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TUNA/PORPOISE OBSERVER PROGRAM

More Needs to Be Done to Identify and Report Harassment of Observers



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General Accounting Office
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Resources, Community, and
Economic Development Division

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The Honorable Ernest F. Hollings
Chairman, Committee on Commerce,
Science, and Transportation
United States Senate

The Honorable John F. Kerry
Vice Chairman, National Ocean
Policy Study
United States Senate

The Honorable Bob Packwood
The Honorable Pete Wilson
The Honorable John B. Breaux
United States Senate

In response to your request and subsequent discussions with your offices, we evaluated certain aspects of the National Oceanic and Atmospheric Administration's (NOAA) management and operation of its tuna/porpoise observer program. This program, administered by NOAA's National Marine Fisheries Service, Department of Commerce, places observers aboard U.S. tuna boats to monitor the number of porpoise killed by U.S. tuna fishing operations and compliance with regulations promulgated under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.). In 1981 the Fisheries Service set a limit of 20,500 porpoise kills before U.S. fishermen are prohibited from setting nets around porpoise. The estimated number of porpoise killed annually by the U.S. tuna fleet has averaged about 18,000 for the period from 1981 through 1988. In 1989 the total porpoise mortality due to U.S. tuna boat fishing operations was 12,643.

Specifically, we evaluated the (1) extent to which shipboard harassment of observers is occurring and whether it adversely influences the observers' reporting of porpoise kills, (2) adequacy of the procedures and training to help identify harassment, and (3) adequacy of internal controls for ensuring accurate reporting of porpoise kills and violations of the act.

Results in Brief

Harassment is defined by the Fisheries Service as conduct which has the purpose or effect of unreasonably interfering with the observers' work performance, or which creates an intimidating, hostile, or offensive

environment. We estimate that observers experienced some form of harassment, such as being denied access to radio communications, on about 18 percent of the 191 cruises listed in the Fisheries Service's data base between 1985 and June 1989. Often the ship's officers were the source of the harassment. However, we did not find evidence that the harassed observers were influenced to underreport the number of porpoise killed. Cases of harassment are not always reported because they are thought to be minor, not part of a recognizable pattern, or because observers are uncertain about the definition of harassment. In April 1990 three companies, which account for 75 percent of the U.S. tuna market, announced that they would no longer buy tuna caught with methods that would harm porpoise. This development may increase the extent of observer harassment in the future, because of the impact of a negative observer report.

The Fisheries Service's training program includes advice designed to help observers identify harassment and record it in their logbooks.¹ However, most observers we interviewed told us that the areas of training covering harassment were only moderately effective, while most observers stated that all other categories of training were very effective. Certain procedures in the tuna/porpoise observer program, dealing with the methods by which observers communicate and document harassment and the Fisheries Service debriefs observers after returning from a cruise, are inadequate.

The Fisheries Service internal controls for collecting and reporting data on porpoise kills and violations, although recently significantly strengthened, remain inadequate because the Fisheries Service still does not receive kill data, by vessel, on a timely basis to identify and correct erroneous counting procedures.

Background

In the eastern tropical Pacific, schools of yellowfin tuna often swim below schools of porpoise. Commercial tuna fishermen use the porpoise to find the tuna, which they catch in large nets called purse seines. Porpoise sometimes become entangled in the nets and, if unable to surface, die.

Because of widespread publicity in the 1960s about the high numbers of porpoise being killed by such fishing methods, the Congress passed the

¹The logbook, often called a greenbook, is used by observers to record information during the fishing trip.

Marine Mammal Protection Act to reduce the incidental kill or incidental serious injury of marine mammals.² In 1976 the Fisheries Service initially established upper limits on the number of porpoise that may be killed annually—20,500 since 1981—during commercial fishing operations. The Fisheries Service requires that observers be on board U.S. tuna boats to collect data on porpoise kills. While at sea, the observers report information to the Fisheries Service on the numbers of porpoise killed, using ship radios.

Foreign countries, as well as the United States, do a significant amount of tuna fishing in the eastern Pacific Ocean. Some of these countries belong to the Inter-American Tropical Tuna Commission. Since 1979 the Commission has been responsible for estimating incidental porpoise mortality; reporting relative abundance of stocks; and identifying, developing, testing, and promoting technologies and information to reduce porpoise mortalities. In 1979 the Commission initiated a voluntary observer program to gather data in this regard. According to the Director of Investigations for the Commission, these observers are citizens of the country where the observed vessel is flagged. The Fisheries Service agreed to designate about one-half of the U.S. tuna boat cruises as Commission cruises.

While on board observers may face harassment. Many instances which may constitute harassment may also be violations of Fisheries Service regulations. Observers are encouraged to document instances of harassment in logbooks and report them to the Enforcement Branch when they return from the cruise. If warranted, NOAA's Southwest Regional Counsel will send the captain and/or boat owner a Notice of Violation and Assessment of Administrative Penalty. If desired, the captain and/or owner may request a hearing before an administrative law judge.

²The act applies to all marine mammals. We are using the term "porpoise" to refer to all small cetaceans affected by the tuna fishery. While "dolphins" is the scientifically correct term, porpoise is the term used by tuna fishermen.

Shipboard Harassment Has Occurred, but No Evidence That It Influenced Reporting

On the basis of our review of samples of the observer-prepared log-books, we estimated that the observers were subjected to one or more types of harassment on about 18 percent of the 191 cruises designated as non-Commission cruises in the Fisheries Service's data base between 1985 and June 1989.³ Often the ship's officers are the source of the harassment. Although we estimated the number of cruises on which harassment occurred and the types of harassment, we could not estimate the frequency of harassment on an individual cruise. We did not find evidence that the observers subjected to the harassment were influenced to underreport the number of porpoise killed. (See app. I for additional information on instances of harassment.)

Table 1 estimates the number and percent of cruises for which various types of harassment occurred, based on our samples of the cruises taken between January 1985 through June 1989. Each estimate developed from the samples has a measurable precision; that is, if we reviewed all 191 cruises, the results would fall between the upper and lower limits of the confidence interval about 19 times out of 20. (See app. III for additional information on our methodology.)

Table 1: Estimated Number (Percent) of Cruises for Which Observers Reported Harassment of Various Types

Type of harassment	Estimated cruises ^a	
	Number	Percent ^b
Radio access denial	8	4.2 (4.2–9.4)
Porpoise specimen access denial	20	10.5 (5.8–19.9)
Ship's position access denial	6	3.1 (3.1–8.4)
Intimidation	20	10.5 (5.8–19.9)

^aWe estimated that observers were subjected to one or more types of harassment on about 18 percent of the 191 cruises listed in the Fisheries Service data base between 1985 and June 1989.

^bThe numbers in parentheses are the lower and upper limits of estimates to the universe at the 95-percent confidence level.

