

# Potential Regulatory Amendment for Tender Activity under the Observer Program December 2013<sup>1</sup>

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## 1 Introduction

Beginning in 2013, the Council and National Marine Fisheries Service (NMFS) implemented a restructured observer program for the groundfish and halibut fisheries of the North Pacific. The new observer program places all vessels and processors in the groundfish and halibut fisheries off Alaska into one of two categories: (1) a full coverage category, where vessels and processors obtain observers by contracting directly with observer providers, and (2) a partial coverage category, where NMFS will have the flexibility to decide when and where to deploy observers based on an annual deployment plan.

At the October 2013 meeting, the Council reviewed the draft 2014 Annual Deployment Plan (ADP), which identified that tender activity in the GOA may represent an important source of variance and/or bias in catch data from the partial coverage category. Discussion of the issue through the Council's Observer Advisory Committee (OAC) and at the meeting noted that first, a potential bias in the catch data could occur if vessels are making extended, unobserved deliveries to a tender, and second, salmon genetic sampling is not occurring with trawl tender deliveries. To address these issues, the Council requested that sufficient scoping information be brought forward at the December 2013 meeting for the Council to initiate a regulatory amendment. The Council prioritized the tendering issue over other potential regulatory amendments to the program<sup>2</sup> which had been previously tasked, because it addresses a bias in data quality, if fishing behavior on observed vessels delivering to tenders is not representative of vessels that are not observed.

This paper provides a short background on tender activity, identifies the two issues of concern to the Council, and some possible options for addressing them.

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<sup>2</sup> In June 2013, the Council tasked staff to develop a discussion paper outlining the main issues associated with three proposed regulatory amendments to the restructured program, in order for the Council to consider initiating an amendment package to revise the Observer Program. The three proposals are (1) to evaluate moving the BSAI Pacific cod trawl catcher vessel (CV) fleet into the full coverage category; (2) for vessels that have previously operated as CVs and catcher processors (CPs) within a single year, to consider options to allow for an annual election of whether they should be considered CPs or CVs under the program; and (3) to change the method of observer fee collection for the IFQ fleet to use standardized current year ex-vessel prices.

## **2 Background on tender vessels**

A tender vessel is defined in regulation as a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor (50 C.F.R. 679.2). In order to operate in Federal waters of the GOA or BSAI, a tender vessel must have a Federal fisheries permit (§ 679.4(b)). A single tender vessel can receive deliveries from multiple fishing vessels, depending on its capacity, and the regulations that limit tender activity. The use of tenders allows fishing vessels to keep fishing, without the delay and associated costs associated with travel to and from port. Throughout the course of a year, catcher vessels may deliver to tenders, shoreside processors, or even both during a single trip (split delivery), and the vessels that engage in these activities change from year to year.

In the partial coverage observer category, the primary fisheries where tender vessels are used are the GOA pollock (trawl vessels) and GOA Pacific cod (all gear types) target fisheries. There is also some tendering in the Bering Sea pot cod fishery. Tender vessels are often stationed in areas where there is no internet connection, or communication ability. When the catcher vessel delivers to the tender, a fish ticket is issued by the tender vessel, which estimates the weight of delivered catch. The tender submits the fish ticket data to the shoreside processor on its return, and the processor must enter the fish ticket information into eLandings<sup>3</sup> within 7 days of the initial delivery.

NMFS and the Alaska Department of Fish and Game (ADFG) are also implementing a tender component to eLandings, called tLandings. Originally developed for salmon tender reporting, the system is being expanded to some groundfish tendering in 2013. This system enables electronic data entry on board tender vessels without an internet connection. The application and landings reports (fish tickets) are stored on a portable thumb drive. Using the tLandings application, tender operators can create and print fish tickets similar to the current method used shoreside. When the tender makes a delivery to the shoreside processor, then landing data are uploaded into the eLandings system.

Tender vessels are not required to have observer coverage, and the regulations governing observer activities do not extend to tender vessels. For example, for vessels and processors that are subject to the observer program, regulations at § 679.51 specify vessel and processor responsibilities, which include providing safe conditions, access, notification, communication equipment, and assistance, including with transfer of observers at sea. Because the tender vessel provides the delivering vessel with a fish ticket, it must, at a minimum, have the ability to weigh the catch as it comes onboard. Some tender vessels may also have requisite space on board to allow some sorting of the catch, and the ability to accommodate an observer station.

