

**Observer Advisory Committee – Meeting Report  
September 18 - 19, 2014**

Alaska Fisheries Science Center, 7600 Sand Point Way, NE, Seattle  
Building 4, Observer Training Room  
8:30 am – 5 pm (Thurs); 8:30 am – noon (Fri)

**Committee:** Dan Hull (Chair), Bob Alverson, Jerry Bongen, Julie Bonney, Dan Falvey, Kathy Hansen, Stacey Hansen, Paul MacGregor, David Polushkin, Joe Rehfuss, Chad See, Anne Vanderhoeven. **Not present:** Michael Lake, Todd Loomis, Brent Paine.

**Agency Staff<sup>1</sup>:** Diana Evans (NPFMC), Chris Rilling (NMFS FMA), Farron Wallace (NMFS FMA), Gwen Schnaittacher (NMFS FMA), Sam Zmolek (NMFS FMA), Jennifer Mondragon (NMFS AKR), Sally Bibb (NMFS AKR), Tom Meyer (NOAA GC), Alicia Miller (NOAA OLE), Nicole Kimball (ADFG).

**Other attendees included:** Liz Mitchell (Association for Professional Observers), Luke Szymanski (AIS, Inc.), Troy Quinlan (TechSea), Tracey Mayhew (Seafarers International Union), Rhonda Hubbard (Kruzof Fisheries).

**Agenda**

- I. Introductions, review and approve agenda
- II. Updates
  - a. Implementation of observer restructuring
  - b. Rebidding of partial coverage contract
  - c. Lead level 2 certification in partial coverage
  - d. Electronic Monitoring Workgroup
- III. Draft 2015 Observer Annual Deployment Plan
  - a. Presentation of deployment plan
  - b. Review data on lower limit of trip selection pool with respect to conditional releases
  - c. Public Comment
  - d. OAC Discussion and Recommendations
- IV. Review progress on regulatory amendment and other analytical projects
  - a. Review progress and priority of analytical projects and regulatory amendments
  - b. Public Comment
  - c. OAC Discussion and Recommendations
- V. Scheduling & Other issues

**Introductions and agenda**

Introductions were made, and the agenda was approved.

**Updates**

Chris Rilling noted that in the second year of the program, we are now in the regular cycle of reviewing the prior year's activity in June, and using that input to design the next year's annual deployment plan (ADP) for review in October. He updated the OAC on the Court's decision in the observer lawsuit, which upheld the program, but remanded the agency to look more closely in a supplemental environmental

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<sup>1</sup> NPFMC – North Pacific Fishery Management Council; NMFS FMA – Fishery Monitoring and Assessment division at the National Marine Fisheries Service's Alaska Fisheries Science Center (AFSC); NMFS REFM – Resource Ecology and Fisheries Management division at the AFSC; NMFS AKR – NMFS Alaska Region; NOAA GC – National Oceanic and Atmospheric Administration General Counsel; NOAA OLE – NOAA Office of Law Enforcement; ADFG – Alaska Department of Fish and Game.

analysis (EA) at the narrow scope of the risk to data quality that may result from decreased observer coverage, and the point at which the coverage rate becomes too low to generate reliable, high quality data. My Rilling also provided an update on the Inspector General's audit of all observer programs nationally, which appears to be focusing particularly on electronic monitoring.

Regarding the new observer contract for partial coverage, a request for proposals (RFP) has been prepared, and will be out shortly. The OAC asked a number of questions about the transition process between the old and new contracts, especially if they are with different service providers, and the budget implications for the ADP if the cost per observer day is substantially different. Mr Rilling noted that the agency has tools available to ensure a smooth transition between the contracts.

The agency recently received and responded to a letter from the Freezer Longline Coalition about the shortage of fixed gear lead level 2 observers for that fleet, asking the agency to adopt a non-enforcement policy. Mr Rilling discussed the agency's response, that NMFS does not adopt non-enforcement policies, and there was some OAC discussion about the letter, although it was largely deferred to a later agenda item.

Finally, the Chair updated the Committee briefly on the progress of the Electronic Monitoring (EM) Workgroup, and the scope of work planned for the upcoming Workgroup meeting. The OAC inquired about the target date for integrating EM with the Observer Program, and whether the OAC can help get more vessels involved in testing EM next year, if an RFP is re-released.

