

EXAMINING OPPORTUNITIES TO IMPROVE PREVENTION AND RESPONSE OF SEXUAL ASSAULT AND SEXUAL HARASSMENT AT THE NATIONAL OCEANIC AND ATMOS- PHERIC ADMINISTRATION

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
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OVERSIGHT HEARING ON EXAMINING OPPORTUNITIES TO IMPROVE PREVENTION AND RESPONSE OF SEXUAL ASSAULT AND SEXUAL HARASSMENT AT THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Thursday, February 27, 2020
U.S. House of Representatives
Subcommittee on Oversight and Investigations
Committee on Natural Resources
Washington, DC

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room 1324, Longworth House Office Building, Hon. TJ Cox [Chairman of the Subcommittee] presiding.

Present: Representatives Cox and González-Colón.

Also present: Representative Huffman.

Mr. Cox. The Subcommittee on Oversight and Investigations will now come to order.

The Subcommittee on Oversight and Investigations is meeting today to hear testimony on sexual harassment at the National Oceanic and Atmospheric Administration.

Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chair and the Ranking Minority Member. Therefore, I ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted to the Clerk by 5 p.m. today.

Hearing no objection, so ordered.

STATEMENT OF THE HON. TJ COX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Cox. Good afternoon, and thank you, everyone, for joining us today, and to our witnesses for giving your time to be here.

At a previous hearing on sexual harassment at the Department of the Interior, we heard from witnesses that employees who work in remote, isolated places like national parks are at a higher risk of being sexually harassed. But remote workplaces are not limited to our public lands. Men and women who work in our fisheries and oceans, like those with the National Oceanic and Atmospheric Administration, or NOAA, are also at risk. Today's hearing will look at how sexual harassment and assault has affected NOAA employees, and how NOAA is trying to address the issue.

Sexual assault and sexual harassment are not new problems at NOAA. In 2014, whistleblowers spoke about how pervasive these issues are, especially among female scientists and contractors. Addressing sexual harassment at any organization is challenging, but NOAA's complex, decentralized structure and the nature of the duties many of its workers perform makes it especially challenging for them.

Many of NOAA's 12,000 employees and approximate 7,700 contractors are stationed at sea or other remote locations and workplaces that are frequently male-dominated, physical in nature, and far away from the usual support services.

In the National Defense Authorization Act for 2017, Congress directed NOAA to take steps to address this issue, including issuance of a comprehensive sexual assault and harassment policy, and establishment of victims advocacy program. NOAA has not only met most of its objectives, but, as we will hear today, there is still room for improvement and the need for additional authorities and resources.

For example, their Workplace Violence Prevention and Response Program, which is responsible for coordinating all harassment and assault reporting, implementing a holistic training platform, and providing services to its victims across the organization, is up and running. But it is severely under-staffed, with only a single person. In a 2018 report to Congress, NOAA detailed 22 allegations of sexual assault from 2015 to 2018. And the newest report that was just submitted to us this week showed two additional allegations.

Most of these assaults are reported by fishery observers. Fishery observers are employees who are often stationed aboard private commercial fishing vessels or in processing plants, where they collect samples and data to support NOAA's mission. Many of these observers are young female college graduates who are just starting their careers in the scientific field. And Federal law requires their presence on fishing vessels, but that doesn't mean crew members and captains appreciate them being there and are enforcing regulations.

Observers have frequently reported hostility and general harassment from crew members. And when aimed at female observers, this hostility often takes the form of sexual harassment or assault. Making matters worse, there is often only one observer on a vessel, and sometimes the only woman onboard, out in the ocean, far from port for weeks or even months at a time. And despite these vulnerabilities, fishery observers do not currently qualify for the same access to many of the sexual assault and harassment prevention and response services that NOAA offers.

These observers and other similarly positioned NOAA workers need protection from further harm, and not just the most severe instances like sexual assault. There also needs to be a commitment to prevent those less obvious but still harmful behaviors, like inappropriate jokes or comments that observers have come to accept as simply part of the job. This behavior, no matter the intention, degrades women's feelings of safety and security on the job, which, undoubtedly, only further widens the gender gap we see in science, technology, engineering, and math, or the STEM fields.

A change is possible, but it will not come by simply checking the boxes for policy updates or verbal commitments. A real sustained shift in how NOAA workers are treated will require a persistent time and financial commitment of resources from the leadership to changing a culture that has existed for years, or even decades.

NOAA has the responsibility to build a respectful culture within the STEM maritime and aviation fields that is free of sexual discrimination and harassment. As one oceanographer and mariner,

Dr. Julia O'Hern, wrote in a *Washington Post* op-ed, "I want future female deckhands, technicians, captains, and other professionals to expect without hesitation that they, too, can embrace science and the sea."

I look forward to hearing from our witnesses more about how we can achieve exactly that.

With that, I will now recognize Ranking Member González-Colón for her opening statement.

STATEMENT OF THE HON. JENNIFER GONZÁLEZ-COLÓN, A RESIDENT COMMISSIONER IN CONGRESS FROM THE TERRITORY OF PUERTO RICO

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. Good morning. I thank the Chairman and the witnesses for being here today to discuss a very important topic, the National Oceanic and Atmospheric Administration's efforts to address sexual assault and harassment in the workplace. And I think that is one of the biggest issues for many of the Members of Congress that are here today.

First, let me say that I think this issue of sexual assault and sexual harassment is very serious. It cannot be tolerated in a Federal workforce. And every employee deserves a workplace free of sexual assault and harassment.

Understanding this, NOAA has begun to develop a new agency initiative, a SASH prevention program. SASH stands for sexual assault and sexual harassment. The SASH prevention program mission is to establish a culture of professionalism and respect through education, training, and, when needed, victim response and support. NOAA has taken several important steps to begin implementing the SASH preventive program.

For example, NOAA has opened a help line which provides crisis intervention, referrals, and emotional support to victims of sexual assault and harassment. This help line can be accessed 24 hours a day, 7 days a week. Additionally, the agencies have written and implemented a sexual assault and sexual harassment prevention and response policy, and this zero tolerance policy defines unacceptable behavior, encourages employees to report such behavior, and outlines available resources for victims.

These are all steps in the right direction, and I am encouraged by NOAA's action. And to understand the bigger picture, we must examine the data on sexual assault and harassment at NOAA.

In 2017, NOAA published its first data on this topic. Last year, the agency found that 4 instances of sexual assault and 21 instances of sexual harassment had taken place. The following year, the number of reported cases of sexual assault increased to 22, while the reported numbers of incidents of sexual harassment increased to 52. While still nowhere near perfect, these numbers declined to 2 allegations of sexual assault and 34 sexual harassment allegations in 2019. This is progress, but again, more work remains.

And Ms. Kelley Bonner, who serves as NOAA workplace violence advocate and is the only career official working on the SASH prevention program, is in the audience today. Thank you, and welcome to this hearing.

When she met with our Committee staff prior to the release of the 2019 report, she estimated that an increase in the number of reported instances of sexual assault and harassment will occur in the short term, but that NOAA's work will eventually produce a downward trend. The latest numbers in the 2019 report indicate that the program may be seeing some success.

In the 2019 report, however, it also indicates that it is premature to speak to any trends or discuss improvement as a result of these efforts. And I agree, given the limited data, that trends are difficult to determine at this point. NOAA has more work to do, and the agency should keep the Committee apprised of the important developments and further statistics on the SASH prevention program.

In the last hearing held by this Subcommittee in October, we discussed sexual harassment in the Department of the Interior. At this hearing, the Department reported that the percentage of their employees who knew how to report harassment jumped from 62 percent in 2017 to 94 percent in 2018. In turn, the percentage of Department employees who experienced inappropriate behavior dropped from 35 percent in 2017 to 18 percent in 2019.

Statistics like this confirm that as the knowledge of how to report instances of sexual harassment increases, such unacceptable behavior decreases, thanks to God. As we discuss sexual assault and harassment today, please keep these statistics in mind, and they will serve as a model for other agencies, including NOAA.