Under the 30% observer coverage requirements that were in place before 2013, observers were sometimes 'deployed' from tender vessels. At that time, it was the responsibility of the vessel to contract with an observer provider to meet its obligations. When participating in tender fisheries, vessels could pay a water taxi to transport the observer to the fishing grounds, or ask the observer to get a ride out on an incoming tender vessel. Vessels would also share an observer, where one vessel would drop off the observer at the tender with its delivery, and another vessel would bring the observer onboard for its next trip.

## **3 What are the issues of concern**

There are two potential issues that have been identified with respect to tender activity, as discussed below.

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<sup>3</sup> eLandings is the Interagency Electronic Reporting System for reporting commercial fishery landings in Alaska.

### 3.1 Tender activity may be causing a bias in data quality due to unrepresentative observed versus unobserved fishing practices

The first issue of concern with respect to tender activity is that it may be that vessels are behaving differently when observed and delivering to tenders than they do when they are unobserved and engaging in the same practice. This difference in behavior may introduce a bias into the program data.

In the trip selection pool of the partial coverage category, vessel owners or operators are required to log each trip in the Observer Declare and Deploy System (ODDS), and they are immediately informed whether the trip has been randomly selected for observer coverage. The definition of a “trip” depends on the type of activity a vessel is engaged in. For a catcher vessel delivering to a shoreside processor or stationary floating processor, a trip is defined as the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel. In contrast, for a catcher vessel delivering to a tender vessel, a trip is defined as the period of time that begins when a catcher vessel departs from port to harvest fish until the vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located (§679.2). The definition of a tender trip allows a vessel to stay at sea, fishing, and make multiple deliveries without ending the trip.

The June 2013 Annual Performance Review (APR), a preliminary evaluation of observer coverage in the partial coverage category during the first sixteen weeks of 2013, included data on catcher vessels delivering to tenders (Faunce et al 2013). The June 2013 APR indicated that there may be incentive for vessels in the trip selection pool to fish more, and make more deliveries to a tender, when unobserved. Differences in behavior between unobserved and observed vessels can introduce bias in estimation, if fishing behavior on observed vessels is not representative of fishing behavior on unobserved vessels<sup>4</sup>. The APR identified that observed trips for catcher vessels delivering to tenders were typically shorter than unobserved trips for catcher vessels delivering to tenders, noting that data was limited to evaluate whether this trend is statistically important. During the time period evaluated, few (16) trips with tender deliveries were observed; by comparison, 136 trips with tender deliveries were unobserved. Table 1 shows the breakdown of trips delivering to tenders, by gear, area and target fishery.

**Table 1 Number of observed versus total trips including delivery to a tender vessel in the trip selection pool, organized by gear, target species (pollock or Pacific cod), and NMFS reporting area, in January-April 2013.**

Gear Type	Target fishery	Western GOA – 610	Central GOA – 620	Central GOA – 630	Bering Sea
		<i>Number of observed trips among the number of total trips</i>			
Trawl	Pollock	1 of 8	4 of 20		
	Pacific cod	1 of 31	7 of 34	0 of 2	
Hook and Line	Pacific cod		1 of 7	0 of 5	
Pot	Pacific cod	1 of 15	0 of 4	1 of 13	0 of 13

Source: Table 6 in Faunce et al 2013.