On April 12, 1990, three companies, which account for about 75 percent of the U.S. tuna market, announced that they would no longer buy tuna caught with methods that harm porpoise. Officials of these companies said that they would rely on reports from observers to decide whether to buy a particular catch of tuna. On April 13, 1990, the Fisheries Service announced its support of these companies' actions and stated that this action should help reduce the number of porpoise killed. Although it is too early to tell what effect the companies' action will have, this recent development may increase the extent of observer harassment

³The lower and upper limits of the 95-percent confidence interval are 11.0 percent and 28.3 percent.

because of the adverse financial impact on the fishermen of a negative observer report. (See app. II.)

Procedures and Training Inadequate to Help Identify Harassment

Procedural problems in the tuna/porpoise observer program and the training of those observers adversely affect the identification, documentation, and reporting of harassment. Specifically, (1) observers may have problems differentiating between harassment and harmless pranks, (2) not all cases of harassment are being documented on-board or systematically identified when observers are debriefed, and (3) observer training does not adequately cover harassment.

Observers May Have Problems Identifying Harassment

The Fisheries Service does not provide clear guidance to observers that enables them to adequately determine what constitutes harassment. On one hand, the Fisheries Service's field manual for observers advises them to document any attempt to interfere with their work. On the other hand, the manual defines harassment to include only "unreasonable interference," and during training observers are advised to expect persistent, harmless pranks. The observer is to determine if, and when, pranks become harassment. In contrast, the Fisheries Service's foreign fisheries observer training manual stated that its observers were to be treated as guests on the boat and that persistent, harmless pranks were to be reported to the captain.⁴

Fisheries Service officials told us that the observers were not expected to endure anything beyond innocent hazing. They said observers were expected to document any behavior that they believed was unacceptable. However, because of a high turnover rate, many of the observers may not have sufficient experience to make such a determination. For example, from January 1976 to July 1989, 55 percent of the tuna/porpoise observers made two trips or fewer before leaving the program. Moreover, 31 percent of the observers made only one trip. The Tuna/Porpoise Management Branch Chief said that the first trip an observer makes is basically a learning-on-the-job cruise.

⁴This program ceased operating during 1989 because foreign fishing in U.S. waters was phased out. According to a NOAA program manager, the Fisheries Service domestic observer program uses many of the same procedures followed in the foreign program.

Methods to Communicate and Resolve On-Board Harassment Are Inadequate

Tuna/porpoise observers when at sea have no means to confidentially tell the Fisheries Service that they are being harassed. The Fisheries Service does instruct the tuna/porpoise observers to seek assistance from the ship's officers to resolve any problems associated with unacceptable behavior. The Coast Guard requires that responsible personnel, such as the captain and chief engineer, be licensed, and it may revoke a license if a license holder is proven guilty of interfering with an observer's performance of official duties. However, of the harassment being reported, the ship's officers were often the source of the harassment.

In contrast, observers in the foreign fisheries observer program were provided with confidential safety radio codes to be included as part of their weekly radio reports. If necessary, the observer could request Coast Guard assistance. As of September 1989, according to Fisheries Service data, the code had been used six times since it was implemented in 1986.

In 1986 the Tuna/Porpoise Management Branch Chief tried to implement confidential safety radio codes to be included as part of the observers' weekly reports of porpoise kills. However, the tuna industry's representative expressed his concern in a December 1986 letter that using such radio codes "will unnecessarily stimulate problems aboard the vessel and damage the command position of the vessel's captain." In January 1987 the Fisheries Service's Southwest Regional Office Director rejected the proposed use of such codes. In response to our draft report, the Department of Commerce stated that it was reviewing the requirements and need for implementing observer radio codes for reporting harassment.

Fisheries Service officials pointed out that the distance of the boats from shore—foreign observers were never more than 200 miles from shore; tuna/porpoise observers can be as far as 3,000 miles—makes it difficult for the Coast Guard to respond in case of an emergency. In our discussions with Fisheries Service Southwest Region officials, a possible alternative surfaced to Coast Guard assistance. The ship's owner could be required to contact the captain and caution him to immediately cease harassing the observer. According to Fisheries Service officials, because vessel owners can contact their vessels by radio, the Fisheries Service could notify the owners when harassment occurs, and owners could then contact the vessels.

Not All Cases of Harassment Are Documented

Observers are not documenting all instances of potential harassment. About 400 observers have been employed since the inception of the program. Because of difficulty in locating the observers, we were unable to select a sample that would be representative of the universe of 400 observers, but we were able to contact and interview 32 current and past observers about identifying and documenting instances of harassment. The results of these interviews cannot be projected to the universe. Of the 32 observers interviewed, 8 told us that they did not document all incidents of harassment because they believed the incidents were isolated or not significant enough to report.

Fisheries Service representatives were unable to explain why observers were not logging incidents of unacceptable behavior that occurred during the cruises. The Chief of the Tuna/Porpoise Management Branch said that during training, observers are told to document all instances of interference with their work, regardless of how isolated or insignificant, because they need to be looked at collectively. As a result of our discussions, the Chief redesigned the format of the logbook to improve its organization, elevate its significance to the observers, and aid in ensuring that observers would document instances of harassment regardless of significance.

Harassment Not Systematically Identified When Observers Debriefed

The tuna/porpoise observer is interviewed (debriefed) by a member of the Fisheries Service's Enforcement Branch concerning possible harassment and violations of Fisheries Service regulations. Instances of harassment were not systematically identified during the debriefing process because observers were not asked to prepare for the debriefing and because the Enforcement Branch did not follow a standard set of questions. Before 1986, according to Enforcement Branch officials, this interview often did not occur, and when it did occur, no documentation was prepared. During 1986 efforts were strengthened to interview all returning observers and to document the results of these interviews.

On the other hand, observers in the foreign fisheries observer program were required to complete two debriefing questionnaires before meeting with their enforcement people. One questionnaire was cruise-specific and asked for responses on certain occurrences, including harassment, the observer experienced on the cruise. The other questionnaire asked program-specific questions such as adequacy of the training and the value of the debriefing process. The information collected from these questionnaires was used to determine how well the observer performed

during a particular cruise, provide the basis for follow-up, prosecute violators, and identify overall strengths and weaknesses in the program.

We discussed with Southwest Regional officials the need for such a detailed debriefing questionnaire in the tuna/porpoise program. The Tuna/Porpoise Management Branch Chief told us that, as the result of our review, he had instituted a debriefing questionnaire in January 1990 for tuna/porpoise observers. Although it is too early to judge the questionnaire's success in identifying instances of harassment, the 35 questions asked are very specific and at least as comprehensive as the debriefing questionnaire used in the foreign fisheries program. The revised questionnaire should improve the debriefing process.

Observer Training Does Not Adequately Cover Harassment

Our discussions with 32 current and past observers indicate that the areas of training covering harassment—specifically, interpersonal relations with the captain and crew and documentation of suspected violations—were moderately effective. (See table 2.) The most frequent observer response for almost all other categories of training was that it was “very effective.” When we pointed this out to the Tuna/Porpoise Management Branch Chief, he told us that the training would be revised to better address harassment.

