

June 5, 2020

Mr. Phil Anderson
Pacific Fishery Management Council (Council)
7700 NE Ambassador Place, Suite 101
Portland, Oregon 97220-1384

Dear Chair Anderson:

Thank you for your letter requesting that the National Marine Fisheries Service (NMFS) temporarily suspend federally authorized at-sea observer coverage in all West Coast fisheries (including at-sea sectors) and the Pacific Coast Groundfish Trawl Rationalization Program (Trawl Rationalization Program) shoreside catch monitors. NMFS is actively monitoring and adjusting to the national health crisis. Observers and at-sea monitors are an essential component of commercial fishing operations and provide critical information that is necessary to keep fisheries open and to provide sustainable seafood to our nation during this time.

On March 27, 2020, NMFS issued an emergency rule to provide the authority, on a case-by-case basis, to waive observer coverage, some training, and other program requirements while meeting conservation needs and providing an ongoing supply of fish to markets. Under the emergency rule to waive observer coverage ([85 FR 17285](#)), the West Coast Regional Administrator has the ability to waive observer requirements for an individual trip, vessel, or entire fleet, in three specific circumstances:

- The providers do not have sufficient observers to staff a fleet or a port or a vessel (i.e., the observers are under quarantine).
- The providers cannot physically get observers to fishing vessel departure points, possibly because of travel restrictions, or shelter-in-place guidance, etc.
- The providers do not have enough trained observers because we could not offer training due to building access restrictions, meeting guidance, etc.

While we have the flexibility to waive observer coverage requirements, we must still consider a range of other criteria including the purpose of the observer coverage, our conservation and management responsibilities, and other available fishing opportunities. If waivers are issued, NMFS must carefully monitor the status of the fishery and/or protected species interactions to ensure that the relevant conservation and management goals are still being met.

We actively participated in the discussion and listened to the concerns raised at the April 2020 Council meeting. We reviewed in detail and discussed with the observer providers the subsequent Council recommendation to temporarily suspend federally authorized at-sea observer coverage in all West Coast fisheries and the Trawl Rationalization Program shoreside catch monitors in response to the global pandemic. The Council cited the increased risk of transmission by observers and catch monitors to vessel and plant crews, since they regularly deploy to different vessels, and where social distancing is difficult, if not impossible.

On April 15, 2020, all five West Coast observer and catch monitor service providers notified us that they intended to institute a mandatory 14-day self-isolation period prior to deployment (Attachment 1). This created a short-term observer shortage. In response to that letter, consistent with the authority provided under the emergency rule, we temporarily waived the requirement for commercial fishing vessels and first receivers in West Coast fisheries to carry a fishery observer or have a catch monitor (Attachment 2). The waiver was in effect from April 16 through April 30, 2020.

Observer providers have also implemented procedures that allow the observer or catch monitor to stay with a single vessel or plant assignment without interruption. This will minimize the usual interactions that an observer has with different crew or plant personnel, thereby reducing an observer's risk of transmission and infection. Currently, observers are self-isolating between trips and monitors are self-isolating between offloads. Vessels in northern California, Oregon, and Washington are only assigned observers living in nearby coastal communities. Observers living in California's San Francisco and Los Angeles areas are confined to covering vessels operating out of their ports. Detailed pre-deployment health screenings are continuing. Observers who suspect they are ill are instructed to contact their employer, the observer provider, and immediately seek medical advice.

The provider protocols have resulted in reduced observer availability in the groundfish fisheries. Additionally, some partial-coverage fleet observers have been reassigned into the Trawl Rationalization Program, Shorebased Individual Fishing Quota (IFQ) program to maintain the 100 percent coverage requirement for this limited access privilege program. These factors have resulted in the West Coast Region (WCR) issuing waivers for some vessel trips in the partial-coverage fleets due to observer availability (described in detail below).

The WCR Observer Program, which covers the highly migratory species fisheries, has deployed several observers under the "one observer to one vessel" format. No waivers have been issued from May 1 to May 31, 2020. April and May, however, are typically periods of low effort.

On April 16, 2020, the member countries of the Inter-American Tropical Tuna Commission (IATTC) and Parties to the Agreement on Dolphin Conservation Program agreed on procedures to provide for the temporary exemption, on a case-by-case basis, of observer requirements for large purse seine vessels fishing for tuna in the eastern Pacific Ocean (EPO). The procedures allow the IATTC to grant an exemption for observer coverage for a specific trip when it is not possible to place an observer due to operational and logistical constraints arising from actions taken by governments or organizations to safeguard health. If the IATTC determines that they cannot place an observer on a U.S. large purse seine vessel, then NMFS will review the case and issue an individual waiver under the authority of the emergency rule for the vessel's fishing trip. We have not received waiver requests or issued waivers for U.S. large purse seine vessels fishing in the EPO from May 1 to May 31, 2020.