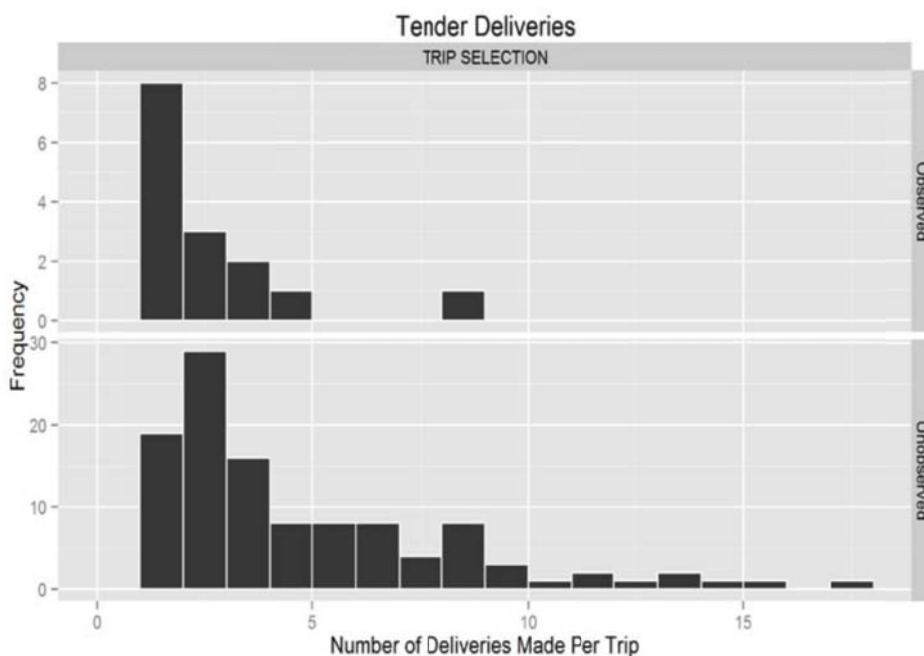
Among trip selection pool trips delivering to tenders, those that are unobserved make more deliveries, and stay at sea longer, than those that are observed. Figure 1 and Figure 2, from the June 2013 APR, compare observed and unobserved trips during the first sixteen weeks of 2013 which resulted in at least one delivery to a tender vessel. Figure 1 illustrates the distribution of the number of deliveries made on a tender trip, when vessels are observed versus unobserved. When observed, over half of all trips made just two deliveries, the minimum that would show up in the data, with a few vessels making 3, 4, or 5 deliveries during a trip, and a single vessel making 9 deliveries. When unobserved, the distribution of the number of deliveries changes. While the majority of unobserved trips still result in between 2 and 4 deliveries, vessels making just 2 deliveries represent only about 20% of the total. Also, about a third of all

<sup>4</sup> This potential bias should only occur in the trip selection stratum, since in the vessel selection pool, vessels are observed for all activities during a two-month period.

unobserved trips involve between 5 and 10 deliveries, and an additional 9 trips each make between 11 and 18 deliveries.

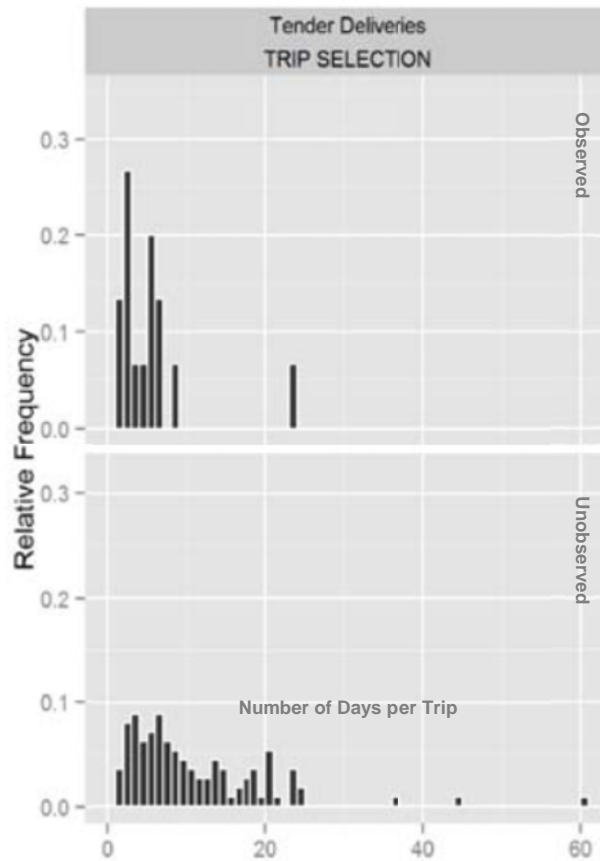
Figure 2 illustrates the comparative number of days fishing in a trip by vessels delivering to a tender, based on whether or not the trip is observed. For observed vessels, approximately 40% of all trips last between 1 and 2 days, and 95% of all trips are completed within 8 days. For unobserved vessels, the distribution is much less acute. Only a tenth of trips are completed within 1 to 2 days, and about a third are completed within 6 days. Over 60% are completed within 10 days, and 10% of all trips last longer than 20 days. The preliminary data indicate that vessels are exhibiting a different fishing behavior in terms of whether to remain at sea, fishing and delivering to tenders, versus returning to port, when observed versus unobserved.

**Figure 1** Distribution of the number of deliveries made in a trip in which at least one delivery was made to a tender vessel, presented by observation status, in January-April 2013.



Source: Figure 3 in Faunce et al 2013.

**Figure 2** Distribution of the number of days fished in a trip by vessels in the trip selection pool, organized by observation status and whether or not the delivery was made to a tender, in January-April 2013. The relative frequencies (vertical axis) in each plot sum to one.