Table 2: Observer Responses Concerning Training Adequacy

Training category	Not effective	Moderately effective	Very effective
Identification of species	0	4	28
Documentation of incidental deaths	0	7	25
Identification of deaths	1	8	23
Documentation of injuries	5	11	16
Identification of injuries	6	13	13
Documentation of suspected violations ^a	2	17	13
Interpersonal relations with captain and crew ^a	1	20	11

^aThese two categories include, among other things, identifying, dealing with, and documenting harassment

Fisheries Service Has Improved Internal Controls Over Data Reporting

The Fisheries Service estimate of total porpoise kills is based solely on data observers reported during the fishing trips. Because the observers work alone, the Fisheries Service has no independent means of ensuring that the observers accurately record porpoise kills. Some problems with the internal controls, particularly the timely reporting of porpoise kill data, may affect the data's reliability.

Observers are placed on all U.S. tuna fishing boats, but about one-half of the U.S. tuna boat cruises are designated as Inter-American Tropical Tuna Commission cruises. Until recently, data requirements on the cruises designated as Commission cruises differed from those designated as Fisheries Service cruises. For example, observers on designated Commission cruises (1) reported directly to the Commission, (2) did not document or report violations, and (3) were not debriefed by the Enforcement Branch. The Commission would aggregate the porpoise kill data before giving it to the Fisheries Service to maintain confidentiality of the data by individual cruise. However, as a result of negotiations between the Fisheries Service and the Commission during 1989, data provided the Fisheries Service are now similar regardless of the designation of the cruise, except that observers on Commission cruises still send their weekly radio reports to the Commission. The Commission then provides the Fisheries Service with an aggregate total of porpoise killed. For individual boat totals, the Fisheries Service must wait until observers return to shore and submit the original data forms. Timely reporting of porpoise kill data is important, especially when the aggregate total approaches the annual upper limit of 20,500. The Chief said that the Fisheries Service needs to receive data on the number of porpoise killed each week by individual cruise to (1) determine if observers are correctly counting the kills and (2) correct any observers' erroneous procedures in a timely manner.

Conclusions

Harassment of observers on U.S. tuna boats does occur, but we could find no evidence that harassment affects the observers' reporting of porpoise killed. Observers told us that (1) they do not report all instances of harassment and (2) improvements could be made in their training on how to identify, document, and report harassment. No covert means are available to the observers while at sea to report that they are being harassed.

Recent developments have given the Fisheries Service improved controls over the data and information used to report porpoise kills, but data collection and reporting are still not adequate enough to ensure that

observers are correctly counting kills or to correct observers' erroneous counting procedures in a timely manner.

Recommendations

To improve the management of the tuna/porpoise observer program, we recommend that the Department of Commerce's Under Secretary for Oceans and Atmosphere direct the Assistant Administrator, National Marine Fisheries Service, to

- clearly define, and communicate to all parties, what constitutes harassment;
- reemphasize the requirement that observers document cases of harassment;
- provide the observers with means by which to quickly report problem harassment, such as maintaining adequate personal safety radio codes and requiring vessel owners to contact their captains on problem cruises;
- implement improvements in the training program to help observers to better identify, document, and report harassment; and
- improve the internal controls over porpoise kill data by seeking an agreement with the Commission that its observers report by radio directly to the Fisheries Service each week.

Agencies' Comments and Our Evaluation

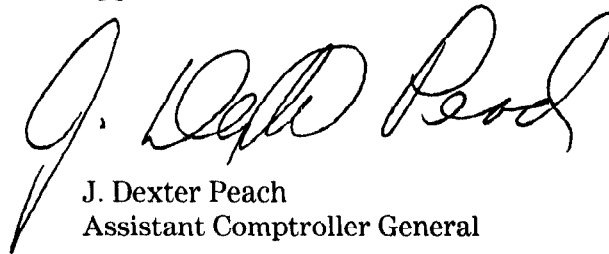
The Department of Commerce, Inter-American Tropical Tuna Commission, and the American Tunaboat Association (an association comprised exclusively of American tuna boat owners) provided written comments on a draft of this report. Their comments and our evaluations are included in appendixes IV through VI. The Department agreed with our recommendations for improving the management of the tuna/porpoise program to address harassment of observers and stated that it has already taken certain actions in this regard. The Commission also agreed on the need to define harassment clearly and to communicate that definition to all parties. The American Tunaboat Association stated that further attempts to describe behavior aboard tuna boats as constituting harassment will create more problems than solutions and that the existing rules are more than adequate. None of the three organizations agreed with us that it was necessary for observers on Commission cruises to report directly to the Fisheries Service each week. However, we continue to believe that the current reporting system that U.S. observers use on Commission cruises is not adequate to allow the Fisheries Service to (1) determine if observers are correctly counting kills

and (2) correct observers' erroneous counting procedures in a timely manner.

Our review was performed from May 1989 to August 1990 in accordance with generally accepted government auditing standards. Appendix III presents information on our scope and methodology.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time we will send copies of this report to the Secretary of Commerce, the Administrator of the National Marine Fisheries Service, the Director of the Office of Management and Budget, and other interested parties. We will make copies available to others upon request.

This report was prepared under the direction of John M. Ols, Jr., Director, Housing and Community Development Issues, who can be reached at (202) 275-5525. Other major contributors are listed in appendix VII.



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Abbreviations

GAO General Accounting Office
NOAA National Oceanic and Atmospheric Administration

Incidents of Harassment

Incidents of harassment we reviewed ranged from the vessel captains and/or crew acting in ways intended to interfere with the observers' work to attempting to influence the observers by intimidating them. The actions to interfere with the observers included limiting or denying access to the two-way radio, not providing the observers with necessary vessel position information, and denying the observers access to porpoise carcasses to perform scientific research. The captains' attempts to intimidate the observers typically consisted of verbal abuse. Many of these incidents constitute violations of Fisheries Service regulations, which state that "It is unlawful for any person to assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel."

On the basis of our review of the logbooks, we estimated that radio access problems occurred on eight cruises (see table 1). A federal regulation (50 C.F.R. 216.24(d)(2)(iii)(B)) states that observers must be allowed to report data to the Fisheries Service while at sea via the ship's radio at such times as specified by the Fisheries Service. The Fisheries Service's tuna/porpoise observer manual formerly stated that the observer was to report every Monday and Thursday, but the manual was later changed to require reporting once a week. If communications prove impossible on reporting days, the manual requires the observer to call every day until contact is made. Observers' logbooks noted various ways in which the captain interfered with their radio communications:

- An observer recorded that the captain would allow him to use the radio only on Mondays and Thursdays even if he was unable to contact the Fisheries Service on those days. The captain was assessed a civil penalty of \$7,500 for denying the observer access to the ship's radio and other offenses. The case was settled in December 1989 by payment of a \$4,000 penalty.
- Another observer documented that the captain would allow him to use the radio only once each week during the period the regulations required two calls a week. The captain was not assessed a penalty for a radio access violation but was assessed a \$500 civil penalty for specimen denial. The case was settled for \$375.
- An observer recorded that the captain refused to let him use the radio early in the day because the captain knew that he had recorded a high kill total for the reporting period. The observer wrote that, although the captain allowed him to use the radio later in the day, he was unable to contact the Fisheries Service station in San Diego to report his porpoise kill numbers until 10 days later. The observer did not identify the radio

denial to the Enforcement Branch during the debriefing process. No action was taken against the captain.