I look forward to the hearing and to hearing more about NOAA's SASH prevention program and the continued efforts to eliminate sexual assault and harassment in our workforce.

Thank you and I yield back.

Mr. Cox. Thank you, Ranking Member.

Unfortunately, votes have been called and we will need to recess and come right back. We appreciate everyone's patience.

So, the hearing is now in recess, subject to the call of the Chair. [Recess.]

Mr. Cox. I want to thank the witnesses in the audience for your patience and forbearance. The Subcommittee on Oversight and Investigations will now come back to order.

I would like to introduce our witnesses today. Dr. Neil Jacobs is the Assistant Secretary of Commerce for Environmental Observations and Prediction, performing the duties of Under Secretary of Commerce for Oceans and Atmosphere at the National Oceanic and Atmospheric Administration. Ms. Julie Dale is the Prevention and Education Manager at Standing Together Against Rape, Inc. And Ms. Linda Seabrook is General Counsel and Director of Workplace Safety and Equity at Futures Without Violence.

Under Committee Rules, oral statements are limited to 5 minutes, but your entire statement will appear in the hearing record.

The lights in front of you will turn yellow when there is 1 minute left, and then red when time has expired.

After the witnesses have testified, Members will be given the opportunity to ask some questions.

With that, the Chair will now recognize Dr. Neil Jacobs.

STATEMENT OF NEIL JACOBS, ASSISTANT SECRETARY OF COMMERCE FOR ENVIRONMENTAL OBSERVATIONS AND PREDICTION, PERFORMING THE DUTIES OF UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, WASHINGTON, DC

Dr. JACOBS. Thank you, Chairman Cox, Ranking Member González-Colón, and Representative Huffman, for inviting me here to testify today before you on how NOAA is working to prevent sexual assault and sexual harassment and to ensure a safe environment for our workforce to carry out their critical mission.

NOAA faces specific risk factors for SASH. We have a decentralized workforce that spans over 600 locations in all the U.S. states and territories. Some workers are in isolated locations with limited access to resources.

NOAA is also in the midst of a generational shift within the workforce, with an influx of younger employees highlighting clashing generational attitudes toward appropriate behavior in the workplace. Nothing typifies the convergence of these risk factors better than fishery observers who are placed on commercial fishing vessels to collect fisheries data.

The job of an observer is challenging, as they work alongside fishermen in stressful and often hazardous conditions. Because their job involves reporting observations related to compliance with the fisheries regulations, they can become the target of interference, intimidation, and harassment, including sexual harassment and assault.

NOAA trains fishery observers to recognize and report harassment. Satellite phones and other independent communication devices, such as personal locator beacons, are made available.

Regional observer programs in NOAA's law enforcement office respond to and provide victim assistance resources to reported incidents and observers of sexual assault and harassment.

While fishery observers remain one of the highest-risk populations for sexual harassment and assault, these have also occurred on NOAA's research vessels and in agency facilities. For some employees, sexual harassment creates a daily struggle that has profound impact on the victim's professional development, performance, and overall well-being.

NOAA's Workplace Violence Prevention and Response Program is the center of expertise for addressing SASH issues at NOAA. The program is in its second year of operation and is focused on three strategic goals: (1) embedding full-time victim advocates in all major regional campuses; (2) providing comprehensive prevention services; and (3) ensuring training to increase competency around addressing harassment.

NOAA has several contracts with leaders in bystander intervention, victim advocacy, computer-based training, and prevention of sexual assault and sexual harassment in the workplace.

One contract with Standing Together Against Rape (STAR) allows NOAA employees, contractors, and affiliates in Alaska to receive victim advocacy services, including crisis intervention and emotional support.

To undertake the agency's prevention and assessment needs, we contracted with Soteria Solutions, an international leader in sexual assault and sexual harassment prevention, to develop prevention products, including bystander intervention for NOAA's highest-risk areas.

A third contract is with EverFi, a leading computer-based training specializing in sexual harassment prevention that will provide foundational training to the entire NOAA workforce. Three weeks ago, I announced EverFi's computer-based training via an all-hands message. A 1-hour version of this training is mandatory for all NOAA employees, and a more comprehensive 2-hour version is mandatory for all NOAA supervisors, myself included.

The scope and complexity of the issues at NOAA demanded a comprehensive, multi-pronged strategy that includes dedicated, full-time staff to execute it successfully. To date, we only have one full-time victim advocate at NOAA in the Workplace Violence Prevention Program, but are working expeditiously to provide additional staffing and resources.

NOAA has created a SASH council that meets monthly and engages stakeholders on a topic to track data trends and prevention initiatives.

NOAA continues to train its workforce and will be providing cutting-edge education from leaders in the field of sexual assault and sexual harassment prevention, diversity, inclusion, and civility via an upcoming summit this fall.

I have only been at NOAA for 2 years, and I assumed the role of Acting Agency Head a year ago. While we still have a long way to go, I want to recognize the significant progress that has taken place over the last 18 months. Kelley Bonner has done an amazing job designing this program and setting a new course.

While she is NOAA's subject matter expert, I am grateful to have this opportunity to be here today so that I can tell you myself that prevention of sexual harassment and assault is a top priority. In fact, the Fiscal Year 2020 budget request of \$2.7 million is the highest percent increase of any new program in the agency. This request not only reflects my commitment in addressing SASH, but also my confidence in the plan that we have set into motion to address these long-standing issues.

I thank you for your attention on this very important topic, and I am happy to answer any questions you have.

[The prepared statement of Dr. Jacobs follows:]

PREPARED STATEMENT OF DR. NEIL JACOBS, ASSISTANT SECRETARY OF COMMERCE FOR ENVIRONMENTAL OBSERVATIONS AND PREDICTION, PERFORMING THE DUTIES OF UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE

INTRODUCTION

Thank you, Chairman Cox, Ranking Member Gohmert, and Committee members for allowing me to testify before you today. I am here to discuss NOAA's efforts to address and prevent sexual assault and sexual harassment, or "SASH," as well as NOAA's unique and ongoing challenges in meeting this goal.

NOAA's Workplace Violence Prevention and Response Program is the center of expertise with regard to sexual assault and sexual harassment. The program is working to set up agency-wide prevention services, and to establish victim advocacy for the agency. Victim advocacy is a unique facet of legislation requiring NOAA to respond to SASH issues, and NOAA will be the first civilian Federal agency to have embedded victim advocates, providing a critical service to our entire organization.

To understand SASH issues within NOAA, you must first understand the specific risk factors NOAA faces. For one, NOAA has a decentralized and a complex workforce. NOAA's workforce spans over 600 locations in all U.S. states and territories, and is routinely deployed on ships and planes in state, federal, and international waters. Moreover, within these dispersed geographic locations are isolated workplaces with limited resources. Finally, NOAA is in the midst of a generational shift within its workforce.

Nothing typifies the convergence of all three of these risk factors better than fisheries observers. These approximately 851 contractors and privately employed biologists are placed on commercial fishing vessels and tasked with collecting an independent fisheries catch and bycatch data along with recording fishing activities. While fishery observers are deployed in state, federal, and international waters around the country, they spend the most time at sea in Alaska, where they may be contracted to work on vessels for up to 90 days. The job of a fisheries observer isn't easy as they work alongside fishermen in stressful, strenuous, and hazardous conditions. Observers are often viewed as outsiders with oversight responsibilities. Therefore, they are at a high risk for bullying and intimidation, sexual and physical harassment, and violence.

Regional Observer Programs (ROPs) coordinates with NOAA's Office of Law Enforcement (OLE) to train fisheries observers to recognize and report any type of harassment. ROPs also ensure satellite phones or other independent communication devices such as In-Reach or Personal Locator Beacons (PLBs) are available for observers seeking help. In the unfortunate event of sexual assault or harassment, ROPs provide NOAA SASH resources to observers.

While fisheries observers remain one of the highest-risk populations for sexual harassment or assault, there are others who experience harassment and assault in NOAA's fleet and research vessels, offices and other Agency facilities. For these employees, sexual harassment creates a daily struggle that interferes with their personal and professional lives and costs the Agency in a myriad of ways. The psychological effects of sexual assault and sexual harassment have a profound impact on a victim's professional development, performance, and overall physical and emotional well-being. Organizationally, these incidents create a culture of low morale, have economic impacts, and compromise the integrity of the Agency's mission and science.