Source: Figure 4 in Faunce et al 2013.

The proposed rule for the restructured observer program originally defined a trip exclusively as the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel. This would have meant that while a trip might end at the time a vessel delivers to a tender, a new trip must begin with the vessel departing from a port, effectively removing the efficiency of using tenders when fishing far from port. In response to public comment on the proposed rule (see Comment 40 in 77 FR 70062), NMFS added an additional definition of a trip to address vessels delivering to a tender vessel. Public comment cited specifically that the final rule should provide a method for Western GOA CVs, which deliver the majority of their pollock and cod landings to tender vessels, to obtain observer coverage without having to transit back to Sand Point or King Cove. NMFS agreed that requiring these vessels to return to port would significantly impact the vessels' operations.

At the September 2013 Observer Advisory Committee (OAC) meeting, it was discussed that the ability to change behavior when delivering to a tender is being perceived by fishermen as a loophole in the program. It is therefore being viewed as a source of inequality, as vessels are disproportionately impacted by the costs associated with having to carry an observer. This is affecting fishermen's sense of whether the program is being implemented fairly.

### **3.2 Deliveries to tenders interfere with the ability to take genetic samples of salmon bycatch in the GOA**

The second issue of concern that has been identified with respect to tender activity is that when trawl vessels deliver GOA pollock and associated salmon bycatch to tenders, the salmon are not censused and genetically sampled, as happens when pollock is delivered to a shoreplant. Not including these salmon in the sampling protocol represents a data quality issue for developing hindcasts of the stock of origin for Chinook salmon bycatch. The Council has prioritized implementation of a robust sampling protocol for Chinook salmon in the GOA trawl pollock fisheries, to be able to better understand the stock composition of Chinook salmon taken as bycatch<sup>5</sup>. To facilitate this sampling, full retention is required by regulation for all salmon species taken in the pollock trawl fisheries, and a salmon sampling mechanism is included in the observer program ADPs. A related issue of concern with respect to tenders is that the offload census of salmon bycatch, which occurs shoreside by the observer, provides far more precise data for managing the PSC limit in place for Chinook salmon in the GOA pollock fishery, and is unavailable for tender deliveries.

The 2013 observer Annual Deployment Plan (ADP) accommodated the Council priority for salmon sampling in the pollock fishery by deploying dockside observers to ensure that all trawl offloads in the pollock fishery would be monitored. The onboard observer already monitors deliveries from observed vessels for salmon bycatch, so the dockside observers were intended to fill the gap for unobserved deliveries. Under the 2013 sampling protocol, dockside observers sampled salmon bycatch according to the protocols outlined in Pella and Geiger (2009), which rely on obtaining a complete census of all salmon taken as bycatch, after which 1 in every  $n^{\text{th}}$  salmon is sampled. As reported by the agency, however, the June 2013 APR revealed that complete monitoring of pollock deliveries in the GOA was not being achieved, due, in part, to vessels delivering to tenders. There was no provision in the 2013 ADP for plant observers to monitor either deliveries at the tender, or the tender's offload at the plant. As discussed above, tender vessels are not subject to observer coverage, and there are no regulations in place to allow NMFS to deploy observers on tender vessels to monitor deliveries. Under the 2013 ADP, NMFS had not proposed to monitor tender vessels offloading to the plant. Monitoring the offload of tender vessels would only provide information useful for genetic sampling, because once a catcher vessel has delivered to a tender, the catch from observed and unobserved vessels is mixed together in the tender hold, and therefore cannot be used to improve data for catch accounting, in the way that monitoring an observed pollock offload at a shoreside delivery improves the precision of salmon bycatch estimates relative to the GOA pollock Chinook salmon prohibited species catch limit.

In response to the Council's request for GOA salmon sampling in the GOA pollock trawl fishery, the agency was able to apply the Pella and Geiger salmon sampling protocols because the character of the fishery is such that there is very little discarding at sea in the pollock target fishery, and they thought they could have a high level of confidence that they were censusing all the salmon bycatch in the fishery. As discussed above, this did not prove to be the case in 2013 because of tender deliveries. Additionally, the Council has since expressed a priority for sampling salmon bycatch in the non-pollock trawl fisheries, and due to the very different nature of these target fisheries (where catch is regularly sorted at sea), a different sampling protocol is required. For the 2014 ADP, the agency has proposed an alternative salmon sampling plan that uses the randomization built into the observer selection process for the trip selection pool. Instead of sampling a systematic selection of salmon bycatch across all observed and unobserved pollock deliveries, the alternative approach will sample every salmon that is encountered during the randomized observed trips that occur in the GOA pollock fishery. This should provide data that will accomplish the Council's intent of identifying stock of origin Chinook salmon bycatch composition for the GOA pollock fishery, and will also allow for cost savings for the observer program as a whole.

