

INTERNATIONAL OBSERVER BILL OF RIGHTS - A GUIDE TO THE HEALTH, SAFETY, WELFARE AND PROFESSIONALISM OF OBSERVERS

The original Observer Bill of Rights (OBR) was published in 2000 as the product of a workshop and panel session held at the Canada - US Fisheries Observer Programme Workshop, St. John's, Newfoundland, Canada (Anon. 2001), which was the second conference in the International Fisheries Observer and Monitoring Conference (IFOMC) series. The original drafters included active and former observers who felt that the managing agencies and employers were in need of best-practice guidelines in order to enhance and maintain a professional corps of observers. The Observer Professionalism Working Group (OPWG) was initiated at the 5th IFOMC in 2007 (McVea and Kennelly 2007), using elements of the OBR for its workshops and resulting documents (Davis and Quelch 2008). The OBR was last modified in the 5th IFOMC proceedings (McVea and Kennelly 2007). The current version widens the scope of the document to the ever-increasing corps of observers worldwide. The IOBR has been developed to clearly delineate the employment and human rights of the observer. It is complemented by the provisions of the Code of Conduct for Responsible Observer Programmes - Observer Health and Safety (CCROP-HS) and Stakeholder Responsibilities (CCROP-SR). A standard list of definitions is used for referencing these documents (CCROP-SR, Glossary). The two supplemental CCROP documents detail what is required to implement the IOBR. These documents don't intend to supersede any existing international, regional, national, state/provincial or local law or observer programme requirements, which may be more extensive or restrictive. All observer rights are equal and shall not be construed to deny or disparage other rights retained by the observers.

This International Observer Bill of Rights (IOBR) was modified in collaboration with current and former members from the Association for Professional Observers (APO) and the OPWG, as well as input received in association with the 7th IFOMC¹ (150 delegates from 27 countries), held in Viña del Mar, Chile, April 8-12, 2013. These documents were distributed for public comment to over 1200 stakeholders internationally from February 2013 until August 2013. Venues for outreach were the APO Mail List, APO Facebook Group, the 7th IFOMC Steering Committee, and targeted mail lists of additional public stakeholders.

The APO has agreed to be custodian of this document² and associated CCROP-HS and CCROP-SR documents. These documents will be modified biennially with stakeholder input³. For enquiries, comments, contributions and updates, please contact the IOBR Team: E-mail: ioibr@apo-observers.org; Web: <http://www.apo-observers.org/billofrights>.

Introduction

An 'observer' is a person who is authorised by a regulatory authority to collect information in the field (either at sea or on shore) to support sustainable aquatic resource management. The observer must be financially independent of the industry being monitored (CCROP-SR, Section V). Observers generally do not have enforcement powers but their duties often involve the collection of enforcement related information. There are many titles associated with the observer profession, some of which do not have the word "observer" in the title (such as monitor, fisheries assistant, inspector, and sampler). For the purposes of this document, the term "observer" is inclusive of several analogous positions under the monitoring, compliance and surveillance (MCS) umbrella (Flewelling 1994, Flewelling et al. 2002).

Observers are tasked with a wide range of duties that are primarily related to commercial fishing, although other industries impacting the ocean environment may be monitored as well. Observer programmes typically have a multitude of objectives ranging from science to compliance and frequently a combination of both (Davies and Reynolds 2002). Observers are

¹ <http://www.ifomc.com>

² Suggested citation: International Observer Bill of Rights (IOBR) [Internet]. Association for Professional Observers (APO): The International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes. Version 1.0. September 2013. Available from: <http://www.apo-observers.org/billofrights>.

³ The next revision will begin by September 2015.

typically either hired by third party contractual agreements or directly by a government regulatory authority. However, sometimes observers are hired as independent contractors. Regardless of employer, observers generally work independently and unsupervised in an isolated and sometimes contentious environment and a variety of entities may negatively impact their ability to complete their duties. The intent of these documents is to establish international standards that programmes can strive toward and to clarify and harmonise observer terms of reference. Standard terms of reference relating to professional levels of observers would make it easier for an observer to transfer their expertise and clarify the technological level of data collected in a programme for data end-users.