To achieve a measureable reduction in sexual assault and harassment, NOAA's Workplace Violence program has focused on three strategic goals and has received additional resources. These goals are in line with both the 2016 EEOC's *Select Task Force on Harassment in the Workforce* and the 2018 National Academies of Sciences, Engineering, and Medicine study, *Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine*.

The three goals developed for NOAA's Workplace Violence program focused on a streamlined response, and include:

1. Full-time regional victim advocates embedded in all major regional campuses across NOAA;
2. Comprehensive prevention services; and,
3. Leadership education and engagement to increase competency and comfort around addressing harassment.

To achieve these goals while addressing NOAA's unique challenges, we procured six contracts with the leading organizations in the field for bystander intervention, victim advocacy, computer-based training, and overall prevention in sexual assault and sexual harassment in the workplace.

One contract, with STAR (Standing Together Against Rape), specifically focuses on providing services for NOAA staff in Alaska. The STAR contract allows any NOAA employee, contractor, or affiliate to specifically reach out to STAR to receive victim advocacy services. This includes the traditional services of crisis intervention, emotional support, and connection to additional resources. It also includes expanded services of hotel accommodations and follow-up telephonic support.

To undertake the agency's prevention and assessment needs, we contracted with Soteria Solutions. Soteria Solutions, known for its "Bringing in the Bystander" product, is an international leader in sexual assault and sexual harassment prevention. They are working with NOAA on a targeted assessment via focus groups. From this assessment, Soteria will produce a suite of prevention products that will include bystander intervention for the highest risk areas of the agency for 2020.

A third contract is with EverFi, a leading computer-based trainer, specializing in sexual harassment prevention. This contractor will provide foundational training to the entire NOAA workforce. I announced EverFi's computer-based training this

month via an all-hands message. A 1-hour version of this training is mandatory for all NOAA employees, and a more comprehensive 2-hour version is mandatory for all NOAA supervisors. This training incorporates the NOAA SASH policy, interactive components, and video.

The scope of the issues at NOAA demands a comprehensive, multi-pronged strategy that requires dedicated, full-time staff to execute it successfully. To date, we have only full-time employee at NOAA in the workplace violence prevention program. However, in January of this year, two NOAA employees were assigned to work in the program on a 1-year detail.

Additionally, two critical full staff positions have been advertised, and interviews have been conducted and selections made, although we do not yet have firm on-boarding dates. Along with an FY21 request of \$1.7M over the base of \$1.0M, this upcoming infusion of staffing resources will allow NOAA's workplace violence prevention program to continue to mature. NOAA also continues to develop innovative ways to tackle sexual harassment and sexual assault. For example, NOAA has created a Sexual Assault/Sexual Harassment Council that is chaired by the Deputy Under Secretary for Operations and includes senior NOAA leaders with equities in the SASH arena. The Council meets monthly and engages stakeholders on the topic to track data, trends, and prevention initiatives.

Moreover, NOAA continues to train its workforce and will be providing cutting-edge education from leaders in the field of sexual assault and sexual harassment prevention, diversity and inclusion, and civility via an upcoming summit this fall. This summit will provide in-person training to NOAA's leadership, general workforce, and practitioners in the field of sexual assault and sexual harassment, and diversity and inclusion. Live-streamed panels, workshops, and webinars from the summit will be available to the entire NOAA workforce.

More remains to be done. Although we recently have made significant strides, I commit that our Agency will continue to prioritize its efforts in the prevention and response to sexual harassment and assault. We will ensure the foundation we've started building remains strong and lasting. The workforce deserves no less. I thank you for your attention to this important topic and for the opportunity to testify before you today. I am happy to answer any follow-up questions.

QUESTIONS SUBMITTED FOR THE RECORD TO DR. NEIL JACOBS, ASSISTANT SECRETARY OF COMMERCE FOR ENVIRONMENTAL OBSERVATION AND PREDICTION, PERFORMING THE DUTIES OF UNDER SECRETARY OF COMMERCE FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Questions Submitted by Rep. Cox

Question 1. In your testimony, you indicated that observers are equipped with a beacon (presumably an emergency position-indicating radiobeacon or EPIRB), which communicates with NOAA-operated satellites to indicate distress and need of immediate rescue. These devices do not provide for two-way communications, merely an indication that a person, vessel, or aircraft is in distress at a specific location. We understand that some observers, depending on their region and provider employer do receive two-way communication devices that would allow for a proportional response. Does NOAA have the authority to develop a policy to provide a standard means of communication for observers deployed at sea?

Answer. All observers are issued a unique personal locator beacon (PLB), separate from the vessel's EPIRB, and are encouraged to notify the United States Coast Guard (USCG), their employer, and NOAA (the Agency) with this distress signaling device in any unsafe situation. NOAA Fisheries also provides secure, two-way communication between an observer, NOAA Fisheries staff, and the observer's employer (either through InReach satellite communicators, Iridium satellite phones, encrypted data transmission, or cell phones issued by their employers). The type of device issued is dependent on the length and location of deployment such as short, nearshore day trips vs. multi-week or month-long deployments. Recognizing that cell phones only work in nearshore operations, observers deployed in the Gulf of Mexico and Pacific Islands fisheries are issued Iridium satellite phones while observers deployed in the Mid-Atlantic and West Coast regional fisheries deploy with InReach Satellite communicators. North Pacific Groundfish and At-Sea Hake fishery observers submit encrypted data and text messages daily to regional observer program staff through the Agency provided, encrypted data transmission system known as ATLAS.

Question 2. Fisheries observers are not the only workers in a unique employer arrangement. There are also protected and endangered species observers that are required by NOAA to be present on privately owned geophysical survey vessels, dredges, and underwater construction for the purposes of mitigating take of marine mammals, turtles, and other species. What does NOAA consider its authority or responsibility to provide resources and protection to protected and endangered species observers?

Answer. NOAA prioritizes the safety of our observers. NOAA's Office of Law Enforcement (OLE) has staff in each division who focus on observer safety. Each year, OLE personnel participate in outreach and education to ensure observer safety along with fishermen, observers, stakeholders, and state and Federal partners. During observers training, OLE provides a safety training module to show observers how to report inappropriate activity and behavior and the importance of doing so. The observers are shown examples of unacceptable behavior and taught what steps they can take if something inappropriate happens during a scheduled fishing trip. Throughout the year, OLE continues to provide outreach to ensure that observers feel comfortable with reporting issues to their supervisors and OLE. In addition, OLE meets with fishing vessel crews, captains, and fishing company managers to ensure that they clearly understand the type of behavior that constitutes assault and harassment of observers. Finally, OLE informs stakeholders and our industry partners of the potential penalties for not providing a safe environment for observers, both at sea and at shore-side processing facilities.

However, the protected resources observers required as part of mitigation or terms and conditions of a Marine Mammal Protection Act Incidental Take Authorization or Endangered Species Act Biological Opinion are employed by companies that are contracted by entities conducting the activities (e.g., action agencies, private sector companies in construction, geophysical surveys, or other). The contracting companies employing the protected species observers are responsible for ensuring that any harassment or safety issues are mitigated. Protected species observers are similar to fishery observers as both are employed by private companies, however the Magnuson-Stevens Act authorizes criminal, as well as civil administrative, penalties for harassing, forcibly assaulting, opposing, or intimidating a fishery observer or interfering with their duties. While those penalties are not available under the Marine Mammal Protection Act and Endangered Species Act, other local, state, and Federal laws regarding assault and harassment may apply.

Question 3. NOAA has proposed incidental take regulations that would authorize the take of nearly 200 percent of the Gulf of Mexico Bryde's whale annually, or over 1,300 percent over 5 years, in addition to nearly 9,000 percent of the sperm whale population and over 40,000 percent of the beaked whale population for seismic oil and gas surveys (83 Fed. Reg. 29212). NOAA's analysis places significant weight on mitigation by protected species observers. Considering that these observers would be the final backstop to halt operations, how does NOAA propose to protect these observers from harassment, intimidation, and assault?