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<sup>5</sup> The Council has also prioritized implementing a sampling protocol for Chinook salmon in the GOA non-pollock trawl fisheries as well; a proposed rule is currently being prepared to implement the full retention requirement in these fisheries.

For the 2014 salmon sampling protocol to be effective, the behavior of vessels fishing with an observer must be representative of vessels fishing without an observer. Therefore, if a solution is found to address the bias in catch data issue discussed in Section 3 above, the same solution will serve to ensure that the salmon sampling protocol is robust. However, the 2014 protocol relies on obtaining every salmon caught as bycatch on an observed trip in the pollock target fishery. Currently, the customary shoreside practice of allowing observers to monitor the offload pollock vessels in order to census salmon bycatch is not applied when delivering to tenders, as there is no regulatory provision to allow the observer to census the offload at the tender. Deploying dockside observers to monitor the offload of the tender at the plant would not help in this instance, as by that time observed and unobserved catch would be mingled in the hold.

#### **4 Potential options to address the concern**

There are several potential options that could be evaluated to address the issue with unrepresentative fishing causing a potential data bias with respect to vessels delivering to tenders, and salmon sampling concerns. These are listed below, along with some preliminary discussion points.

##### **Prohibit tendering**

One option is to prohibit tendering. The Council has the authority to regulate tender vessels under the MSA, and they are required to have a FFP in order to operate. The Council has restricted the use of tenders in the past, for example in the GOA pollock fishery as a Steller sea lion protection measure, and as a management measure to slow the pace of fishing. Prohibiting the use of tenders would address both concerns that have been identified with respect to tender activity: causing a bias in data quality due to observed fishing activity being unrepresentative of unobserved activity, and omitting salmon from sampling protocols. Logistically, this option would be simple to regulate and enforce.

The use of tender vessels is, however, longstanding in the Alaska fisheries, and may improve efficiency by allowing fuel and time savings. Tender vessels are particularly important in the western GOA, where the location of pollock and Pacific cod fishing grounds may be further from port, and the fleet is largely comprised of smaller trawl vessels (57-60 ft LOA). There are likely to be economic costs from prohibiting the use of tenders, and these may be disproportionately distributed among participants with different vessel sizes and resident in different areas.

##### **Deploy observers for catcher vessels from tenders**

A second option is to redefine a trip so that each delivery constitutes a separate trip (recall, under the current definition of a trip where a catcher vessel is delivering to a tender vessel, the “trip” begins and ends in a port, no matter how many deliveries to the tender occur during the “trip”), and allow a vessel to pick up an observer at the tender vessel. Under this option, the program would need to be able to deploy observers directly from the tender vessels.

In order to implement this option, regulatory amendments would be required in two areas. First, the definition of a tender trip would no longer be required, and the original definition of a fishing trip would be revised so that a trip can begin when a catcher vessel either departs a port to harvest fish, or departs from a tender to go fishing. Second, tenders are not part of the full or partial coverage category so certain regulations governing observer activities are not extended to tender vessels. These include prohibitions protecting observers at 50 CFR 679.7(g), vessel operator responsibilities at § 679.51(e), and general requirements at § 60.746. There would need to be some way to regulate tenders to require them to provide safe transportation and housing for an observer to be deployed from their vessel.

In terms of safety, this option could result in increased risk, as it inherently would increase the number of personnel transfers occurring at sea. There is evidence that this option is feasible, however, as it did occur under the old observer program. With respect to the first data quality concern identified, it could resolve the issue of unobserved vessels acting in a different way to observed vessels, by placing each delivery, whether to a tender or to a shoreplant, on an equal probability of being observed. This option would not resolve the second issue, of ensuring that salmon bycatch delivered to a tender is available for sampling.

There are, however, a number of logistical issues that the agency would need to work out under this option. When this occurred under the old program, the onus was on industry to provide themselves with an observer; now the onus is on NMFS (or the observer contractor) to get their observer to the appropriate place to be deployed. First, with respect to transportation of the observer, would NMFS require tender vessels to transport the observer if requested? Would NMFS pay the cost of transportation by water taxi, if a vessel is not available? Would vessels be reimbursed for the cost of the trip? Other requirements might need to be available on the tender vessel to house the observer, while waiting for deployment on the next observed trip. Deploying observers off tender vessels would require a change to the current observer contract. The tradeoff between the additional cost, and observer at sea days, should be evaluated.