Summary of Groundfish Waivers to Date

Waivers for the Partial Coverage Fleets

For partial coverage fleets, the West Coast Regional Administrator may temporarily waive coverage requirements for an individual vessel because of circumstances that are deemed to be beyond the vessel's control, based on existing authority in the regulations at 50 CFR § 660.216 and 316. From May

1 to May 31, we issued 51 waivers for the partial coverage fleets due to observer availability issues. Two vessels requested waivers but we did not provide waivers because observers were available to be deployed to these vessels.

Waiver of Scientific Observers on Vessels with Electronic Monitoring (EM)

Approximately 42 trawl vessels and 11 fixed gear vessels in the Shorebased IFQ Program use EM for catch accounting under an exempted fishing permit (EFP). Under this permit, EM is used in lieu of an observer for the majority of trips. Approximately 25 percent of the EM trips are assigned scientific observers to collect biological samples. From May 1 to May 31, four EM vessels were selected for observer coverage. Waivers were issued to ensure sufficient observers are available for the Shorebased IFQ program vessels that do not use EM. Additional vessels may opt into the EM program if they would prefer not to carry an observer.

Waiver Requests for the Full Coverage Fleets in the Pacific Coast Groundfish Trawl Rationalization Program

From May 1 to May 31, we received three requests for waivers under the emergency rule. The first request was to waive the 100 percent at-sea and shoreside monitoring requirement for all participants in the Shorebased IFQ Program. The request was sent on behalf of the Midwater Trawlers Cooperative, West Coast Seafood Processors Association, United Catcher Boats, Fishermen's Marketing Association, and Oregon Trawl Commission. The remaining requests were from Shorebased IFQ Program fishing vessels seeking waivers for upcoming trips based on health and safety concerns.

We did not provide these waivers because the WCR has prioritized observer coverage for the Trawl Rationalization Program since 100 percent at-sea and shoreside monitoring is a requirement for this limited access privilege program. At this time, there is no shortage of observers or catch monitors to cover the vessels in the Shorebased IFQ Program.

Waiver Requests for EFPs

We have received requests from the sponsors of the Real Good Fish and Scott Cook EFPs to waive observer coverage due to observer availability. We will be considering waivers on a trip-by-trip basis if observers are unavailable.

We will continue to monitor all local public health notifications as well as the Centers for Disease Control and Prevention for updates. We are committed to protecting the public health and ensuring the safety of fishermen, observers, and others, while fulfilling our mission to maintain our nation's seafood supply and conserving marine life.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry A. Thom".

Barry A. Thom
Regional Administrator



Attachment 1

April 15, 2020

Mr. Barry Thom, Regional Administrator
National Marine Fisheries Service, West Coast Region
1201 NE Lloyd Blvd., Suite 1100
Portland, OR 97232-1274

Dear Mr. Thom,

At the conclusion of its April meeting, the Pacific Fisheries Management Council (Council) drafted a letter requesting that you temporarily waive all federally required Observer and Catch Monitor coverage on the West Coast as a means of curbing the COVID-19 risk posed by the presence of Observers. Prior to drafting its letter, the Council heard from fishers and fishing industry representatives who expressed concerns about this risk, one they clearly believe is unnecessary. The Council found their testimony compelling.

As the dimension of the pandemic became clear in late February and early March, Observer providers on the West Coast began taking steps to reduce the possibility that their employees would introduce the coronavirus into the fishery. For instance, at Alaskan Observers, Inc. (AOI), we instituted stay-at-home requirements for our Observers before the first state-wide stay-at-home order on the West Coast was issued in California on March 19; we cancelled all previously approved vacations through late May; and we deployed an on-line assessment tool, developed by Discovery Health and tailored to our situation, to track the health and risk factors of all our Observers and Monitors prior to every deployment (Discovery Health has developed similar tools for numerous Pacific Northwest fishing companies, including Trident Seafoods). Working with the West Coast Groundfish Observer Program (WCGOP), we also settled on a plan to keep a given Observer assigned to a single vessel for longer periods of time, while the WCGOP agreed to suspend the rule that limits an Observer to 90 days on a single vessel each year.

While the industry appreciates our response, we recognize that it views anything short of a complete waiver of all federal Observer requirements in West Coast fisheries as insufficient. We believe, however, that we can refine our approach to address the concerns raised by the Council's letter, and we can do so in a way that creates minimal disruption to the Observer coverage that is essential to successful fishery management plans on the West Coast. Most importantly, we can design a collaborative and protective approach that will allow coverage to continue regardless of the pandemic's course in the months ahead.

To implement this plan, we recommend that the West Coast Region waive all federal Catch Share and Non-Catch Share coverage requirements on the West Coast for a period of 14 days. During this period, fishing operations should continue while Observers and Monitors undergo a mandatory 14-day self-isolation period, only leaving their homes for trips defined as "essential" by the state stay-at-home orders now in place.