Answer. In February 2020, the Department of Interior revised the scope of the requested incidental take regulations by removing the area currently under a leasing moratorium—as established under the Gulf of Mexico Energy Security Act—from consideration. NOAA issued a new biological opinion under the Endangered Species Act in March 2020 based on DOI's revised action. NOAA is also considering DOI's revised scope of action as it develops the final rulemaking.

The protected resources observers required as part of mitigation or terms and conditions of a Marine Mammal Protection Act Incidental Take Authorization or Endangered Species Act Biological Opinion are employed by companies that are contracted by entities conducting the activities (e.g., action agencies, private sector companies in construction, geophysical surveys, or other). The contracting companies employing the protected species observers are responsible for ensuring that any harassment or safety issues are mitigated. Protected species observers are similar to fishery observers as both are employed by private companies, however the Magnuson-Stevens Act authorizes criminal, as well as civil administrative, penalties for harassing, forcibly assaulting, opposing, or intimidating a fishery observer or interfering with their duties. Those penalties are not available under the Marine Mammal Protection Act and Endangered Species Act. However, other local, state, and Federal laws regarding assault and harassment may apply.

Question 4. An important component of an anti-harassment program is holding managers and supervisors accountable when they do not take appropriate steps when an incident of harassment or assault is reported. How does NOAA hold managers and supervisors accountable in this regard?

Answer. NOAA's policy explicitly states in its Sexual Assault/Sexual Harassment (SASH) policy (NAO 202-1106) that all managers are responsible for reporting any incident of SASH and taking appropriate actions to reduce SASH within the agency. In the past, NOAA has disciplined and terminated supervisors/managers who have not adhered to its policy. Currently, all SASH-related discipline and incidents are tracked monthly through the SASH council, where higher-level leadership and stakeholders search for trends and ensure that all employees, including managers and supervisors, are held accountable.

Question 5. During last week's hearing, when asked if NOAA plans to do a workplace environment survey, you said NOAA had included two surveys in a new online training module. I ask that you please provide those survey questions to this Committee. And I ask again: Does NOAA intend to deploy an agency-wide survey? If so, how could you ensure that contractors and affiliates, such as fisheries observers, protected and endangered species observers, and fishery management council members, executive and administrative staff would receive this survey? Could you describe the challenges you anticipate from conducting a comprehensive agency-wide workplace environment survey?

Answer. NOAA intends to complete an agency-wide targeted assessment on SASH in calendar year 2021, including contractors and affiliates, and we will share the survey questions with this Committee when they are final. For entities with whom NOAA has a contractual relationship, NOAA's contract agreements include the requirement that its contractors and affiliates be made aware of and adhere to NOAA's SASH policy. We are working on expanding SASH training requirements for our contractors and affiliates as well. For entities with whom NOAA does not have a contractual relationship (e.g., fisheries observers and protected species observers) the contracting companies employing the protected species observers are responsible for ensuring that any harassment or safety issues are mitigated. Because contractors and affiliates are not Federal employees, surveying them presents a challenge for any Federal agency. NOAA will procure a contractor who specializes in culture assessments to implement the survey.

Questions Submitted by Rep. Huffman

Question 1. What does NOAA consider its authority or responsibility to provide resources and protection for harassment and prevention response to fisheries observers?

Answer. NOAA prioritizes the safety of our observers. NOAA's Office of Law Enforcement (OLE) has staff in each division who focus on observer safety. Each year, OLE personnel participate in outreach and education in regard to observer safety with fishermen, observers, stakeholders, and both state and Federal partners. During observers training, OLE provides safety training to show observers how to report inappropriate activity and behavior and the importance of doing so. The observers are shown examples of unacceptable behavior and taught what steps they can take if something inappropriate happens during a scheduled fishing trip. Throughout the year, OLE makes efforts so observers feel comfortable with reporting issues to their supervisors and OLE. OLE also talks to fishing vessel crews, captains, and fishing company managers so they understand what constitutes assault and harassment of observers. OLE also informs them of the potential penalties for not providing a safe environment for observers, both at sea and at shore-side processing facilities.

However, the protected resources observers required as part of mitigation or terms and conditions of a Marine Mammal Protection Act Incidental Take Authorization or Endangered Species Act Biological Opinion are employed by companies that are contracted by entities conducting the activities (e.g., action agencies, private sector companies in construction, geophysical surveys, or other). The contracting companies employing the protected species observers are responsible for ensuring that any harassment or safety issues are mitigated. Protected species observers are similar to fishery observers as both are employed by private companies, however the Magnuson-Stevens Act authorizes criminal, as well as civil administrative, penalties for harassing, forcibly assaulting, opposing, or intimidating a fishery observer or interfering with their duties. While those penalties are not available under the Marine Mammal Protection Act and Endangered Species Act, other local, state, and Federal laws regarding assault and harassment may apply.

Question 2. NOAA's budget request for Fiscal Year 2021 requests funds to develop and maintain a workplace violence database, which the Committee fully supports. Please describe how you could use this database to track data on disciplinary corrective actions and ongoing investigations and how it could be used to identify trends in offenses.

Answer. A centralized workplace violence database enables stakeholders to report their data in a timely manner. NOAA is looking at various companies that specialize specifically in internal investigations similar to NOAA's. This database would aggregate length of time of cases, case outcome, discipline data including corrective actions. Aggregating this data would allow accurate and timely trend analysis. Reports generated from the centralized database would be presented monthly at the NOAA SASH council.

Mr. Cox. Thank you, Dr. Jacobs.

The Chair will now recognize Ms. Julie Dale for 5 minutes.

STATEMENT OF JULIE DALE, PREVENTION AND EDUCATION MANAGER, STANDING TOGETHER AGAINST RAPE, INC., ANCHORAGE, ALASKA

Ms. DALE. Thank you. Good afternoon, Chairman Cox, Miss González-Colón, Representative Huffman, and other members of the Subcommittee. Thank you for the opportunity to share with you the issues facing NOAA observers, and how our organization, Standing Together Against Rape (STAR), supports them.

My name is Julie Dale. I have been working in the sexual violence prevention field at STAR in Anchorage, Alaska for over 7 years, and I have been working closely with observers and NOAA for over 4 years.

While the connection between the work a rape crisis center in Alaska does and the work NOAA does might not be immediately apparent, the reality is that Alaska has the highest rates of sexual violence in the Nation. These incredibly high rates are not confined to our landmass, but impact our offshore environments, as well.

As a lifelong Alaskan, I greatly value the work observers do to help preserve our fishing industry in my home state, as well as across the Nation. And I am passionate about helping our fishing industry be as safe and sustainable as possible.

As you may be aware, NOAA observers are professionally trained biological scientists gathering firsthand data on what is caught and thrown back, which supports science, conservation, and management activities. This data is used to monitor fisheries, assess fish populations, set fishing quotas, and inform management. Observers also support compliance with fishing and safety regulations. It is a necessary role for scientists in our fishing industry if we hope to maintain a fishing industry at all.

Commercial fishing is an inherently dangerous job. Slippery decks, heavy equipment, isolation, and rough seas all contribute to the perils observers and fish industry workers face at sea.

In addition to the job being inherently dangerous, observers are immediately placed in a vulnerable position the moment they step onto a vessel, as fishing crews often view an observer as an outsider or a snitch.

An observer's vulnerable position becomes even more perilous as it is combined with being isolated far from shore for extended periods of time without access to communication with individuals off of

the boat, and potentially witnessing fishing violations that the vessel crew does not want to be reported. This can, and does, result in observers being pressured, harassed, threatened, and physically and/or sexually assaulted to either interfere or prevent them from completing their job.

While providing training, I have received firsthand examples from observers of how this harassment starts. These examples include, but are not limited to, being told to shuck scallops, clean the slime line, measure crab, or even cook for the crew. These duties are not part of the observer's job, and the intent is to remove them from their assigned position so they are not able to perform their job functions. Therein lies the power and control. If an observer refuses to participate in these behaviors, they are not part of the team; and if they do participate, the crew then can hold over their heads that they were not at their assigned job.

