



AGENDA C-5(b)(2)
DECEMBER 2008

**UNITED STATES DEPARTMENT OF
National Oceanic and Atmospheric Administration**

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

December 3, 2008

Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501

Dear Mr. Oliver:

This letter responds to several observer issues raised in a letter to you from Michael Lake dated October 2, 2008 (Enclosure 1). Our response to these issues is summarized in this letter and additional detail is included in Enclosure 2.

Mr. Lake requested a thorough analysis of: 1) the Level 2 lead observer experience requirements which appear to him to be arbitrary; 2) the observer coverage requirements for hook-and-line catcher/processors that are in excess of requirements for catcher/processors using other gear types in similar fisheries; and 3) new observer workload requirements which seem to have increased the length of time required for observer debriefing. We also address the perceived shortage of Level 2 lead observers which prompted the inquiry about Level 2 lead experience requirements.

Level 2 lead experience requirements: NMFS maintains that experience requirements for Level 2 lead observer endorsements are necessary and reasonable. These requirements were designed to yield high quality data vital for managing individual vessel or cooperative allocations and were developed by long-time Observer Program staff based on their knowledge and experience from prior work as observers and their experience in training, debriefing, and evaluating observer's performance (see Enclosure 2).

We recognize additional challenges observer providers may face in supplying a sufficient pool of experienced Level 2 lead observers. While lowering the experience requirements is not a viable option in our view, we have streamlined the Level 2 and Level 2 lead observer endorsement process to alleviate potential supply issues for experienced observers. The Level 2 training materials, which previously required separate training, have been incorporated into the initial three-week training for observers. This is intended to achieve dual objectives of streamlining Level 2 certification and increasing the knowledge and skill of all observers by providing this additional material. Moreover, we will no longer require Level 2 observers to return from the field for debriefing upon achieving the minimum sampling experience required for endorsement as a Level 2 lead observer. Rather, observers may become endorsed as a Level 2 lead observer while they are deployed, without first having to debrief. These modifications are intended to ease observer provider burdens associated with supplying experienced observers.

Level 2 observer coverage requirements: Mr. Lake notes that the experience requirements for the second observer required for catcher/processors using hook-and-line gear in the Community Development Quota (CDQ) fisheries differ from the requirements that apply to catcher/processors and motherships participating in other similar quota share or cooperative fisheries. This is correct and NMFS proposes to revise its regulations to address this issue. The observer coverage requirements for all vessels and processors participating in the CDQ fisheries were developed in 1998 with implementation of the



multispecies groundfish and prohibited species allocations to the program. Since then, similar observer coverage requirements have been implemented for the American Fisheries Act and Aleutian Islands pollock fisheries, the Central Gulf of Alaska Rockfish Program, and the Amendment 80 fisheries. In each case, the observer coverage requirements for vessels of similar types in the CDQ and non-CDQ fisheries were revised to be the same. Catcher/processors and motherships in these fisheries are required to have at least two-NMFS certified observers, one of whom must be a Level 2 lead observer. However, catcher/processors or motherships participating in the CDQ fisheries are required to have at least two Level 2 observers, one of which must be a Level 2 lead observer except when participating in the pollock fishery, if an Amendment 80 vessel, or a catcher/processor using pot gear. This means that hook-and-line catcher/processors are the only significant group of CDQ fishery participants that are required to have the second observer be a Level 2 observer.

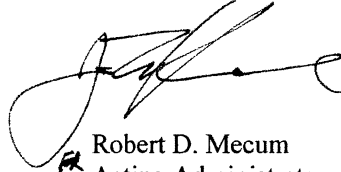
Unless otherwise directed by the Council, NMFS will prepare a proposed rule to revise the observer coverage requirements for the CDQ fisheries to make the observer experience requirements that apply to the hook-and-line catcher/processors consistent with the experience requirements that apply in the other CDQ fisheries and non-CDQ quota and cooperative fisheries. In the interest of time, and because the proposed change is very straightforward, we suggest that this regulatory amendment package not be brought back to the Council for review prior to publishing the proposed rule in the Federal Register. We anticipate that it would be late 2009 before this regulatory amendment could be effective, primarily due to the higher priority of the Observer Program regulatory amendments recommended by the Council in April 2008 and the potential program restructuring analysis.