Another logistical issue is how to deal with the potential lack of communication in areas where the tender vessels may be located, and fishing vessels operating. The ODDS system is dependent on vessels logging their upcoming trips online or on the phone, and there is a limit to how many trips may be logged at one time. The implementation of this option might necessitate limiting the number of deliveries a vessel may make without coming back to an area where the vessel operator can again log trips into ODDS. Given that the preliminary data to date show that a large number of trips do involve six or fewer deliveries, this may be feasible without severely impacting current fishing practice, however there are vessels that fish continually for longer time periods (some as long as 60 days).

The existing issues involved with ensuring that an observer is in the right place for a planned observed trip are exacerbated when the deployment location is on the fishing grounds, and the agency will have to consider the logistics further. A change to ODDS may be required to include a notification of a planned trip that will begin at a tender. Additionally, the agency will need to ensure that observers are not stranded, for example at a tender vessel from which a return transportation mechanism has not been devised.

#### **Allow catcher vessel observers to monitor deliveries on tenders**

Another option is to change the regulations to allow catcher vessel observers to work directly on tender vessels during the offload of catch, in a similar way to how they operate at shoreplants. This could be applied either independently, or in conjunction with the option above.

As with the option to deploy observers directly from a tender vessel, this option would result in an increase in the number of at sea transfers undertaken by observers, with an associated increase in safety risks. While this option would not address the concern regarding unrepresentative fishing by observed vessels, it could directly resolve the concern with respect to improving data quality both for salmon sampling, and for inseason management of the Chinook salmon PSC limit in the pollock fishery. By allowing observers to monitor and census salmon in pollock deliveries to tender vessels, the catch accounting system would be able to use the more reliable census numbers for accounting for salmon bycatch, rather than the less precise at sea sampling counts. With respect to salmon genetic sampling, this option would allow the full implementation of the new salmon sampling protocol for vessels delivering to tenders, which requires observers to sample all salmon that are encountered by the vessel on an observed trip.



As above, implementation of this option would require a change to the regulations governing observer activities. Additionally, tender vessels would be required to provide appropriate space on the tender vessel for an observer to sample the offload of a catcher vessel on which the observer has been working, just as the observer would otherwise monitor the offload of a pollock vessel shoreside. This would likely require the development of a comparable Catch Monitoring and Control Plan for tender vessels, including specifying the availability of a sampling area, restricting the transfer flow rate of the offload to allow the observer remove salmon bycatch, and other provisions.

An analysis of this option would need to consider whether these additional requirements would prohibit some vessels that are currently involved in tendering from participating in this activity. There is a large variety in the characteristics of the vessels that, at any one time, may operate as a tender. As a result, the additional costs involved in complying with these requirements will likely vary greatly across impacted vessels.

### **Place all catcher vessels delivering to a tender in the vessel selection pool**

A final option is to place any vessel delivering to a tender vessel in the vessel selection pool, or, defined another way, to prohibit vessels in the trip selection pool from delivering to a tender. This could potentially be considered either for vessels participating in a particular fishery during a defined season, or be required as an annual election for vessels intending to deliver to tenders during the course of the coming year. The option could also potentially be extended for all vessels participating in a particular target fishery, for example pollock.

This option could address the data quality concern outlined above, with respect to unrepresentative fishing behavior, because if a vessel in the vessel selection pool is selected for observer coverage, all trips during the selected two month period will be observed. This option does not address the salmon sampling concern.

One difficulty with this option is that it would base the assignment of a vessel to the pool on a characteristic that is flexible and unpredictable. A vessel's decision as to whether to deliver to a tender or a shore plant may vary by year, season, or even trip. Vessels are currently assigned to the vessel or trip selection pools based on fixed characteristics of the vessel. Placing vessels in the vessel selection pool based on vessel activity that can change from trip to trip is logistically difficult. It is likely that some kind of prior notice, or pre-registration to deliver to a tender, would be required as a regulatory amendment. Based on current notification patterns in the vessel selection pool, vessels would need to inform NMFS at least 3 months in advance that they intended to deliver to a tender, in order to be considered in the vessel selection pool random selection. Enforcement is more complicated when the selection of the observer coverage pool is not based on fixed characteristics, such as vessel length. This option would effectively allow vessel owners a choice to self-select which pool a vessel wanted to participate in, and the agency would have to define the constraints carefully in order to avoid the possibility of gaming the system, and introducing unintended consequences in terms of different data biases.