These harmful behaviors can escalate quickly and result in the observers not having access to food, sleeping quarters, bathroom facilities, or the captain's deck. All of these tactics hold power and control over the observers, which contributes to the sexual violence experienced by these individuals.

There is good work being done, but it is not enough. There are some real barriers to observers reporting and seeking help. These can include gaining a reputation for being a narc, not wanting to worry their friends and family, not sure if it is a reportable offense, having to go back out on the same boat with the same crew again, and being blacklisted from the industry, not able to do the work for which they are so passionate.

The response observers receive when reporting these behaviors is very disheartening, and ranges from, "Well, it is just hazing," "What do you expect is going to happen on a fishing boat," "I bet they thought you were flirting with them," "We told you not to wear yoga pants," and, "Well, it happened to me too and I made it through just fine. You will get over it."

We need to create safe environments for our observers and prevent further harm from happening by providing consistent prevention training for industry personnel, enacting enforceable legislation that holds individuals who harm accountable, and changing the norms from those that are tolerant of sexual violence to supporting and believing survivors.

Thank you for the opportunity to appear today. I will be happy to respond to questions.

[The prepared statement of Ms. Dale follows:]

PREPARED STATEMENT OF JULIE DALE MCNEESE, PREVENTION AND EDUCATION
MANAGER FOR STANDING TOGETHER AGAINST RAPE (STAR)

Chairman TJ Cox, Ranking Member Louie Gohmert, and the other members of the Subcommittee, thank you for the opportunity to share with you the issues facing NOAA Observers and how our organization, Standing Together Against Rape (STAR), supports them.

My name is Julie Dale. I have been working in the sexual violence prevention field at STAR in Anchorage, Alaska, for over 7 years and have been working closely with Observers and NOAA for over 4 years. While the connection between the work a rape crisis center in Alaska does and the work NOAA does might not be immediately apparent, the reality is that Alaska has the highest rates of sexual violence in the Nation, these incredibly high rates are not confined to our landmass but impact our offshore environments as well.

As a lifelong Alaskan, I greatly value the work observers do to help preserve our fishing industry in my home state as well as across the Nation and am passionate about helping our fishing industries be as safe and sustainable as possible.

As you may be aware, NOAA Observers are professionally trained biological scientists gathering firsthand data on what is caught and thrown back, which supports science, conservation, and management activities. This data is used to monitor fisheries, assess fish populations, set fishing quotas, and inform management. Observers also support compliance with fishing and safety regulations. It is a necessary role for scientists in our fishing industry if we hope to maintain a fishing industry at all.

Commercial fishing is an inherently dangerous job, slippery decks, heavy equipment, isolation, and rough seas all contribute to the perils observers, and fish industry workers face at sea.

In addition to the job being inherently dangerous, Observers are immediately placed in a vulnerable position the moment they step onto a vessel as fishing crews often view an Observer as an “outsider” or “snitch.” Observers vulnerable position becomes even more perilous as it is combined with being isolated, far from shore, for extended periods time, without access to communication with individuals off the boat, and potentially witnessing fishing violations that the vessel crew does not want to be reported. This can, and does, result in observers being pressured, harassed, threatened, and physically and/or sexually assaulted to either interfere or prevent them from completing their job.

While providing training, I have received firsthand examples from Observers of how this harassment starts. These examples include, but are not limited to, being told to shuck scallops, clean the slime line, measure crab, or cook for the crew. These duties are not part of the Observers job, and the intent is to remove them from their assigned position, so they are not able to perform their job functions. Therein lies the power and control. If an Observer refuses to participate in these behaviors, they are “not part of the team,” and if they do participate, the crew then can hold over their heads that they were not at their assigned job. These harmful behaviors can escalate quickly and result in the Observers not having access to food, sleeping quarters, bathroom facilities, or the captain’s deck. These tactics hold power and control over the Observers, which contributes to the sexual violence experienced by these individuals.

There is good work being done, but it is just not enough, there are some real barriers to Observers reporting and seeking help, and these can include, gaining a reputation for being a narc, not wanting to worry friends and family, not sure if it is a reportable offense, having to go back out on the same boat with the same crew AGAIN, and being blacklisted from the industry, not able to do the work for which they are so passionate.

The response Observers receive when reporting these behaviors is very disheartening and range from “well its just hazing,” “what do you expect is going to happen on a fishing boat,” “I bet they thought you were flirting with them,” “I told you not to wear yoga pants,” and “Well it happened to me too, and I made it through just fine, you will get over it.”

We need to create safe environments for our Observers and prevent further harm from happening by providing consistent prevention training for industry personnel, enacting enforceable legislation that holds individuals who harm accountable, and changing the norms from those that are tolerant of sexual violence to supporting and believing survivors.

Again, thank you for the opportunity to appear today. I would be happy to respond to questions.

Mr. Cox. Thank you, Ms. Dale.

The Chair will now recognize Ms. Linda Seabrook for 5 minutes. Please go ahead.

STATEMENT OF LINDA SEABROOK, GENERAL COUNSEL AND DIRECTOR, WORKPLACE SAFETY AND EQUITY, FUTURES WITHOUT VIOLENCE, WASHINGTON, DC

Ms. SEABROOK. Thank you, Chairman Cox, Ranking Member González-Colón, and Representative Huffman. Good afternoon.

For more than 30 years, Futures Without Violence (FUTURES) has led the way in creating innovative solutions to end violence against women and children around the world, and to help communities heal and thrive. On behalf of myself and FUTURES, I would like to thank Chairman Cox and this Subcommittee for inviting me to speak with you today.

At FUTURES, we are honored to lead the only national resource center dedicated to addressing the impacts of gender-based violence and harassment on workers and the workplace. Authorized by the Violence Against Women Act and funded through DOJ's Office on Violence Against Women, the National Resource Center on Workplace Responses helps employers, employees, workplace stakeholders, and others improve responses to violence and harassment.

Most importantly for our time here today, the Resource Center serves as the technical assistance provider to executive branch agencies in crafting and implementing policies and programs designed to prevent and respond to such harassment and violence impacting the wide range of workplaces and workers who serve the public good.

We also focus our efforts on the Nation's most vulnerable workers, such as those in agriculture, hotel, and janitorial industries. These workers, who often perform their work in isolated environments, are women or members of otherwise marginalized groups, are paid low wages, and often perform their jobs through subcontracted work arrangements, experience the highest rates of sexual violence in the workplace.

Sexual violence and harassment, no matter where it occurs, is primarily about power. Thus, the process of creating effective responses to and preventing this conduct must seek to leverage the collective power of all in the workplace to bring about necessary cultural change, and democratize responsibility for creating an environment that promotes respect, equity, dignity, and thereby greater safety and support.

Workers know how, where, to whom, by whom, and under what circumstances sexual harassment occurs. Therefore, they must be intimately involved in the policies, procedures, and processes intended to protect them. At FUTURES, we engage in collaboration to help build workplace-appropriate responses and interventions that promote prevention and culture change.

One such collaboration was with the Coalition of Immokalee Workers. With FUTURES' expertise in sexual violence prevention, and using certified Sunripe Certified Brands as a pilot site employer, we collectively developed a worker-engaged and workplace-based education and response program as a companion to CIW's Fair Food Program, a program which has effectively addressed the long-standing scourge of sexual violence in the nation's fields and farms.

Some of the working environments at NOAA have similar factors that account for vulnerability to experiencing sexual harassment on the job as the agricultural industry. For example, fishery observers, who are often recent college graduates without the gravitas of experience, working in isolated, remote working environments on behalf of an agency that is not necessarily their employer, are in

a situation that makes them vulnerable to experiencing sexual violence and harassment.

I have been provided with and have reviewed NOAH's SASH policy, which is thorough and an excellent first step. I am happy to address specific concerns about this policy, but what I would like to impress upon you today is how important it is for the process of implementation to incorporate worker input and participation. Doing so provides the means for creating that shared responsibility and collective engagement for changing culture that we know brings a policy to life.