Article I - Employment Terms

I. Observers have the right to a written contract that clearly defines employment terms (CCROP-SR, Section III(9), including:

1. Position level as it relates to qualifications, competencies, responsibilities and types of data collected;
2. Hiring, promotion, probation, demotion and firing criteria;
3. Health, life, and disability insurance terms (IOBR Article III(3));
4. Wage linked with observer experience, performance, position, and location; segregated by different components of observer employment;
5. Employment leave terms (including holiday/vacation, bereavement, medical and employment re-entry terms);
6. Retirement package terms;
7. Protocols for deployment and field support of observers (e.g. travel logistics and documents, cash, gear, food, accommodations and medical needs), in the field and during briefings, trainings, debriefings, and during standby intervals;
8. Specify payment interval frequency and disclose any payroll deduction types (e.g. expenses, cash advances, and taxes);
9. Observer gear and equipment requirements and maintenance;
10. Protocols that ensure safe and healthy working conditions (CCROP-HS Section IV);
11. Communications and Emergency action plan: protocols for helping and/or rescuing observers from emergency situations, including interference, harassment or assault scenarios (CCROP-HS Section IV(7));
12. Performance evaluation criteria and frequency;
13. Employer's Plan of Action for observer's professional development;
14. Professional stakeholder *Codes of Conduct* (CCROP-SR).

Article II - Fair and Equitable Employment

II. Observers have a right to non-discriminatory, fair and equitable employment, including:

1. Work environment free of discrimination based on factors such as gender, ethnicity, race, spiritual beliefs, age, class, sexual orientation, nationality or political activities;
2. Equal opportunity grievance procedure available at no cost to the observer. Grievance procedures must be independent of observer programme and observer employer influence and include an appeal process. Employers and observer programmes must specify the equal opportunity grievance procedures as part of a labour agreement and must comply with national labour law;
3. Transparent and unbiased protocols used to select individual observers for a given deployment;
4. Performance evaluations that are transparent to the observer, part of the debriefing process and include criteria used by both the observer programme and employer. Observer programmes and employers shall afford a system of warnings within their performance evaluations that allow the observer the option of appealing the evaluation or make the necessary changes to return to good standing with the programme and the employer;

5. Fair labour standards for observers at both the observer programme and observer employer level. Reviews of programme and observer employer adherence to fair labour standards must be regularly performed, be transparent, independent and easily accessible to new and former observers;
6. No employer may, without cause, fire, demote or restrict an observer from employment opportunities. The employer shall clearly support any termination of an observer's employment with both observer programme and observer employer policies and documentation, stated in the observers' employment contract and in accordance with national labour laws.

Article III - Competitive Wage Package

III. Observers have a right to a competitive wage package commensurate with positions requiring similar duties and educational background (IOBR Article I; CCROP-SR Section III (9, 10, 11 and 14)). Financial independence from the monitored industry is crucial. A competitive wage package includes but is not limited to:

1. Step-based pay system that acknowledges different observer levels (defined by variations in duties, responsibilities) and encourages experience and work performance that meets or exceeds expectations;
2. Transferability of observer credit (experience) for purposes of financial compensation from one programme to the next, regardless of employer;
3. Insurance coverage, with consideration for coverage being equivalent to observer field (sea) time, and consideration of a national or group pool to decrease cost, including:
 - i. Basic health coverage provided for employment period;
 - ii. Options for year round (comprehensive, beyond employment/during stand-by periods) health coverage;
 - iii. Life insurance, which provides compensation to a named beneficiary in case of death;
 - iv. Disability insurance; for long-term, cumulative injury arising from work related injuries that were not originally detected during the work such as back problems, knee failure, lung problems;
4. Retirement package options;
5. Shore-based work alternatives for older observers and those who experience disabilities resulting from their observer careers;
6. Leave remuneration including compensation options that acknowledge leave-time needs (e.g. vacations and holidays) between deployments;
7. Payment for all time awaiting deployment, between deployments or waiting to be debriefed.