After 14-days, coverage will resume. Once assigned to a vessel or plant, an Observer or Monitor will stay with that assignment without interruption for the duration of current stay-at-home orders.

Observers will continue to self-isolate between trips; Monitors will continue to self-isolate between offloads. Should an Observer or Monitor need to be replaced—as a result of injury, for instance—then any replacement Observer will first undergo a 14-day self-isolation period, without covering any other assignment, before joining the open assignment. Movement of non-isolated Observers and Monitors from one assignment to another will be eliminated, addressing a primary concern heard from industry. Vessels in Northern California, Oregon, and Washington will only be assigned observers living in nearby coastal communities. Observers living in the San Francisco and Los Angeles areas will be confined to covering vessels operating out of their ports. Pre-deployment health screening will continue throughout the entire period.

Observers in the at-sea whiting fishery will also undergo a 14-day self-isolation period prior to the fishery opening and undergo pre-deployment health screening of their own before joining their assigned vessels. These vessels have completed their winter operations in Alaska as of this writing and will not enter the whiting fishery for another month. Observer self-isolation periods will therefore not coincide with fishing activity, so for the at-sea fleet no 2-week coverage waiver is required. During the Alaska Pollock fishery this year these vessels developed plans in response to the coronavirus emergency. Once on board, our Observers will be subject to these plans. (Vessels have in place procedures to promptly identify sick people, isolate potentially infectious individuals, and quarantine other workers who may be exposed.) To protect communities up and down the coast, we will require Observers to stay on board should their vessels stop in Newport or any other West Coast port.

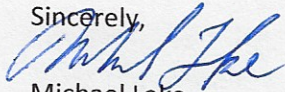
When stay-at-home orders are lifted, providers, in coordination with the Observer Program, will re-evaluate procedures to ensure that we continue to minimize risks. Even when adjustments are made to observer logistics, pre-deployment health screening will certainly continue. Should COVID-19 make a comeback months later, the protective plan outlined above can be reinstated—for Catch Shares and Non-Catch Shares, a 14 day coverage waiver to allow for Observer isolation periods, followed by static coverage assignments; for at sea whiting, a 14-day self-isolation period for all Observers before they join their respective vessels, followed by deployments conforming to vessel coronavirus protocols.

A waiver as requested by the Council could be months long. Should the coronavirus sweep through the Western U.S. again next fall and winter, new stay-at-home orders will follow, and any subsequent waivers would result in still more disruption to data collection. Holding the Observer workforce together would be impossible under these circumstances; the Observer Program would face a rebuilding period even after coverage resumed, complete with Observer shortages and the difficulties these present to the Agency and industry.

AOI has contacted the other Observer Providers on the West Coast and briefed them on our proposed approach. As a group we have a history of cooperating to address spot-shortages of Observers through sub-contracting, and NMFS can rely on us to continue that cooperation for the duration of the emergency. Should coverage in IFQ fisheries be deemed a priority, AOI will also request that the WCGOP release federally funded Observers from the Non-Catch Share program if they are needed to maintain coverage in the industry-funded Catch Share Program.

We believe the protective approach outlined here is superior to the lengthier waiver requested by the Council. Whatever action NMFS settles on should not be reactive and shortsighted, rather it should be designed to outlast the COVID-19 threat on the West Coast. We appreciate your willingness to consider our suggestions alongside those of the Council; please let us know if you require further information from us. We look forward to your reply.

Sincerely,



Michael Lake
Alaskan Observers, Inc.

Scott Casey
Frank Orth & Associates

Stacey Hansen
Saltwater, Inc.

Troy Quinlan
TechSea International, Inc.

Gery Cox
Tenera Environmental

Attachment 2

April 15, 2020

Dear Partners and Stakeholders:

NOTICE OF WAIVER OF OBSERVER AND CATCH MONITOR COVERAGE REQUIREMENTS

As part of our response to the COVID-19 pandemic, and consistent with the authority provided under the Emergency Rule signed on March 24, 2020 (Available at: <https://www.fisheries.noaa.gov/action/noaa-fisheries-issues-emergency-action-waive-observer-coverage-case-case-basis>), NOAA Fisheries is temporarily waiving the requirement for commercial fishing vessels and first receivers in west coast fisheries to carry a fishery observer or have a catch monitor. The waiver will be in effect beginning on April 16, 2020 for 14 calendar days. This waiver applies to the following requirements:

- Have 100-percent shoreside and at-sea coverage for vessels and first receivers participating in the Pacific Coast Groundfish Trawl Rationalization Program (50 CFR 660.140(h)(1)(i) and (i)(1), §660.150(j)(1)(i), and §660.160(g)(1)(i);
- Carry a federal observer if selected in the Pacific Coast Groundfish limited entry fixed gear and open access fisheries (§660.216(a) and §660.316(a)), including California halibut and Oregon pink shrimp fisheries;
- Carry a federal observer if selected in the Highly Migratory Species (HMS) fisheries (§660.719(a) and (d)); and,
- Carry an observer as a term and condition of an Exempted Fishing Permits (EFP) issued pursuant to 50 CFR 600.745(b), except for the Deep-Set Shortline EFP for HMS.