What numerous studies have revealed, and what I can also speak to as a survivor of sexual harassment, is that most survivors do not want to report or avail themselves of the legal or administrative remedies to address this conduct. They just want it to stop, and not happen in the first place to them or anyone else. So, while policies that provide greater protections and ensure greater accountability are much needed and most welcome, we must also seek to engage workers, survivors, and management to work together to change the culture that facilitates this conduct in the first place.

On the Resource Center website, on the sexual harassment subpage, we have many resources that I am happy to discuss later on. But I wanted to leave you with the premise that workers, and especially survivors, should be front and center in the implementation of these policies and practices. Incorporating trauma-informed and survivor-centered approaches in investigations, trainings, practices, and protocols provide greater assurance that such policies will be engaged in the first place, and engenders trust throughout the workplace to promote collective responsibility for the kind of workplace every worker deserves. Thank you.

[The prepared statement of Ms. Seabrook follows:]

PREPARED STATEMENT OF LINDA A. SEABROOK, GENERAL COUNSEL AND DIRECTOR OF
WORKPLACE SAFETY & EQUITY, FUTURES WITHOUT VIOLENCE

Good afternoon, my name is Linda Seabrook and I am General Counsel and Director of Workplace Safety & Equity for the national non-profit organization, Futures Without Violence (FUTURES). For more than 30 years, FUTURES has led the way and set the pace in creating innovative solutions to ending violence against women and children, and improving responses to violence and abuse impacting individuals, families, and communities.

On behalf of myself and FUTURES, I would like to thank the Committee on Natural Resources, Subcommittee on Oversight and Investigations, for inviting me to speak at this hearing on Sexual Harassment at the National Oceanic and Atmospheric Administration.

SCOPE OF PROBLEM

Countless women and other vulnerable workers have shared their stories of workplace sexual harassment and violence and continue to do so. What we have seen from these stories bravely shared, is that sexual harassment and violence is and continues to be a pervasive problem in the world of work.

According to a 2016 Equal Employment Opportunity Commission study, up to 85 percent of women report that they have experienced workplace sexual harassment.¹ A study detailed in an article in *Gender and Society* entitled "The Economic and Career Effects of Sexual Harassment on Working Women," revealed that women

¹ Feldblum, Chai, and Victoria Lipnic. 2016. "EEOC Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum and Victoria A. Lipnic." https://www.eeoc.gov/eeoc/task_force/harassment/.

who are sexually harassed are six times more likely to change jobs,² and a National Council for Research on Women study found that women are nine times more likely to quit, and three times more likely to lose their jobs because of experiencing workplace sexual harassment and violence.³ And these statistics are more acute for women of color. This should be of grave concern as it leads to decreased employment opportunities, decreased economic stability for women and their families, and impacts the efficacy and mission of the organizations, businesses, and agencies in which they work.

NATIONAL WORKPLACE RESOURCE CENTER

At FUTURES, we are honored to lead the only national resource center dedicated to addressing the impacts of sexual harassment and violence, domestic violence, and stalking on workers and the workplace. Authorized by the Violence Against Women Act, and funded through the U.S. Department of Justice's Office on Violence Against Women, the National Resource Center on Workplace Responses (Workplace Resource Center) helps employers, employees, Federal agencies, and other workplace stakeholders by providing tools, resources, promising practices, training and education to prevent, as well as improve responses to, workplace sexual violence and harassment. Most importantly for our time here today, the National Resource Center serves as the technical assistance provider to executive branch agencies in crafting and implementing policies and programs designed to prevent and respond to domestic violence, sexual violence and harassment, and stalking impacting the wide range of workplaces and workers who serve the public good.

Through the Workplace Resource Center, we focus our efforts on the Nation's most vulnerable workers, such as those in agriculture, hotel, and the restaurant and janitorial services industries. These workers, who often perform their work in isolated environments, are largely women of color, LGBTQ or otherwise marginalized, are paid low wages, and perform their jobs through subcontracted work arrangements (which weakens the chain of accountability), experience the highest rates of workplace sexual violence.

Sexual violence and harassment, no matter where it occurs, is primarily about power and abuse of power, and not all that much about sexual desire. Thus the process of creating effective responses to and preventing sexual harassment in the workplace must seek to leverage the collective power of all in the workplace to bring about necessary cultural change, and democratize responsibility for creating a work environment that promotes respect, dignity, equity, and thereby, greater safety and support. Workers know how, where, to whom, by whom, and under what circumstances sexual harassment occurs, therefore they must be intimately involved in the policies, procedures, and processes intended to protect them from such conduct.

At FUTURES, we partner with survivors, workers, employers, unions, workers' rights and antiviolence advocates to build workplace-appropriate responses and interventions that promote prevention and culture change. One such collaboration centered around the work of our partners and friends at the Coalition of Immokalee Workers, a human rights organization based in Immokalee, Florida that created the Fair Food Program, an innovative and effective partnership among farmers, farm-workers, and retail food companies that ensures those who harvest our food are able to do so without being exposed to sexual harassment and violence in our Nation's fields and farms. With FUTURES' expertise in sexual harassment and violence prevention, and using Sunripe Certified Brands as a pilot site employer, we collectively developed a survivor and worker-led workplace-based education, awareness, resource, and response program as a companion to the consumer-powered and worker-driven Fair Food Program, which has been called the "best workplace monitoring program" by the *New York Times* and has effectively addressed the long-standing scourge of sexual violence in the fields that has long plagued our agricultural industry.

ADDRESSING SEXUAL HARASSMENT AT NOAA

Some of the working environments at NOAA have similar factors that account for vulnerability to experiencing sexual harassment on the job as the agricultural industry. For example, fishery observers are young professionals, often recent college graduates, who work pursuant to a subcontract. They board private fishing boats

² McLaughlin, Heather, Christopher Uggen, and Amy Blackstone. 2017. "The Economic and Career Effects of Sexual Harassment on Working Women." *Gender & Society* 31(3): 333–58. <https://doi.org/10.1177/0891243217704631>.

³ National Council for Research on Women. 1994. "The Webb Report." *The Webb Report*, June.

and vessels as the only NOAA-affiliated person on that vessel, which are at sea, many miles from shore. A recent college graduate, new to such a workforce and without the gravitas of experience, working in an isolated, remote working environment, on behalf of an agency that is not their employer, is in a situation that makes them extremely vulnerable to experiencing sexual violence and harassment.

I have been provided with and reviewed NOAA's Sexual Assault and Sexual Harassment Prevention and Response Policy, which is a thoughtful and thorough policy, and excellent first step. I am happy to address specific questions about the policy when appropriate, but what I would like to impress upon you today is how important it is for the process of implementation to incorporate worker input and participation. Doing so provides the means for creating that shared responsibility and collective engagement for changing culture that we know brings a policy to life and moves a workplace toward prevention and culture change. What numerous studies have revealed, and what I can also speak to anecdotally as someone who has experienced sexual harassment in my work life, is that most targets of sexual harassment do not want to report, complain, or avail themselves of the legal or administrative processes to address their experiences of sexual harassment and violence—they just want this behavior to stop, and not happen again, to themselves or anyone else. So while policies that provide greater protections and ensure greater accountability are much needed and most welcome, we must also engage employees, bystanders, survivors, and supervisors to work together to change the culture that facilitates workplace sexual harassment and violence in the first place.

Available on the Sexual Harassment and Violence subpage of the Workplace Resource Center website, www.workplacesrespond.org/harassment, you will find a number of resources that can guide any agency or organization through the process of collective engagement in changing workplace culture to one that promotes greater dignity, respect, collective responsibility, and safety, to include a model climate survey and code of conduct, a workplace "culture walk," sample education and awareness materials, as well as myriad other resources and tools to effect necessary culture change.