Article IV – Health and Safety

IV. Observers have a right to a working environment with minimal health and safety risks (See CCROP-HS), including:

1. Ability to conduct duties free from assault, harassment, interference or bribery (CCROP-HS Section III(2)(A)(xii) and (E)(iii) and Section IV(1); CCROP-SR Section I(2 and 3), Section II(1)(E), (3)(B), (14, 17 and 20), Section III(3)(A and B), (13, 14, 16 and 17), Section IV, Section V(10 and 11));
2. Right to refuse an assignment without negative repercussions, with documentation of reason. Observer programmes or employers shall not require observers to address any vessel inadequacies that cause vessel refusal (CCROP-SR Section III(13) and Section IV (7, 8); CCROP-HS Section IV);
3. National/international protocol developed for checking minimum compulsory safety and emergency-action equipment prior to each deployment (e.g. pre-deployment checklist, CCROP-HS, Box 2). Protocol must also include documentation of vessel refusal, follow-up actions taken by appropriate regulatory authority and observer employer (if different) to address any safety or accommodation issues and how any shortfalls were resolved prior to placement of subsequent observer;
4. Development and enforcement of laws protecting observer health and welfare;

5. Established minimum standards for adequate accommodation for an observer deployment appropriate to the size of the monitored entity and equivalent to that of the officers of the monitored entity (CCROP-HS Section IV (4); CCROP-SR Section I(3), Section II (3)(B), Section III (13 and 17) IV(13, 14 and 17);
6. Transparency (especially available to observers) of safety and welfare reports from previous observer deployments (especially on refused assignments). Include accountability report, with follow-up and actions taken to rectify problem;
7. Minimum health and safety training standards, safety protocols and that are programme-specific. (CCROP-HS Section III and IV);
8. Communication protocols and emergency action plan (CCROP-HS Section IV (5 and 7)).

Article V - Regulatory Authority, Observer Programme and Observer Employer Support

V. Observers have the right to regulatory authority, observer programme, observer employer and monitored entity support, including:

1. Regular communication between observer programme/employers and the observer while they are deployed (CCROP-HS Section IV(7); CCROP-SR Section II(1)(B) and Section IV(11));
2. Assessment and attendance to observers' health and welfare status, including mental health (CCROP-HS Section I(2) and Section IV(8); CCROP-SR Section II(14 and 17), Section III(14,16 and 17), and Section IV);
3. Face-to-face debriefings (CCROP-SR Section II(17));
4. Adequate break time between deployments (CCROP-HS Section I(2)(C) and Section IV(6 and 8); CCROP-SR Section III(14));
5. Debriefings and performance evaluations by observer programme personnel who are experienced in data collection from the resource they are monitoring (CCROP-SR Section II(14)).

Article VI - Stakeholder Integrity, Responsibility and Programme Transparency

VI. Observers have a right to stakeholder integrity and programme transparency (See CCROP-SR), including but not limited to:

1. Financial independence of observer, observer employer and observer programme from monitored entity is crucial (CCROP-SR Section I(1), Section, II(3)(A), Section III(4), Section IV(15) and (16)(B) and Section V(3, 10 and 11);
2. Institutionalised whistle-blower rights for observers with a third party for observers to address both employer and observer programme issues;
3. Minimum data collection and debriefing standards that ensure the objectives of the programme are met and accounted at a prescribed level of quality;
4. Enforceable *Codes of Conduct* for stakeholders that support the integrity of all levels of the observer programme (CCROP-SR Section I(1));
5. Transparency of observer programme statistics that allow comparison of programme, including retention rates and actual deployment/employment rates.

Article VII - Professional Development

VII. Observers have a right to professional development, including but not limited to:

1. Acknowledgment of individual observers for their contribution to science and resource management through credit in publications and support of their attendance at observer programme conferences and workshops;
2. Inclusion of observers and observers' perspective in observer programme decision-making processes that impact the observer's work environment (CCROP-SR Section I(1), II(1)(C), (6, 17);

3. Connection with data users through workshops, presentations and programme libraries of reports based on data collected by observers and make these easily available to observers (CCROP-SR II(19));
4. Certificate or training endorsements that documents additional training and use of special sampling equipment, skill level obtained and information about the project (CCROP-SR Section II(18), Section III (3)(D), (5 and 15).

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