In its September 3, 2013, letter to the Council on the 2014 ADP, NMFS reported on its consideration of whether to recommend placing all catcher vessels delivering to a tender in the vessel selection pool to reduce the opportunity to manipulate trip length. However, NMFS did not recommend this approach for 2014, due both to the preliminary nature of the information available to evaluate the potential data quality concerns, and the complexity of the issue.

The Council may also want to consider this option in the context of other requested Council evaluations looking at the vessel and trip selection pools. The Council has asked for a discussion in June 2014 about whether the ADPs should go forward with two distinct vessel selection and trip selection pools, or

whether the program would be better served with having a single pool for all participants. Given these outstanding questions, it may not be worth exploring the issue of moving participants delivering to tenders into a different vessel class until this larger question is resolved.

### **Options considered but rejected**

The agency considered an option to prohibit tendering only when an observer is onboard. In order to begin an observed trip, a vessel would need to return to port to pick up the observer, and the vessel would not be able to deliver to a tender during that observed trip. This would create a disparity between the requirements for vessels when observed or when unobserved, which would be unpopular. It would also, however, fail to address the issue of fishing behavior while observed being unrepresentative of fishing behavior while unobserved – it would just solidify in regulation the difference, rather than having it be the result of a choice by the vessel operator. For this reason, this option is not presented as a solution to the tender activity concerns that have been identified.

## **5 Council action**

At the December 2013 meeting, the Council may choose whether to initiate a regulatory amendment to address observer coverage associated with vessels delivering to tenders. Section 4 describes different options that could be evaluated to address this issue, and articulates some of the general advantages or disadvantages of the various options. Should the Council decide to initiate an amendment, the Council should consider articulating the purpose and need for such an amendment, as well as a discussion of which of the options should be further evaluated in an analysis.

Also, if the Council chooses to initiate a regulatory amendment, the Council may wish to consider how the analysis of this issue should be prioritized compared to other observer program evaluations. The Council has already indicated that this regulatory amendment should be prioritized over other, potential amendments which will be evaluated in an upcoming staff discussion paper (i.e., moving the BSAI Pacific cod CV fleet into full coverage, allowing vessels that act as both CPs or CVs an annual choice as to whether to be in full or partial coverage, and changing the basis of observer fee collection for the IFQ fleet). During the first half of 2014, the agency will also be preparing the annual Observer Program Performance Review, which will be presented to the Council in June 2014. This will be the first analysis of a complete year of data under the restructured program, to see whether the deployment plan achieved its scientific goals. The Council has also asked for other evaluations to be presented in conjunction with the 2014 performance review, including an evaluation of the vessel and trip selection pools to see whether there should still be two separate pools, and an evaluation of programmatic costs of the program, including ways to insert cost effectiveness. Given that the same pool of staff expertise is necessary to complete all of these analyses, the Council may wish to articulate how the tendering regulatory amendment should be prioritized with these other Council requests.

Additionally, in June 2013, the Council also reviewed a separate discussion paper on tendering in the GOA, which addressed not only observer issues, but also patterns in the use of tenders by GOA community in recent years, and management implications with respect to the flow of catch accounting data resulting from the use of tenders. The Council requested that the paper be updated with information about AFA vessels are operating as tenders in GOA fisheries, the timeliness of catch accounting data flow, and the implications for collecting salmon genetic samples (also addressed in this paper). It is currently scheduled to come back to the Council in February; the Council may wish to consider how, procedurally, the other paper should interact with the observer coverage component of tender activity.

## 6 References

Faunce, C., J. Gasper, F. Wallace, J. Cahalan, J. Mondragon, T. Amar, S. Lowe, and R. Webster. Annual Performance Review, North Pacific Groundfish and Halibut Observer Program, First and Preliminary 2013 Version. NOAA.

## 7 Relevant Regulations

The following provides a listing of relevant regulations that may need to be revised in an amendment analysis. The list is not necessarily exhaustive.

### 7.1 Definition of a Fishing Trip

#### 50 CFR 679.2: Fishing trip means: ...

- (3) Groundfish and Halibut Observer Program. With respect to subpart E of this part, one of the following periods:
- (i) For a catcher vessel delivering to a shoreside processor or stationary floating processor, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.
  - (ii) For a catcher vessel delivering to a tender vessel, the period of time that begins when a catcher vessel departs a port to harvest fish until the vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located.