CONCLUSION

Most importantly, the voices and experiences of survivors of workplace sexual harassment and violence need to be front-and-center in any solutions and in the implementation of any policies and practices to address this problem. Trauma-informed and survivor-centered approaches in investigations, trainings, practices and protocols provide greater assurance that such policies will be engaged in the first place, and engenders trust throughout the workplace to promote collective responsibility for the kind of workplace every worker deserves.

I thank you again for allowing me the opportunity to be with you today, and am happy to respond to any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO LINDA SEABROOK, GENERAL COUNCIL AND DIRECTOR OF WORKPLACE SAFETY & EQUITY, FUTURES WITHOUT VIOLENCE

Questions Submitted by Representative McEachin

Question 1. Could you provide your analysis of NOAA's current SASH policy, as well as suggested improvements?

Answer. As stated in my testimony, the SASH policy is an excellent first step, and thoughtful and thorough policy. It integrates many best practices recommended by the FUTURES-led National Resource Center on Workplace Responses (Workplace Resource Center), including:

- A clear purpose statement that articulates the workplace culture that NOAA seeks to create and that establishes broad goals for the policy;
- The scope of who, where, and what types of conduct are covered by the policy;
- Legally-sufficient definitions and examples of sexual harassment and sexual assault, using accessible terminology;
- Prioritizing and centering prevention, training, and awareness over discipline, which is a meaningful indication of NOAA's values;
- Multiple channels for reporting potential prohibited conduct;
- Clear distinctions between the SASH policy and EEO processes;

- Centering the immediate safety and resource referral needs of an employee who makes a report;
- A clear statement of the limitations of qualified confidentiality;
- The creation of advocacy and liaison positions, as well as a list of additional resources, for the benefit of employees who may need assistance;
- A prerogative to avoid transferring employees who make a report if it is not their wish to be transferred;
- Clear and enforceable protections against retaliation; and
- Regular incident reporting procedures to track the impact of the policy and promote accountability.

Suggested improvements include the following:

As stated in my testimony before the Subcommittee, the provision “swift reporting allows *law enforcement authorities* and the Agency to take measures . . .” as detailed in Section 6.01 might discourage a target of sexual harassment or assault from reporting conduct because they may not want law enforcement to become involved. For many survivors, the criminal justice system does not instill confidence, and the fear of being responsible for a coworker or supervisor’s potential interaction with the criminal justice system may also inhibit a target from reporting. Instead, we suggest removing “*law enforcement authorities*” and leaving the remaining language. “Appropriate measures” may indeed include law enforcement, but the policy details in subsequent sections what circumstances might require the involvement of law enforcement. We would recommend, however, that the policy provide for a conversation with the target of the harassment when law enforcement must be called, or if discretionary, if they want law enforcement to be involved.

With respect to Section 9.04 “Reassignment of an Alleged Perpetrator,” we are concerned by the lack of guidance on when or how this might occur or be appropriate and would recommend revisiting and expanding on this provision to provide clearer guidance on when such a reassignment may be justified as well as the process for doing so. The victim’s safety should be prioritized in any determination of whether reassignment is appropriate and if appropriate, where the perpetrator is reassigned.

Finally, the policy does not appear to contain a provision for keeping a target/victim who makes a report abreast of the status of their report at regular intervals, where feasible and appropriate. We would recommend the incorporation of practices that provide the most information as the law and agency regulations allow.

Question 2. In your testimony, you mentioned that an important strategy to addressing sexual harassment in an organization is to involve workers, including former victims and survivors of harassment, in the solutions. In other words, organizations should ‘democratize’ the process for addressing sexual harassment and changing the culture in an organization. What are some of the most effective ways an organization can involve workers in addressing sexual harassment? How can organizations keep employees engaged in the process to ensure that positive progress is continuing to be made?

Answer. Policies created from the top down without a robust plan for implementation that involves the participation of representatives of workers at all levels, including former or current targets of sexual harassment, may drive compliance, but it will be temporary. Workers need to feel a stake in the process in order to have trust in policies and a collective responsibility for outcomes. Involving workers in the development of education and practices that promote compliance with the policy creates buy-in and fosters culture change and values alignment.

Our first recommendation would be for NOAA to conduct an agency-wide climate survey, which, in addition to including all full- and part-time employees, should include contractors, interns, and others who perform consistent work on behalf of NOAA. Each organization has its own culture, gaps, and needs. A well-executed workplace climate survey process lays the foundation for a tailored response and prevention program by identifying the following: the organizational risk factors that underlie sexual harassment and violence; the needs of employees experiencing workplace sexual harassment on the job; the obstacles to worker participation in accountability measures; current gaps in response to such conduct; and, the level of worker confidence in leadership and current policies and procedures.

To encourage candor, the climate survey should be conducted by an outside entity, and respondents should be assured that their responses cannot be traced back to them and will be incorporated into a comprehensive report, rather than individualized. The survey can include a call for volunteers to serve as employee members of a “Workplace Values Team,” that will be responsible for review and analysis of the

final comprehensive report and serve as an advisory group to offer suggestions for necessary policy changes and closing gaps in response, as well as engage in an ongoing collaborative process for developing shared and representative workplace expectations and values.

The Workplace Values Team can advise and direct the process for implementation of the SASH policy, including any recommended improvements, and help with the creation of an educational program by providing realistic training scenarios, strategies for bystander intervention, and a plan for continued worker engagement. Finally, the Workplace Values Team, if trained appropriately, can serve as peer counselors and educators to provide worker-to-worker support.

We hope that the foregoing proves helpful to NOAA as they continue to improve their response to sexual harassment and violence. Please know the Workplace Resource Center is available for any technical assistance or guidance needed to assist NOAA in this process. We appreciate the thoughtful questions provided by Representative McEachin, and thank you and the Subcommittee once again for your commitment to ensuring that NOAA workers can work free from sexual harassment and violence on the job.

Mr. Cox. Thank you. Now we can entertain some questions.

Kind of the first thing is, Ms. Seabrook, when you are describing this culture of intimidation, harassment, and that sometimes the observers are essentially made to believe that it is just part of the job, you have described some of the things that were being done to or should be done to shift that culture. I would like you to provide a little more elaboration or color on how NOAA has a role in changing that culture.

And, certainly, Dr. Jacobs, a little bit more color on some of the things that you had mentioned that you are doing to bring about that shift.

Ms. SEABROOK. Yes. It is interesting, there was a study that was done by the Restaurant Opportunities Centers United, where they surveyed restaurant workers about sexual harassment. When they just asked the workers, "Have you ever been sexually harassed," the rates weren't actually that high. But then, once they started to describe what sexual harassment actually was, they saw significant rates of sexual harassment as identified.

So, when you say that it is just part of the job, that is often the experience of many workers today, whether it is in the agricultural industry, the retail industry, the restaurant industry, or at NOAA.

I think what is most important is to have, again, that kind of collective responsibility for building the type of workplace in which everyone can thrive. So, it is democratizing that type of responsibility among the workforce and empowering bystanders to stand up, turning co-workers from bystanders to up-standers.

Mr. Cox. Thank you. And Dr. Jacobs?

Dr. JACOBS. We have been spending a lot of time, obviously, with this for the last 18 months. I have been spending a tremendous amount of time with Kelley Bonner. We have set up contracts for nine additional investigators. We originally only had one. Those were started in July 2019.

The response time has gone from weeks down to 48 hours.

We have a mandatory online training module that we released on February 5. Right now, about 40 percent of the agency has already completed it.

We have stood up a SASH council in 2019 with representatives from around the agency.

Hiring, obviously, as you have heard, is an issue. I have personally called Enterprise Services myself to get them to speed up on some of the hiring processes so we can get this staffed out.

Obviously, training is very, very important.

Another thing that we are working on is centralizing the reporting structure of the data, getting a database set up. That is going to help streamline how the reports are uploaded, and the format of them, because there is a lot of uncertainty and confusion around the agency about different reporting formats of the data, and how it is collected. So, streamlining that process is very important.

We have six external contracts to help provide a foundation of training and education in victim services.