- An observer recorded that he was not allowed to use the radio unless both the captain and the navigator were on the bridge. The observer recorded in his logbook that it was difficult to find a time when all three were actually present on the bridge. The observer did not identify this situation to the Enforcement Branch during debriefing. No action was taken against the captain.

On the basis of our review of the logbooks, we estimated that observers were denied ship positions on six cruises (see table 1). A federal regulation (50 C.F.R. 216.24(f)(2)) states that, upon request by the observer, the navigator shall provide the vessel's position by latitude and longitude. Positions are important because the location, in addition to scientific data collected by the observer, allows the Fisheries Service to keep track of porpoise stocks by distribution and size of herd. In one case, an observer recorded that the captain said the observer made him nervous by coming into the pilot house to read the position instruments. As a result, the observer recorded that the captain forced him to remain outside the ship's pilot house and use binoculars to read the ship's instruments. Again, the observer did not point out this situation to the Enforcement Branch, and no action was taken against the captain. The observer told a staff attorney in the Southwest Regional Counsel's office that he had problems on the cruise but decided not to tell anyone about them.

On the basis of our review of the logbooks, we estimated that, on 20 cruises (see table 1), vessel operators interfered with the observers' work by discarding dead porpoise before the observers had an opportunity to obtain scientific samples. A federal regulation (50 C.F.R. 216.24(f)(3)) specifies that

Marine mammals [porpoise] killed during fishing operations which are accessible to crewmen and requested from the certificate holder or master by the observer shall be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean.

Observer logbooks noted various ways in which the captain and/or crew interfered with the observers' need to obtain specimens:

- An observer recorded that he "asked deckboss to put porpoise aside so I could process but crewman threw them over before I could get to them."

During another set when a total of 92 porpoise were killed,¹ the observer recorded in the Marine Mammal Set Log that “33 spotters [type of porpoise] were thrown off work deck by crew as they came up during brailing.”² We found no record that this observer was debriefed by the Enforcement Branch. According to a Branch official, this cruise occurred before the Branch established a debriefing file. No action was taken against the captain.

- An observer recorded that he “was not able to process any specimens as they were dumped from sack, and immediately thrown overboard when brailed. Skipper wouldn’t allow any to remain on deck.” This situation occurred during a set when a total of 446 porpoise were killed. The observer did not identify any problems with specimens during the debriefing session. No action was taken against the captain.
- On two cruises the deckboss required the observers to process specimens during brailing. Both observers stated that processing specimens at that time could adversely affect an accurate mortality count. Neither observer reported any problems during the debriefing session; one observer acknowledged later that he had problems on the cruise but decided not to tell anyone about them.
- One captain told an observer to wear a hard hat, get under the net, and retrieve the porpoise himself. The observer concluded that such an action was a safety hazard and would not do so. Although the captain was not assessed a civil penalty for this specific instance, he was assessed \$7,000 in civil penalties for observer interference and intimidation on this cruise. Final settlement with the captain was for \$5,200.

On the basis of our review of the logbooks, we estimated that, on 20 cruises (see table 1), the vessel captains attempted to intimidate the observers, which under Fisheries Service regulations is unlawful. Observers’ logbooks indicated various ways in which the captain verbally abused them:

- An observer recorded that the “Skipper claims I am not cooperating with him . . .” and that “I was tired of the confrontations that occurred nightly between the captain and myself whenever there was a kill.” He later reported to enforcement agents that the captain became hostile and verbally abusive toward him as the number of porpoise killed increased during the trip. The observer counted a total of 173 porpoise killed

¹Each time the purse seine is deployed is considered a net set. When the net is deployed around a school of porpoise in order to catch the accompanying tuna, it is called a porpoise set.

²The process of moving the catch from the net to the work deck of a tuna boat.

during the 27 sets involving porpoise. Enforcement agents had investigated this case and referred it to Regional Counsel in October 1989 for prosecution. As of April 1990 the case was still pending.

- An observer recorded that "He [the captain] wanted to know how I got 2 kills in set #11 when only one [porpoise] came on deck." Then later, "The captain said if the 'anti' (?) kept going up and I couldn't count right that I wouldn't be able to go up in the half mast during chase/set anymore." The observer recorded that later the pilot told the observer that "most observers knocked a few porpoise off the total because the captain and the crew tried hard to release the porpoise." The logbook contained two "Set Summary" forms. A handwritten note on the top of one of the forms indicated that the numbers marked with an asterisk were "Numbers told to captain, but not actual #'s killed." Another note in the margin said that "It seems like another set or 2 I told him lesser #'s also, but didn't note it in greenbook - check sets 12 - 21." The observer recorded 444 total kills on one form and 429 on the other. The observer told the enforcement agent during debriefing that he had a "smooth trip." We were unable to contact the observer to determine why he did not alert the enforcement agent during debriefing about what happened during the trip.
- An observer recorded that the captain told him to overlook some porpoise mortality and said that "you help me and I'll help you." He added that if the observer did not start overlooking some mortality he would make life difficult for him. The captain was assessed a civil penalty of \$7,500 for trying to get the observer to overlook some porpoise mortalities and other offenses. The case was settled in December 1989 by payment of a \$4,000 penalty. Another observer documented in the logbook that the captain told him to cooperate or "he could make my life difficult, deny access to the pilot house, tell crew not to talk to me, and make my life hell." The captain was assessed a civil penalty of \$12,000 for 16 violations dealing with denial of radio and specimen access. The case was settled for \$2,500 because the Southwest Regional Counsel received excellent cooperation from the boat's managing owner.

Recent Developments That Could Significantly Change the Observers' Role

In April 1990 three large tuna processing companies announced that they will no longer buy tuna caught with methods that harm porpoise. The Fisheries Service pointed out that the observers will be the primary source for verifying that tuna caught have not involved porpoise. Observers are present on all U.S. tuna boat cruises in the eastern tropical Pacific. On the other hand, foreign observers are present only on between 33 and 50 percent of cruises from other nations that are members of the Commission. The Fisheries Service is currently working out the details of how porpoise kill information will be provided to the various companies' representatives.