**Tender vessel** (see also the definition of “buying station” under this section) means a vessel that is used to transport unprocessed fish or shellfish received from another vessel to an associated processor.

**Buying station** means a tender vessel or land-based entity that receives unprocessed groundfish from a vessel for delivery to a shoreside processor, stationary floating processor, or mothership and that does not process those fish.

### 7.2 Observer Requirements for vessels and plants

#### 50 CFR 679.51 Observer requirements for vessels and plants

##### (a) Observer requirements for vessels

- (5) Observer coverage duration. If selected, a vessel is required to carry an observer for the entire fishing trip.
- (i) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.
  - (ii) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.
  - (iii) A vessel must make a minimum of one delivery to a tender vessel to be subject to paragraph (3)(ii) of the fishing trip definition at § 679.2.

##### (e) Responsibilities

###### (1) Vessel responsibilities.

An operator of a vessel required to carry one or more observers must:

- (i) Accommodations and food. Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses, or other management level personnel of the vessel.
- (ii) Safe conditions.
  - (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

- (B) Have on board:
- (1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;
  - (2) A certificate of compliance issued pursuant to 46 CFR 28.710; or
  - (3) A valid certificate of inspection pursuant to 46 U.S.C. 3311.
- (iii) Transmission of data. Facilitate transmission of observer data by:
- (A) Observer use of equipment. Allowing observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.
  - (B) Communication equipment requirements. In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:
    - (1) Observer access to computer. Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.
    - (2) NMFS-supplied software. Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (e)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.
    - (3) Functional and operational equipment. Ensuring that the communication equipment required in paragraph (e)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.
- (iv) Vessel position. Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.
- (v) Access. Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.
- (vi) Prior notification. Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.
- (vii) Records. Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.
- (viii) Assistance. Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:
- (A) Measuring decks, codends, and holding bins.
  - (B) Providing the observers with a safe work area adjacent to the sample collection site.
  - (C) Collecting bycatch when requested by the observers.
  - (D) Collecting and carrying baskets of fish when requested by observers.
  - (E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.
  - (F) Collecting all seabirds that are incidentally taken on the observer sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.
- (ix) Transfer at sea.
- (A) Ensure that transfers of observers at sea are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.
  - (B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

- (C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.
- (D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) Shoreside processor and stationary floating processor responsibilities.

A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (d) of this section must:

- (i) Safe conditions. Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.
- (ii) Operations information. Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.
- (iii) Transmission of data. Facilitate transmission of observer data by:
  - (A) Observer use of equipment. Allowing observers to use the shoreside processor's or stationary floating processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.
  - (B) Communication equipment requirements
    - (1) Observer access to computer. Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer
    - (2) NMFS-supplied software. Ensuring that the shoreside or stationary floating processor specified in paragraph (e)(2) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.
    - (3) Functional and operational equipment. Ensuring that the communication equipment required in paragraph (e)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.
    - (iv) Access. Allow observers free and unobstructed access to the shoreside processor's or stationary floating processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.
    - (v) Document access. Allow observers to inspect and copy the shoreside processor's or stationary floating processor's landing report, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.
    - (vi) Assistance. Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:
      - (A) Assisting the observer in moving and weighing totes of fish.
      - (B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

### 7.3 General MSA requirements for observers

#### §600.746 Observers.

(a) *Applicability.* This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer safety.* An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment.* A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof.* A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS' designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

(i) A certificate of compliance issued pursuant to 46 CFR 28.710;

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a dockside examination report form indicating the decal number and date and place of issue.

(e) *Visual inspection.* Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check.* Prior to the initial deployment, the vessel owner or operator or the owner or operator's designee must accompany the observer in a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator's designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

(1) Personal flotation devices/ immersion suits;

(2) Ring buoys;

(3) Distress signals;

(4) Fire extinguishing equipment;

(5) Emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport;

(6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and

(7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination.* If a vessel is under 26 ft (8 m) in length, and in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration.* The vessel owner or operator is required to comply with the requirements of this section when the vessel owner or operator is notified orally or in writing by an observer, a NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the observer disembarks from the vessel at the end of the observed trip.

(i) *Effect of inadequate status.* A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this section, and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[63 FR 27217, May 18, 1998, as amended at 67 FR 64312, Oct. 18, 2002; 72 FR 61818, Nov. 1, 2007]