### **Draft 2015 Annual Deployment Plan**

Jennifer Mondragon and Craig Faunce presented the draft 2015 ADP, highlighting major changes and providing rationale for the chosen rates in the two trip selection pools. Dr Faunce presented new area-specific metrics to assess how different coverage rates increase or reduce the risk of not getting coverage in a particular reporting area, and, with Ms Mondragon, discussed how these data impact the catch estimation process. Dr Faunce also noted that while in the first two years of the program, the agency was very conservative in order to avoid the risk of going over budget, the draft 2015 ADP is more risk tolerant, allowing for higher coverage rates. Finally, Dr Faunce presented Appendix C to the ADP, which responds to the Council's request to look at the correlation between vessel length and conditional release requests, and also provided some additional background about the analytical origin of the 40' and 57.5' vessel length bounds that have been in place for the vessel selection pool for the last two years.

One person provided public comment on this issue, and requested more information on conditional releases.

### ***Committee Discussion***

The OAC complimented the agency on the ADP, noting that it is well written and contains useful metrics to better understand drivers of program data. The Committee also appreciated the additional figures that were included in the OAC presentation. **The Committee agrees with moving all observed vessels into the trip selection pool, and also the proposed selection rates of 12% in the small vessel trip selection pool, and 24% in the large vessel trip selection pool.** In order to inform whether moving all vessels to the trip selection pool is likely to adversely affect the risk of going over budget, the OAC suggested the Council might benefit from an evaluation of the travel costs associated with the existing trip and vessel selection pools, per observer day in each pool, if this is possible prior to October.

Members of the OAC continue to be interested in moving towards being able to deploy observers by gear strata. The Committee discussed different mechanisms to assist with moving towards this goal, including

the possibility of adding a declaration question to ODDS to record whether a vessel is fishing with longline or pot gear (there is already a declaration for trawl gear). In terms of the ADP, the OAC suggested that the ADP include information on the distribution of projected observer days by gear type (trawl, longline, pot).

**The OAC supports conditional releases in 2015 in the small vessel trip selection pool for vessels that do not have sufficient liferaft capacity to accommodate an observer.** Vessels that want to apply for this conditional release need to apply at least 30 days before commencing fishing; the OAC recommends that the agency highlight the required timing in outreach efforts. The OAC discussed whether maintaining the liferaft waiver will encourage vessels to purposely buy a smaller liferaft in order to qualify for the conditional release, and discussed whether a sunset provision should be associated with this conditional release. After a comprehensive discussion, the OAC noted that more information would be needed to consider sunseting the liferaft conditional release. **The OAC therefore recommends that the 2014 Annual Report include information to evaluate a sunset provision, including information on the potential for bias that could be introduced through the liferaft conditional release, the costs to an individual operator of upgrading to a larger liferaft, and the enforcement disincentives to downgrade one's liferaft.**

**The OAC discussed at length the agency's proposal not to grant conditional releases in the small vessel trip selection pool because of insufficient bunk space to accommodate an observer, but did not reach consensus. The OAC affirms that bunk space is a true constraint for some vessels.** The Committee also notes that the constraint is not apparent on the basis of vessel length; bunk space limitations result from the design of the vessel, not its length. No member of the OAC recommended changing the minimum vessel length for the small vessel trip selection pool. The discussion highlighted that there is a need to weigh data quality concerns. On one hand, conditional releases are clearly a source of potential bias in the data, as identified in the Annual Report and the SSC's review in June. There is also risk, however, that if a vessel is forced to take an observer, the operator will engage in unrepresentative fishing behavior. Members of the Committee cited safety concerns resulting from crew fatigue due to hotbunking, and even the potential for economic impacts from vessel owners choosing to stop running their boat, and instead fish their quota on another vessel.

In the discussion, some OAC members pointed to the mediating factors in support of the agency's proposal to rescind the conditional release for bunk space. These include both that under trip selection, the duration of having an observer onboard is far shorter than in the vessel selection pool, and also that the trip selection pool offers the ability for vessel operators to log up to three trips in advance, which flexibility should allow operators to accommodate IFQ clients on an unobserved trip. An option that had traction with some OAC members was to grant a conditional release after a vessel has drawn two consecutive observed trips. The discussion noted that while the 12% rate provides some mitigation for small vessels, with only 1 in 8 trips to be observed on average, this provision would address the circumstance where a vessel draws three or four observed trips in a row, which could represent a 50% or even 100% realized selection rate for an individual small vessel making few annual trips. It was also suggested that extending a release policy indefinitely, in conjunction with the delay in developing an electronic monitoring alternative, might lead the exempted class to feel themselves excused from the obligation of monitoring, which is not desirable.