On the other hand, the tuna fishing industry stated that the new policy will force many fishermen out of business. They believe that there is no absolute guarantee that some porpoise will not become ensnared in the nets. Thus, they said it is unlikely that they can profitably fish in the eastern tropical Pacific given the new porpoise-safe standard.

Objectives, Scope, and Methodology

Objectives

The objectives of this review were to determine the (1) extent to which shipboard harassment is occurring and whether it adversely influences the observers' reporting of porpoise kills, (2) adequacy of the procedures and training to help identify harassment, and (3) adequacy of internal controls for ensuring accurate reporting of porpoise kills and violations of the Marine Mammal Protection Act of 1972.

Scope

We visited the Fisheries Service Northwest Regional Office at Seattle, Washington; its Southwest Regional Office, Terminal Island, California; and the Tuna/Porpoise Management Branch in San Diego. We reviewed the procedures for minimizing observer harassment and the procedures for assuring accurate reporting of violations of law. We also visited the offices of the Inter-American Tropical Tuna Commission in La Jolla, California, as well as the U.S. Tuna Foundation in San Diego, California, and discussed with representatives of those organizations their roles in managing porpoise kills.

Methodology

Observer Harassment and Training

To estimate the extent to which observers reported harassment on the cruises, we took two separate samples from the Fisheries Service's 1985 through June 1989 cruise data base of observer departures and arrivals. The data base indicated that 191 cruises with observers were non-Commission cruises. Initially, we reviewed a judgmental sample of 30 such cruises. We later reviewed a simple random sample of 41 of the remaining 161 cruises. For each cruise in the sample, we examined the observer-prepared logbook to determine if the observer had documented any instances of interference with duties or intimidation.

We combined the results of these two samples to make estimates related to the 191 cruises.¹ Because we reviewed a probability sample of cruises, each estimate developed from the samples has a measurable precision. The precision of our statistical estimates is developed at the 95-percent confidence level and is shown as the lower and upper bounds of the 95-percent confidence interval. This confidence level means that if we reviewed all of the 191 cruises, the results of such a review would lie

¹In combining the results, we treated the judgmental sample as a separate stratum from which we selected all 30 cruises for review.

between the lower and upper bounds of the confidence interval about 19 times out of 20.

For each estimate based on the sample, the associated lower and upper bounds are given in table 1.

In addition, we obtained a list of former and current tuna/porpoise observers from the Fisheries Service. The Fisheries Service does not maintain an up-to-date list of addresses and telephone numbers for the about 400 observers that have been involved in the program since its inception, but agency personnel provided us a list of 85 current and past observers' names, addresses, and telephone numbers. After allowing for those who no longer could be reached at the number given or were out to sea, we ended up interviewing 32 of the 85. Because of the difficulty in locating the observers, we were unable to select a sample that would be representative of the universe of 400 observers. Consequently, the results of the interviews with the 32 observers contacted cannot be projected to the universe. During the structured interview, we asked them various questions, including identification of harassment, if any, on their latest cruise, documentation of harassment, and the effectiveness of the training received.

We discussed observer-identified violations during the debriefing process with enforcement agents at the Southwest Regional Office, and with the Southwest Regional Counsel, to determine how incidents had been resolved. The enforcement agents are responsible for interviewing returning observers to identify possible violations of the Marine Mammal Act and reporting violations to the Southwest Regional Counsel. The Regional Counsel determines which cases will be prosecuted.

Controls Over Porpoise Kill Data

We discussed data validation procedures used at the Tuna/Porpoise Management Branch and at the Southwest Fisheries Center in La Jolla, California. We discussed the procedures with officials of those offices, including the Branch Chief and data editors. In our structured interview of 32 current or past tuna/porpoise observers, we asked whether harassment, if present, affected the observers' weekly reporting of kills over the radio or the observers' reporting of kills in the logbooks. Furthermore, we asked observers if a difference in the number of kills reported and the actual number of kills was brought up and discussed during the debriefing process.

**Comparing the Foreign
Fisheries Program With
the Tuna/Porpoise
Program**

We compared how the foreign fisheries program and the tuna/porpoise program deal with harassment of observers and whether they provide effective training. We interviewed managers from the two programs and reviewed program documents to determine efforts to minimize observer harassment, including the type of debriefing procedures used and the involvement of enforcement agents in investigating alleged violations. In addition, we reviewed available documentation describing the observers' duties and identifying the observers as either Fisheries Service employees or hired under contract, and interviewed the program managers to determine how they assured themselves that the data reported by the observers were reliable.

Comments From the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Administration
Washington, D.C. 20230

JUL 6 1990


Mr. John M. Ols, Jr.
Director, Housing and Community
Development Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ols:

Thank you for your letter requesting comments on the draft report entitled "Tuna/Porpoise Observer Program: More Needs to be Done to Identify and Report Harrassment of Observers."

We have reviewed the enclosed comments of the Under Secretary for Oceans and Atmosphere and believe they are responsive to the matters discussed in the report.

Sincerely,


Thomas J. Collamore
Assistant Secretary
for Administration

Enclosure

Appendix IV
Comments From the Department
of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Deputy Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUN 29 1990

Mr. John M. Ols, Jr.
Director, Housing and
Community Development Issues
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ols:

Thank you for your letter requesting the Department's comments on the draft General Accounting Office report entitled "TUNA/PORPOISE OBSERVER PROGRAM: More Needs to be Done to Identify and Report Harassment of Observers" (GAO/RCED-90-159).

I understand the investigation of harassment of observers assigned to our tuna/porpoise observer program was complex. We wish to acknowledge the courtesy and special efforts made by Mr. Lew Adams and Mr. Charles Sylvis of your staff to keep the National Marine Fisheries Service advised throughout the investigation.

We concur with the first recommendation of the draft report which involves improvements in the management of the tuna/porpoise program to address harassment of observers. Major modifications have been made in the observer training program since January 1990. The observer training curriculum has been revised to define what actions constitute harassment and enforcement officers lecture trainees on the facts necessary to document instances of harassment so that effective prosecutions can be made. The "greenbook" has been revised to prompt observers to record instances of harassment, and harassment has been added to the post-cruise interview checklist as a specific item for review. Observers are reminded that they are required to report immediately any instances of harassment to the licensed master of the vessel who has the sole responsibility for the health and welfare of all persons on the vessel. We also are reviewing the requirements and need for implementing observer radio codes for reporting harassment.

See comment 1.

See comment 2.



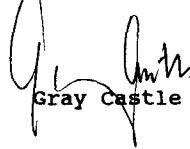
Appendix IV
Comments From the Department
of Commerce

2

We believe that the existing protocol requiring direct radio reporting of porpoise kill data by Inter-American Tropical Tuna Commission observers provides the necessary data and information to meet our program commitments. Direct control over all aspects of observer reporting might be desirable from a technical data collection viewpoint. However, as a participant in the Commission's international observer program, the United States and other cooperating nations have designated observers who report to the Commission, not to the U.S. Government, while aboard their assigned vessels. We will continue to monitor this protocol along with the Commission to ensure that effective control over porpoise kill data is maintained.