Observer workload requirements: In 2008, NMFS modified observer sampling protocols to improve data quality and simplify observer responsibilities. Mr. Lake cites new observer workload requirements and software issues as dramatically increasing debriefing length. NMFS has not experienced an increase in debriefing duration as a result of modifying observer responsibilities. Rather, these changes have allowed NMFS to streamline the debriefing process and we are not seeing the increased duration reported. Delays experienced by individuals in the debriefing process may be attributed to other factors such as the experience of the observer, specifics of their deployment (e.g., duration, number of vessels observed, etc.) or the timing of the request for debriefing. High debriefing demand as fisheries close has resulted in debriefing bottlenecks in the past. As budget allows, NMFS is contracting additional debriefing staff during periods of high demand.

As inferred from Mr. Lake's letter, a perception exists that supply has not kept pace with increasing demand for Level 2 lead observers. The demand for Level 2 lead observers increased in 2008 with the implementation of Amendment 80 to the BSAI FMP. Level 2 lead observers are also required in AFA and CDQ fisheries and the GOA rockfish pilot project. With two isolated exceptions with unusual circumstances, observer providers have met the demand for Level 2 lead observers. NMFS is not able to address market conditions such as observer pay or demand for observers in other industries which may be competing with North Pacific groundfish observer providers. However, as mentioned previously, NMFS is working to streamline Level 2 observer training and has increased training opportunities in December 2008 to facilitate an increased supply of Level 2 observers.

It is our hope that modifications made to the training and endorsement process for Level 2 and Level 2 lead observers and the proposed modification to hook-and-line catcher/processor observer requirements when participating in the multispecies CDQ program will allay some of Mr. Lake's concerns while maintaining high quality data collection needed for fisheries management.

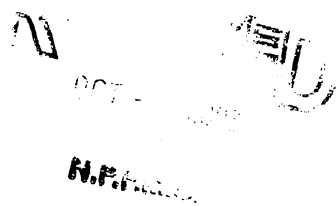
Sincerely,

A handwritten signature in black ink, appearing to read 'R. Mecum', with a large, stylized flourish extending to the right.

Robert D. Mecum
Acting Administrator, Alaska Region

Enclosures (2)

cc: Observer Providers



October 2, 2008

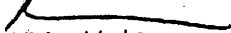
Chris Oliver
Executive Director
North Pacific Fisheries Management Council

Dear Chris,
Due to conflicting schedules I will not be able to attend the "Staff Tasking" portion of the council meeting next week to request the following and would greatly appreciate your help. I would request that the following be included in the draft Observer Program Restructuring Discussion Paper due to the council at the December 8, 2008 meeting:

- a) A thorough analysis of the L2 Lead Observer requirements. Currently, to become eligible for Lead status, an Observer must have completed two cruises and sampled at least 100 hauls on a catcher/processor using trawl gear; two cruises and sampled at least 50 hauls on a catcher vessel using trawl gear; and two cruises and sampled at least 60 sets on a vessel using non-trawl gear. While we agree with some-type of extra requirement, we disagree with the amount of work required and would like some concrete justification for the above arbitrary requirements.
- b) An analysis needs to be done on the extra coverage requirements for the Freezer Longline fleet. They are the only group that still has the requirement of Lead observer and CDQ certified 2nd observer. The requirements should mirror other gear type coverage requirements, i.e. AFA, Amendment 80 despite the fact that their fishery is not yet rationalized.
- c) An analysis of new observer workload requirements (a tripling of paperwork) and software issues that have led to a dramatic increase in the length of debriefings for observers. The NPGOP has stated that these increased work requirements would make for better data. Is that true or are the software problems they seem to be having creating more of a problem?

Thank you for your consideration.

Sincerely,
Alaskan Observers, Inc.


Michael Lake
President

Enclosure 2

Enclosure 2 provides additional information on the Level 2 observer issues described in Robert D. Mecum's December 3, 2008, letter to Chris Oliver which addresses issues raised by Michael Lake in October 2008. Issues raised by Mr. Lake include justification for the Level 2 lead requirements for observers, and new (2008) observer workload requirements. The Level 2 lead observer requirements were raised in the context of observer shortages so we will touch on the perceived shortage also as a third issue.

Justification for the Level 2 lead requirements for observers

The correspondence suggested that the current experience requirements for Level 2 lead observers were developed in an arbitrary manner and that NMFS should re-evaluate these experience qualifications. NMFS disagrees and believes that the current regulations regarding experience requirements for Level 2 lead observers are appropriate and does not consider them arbitrary.

The current experience requirements for Level 2 lead observers were developed through discussions among long-time members of the Observer Program staff. The NMFS staff that developed these standards have knowledge and experience from their prior work as observers and from their Observer Program experience in observer training, debriefing and evaluating observer performance.