Other members of the Committee strongly support the need to retain the conditional release for bunk space, because for those vessels for which it is a true constraint, there is no way to mediate the hardship associated with accommodating a person on board for monitoring. They suggested two options for minimizing any potential sampling bias associated with granting the conditional release. The agency might implement a pre-registration system prior to the beginning of the year, whereby vessels would register if they were unable to accommodate an observer because of insufficient bunk space. This would

address the sampling frame bias issue, and infractions could be addressed through enforcement. Alternatively, the agency could accommodate a similar system within ODDS, where vessels would initially declare their bunk space capacity, and with each trip logged, would identify the number of crew. If the numbers matched, the trip would be released.

The members of the OAC could not reach agreement on this issue, however the OAC continues to be hopeful for electronic monitoring as an alternative, integrated into the Observer Program. The Committee discussed that vessels that are bunk space limited might be prioritized for EM implementation.

**The OAC recommends that the following additional information be presented to the Council in October, to help inform the discussion of conditional releases for bunk space:**

- Additional figure, showing the same information as Figure C-4 in the ADP, but for unique vessels (number of selected and released trips by vessel length).
- Information from the 2013 Annual Report, detailing conditional releases by release type.
- Any information from other regions about their use of conditional releases in small vessel fisheries (from the September 2014 National Observer Program Advisory Team meeting).

The OAC agreed that, regardless of the Council's decision on conditional releases, outreach to the former vessel selection vessels will be particularly important in this transition period. The Committee suggested that a small placard with ODDS information, including web address and a phone number, be mailed to each vessel owner. It was also suggested that in addition to the proposed outreach meetings identified in the ADP, the agency might hold outreach sessions in conjunction with Board of Fish meetings during the winter. Finally, members of the Committee noted that it will be important to remind vessel owners that if they have remaining halibut IFQ onboard, no matter how small the amount, they need to continue to log every trip if there is a chance of catching a halibut, even if they are participating in a State fishery. As a corollary, it was also noted that there should be a reminder to Federal observers that their sampling responsibility for a vessel participating in a State fishery is limited to halibut.

## **Regulatory amendment and other analytical projects**

Sally Bibb presented a table identifying all the analytical projects related to the Observer Program which have been tasked at this time, in a priority list. The priorities are largely reflective of Council input in February and June, although there are also some new items. Notably, the Court-ordered supplemental EA has been added to the list as priority 2, ahead of the 2014 Annual Report. Ms Bibb described the type of work involved in each of the tasks, and explained that the agency will use this prioritization to inform tasking for analysts that work on the various aspects of observer issues, although acknowledging that the analysts also have other responsibilities not included on this list, which are part of their workload.

### ***Public Comment***

Three people provided public comment on this issue. One person complimented the agency on making progress on the small CP amendment (priority 11), noting the costs they have been imposed on small CPs operating especially out in the Aleutian Islands and Bering Sea. Concern was also expressed about the need to keep moving the tender issue forward, because it seems like this represents a hole in data collection. Another person asked how long the BS cod trawl CVs can continue to opt for voluntary full coverage without a regulatory change. Two people commented on the longline lead level 2 (LL2) issue, and the possibility of solutions between industry and providers, for example rotating LL2 observers between freezer longline and more comfortable assignments to promote observer retention.

### **Committee Discussion**

**The OAC finds the table very useful** to help visualize the Council's priorities, and how the various projects interact, and was glad to hear that it will be regularly updated for the Council as part of staff tasking in the future. In general, the Committee agreed with the prioritization presented in the list. **Although some projects further down the list were highlighted as also being very important, the OAC did not recommend any specific changes in prioritization.**

With respect to the highest priority items, the OAC expressed interest in understanding the scope of the supplemental EA (priority 2). Ms Bibb noted that this project is still being conceptualized, and more information will be available at the October Council meeting. The OAC also noted that priority 3, the 2014 Annual Report, is really a catch-all for a lot of different information requests that were articulated during the review of the 2013 Annual Report. Given the possibility that preparation of the supplemental EA will curtail the agency's ability to address all the Annual Report requests, the OAC discussed whether there would be an opportunity to prioritize among the requested components. For example, following the model from last year, the agency might bring an outline of the Annual Report for review in February. Agency staff noted, however, that preparing for and attending the February Council meeting is a direct tradeoff with time that can be spent on analysis for the supplemental EA and the Annual Report, and also that they felt that the feedback received in June was comprehensive.