We appreciate the opportunity to comment on the draft report.

Sincerely,



Gray Castle

See comment 3.

The following are GAO's comments on the Department of Commerce's letter dated June 29, 1990.

GAO Comments

1. The Department's concurrence with our recommendation and the actions it has taken as a result are summarized in the agency comment section and at appropriate places in the report.
2. We revised the report where appropriate to reflect these comments.
3. We have not revised the report to reflect these comments. We believe that U.S. observers on Commission cruises should report directly to the Fisheries Service so that it can (1) determine if observers are correctly counting kills and (2) correct observers' erroneous counting procedures on a timely basis.

Comments From the Inter-American Tropical Tuna Association

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Established in 1950 by treaty between the United States of America and the Republic of Costa Rica for the investigation and conservation of the tuna resources of the eastern Pacific Ocean.

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Director
Antonio Joseph

4/o Scripps Institution of Oceanography
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June 22, 1990
Ref: 0428-100-800

Mr. Frank V. Subalusky, Assistant Director
Housing and Community Development Issues
General Accounting Office
Room 1992, Jackson Federal Building
915 Second Avenue
Seattle, Washington, 98174

Dear Mr. Subalusky:

Thank you for providing me with the opportunity to comment on the draft report, Tuna/Porpoise Observer Program: More Needs to Be Done to Identify and Report Harrassment of Observers. Key members of my staff and I have read the report, and our comments follow.

Specific Comments:

Page 2, last par.:

The IATTC staff has its own procedures to verify the quality of the data, the performance of the observer, and his/her interactions with the crew. The data collected on IATTC U.S. trips were confidential with regard to violations only; they were available to NMFS scientists for research purposes even on a single-vessel basis, replacing the name of the boat with a numeric code. We have had for years an exchange of information with the Southwest Fisheries Center.

See comment 1.

The fact that we had confidentiality constraints in the past did not mean that our data could not be audited or verified. In fact, we have repeatedly offered the opportunity to do so to qualified people, e.g. your employee Mr. Sylvis. All that is needed is to replace the names and flags by numeric codes, and the whole data base could be made available without violating our confidentiality.

See comment 2.

Currently, the logbooks collected by our observers are examined by the NMFS enforcement staff. The radio reports from our observers are passed to the NMFS after decoding in an aggregate form. This is still being done that way because no one has requested that it be done differently. Given that the entire observer log is examined by the NMFS, it makes no sense to keep the weekly radio reports confidential. We will have no problem in switching from the current system to some other if that is more convenient. From the point of view of mortality estimation, the current system does not affect in any way

**Appendix V
Comments From the Inter-American Tropical
Tuna Association**

Now on p. 3.

the promptness or quality of the estimates. The data are used to compute kill-per-day ratios, and they have to be aggregated for that purpose, so the way they are obtained is irrelevant. The data are also transferred weekly, so the matter of timeliness does not appear to be a problem.

Page 5, par. 1: before "In 1979..."

See comment 3.

Since 1979, the IATTC staff has had responsibility for the estimation of incidental mortality of dolphins, relative abundance of the stocks, and identification, development, and testing and promotion of technologies and information to reduce dolphin mortality.

Now on p. 3.

Page 5, par. 2: "To encourage..."

See comment 3.

It is my recollection that the U.S. decided to participate in the international observer program because it shared the objectives of the program, not because it wanted to encourage the other nations to participate. Also, in order to improve the accuracy of the estimates of dolphin mortality and abundance, the data had to be standardized by placing observers from the international program on vessels of all national fleets, including that of the U.S.

Page 14, par. 3: "...summarizing and editing..."

See comment 3.

Radio reports are added up for all vessels reporting in that week and provided as a single figure. With the data for total mortality and the number of days at sea added to the NMFS figures, a single ratio is computed. There is no editing of any kind here.

Now on p. 9.

With other data, the IATTC staff has a series of editing procedures, similar to those of the NMFS, to control the quality of the data.

See comment 4.

Page 15, par. 3: "The chief said ... reliability of data gathered on Commission cruises."

The radio reports sent to us are nearly identical to those sent to the NMFS. They are decoded in a similar way and examined for problems by personnel with the same experience or more experience than those reviewing the NMFS data. The statement, "...they need to receive data on the number of porpoise killed each week by individual vessels to know that the observer is properly counting the kills," doesn't make sense to me; only the debriefing procedure can help in answering that question.

General Comments:

**Appendix V
Comments From the Inter-American Tropical
Tuna Association**

See comment 5.

We fully agree with your conclusion that there is a need to define harassment clearly and to communicate that definition to all parties. Concerning these, we wish to make the following classification:

I) Interference with duties:

Passive:

- a) lack of cooperation (denial to access of position data, failure to provide space to process specimens, etc.).

Active:

- a) providing misleading data.
- b) pranks or other interactions with the observer on duty.

II) Harassment:

- a) Threats or intimidation in an attempt to produce underreporting.
- b) Offers of bribes of any kind to produce underreporting.
- c) Denial of the use of the radio for the weekly reports.
- d) Hiding or destroying observer equipment or forms.

This classification is not complete, but it distinguishes clearly what is a major problem from the "petty revenges" such as forcing an observer to read the positions with binoculars! If an observer doesn't have positions, or cannot process specimens, he/she could still perform the main duties.

The officers and crew of the vessels should be fully aware of whatever definitions are established, because the same action could be considered a prank by one person and an assault by another. An example that comes to mind is the common prank of one crewmember throwing a seal bomb near another unsuspecting crewmember. Even if the intention is not hostile, the safety of the observer requires that that action should be unacceptable, even as a prank, when directed at an observer. It is going to be difficult to draw a clear line separating behaviors, because the normal interactions between fishermen sometimes include actions that appear to be very aggressive to an outsider. With the high proportion of beginners in the program, they are more likely to be the target of the crews and officers. I am sure you are aware of recent incidents aboard navy and coast guard vessels involving "heavy hazing" of recruits, and how violent and dangerous some of those incidents may be; yet they are performed within tightly-structured groups and considered part of the "initiation process."

In the case of IATTC observers, these problems are handled through the vessel managers, which has proven to be quick and efficient. During training we emphasize to the observers that they, especially the beginners, are going to experience at least some form of interference, but if they are prepared to handle such incidents they will remain minor inconveniences. One of the areas accentuated is the idea that the observer should project the image of a person

Appendix V
Comments From the Inter-American Tropical
Tuna Association

doing his/her job in the best possible way, standing solidly by his/her own observations, listening to everyone, but staying firm on his/her own assessments. Some observers have said in the past (affidavits in a court case) that they changed their numbers to improve their environment, but kept records of the right figures for the debriefing process. Our staff informs IATTC observers that such an attitude is wrong; it creates more problems for other observers who are trying to do their jobs properly. If the observers stand by their observations they will, after some time, be accepted as what they are and their difficulties, in almost all cases, will disappear.