NMFS started requiring additional training and experience because monitoring individual vessel or cooperative quota programs (i.e., CDQ, AFA, Amendment 80) requires a high level of confidence in at-sea, real-time, observer estimates and sampling efforts in order for these programs to be managed effectively by both NMFS and industry. NMFS placed experience requirements on the observers that cover these fisheries in order to ensure the quality of observer data and the success of these programs. Demand for Level 2 lead observers is increased as new programs continue to be implemented. For example, Amendment 80 was implemented in 2008 requiring two observers on each vessel, one being a Level 2 lead observer.

We understand the problems observer providers sometimes encounter when trying to meet the experience requirements of Level 2 lead observers, but we do not agree the solution lies in reducing these experience requirements. Instead, we have taken action to help alleviate this problem by creating a more efficient pathway towards achievement of the basic Level 2 endorsement and the Level 2 lead endorsement.

Under current regulations (50 CFR §679.50 (j)(1)(v)(D)), a Level 2 endorsement to an observer's certification may be obtained by meeting the following requirements:

- (1) Be a prior observer in the groundfish fisheries off Alaska who has completed at least 60 days of observer data collection;
- (2) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;
- (3) Successfully complete a NMFS-approved Level 2 observer training as prescribed by the Observer Program;
- (4) Comply with all other requirements of this section.

We have now incorporated the Level 2 training materials into the 3-week and 4-day briefings in preparation for the 2009 fishery season and we informed the certified observer providers of this in correspondence dated September 15, 2008. We believe that this change will achieve two goals. The first goal is to increase the knowledge and skill level of all observers. As management regimes in the North Pacific continue to develop, the data collected by observers are becoming an increasingly important tool for management. As a result, the work observers do has a growing impact on individual vessels and seasons. To ensure that all observers are prepared to face the many challenges presented to them at sea,

we have upgraded our initial training to include what were historically 'Level 2' materials. This will prepare inexperienced observers to make informed decisions that positively affect data quality.

The second goal is to simplify the Level 2 endorsement process. By including Level 2 instruction materials in the initial 3-week training course, the need for observers to complete a separate, 4-day Level 2 training class will be eliminated. This should greatly ease the logistical, time, and cost issues associated with the original Level 2 endorsement process. Essentially, an observer will now gain a Level 2 endorsement after (1) successfully completing the initial 3-week training course, (2) completing at least 60 days of observer data collection and (3) receiving an acceptable evaluation by NMFS for his or her most recent deployment. Once an observer has achieved a Level 2 endorsement to their observer certification, they may additionally receive a Level 2 "lead" observer endorsement by meeting further experience requirements (50 CFR §679.50 (j)(1)(v)(E)).

These Level 2 lead requirements are as follows:

- (1) A Level 2 "lead" observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.
- (2) A Level 2 "lead" observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.
- (3) A Level 2 "lead" observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

In the past when an observer, who was deployed at sea, reached the required level of sampled hauls or sets that would allow them to become a Level 2 lead observer, they had to first return from sea and successfully complete a debriefing before they achieved their Level 2 lead status for that fishery. We are now going to allow observers to become Level 2 lead endorsed while they are deployed, without first requiring them to debrief from their deployment.

With these changes in the way observers achieve basic Level 2 and Level 2 lead endorsements, we are confident that observer providers will be better able to meet the observer coverage needs of the individual vessel quota monitored fisheries. Observers will graduate from our initial training courses better prepared to work aboard vessels that are managed through individual vessel quota monitoring systems and observers will be able to more rapidly achieve a Level 2 lead endorsement.

We are supportive of changes to experience requirements for Level 2 and Level 2 lead observers when such modifications do not undermine data quality. At this time, we believe that the existing regulations set a reasonable and necessary level of experience for Level 2 lead observers which provides NMFS, the Council, and the fishing industry high quality information. In most cases where two observers are required, the second observer can be a first time observer thus providing a mechanism for new trainees to obtain the requisite experience to work in the Level 2 lead role.

New (2008) observer workload requirements

In 2008, NMFS implemented a suite of broad changes to improve the quality and utility of observer information. The changes were made in response to scientific reviews of the information we collect. First, many of the observer duties were simplified to eliminate the observer making extrapolations from raw data and they were re-focused on collecting, recording and transmitting quality information to NMFS. Second, we required the selection and recording of discrete samples within any given set or tow. These samples are taken following scientific protocols and each sample is now recorded. Previously, samples were pooled limiting some of the scientific uses of the information.