This waiver does not apply to trips that are currently underway at sea with an observer onboard or to electronic monitoring (EM) requirements. For vessels using electronic monitoring, this waiver applies to human observers only.

This action is consistent with the Emergency Rule authority to grant waivers for observer requirements under certain circumstances. NOAA Fisheries is granting this limited duration waiver for observer coverage for vessels and processors in west coast fleets based on new social control guidance issued by west coast observer and catch monitor providers. West coast observer and catch monitor service providers (Alaskan Observers Inc., Saltwater Inc. Techsea International Inc., Frank Orth and Associates, and Tenera Environmental) have notified us that they intend to immediately implement policies to address health and safety concerns of the fishing industry and observers associated with the COVID-19 pandemic. Providers intend to implement a policy instituting a 1-to-1 ratio of observers and catch monitors with vessels and plants, and 14-day self-isolation of observers/catch monitors before starting their deployment with their assigned vessel/plant. Providers have requested that NOAA Fisheries temporarily waive coverage requirements in west coast fleets to allow observers/catch monitors time to complete the 14-day self-isolation. I have determined that this situation meets the criteria for a

waiver under the Emergency Rule criteria and warrants a temporary waiver for all west coast fleets to allow observers/catch monitors to complete the 14-day self-isolation period before deploying.

From April 16 – April 30, 2020, vessel owners or operators must still notify the applicable observer program before taking a trip and otherwise comply with applicable regulatory and other requirements. NOAA Fisheries will waive the observer coverage requirement for those trips that are randomly selected for observer coverage.

Industry self-reporting of protected species interactions/take is still required.

- Regulations governing the recordkeeping and reporting of the incidental take of marine mammals are set forth in 50 CFR part 229.
- Regulations governing the recordkeeping, reporting, and disposal of eulachon, green sturgeon, seabirds, marine mammals, and sea turtles in groundfish landings are set forth at 50 CFR 660.140(g).
- Boat captains are responsible for reporting to U.S. Fish and Wildlife Service Law Enforcement by the vessel operator within 72 hours of taking an albatross by phoning 360-753-7764 (WA); 503-682-6131 (OR); or 916-414-6660 (CA).

NEXT STEPS

During this waiver period, NOAA Fisheries will evaluate the impact of this observer coverage waiver on the conservation and management of the affected fishery resources and may make adjustments to the fishery and catch accounting system in the future.

The West Coast Regional Office and the Northwest Fisheries Science Center will evaluate the impacts of this waiver on our fisheries and observer programs throughout this period as follows:

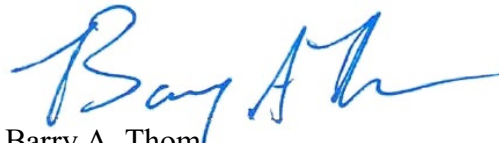
- Monitor fishing activity in comparison to when observers have been deployed, to track continued compliance with legal and regulatory requirements.
- Evaluate weekly observer/catch monitor availability, ability to travel, and level of fishing effort and landings.
- Monitor for changes in current health and safety guidelines that we expect would increase observer/catch monitor availability.

Following this initial 14-day waiver, on May 1, 2020, we do not intend to renew the blanket waiver for all fleets. After the end of the waiver period, providers' social control guidance will likely result in some shortage of observers/catch monitors to meet the coverage needs of all fleets because observers/catch monitors typically serve multiple vessels and plants. However, we anticipate having sufficient observers/catch monitors to maintain the current level of observer coverage in most fleets. We intend to use the Emergency Rule authority to waive individual trips and vessels in lower priority fleets on a case-by-case basis to ensure qualified observers/catch monitors are available for higher priority fleets (i.e., fleets with 100% coverage requirements or bycatch of ESA-listed species).

Observers and catch monitors are an essential component of commercial fishing operations and provide critical information that is necessary to keep fisheries open and to provide sustainable seafood to our nation during this time. We will continue to monitor all local public health notifications, as well as the Centers for Disease Control and Prevention (CDC) for updates. We are committed to protecting the public health and ensuring the safety of fishermen, observers, and others, while fulfilling our mission to maintain our nation's seafood supply and conserving marine life.

For additional information, please contact Ryan Wulff, Assistant Regional Administrator for Sustainable Fisheries at (916) 930-3733 or ryan.wulff@noaa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Barry A. Thom". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Barry A. Thom
Regional Administrator