Regarding your specific request for some comments on the idea of observers verifying non-dolphin fishing as presented in page 16, we believe that such an approach is the most reliable one to follow. Some have suggested that observers would not be needed and that any loads of fish with individual fish greater than 30 pounds would be considered as being taken in association with dolphins. We do not believe that this would be appropriate, as some fish over 30 pounds are caught in schools not associated with dolphins. We agree with your contention that this verification procedure may increase observer harassment because of the financial impact. If observers are used for verification, extra care will be required to ensure that their data continue to be accurate. It may be necessary to introduce some rather innovative techniques, such as the use aboard the vessel of some sort of automatic video recorder that sweeps the net when a set is being made. This could be used to evaluate observer reports.

I hope these comments are useful to you.

Sincerely,

William H. Bayliff

For James Joseph
Director

Now on p. 4.

See comment 3.

The following are GAO's comments on the Inter-American Tropical Tuna Association letter dated June 22, 1990.

GAO Comments

1. No revision was made in the report to reflect this comment. Much of the information presented here is already discussed in the report, specifically the (1) confidentiality of the data on a cruise by cruise basis, (2) reporting of the data on Commission cruises to the Fisheries Service only in aggregate form, and (3) recent changes that now allow the Fisheries Service to examine the observers' logbooks from Commission cruises. It should be made clear that the Fisheries Service, by law, is responsible for collecting data on porpoise killed in U.S. tuna boat operations, regardless of whether the cruise is designated as a Commission or Fisheries Service cruise.
2. We recognized the willingness of the Commission to switch the current system of reporting if requested. We believe that reporting directly to the Fisheries Service will be beneficial because the Fisheries Service is responsible for collecting porpoise kill data on all U.S. tuna boat cruises, including those designated as Commission cruises.
3. We revised the report where appropriate to reflect these comments.
4. Report was revised to more clearly state that the Fisheries Service needs the data reported to it directly to determine if the observers are correctly counting kills and correcting observers' erroneous counting procedures in a timely manner.
5. The Commission's agreement with our conclusion and recognition of its attempt to define harassment is summarized in the agency comment section of this report. We would not argue against a definition of harassment that clearly distinguishes major problems from "petty revenges." As the Commission pointed out, the officers and crew should be made fully aware of the definition established.

Comments From the American Tunaboat Association



**American
Tunaboat
Association**

Membership comprised exclusively of American Tunaboat Owners
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Telephone (619) 233-6405 Telex 984603 (AM TUNA SDG) Fax (619) 233-7913

July 3, 1990

Mr. Frank V. Subalusky
Assistant Director, Housing and
Community Development Issues
U.S. General Accounting Offices
Room 1992, Jackson Federal Bld.
915 Second Avenue
Seattle, WA 98174

RE: Draft Report entitled "Tuna/Porpoise Observer
Program: More Needs to be Done to Identify
and Report Harassment of Observers" (GAO/RCED-90-159)

Dear Mr. Subalusky:

Thank you for the opportunity to review the above
Draft Report.

We are pleased to note the following results of such
Draft Report:

- (1) That the observers were not influenced to under
report the number of porpoise killed.
- (2) Except for training covering harassment, "the
most frequent observer response for almost all
other categories of training was very
effective."

Comments:

1. We dispute the conclusion that "data collection
and reporting are still not adequate enough to assure
accurate kill counts and timely enough to enable it (NMFS)
to take quick corrective action". The quota directly
impacts the fleet. With closure, our fleet is prohibited
from further fishing on tuna/porpoise schools. Therefore,
we also monitor very closely the weekly reporting of
mortality. We are convinced that there exists very
satisfactory mortality counts on a timely basis. The
statement of the Draft Report on page 3 that the NMFS does
not receive kill data on a timely basis is just not true.
There is no need to require the IATTC to report directly to
the NMFS by radio. The present mode of reporting does not
cause, and has not caused any difficulty. Such
recommendation merely increases costly and unnecessary

See comment 1.

See comment 2.

Appendix VI
Comments From the American
Tunaboat Association

bureaucratic activity on the false premise that timely reporting is not occurring.

See comment 3.

2. Regarding the problem of "harassment" and its definition. We note that sometimes observer trainees have pre-conceived ideas about tuna fishermen and about the tuna/porpoise problem. The Draft Report is silent about this aspect and the fact that a significant number of observer have been discharged for cause. What constitutes "harassment" can be a very subjective conclusion. In what ways are the fishermen protected from an observer that decides to make it tough on the fishermen?

See comment 4.

3. This is to object about the listing of certain incidents used to describe alleged violations over (1) radio reporting; (2) positions, and (3) access to porpoise specimens. Only one side of the story is reported.

See comment 5.

The Marine Mammal Protection Act clearly states that activities of the observers "shall be carried out in such manner as to minimize interference with fishing operations". This statement is repeated in the existing regulations.

a. Radio Reporting Incidents

Essential to fishing operations is the exchange of fishing information between fishermen. This is done exclusively by radio. Therefore, the timely use of the radio by the Fish Captain or his designee is important. If by negligent use radio communication is cut off, then the fishing trip's success is placed in doubt. There are many other reasons why the Captain must have absolute control over radio communication. The regulations allow the Regional Director to set forth the times when the observer can use the radio. The observer placement meeting provides the opportunity for the Captain and the observer to understand the rules.

See comment 6.

See comment 7.

b. Position Location Incidents

The Draft Report makes reference to incidents where it is alleged that the observer was not provided positions by the Navigator. We know of no instance when the position of a fishing set was denied to an observer. The incidents reported concern positions of marine mammal sightings as distinguished from sets. This involves the personal relationship between the observer and the Navigator. Since sightings can occur at any time during the day, the Navigator would be required to provide many positions. But, the Navigator has many other duties related to the actual fishing operation. Therefore, a working relationship should be established between the Navigator and the observer so as to reduce burdens. Should difficulties occur, the observer

See comment 8.

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Comments From the American
Tunaboat Association

See comment 7.

can complain directly to the Captain. Such understandings should be worked out during the observer placement meeting where the Captain, observer, NMFS and Industry representatives are present.

c. Porpoise Biological Specimen Incidents

See comment 9.

The Draft Report refers to the failure to provide porpoise specimens "which are accessible to crewmen and requested". In many of these instances, we found that the crew would "clean up the deck" and get the net and other gear ready for the next fishing operation. Meanwhile, the Captain was busy in the helicopter or at the Bridge or in the crow's nest. We found instances when the observer would take an unusually long time to get to the specimens. The Captain would usually delegate this duty of allowing porpoise specimens to be retained by the observer to the Deck Boss. Again, this procedure should be developed during the placement meeting.

See comment 7.