**The OAC discussed the halibut deck sorting action, currently listed as priority 9, and noted that this action has the potential to provide an immediate conservation benefit, by reducing the mortality of Bering Sea halibut, and thus needs to be a high priority.** Some members of the OAC strongly supported achieving halibut savings in 2015 through an EFP if possible. Ms Mondragon reported on a recent meeting with the applicants, at which progress was made, although some operational procedures still need to be resolved. The OAC asked the agency to consider ways in which industry could perhaps frontload some of the work associated with developing the EFP application, or the associated EA, in order to keep that project moving expeditiously.

The Committee also considered priority 10, which requests further information about the potential for unrepresentative fishing by observed vessels delivering to tenders in the early part of 2014. After clarifications about the origin of the request, and the scope of work to address it, **the OAC agreed with the staff proposal that this be included in the 2014 Annual Report, next June.** As such, it can be deleted from the list as a specific item, as it will be folded into the Annual Report task (priority 3). Members of the OAC remain concerned about the perception that the definition of a trip while delivering to tenders constitutes a "loophole", allowing vessels to avoid having to take an observer. The OAC reiterated their recommendation from May, that evaluating the early part of the year separately from the year as a whole will advise the discussion of how rapidly to address this issue, either in the GOA trawl analysis (priority 6) or in the tender amendment analysis (priority 13).

The final issue about which there was considerable discussion was the development of solutions for improving the availability of fixed gear lead level 2 observers. A discussion paper with regulatory and nonregulatory solutions has been tasked by the Council, and is listed as priority 14 on the list. Many members of the OAC expressed concern about this situation, noting that multiple freezer longline boats have now had to delay their fishing because an observer was not available for the trip. The agency's recent letter to the freezer longline fleet outlined nonregulatory solutions, for example, voluntarily taking two observers to allow one to get the requisite training, and paying higher wages to LL2 observers as an incentive to stay. Discussion at the OAC mostly categorized these potential solutions as short-term only, although there was a suggestion to consider a regulatory requirement to carry two observers. Regarding financial incentives, it was noted that the primary reason people leave observing is because of a lifestyle choice, and higher wages will not encourage them to stay substantially longer. Qualified fixed gear LL2

observers are also more likely to get burned out faster, because the shortage means that they are repeatedly given only freezer longline assignments. From the providers' perspective, the shortage has been created because there used to be three avenues to train a fixed gear observer: placement on a longline boat in a fishery without a lead requirement, placement on a pot boat, and placement on a vessel requiring two longline observers. The separation of the observer program into two categories, full coverage and partial coverage, serviced by different companies, has closed off two of those avenues to the freezer longline providers, as observers are generally unlikely to change companies. This leaves only the option to place two longline observers on a vessel, which is a high cost to freezer longline vessels that have recently invested in an alternative monitoring solution which meets with NMFS' data quality requirements.

After talking through what could be included, **the OAC agreed that long-term solutions to the LL2 observer availability issue need to be investigated, and to that end the discussion paper will be useful.** The discussion paper should explore possible regulatory changes that meet the agency's requirements for an experienced fixed gear observer, but also allow for some flexibility. The paper should consider the requirements for how you qualify an observer for fixed gear LL2, and whether there can be additional conditions imposed in order to allow an experienced, but not fixed gear LL2 qualified, observer to go on a trip in extenuating circumstances. These conditions could be additional training sessions, or mid-cruise check-ins; it would also be useful to consider whether there are any electronic monitoring tools that could be helpful. The discussion paper should recognize that observing on a freezer longline vessel is demanding, and that sampling fixed gear is conceptually different than sampling on a trawl vessel. However, it may be possible to achieve the spirit of the agency's policy requiring higher monitoring standards, while allowing some case by case flexibility. The paper should also revisit the agency's analysis in the freezer longline monitoring standards amendment analysis, which concluded that there would not be an impact on the availability of observers.

**The OAC was not able to identify a non-regulatory solution to resolve the problem over the long term,** although several ideas were discussed. Several OAC members reiterated the request in the FLC letter asking the agency to consider not enforcing the observer requirement if a LL2 observer is not available when the vessel is ready to leave port, as is done in the partial coverage category of the Observer Program. However, NOAA Enforcement did not believe this option was available.

## **Scheduling and other issues**

The OAC discussed that in the absence of further Council tasking, the next Committee meeting would be in May 2015, to review the Annual Report for 2014.

Some members of the Committee also reported feedback they have heard from constituents. Fishermen are concerned that sampling fish they would have otherwise have released alive is resulting in killing the resource. They are also reporting that observers seem to be coming onboard small vessels with the attitude that they are enforcement officers, and also that the boats are unsafe and observers are going to be hurt on them. Finally, in response to wheel watch requirements, some vessels are coming inshore to anchor, and when they return to fishing they are noticing more sand fleas.