would not be allowed to deploy on further trips is not supported by any written policy document from the POP. The POP follows a policy of attempting to have observers go through a safety refresher training every three years, but the logistical dictates of scheduling safety trainings occasionally result in having observers take training long before the three years is up or a month or so after. In this fishery, one trip might make the difference between achieving target coverage or not; achieving coverage is a legal mandate but safety refresher training is not. While the POP has attempted to follow best practices (such as safety training every three years) and in fact has a good track record of doing so, when hard legal responsibilities conflict with those best practices the POP's obligation is clear.

6. POP managers joke about punishing observers with unsafe assignments.

Response: Addressed in the letter to OIG.

7. NMFS instructs Fisheries Observers to ignore violations.

Response: Addressed in the letter to OIG.

8. NMFS lacks permits and protocols for collection of protected species samples.

Response: For SEFSC programs, there are protocols and an extensive list of both state and federal

permits established for protected species. In the reef fish program the observer notify the observer coordinators via satellite phones within 24 hours of capture due to GMFMC recommendations. Data forms are completed, with specimens tagged, biopsied, and photographed whenever possible. The POP has to apply for permits for the collection of samples of various species. NMFS, and more specifically SEFSC and the POP do not apply for all permits for all species. Permits are acquired based on the probability of interacting with a species. For example, the POP carried a sawfish take permit for some time, until it became apparent that the chance of interacting with these animals on a longline vessel is improbable. The protocols for collecting and transporting specimens and samples are given orally during training, and are spelled out in the permits that each observer is required to carry on all deployments. In response to Mr. Combs' specific complaint that he was asked to collect samples for which he did not have a permit, there was in fact some initial confusion as to if a permit was needed to collect gut contents from species for which a sampling permit already existed. That confusion was resolved; no extra permit was necessary, therefore Mr. Combs was not asked to do something unlawful.

9. NMFS instructs Fisheries Observer to avoid declaring protected species sample with US Customs.

According to Mr. Comb's statement "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."

Response: The observer was instructed to retain his biological samples while returning from Canada rather than shipping them via FedEx. The observer had been provided with a CITIES permit that allowed for retention, transportation, and importation of samples from endangered species, and was expected to follow the lawful instructions provided by officials to travelers.

10. NMFS and Observer Provider contractor, IAP Services, Inc. ignores dangers of BP Oil spill to Fisheries Observers.

Response: Already addressed in the letter to OIG.

11. NMFS "blackballs" Fisheries Observers who ask questions.

According to Mr. Comb's statement "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."

Response: Observers who refuse trips are placed back in the rotation, at the spot they were already at, and offered the next available trip. There are no procedures for observers that question protocols; these things are dealt with via email exchange, phone conversations, or in person, with POP staff as the situation dictates; however, the POP denies asking the contractor to fire or giving unpleasant assignments to observers who raise concerns. Factual data and examples on who was blackballed, and why, is absent from this allegation (other than Mr. Combs' belief that he himself was blackballed). We advance the exemplary retention rate of observers in the POP program (current

average length of service with the POP: 6.2 years), combined with the fact that every year observers express their desire to return to the Bluefin project, serves as evidence that the majority of observers who get employed by the POP find the experience rewarding. Also see the response to the DWH concerns previous; as detailed the four observers who both refused trips and questioned NMFS' safety policies during this time period were not "blackballed" in any way.

12. NMFS lacked standards for Fisheries Observers participating in the Bluefin Tuna Special Study research project.

Response: These observers receive the same standard two week POP course that regular observers do, which includes safety, data forms protocols, ID, protected species data collection, etc. In fact, due to the large logistical demands of training on short notice, the POP brought in certified AMSEA trainers from other regions (John LaFargue from the NWFSC and Eric Matzen from the NEFSC) to conduct the safety training during the training session Mr. Combs refers to. Neither was given instructions to pass everyone regardless of performance, and neither expressed concerns at the end of training that one or more of the observers they had trained were not capable of being safely deployed as an observer. It should be noted that Mr. LaFargue in particular has an outstanding reputation as an observer safety trainer and advocate of rigorous safety training; to dismiss this training as "a bit of a joke" as Mr. Combs did in his complaint is perplexing.

13. NMFS manipulated observer coverage to accommodate a TV reality show filming
According to Mr. Comb's statement "I was deployed on the F/V Eagle Eye for a Grand Banks trip in 2008 even though I was told it had not been selected. Larry Beerkircher told me that the F/V Eagle Eye II had actually been selected. However, the F/V Eagle Eye II was going to carry a camera crew for a TV reality show, so 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 Eagle Eye 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."

Response: The POP standard procedure is to allow substitutions of vessels that have the same owner, if the substitute vessel fishes the same amount of gear, and will be fishing in the same statistical area and selection quarter as the vessel originally selected. This is what happened in this case. Vessel selection procedures and subsequent substitutions are not prescribed by regulation; they are left up to the discretion of the program. Moreover, the POP has occasionally substituted vessels in order to facilitate NMFS research. This was also the case in the situation described by Mr. Combs, the vessel was taking along a NMFS scientist from the NEFSC to tag sharks; had the POP insisted the vessel take the observer, the film crew still would have gone, it would have been the NMFS researcher who would not have been deployed for that trip. The POP strives to have some flexibility to facilitate both observer coverage and vessel operations. This is evident in previous sections of Mr. Combs' complaint where he suggested displacing a crewmember from a bunk, or suggests a captain delay a departure date in order to accommodate observers. This flexibility usually results in a better on board working relationship between the vessel personnel and the observers.

14. Fisheries Observers in the POP have no appeal process, nor any avenue to express their concerns.

According to Mr. Comb's statement "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.

Response: We have an open door policy; observers have personal phone numbers and email contact for the entire chain of command, as well as USCG, OLE, and others. As stated earlier in this response, his employer, IAP World Services, did not fire Mr. Combs as a result of his email of July 20th, 2011. In fact he was no longer deployed by the POP due to difficulties in getting in touch with him in a timely manner, which hampered effective logistical operations. Finally, when the decision to no longer use Mr. Combs was reached, POP staff were instructed by the NMFS COTR and IAP Project Manager to not have discussions with Mr. Combs regarding this matter. It is possible that this contractually mandated restriction created the ill feeling that led to Mr. Combs' subsequent actions. To our knowledge IAP did not fire Mr. Combs until he released a public statement without consulting his employer.