4. Regarding the alleged instances of direct interference by the Certificate Holder/Captain, it is not proper for the Draft Report to refer to a pending case. Based upon my experience of handling many of the cases filed since 1976, there is always another side to the story. Observers are not always innocent of wrongdoing. Personality problems do develop at sea as well as on shore, and this fact has caused difficulties between the parties. Nevertheless, we believe that when given an opportunity, such problems can be quickly corrected by the Managing Owner of the vessel.

See comment 10.

We note with regret that the Draft Report does not discuss the issue of whether applicants for observer duties are properly screened for personal problems that would arise at sea when voyages last from 60 to 100 days.

See comment 11.

5. On page 1 of the Draft Report, the last sentence refers to the fact that the annual porpoise mortality by the U.S. Tuna Fleet "averaged about 18,000 for the period 1981 through 1988". The Draft Report covers 1989 and part of 1990.

See comment 12.

We believe it more appropriate for the Draft Report to use a ten (10) year period 1980-1989. The estimated annual porpoise mortality for this period averaged about 16,606. In 1989, the total mortality was 12,643. As of 24 June 1990, the NMFS estimates total porpoise mortality for the U.S. Tuna Fleet at 3,901.

CONCLUSION:

See comment 13

The word "harassment" is not used in the Marine Mammal Protection Act or in the NMFS regulations. Yet, the Draft report gives the impression to the reader that

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Comments From the American
Tunaboat Association

harassment of the observer is the target of the inquiry. In fact, the target was the claim that observers were being intimidated to under report porpoise mortality. We note that the law and the regulations are more precise in selecting the potential wrongdoing by the fishermen. The regulations state as follows:

"It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, influence or attempt to influence an observer placed aboard a vessel."

"No owner, Master, operator, or crewmember of a certificated vessel shall impair or in any way interfere with the research or observations carried out".

See comment 14.

The Draft Report does not suggest that a "hostile environment" could exist aboard vessels that would lead to the under-reporting of porpoise mortality. The incidents involving radio reporting, position locations and access to porpoise specimens all relate to the performance of fishing operations conflicting with the duties of the observer. The crew clears the deck of porpoise to get ready for the impending fishing set before the observer can work the specimens; the Navigator is using the radio to obtain coded fishing information when the observer wants to use the radio; the Navigator is busy when the observer wants the location of the vessel after he makes a mammal sighting. Are these situations where the observer is harassed so as to prevent the performance of his duties? Why the use of the word "harassment" to describe these situations. It seems that the term "harassment" is more identified with sex cases on shore, and it can be argued that maybe this is the reason the term "harassment" is in vogue. Why the term is used to describe shipboard problems involving observers is difficult to understand.

See comment 15.

We do not believe that rudeness and annoying behavior can be regulated out of existence? Who can claim a perfect work climate? How do we determine when good-humored kidding ceases and harassment begins?

See comment 16.

We note that the Draft Report does not claim that a hostile, persuasive environment of serious harassment was experienced or reported. Despite this fact, the Draft Report dwells on the subject of "harassment" in its recommendation section. In this way, it unfairly derogates the conclusion,

See comment 17.

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Tunaboat Association

the Draft Report reached, namely that no actions by the owners, Masters, operators or crewmembers affected the observer's reporting of porpoise mortality.

See comment 13.

And, we contend that this was the reason for the inquiry by the GAO - the claim of observer under-reporting of porpoise mortality aboard U.S. Tuna Vessels because of illegal actions by the owner, Captain and crew. Now, the Draft Report directs the focus on that uncertain world of what constitutes "harassment".

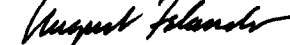
See comment 18.

The existing rules are more than adequate to protect the observer from conduct that unreasonably interferes with his performance of the job. Attempting to describe behavior aboard tuna vessels as constituting "harassment" will create more problems than solutions.

Thank you for the opportunity to review the Draft Report.

Regards,

AMERICAN TUNABOAT ASSOCIATION



August Felando
President

AF/ep

The following are GAO's comments on the American Tunaboat Association's letter dated July 3, 1990.

GAO Comments

1. We revised the report where appropriate to make it clear that the Fisheries Service needs data on a cruise-by-cruise basis to ensure that the observers are correctly counting the kills and to correct the observers' erroneous procedures in a timely manner. The Fisheries Service has, by law, the responsibility to collect data on porpoise kills from all U.S. tuna boat operations and, thus, should have control of all reporting procedures.
2. We do not believe that such reporting increases costly and unnecessary bureaucratic activity. Observers are already directly reporting weekly to the Fisheries Service on all non-Commission cruises.
3. We did not revise the report to reflect this comment. A clear definition of harassment will aid both the captain and the observer to identify what is harassment. Such a clear definition should negate the adverse effect of observers' ". . . pre-conceived ideas about tuna fishermen."
4. We agree with the Association that what constitutes harassment can be a very subjective conclusion. A clear definition of harassment would significantly decrease the degree of subjectivity in making such conclusions.
5. We did not revise the report to reflect this comment. For each instance of harassment included in appendix I, we identified actions taken by the Fisheries Service. Before deciding to assess penalties, the Fisheries Service requests and takes into account the captain's statements on the situation. For those examples in which penalties were not assessed, we identified the reason why.
6. We did not revise the report to reflect this comment. We agree that the observer should not request use of the radio when it is in use by the captain, but sufficient time should exist when the observer can make a report. We found no documentation in the logbooks we examined that the captain's continual use of the radio was used as a sole reason why the observer could not make a weekly report.
7. We agree with the Association's idea of discussing these topics in detail at the observer placement meeting.

8. We did not revise the report to reflect these comments. Federal regulations require the navigator to provide positions to the observer. There is no documentation in our sample that the positions were denied because navigators were busy with their other duties.

9. We did not revise the report to reflect this comment. On the basis of observer comments in the logbooks, the specimens were requested and accessible to the crewmen, but the specimens were not retained.

10. We did not revise the report to reflect this comment. We do not believe that because a case is pending it is not proper to use it as an example, especially when we do not identify the captain, ship, or cruise number in the report.

11. We did not revise the report to reflect this comment. Such a topic was not an objective in this assignment.

12. We revised the report where appropriate to reflect these comments.

13. We did not revise the report to reflect this comment. We were requested to examine both the extent of harassment and whether it caused observers to underreport porpoise mortalities. We did not, as indicated by the Association, report on the extent of harassment only after we could find no documentation of underreporting.

14. We did not revise the report to reflect this comment. This represents a summary of the Association's previous comments that we responded to in comments 6, 8, and 9.

15. We did not revise the report to reflect this comment. Our definition of the word "harassment" is discussed early in the report.

16. We did not revise the report to reflect this comment, but have already done so for similar comments, especially comment 4.

17. We did not revise the report to reflect this comment. We believe we have made it sufficiently clear that we could find no documentation that observers underreported porpoise kills but that we did find instances of harassment.

18. The Association's opinions on our recommendation to clearly define harassment are included in the agency comment section of the report.

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