In August 18, 2008, correspondence signed by all certified observer providers, they noted "...In 2008, NMFS has continued the work of simplifying the observers job by revamping sampling protocols to further reduce opportunities for bias, sampling mis-steps, and data recording errors. The net result of the streamlining NMFS has successfully implemented has been to allow observers to focus more energy on sampling correctly. In turn, the result of more consistent and more accurate sampling has been a corresponding reduction in tension and conflict with fishermen." While this was presented in the context of reducing the Level 2 requirements, it is a good summary of what we did and how it has been perceived by the observer providers and the fishing industry.

It is important to note that we are still in the first year of a substantive set of changes and we will be evaluating feedback on the changes as we consider the future sampling tasks we set for observers. In general, the decisions related to how observers sample is in the purview of NMFS and its scientific staff, though we are happy to share what we are doing with the Council and interested public. To that end, an article on the sampling changes published in the AFSC quarterly report in January of 2008 can be found at: <http://www.afsc.noaa.gov/Quarterly/jfm2008/jfmfeaturelead.htm>. In addition, the details of current and past observer sampling can be found in the annual observer manuals available on the AFSC website at: <http://www.afsc.noaa.gov/FMA/document.htm>.

Mr. Lake's letter (Enclosure 1) attests that these changes have led to a "dramatic increase in the length of debriefings for observers." From NMFS' perspective, we have not seen an increase in the duration of debriefings as a result of the changes. In fact, we are seeing an overall streamlining of debriefing as the data collections have been simplified. Along with those changes, NMFS has recently taken steps to involve the observers in the debriefing process by asking them to check for data entry errors. This work had previously been done by NMFS staff and created a bottleneck in the debriefing process. Debriefing is a necessary component of NMFS data quality program and there are many factors which influence its duration. These factors include the quality of the observer, their experience, the duration of their deployment, the number of vessels/plants they observed, the complexity of their sampling situation, the timing of when their debriefing was requested, any enforcement or safety documentations, and the number and quality of staff NMFS has available to conduct debriefings. In general, the greatest bottlenecks occur when major fisheries are closed and multiple debriefings are requested at the same time. For example, in late 2007, NMFS had 30 debriefings requested in one day. We have not seen a comparable spike in the workload this year. In addition, while NMFS staffing levels have remained relatively constant, we are supplementing debriefing staff with contractors, as funding allows, during peak debriefing times.

Level 2 lead observer shortages

As noted above, there was an increase in demand for Level 2 lead observer with the implementation of Amendment 80 in 2008. Amendment 80 catcher-processor vessels must now carry two observers, one being a Level 2 lead observer. In all cases in which NMFS is aware, this requirement was met in 2008.

Level 2 lead observers are also a requirement on motherships and catcher/processor trawl vessels participating in the AFA fisheries. In one case in July of 2008, a deployed Level 2 lead observer experienced a medical condition that required the observer to be removed from the vessel for medical attention. At that time, a back-up Lead level 2 observer was not available and the vessel's manager considered requesting a waiver from NMFS. However, the Level 2 lead observer's medical condition was resolved and the observer returned to the vessel. Therefore, no waiver was requested.

Level 2 lead observers are a requirement on hook-and-line catcher/processor vessels when fishing CDQ. In one case, also in July of 2008, the F/V BERING PROWLER was unable to obtain a Level 2 lead observer. In light of the particular details, the company requested and was issued, a waiver to the

regulations allowing the Level 2 observer to complete the requisite experience during their next trip aboard the F/V BERING PROWLER. Note that the observer had prior successful longline experience but was short on the quantity of sets sampled.

Thus, to date, with the two exceptions noted, all of the requirements for Level 2 lead observers as required by regulation have been met. This does not mean that it was easy for the observer providers to meet this demand, only that it was possible. The increased demand for Level 2 lead observers places a premium on experience and this likely comes at a cost. NMFS is not a party to agreements between observer providers and the fishing industry, but as demand for experience increases, we would expect the amount observer providers charge their clients to also increase.

In addition, we are aware that there may be increased competition for observers in general. Certainly, there is demand across the U.S. for observers and many experienced observers in Alaska have taken positions with other observer programs. At the Council's December 2008 meeting, NMFS will present a white paper on observer program restructuring that shows that NMFS-contracted programs may pay their observers more than they receive in the North Pacific program. In addition, we are aware that experienced observers are being recruited from the North Pacific program to serve on oil exploration vessels operating off the coast of Alaska.

NMFS is responsible for providing the training for new and experienced observers. As noted, we have taken steps to streamline and simplify the training for Level 2 observers. In addition, we provided training for 184 new observers in 2007, and 142 this year, with 59 registered so far in the remaining training classes of 2008. We have also added additional training classes in December of 2008 to meet next year's demand. It is this pool of new observer trainees who, with experience, can supply the demand for Level 2 lead observers.