These are a lot of things that we have done. Some next steps will be bystander intervention training, that is another computer module that we are going to do later this year. We have a SASH summit coming up this fall. We are working on developing and rolling out a prevention plan. I mean, obviously, we have a plan in place now, but we are forming it as we go based on what we are learning. And then really, really working on increasing victim advocacy services. We do plan to hire internal investigators. Not just having investigators as contractors, but having internal hires on this, I think, is really going to help us a lot.

Mr. COX. Great. Thank you. And certainly these are all very, very positive steps. Have we seen a shift or positive results really out there on the water yet?

Any feedback from some of the observers that the culture has changed on this boat, or people are actually more mindful about what they are doing?

Dr. JACOBS. I would say it is probably too early to tell, really. I mean, I have a lot of positive e-mails and feedback from the all-hands message I sent out with the link to the training module.

In 2017, we had some numbers that came in, the law enforcement part of NOAA, they were collecting data, but they didn't know where to send it. So, those numbers didn't get included until 2018, so there appears to be a spike in 2018. A lot of those are previous years' numbers that they didn't know where to report. And then also, the Alaska incident got reported that showed up in 2018.

So, I would say 2018 is probably anomalously high, 2019 is maybe too early to tell. We would expect, as we develop and roll out this prevention program, that the numbers may go up before they come down, because a lot of these victims don't exactly know where to report or what the proper process to take is. So, I wouldn't be surprised to see an increase before a decrease. But once the program is fully rolled out, I would expect to see the numbers decreasing, particularly over the next year or two.

Mr. COX. Great, fair enough. Thank you.

The Chair will now recognize the Ranking Member for 5 minutes.

Miss GONZÁLEZ-COLÓN. Thank you, Mr. Chairman. And thank you, again, all the witnesses, for waiting. I know sometimes when votes are called, everything gets disrupted. So, thank you again, and sorry about that.

Hearing the testimonies of Dr. Jacobs and Ms. Dale, there is one issue that concerns me, and that is the decentralized system of NOAA. Having personnel in more than 600 locations, as you already specified, including the territories, and how difficult it is to work and have that kind of situation, to work with sexual assault and harassment. Can you elaborate more, Dr. Jacobs, in terms of what policies the agency pursued or explored today to address the risk posed by this decentralized system?

And later on I am going to follow back with Ms. Dale in terms of the experience in Alaska and the vessels, planes, and ships, because coming from a territory, I know how difficult it is when you have employees all over without anyone there in a vessel to help out.

Dr. Jacobs?

Dr. JACOBS. Thank you for the question. Obviously, Alaska, being a remote region, is a challenge to get outreach, so we have contracted with STAR to provide victim advocacy services. In the Lower 48, when I was referring to centralized, it is more of a centralized data management and reporting structure. The actual victim advocates we want out in the field.

We have six different line offices that break their coverage down into different regions. For compliance with the law, we are actually looking at dividing into north, south, east, and west, and then OMAO, we would have folks there, as well. So, the victim advocates will be in the different regions, but the centralized aspect is mostly going to be the data reporting.

Miss GONZÁLEZ-COLÓN. I mean, I think the partnership is great. My question to you, Dr. Jacobs, is what kind of information, guidelines, or policies may be brought after having that experience with a partnership in order to address these kind of issues in isolated areas?

If we are not there yet, fine. If you are working on this, please keep us posted.

Dr. JACOBS. There are a couple of things that could be very helpful, particularly in the Alaska region, when it comes to vessels. When it pertains to the Magnuson-Stevens Act, there is language in there that specifically references issues when they only occur on vessels. So, this would apply only to an observer on a vessel. And it would be tremendously helpful for us if the solution was to just remove reference to “on a vessel,” because a lot of times these issues happen at port, or at hotels when the ship is not actually—I mean, it even happens on the dock.

There is another part in there that discusses forcibly intimidate, and there is a series of intimidate, assault, and so on after the word “forcibly.” And “forcibly” is kind of a hard word to define. It would be very helpful if it just said “intimidate” and “assault.”

Miss GONZÁLEZ-COLÓN. Ms. Dale?

Ms. DALE. As an agency that is responding to victims of sexual violence, one of the most important things that we are focusing on at STAR in this partnership is the appropriate response when somebody discloses they have been harmed. And that appropriate response goes beyond legislation and beyond prosecution. We want to make sure that observers, regardless of the incident that has

happened to them, are supported in being believed and continuing to be able to do their jobs as safely as possible.

So, at our agency, we are looking at that victim support as our role in that partnership.

Miss GONZÁLEZ-COLÓN. Thank you.

Dr. Jacobs, going back to you with the goals of the workplace program, you said that you were looking to have a full-time regional victim advocate embedded in all major regional campuses. What is the status of this effort, and if you need more help?

Dr. JACOBS. We absolutely do need more help. Right now we have one certified and trained victim advocate. She is sitting right behind me. We have three others who are trained, but they are not certified or credentialed yet. They are in the process of that.

It is kind of a two-pronged approach of staffing out and also bringing some investigators as FTEs. I would really love to hire investigators internally, rather than to have to contract it out, so we actually have more oversight of the investigators' work.

And then, once we get the victim advocates credentialed, then it is really a matter of outreach and awareness, and making sure that the employees in the field know who to access, how to access them, and building that type of communication and understanding.

The prevention side of it is largely the modules and the training. But it is how we handle these—we went from weeks down to 48 hours by just bringing on nine additional contractors for the investigation, and shortened the investigation time from months down to around 100 to 120 days. But we have a long way to go still.

So, definitely, I would love to work with everyone here on trying to push this further.

Miss GONZÁLEZ-COLÓN. Thank you, Dr. Jacobs. I know my time has expired. We have a lot of questions, but we can submit them for the record.

Mr. COX. Thank you so much, Ranking Member.

I am going to ask unanimous consent that the gentleperson from California, Representative Huffman, be allowed to sit on the dais and participate in today's proceedings.

Mr. HUFFMAN. Thank you, Mr. Chairman. And I just want to say, as the Chair of the Water, Oceans, and Wildlife Subcommittee, where we spend a lot of time talking about the NOAA programs, I am really grateful to you and your staff and your leadership in choosing to do a deeper dive into this subject. It is really important, and it is the human side of these programs that we talk about so much.

Dr. Jacobs, I also want to thank you for being here, because the Commerce Department has, obviously, sent someone with the right scope of authority and a base of knowledge, and you are here answering questions.

That is a far cry from the non-responsiveness that we get from the Department of the Interior, to be perfectly candid. They have given up sending witnesses with the right position and with actual knowledge to answer our questions. And it is good to just be having a serious conversation about a serious subject. This is the way real non-partisan oversight of a serious subject ought to go. So, I thank you for that.

It seems to me that we all agree that the safety and well-being of employees and those who are employed on behalf of NOAA should be the highest priority at the agency. And resources and services should be readily available and accessible to them.

Dr. Jacobs, you have talked a bit about the Fiscal Year 2020 budget, and some programs and some dollar figures where it seems to suggest a greater emphasis. But I want to focus in on the number of personnel, starting with how many employees and contractors actually work for NOAA. Do you know, off the top of your head, the number of employees and contractors?

Dr. JACOBS. We have just under 12,000 FTEs, and I think roughly about twice that in contractors.

Mr. HUFFMAN. Oh, so that is even more contractors than I had assumed. I had thought 7,700 contractors and affiliates, so I think you have given an even higher number than I had.

And I think I understood you to say that you currently have one full-time employee and two detailees in the Workplace Violence Prevention and Response Program, with two more FTEs in the process of being hired. Did I get that right?

Dr. JACOBS. We have two more in the process of being hired. These are for the victim advocates. We also have one full-time. We have three more that are trained, but not credentialed. And then we have other contractors doing investigations.

Mr. HUFFMAN. OK.

Dr. JACOBS. And then there are a lot of other people in HR and the like doing work on this issue.

Mr. HUFFMAN. Why is it taking so long to fill those positions?

Dr. JACOBS. Some of it is just hiring. I mean, I am sure you are probably aware that we have had hiring challenges in the weather service and elsewhere. It is the same hiring process. That is a slow process. This is why I said I called Enterprise Services myself to try to expedite one of these individuals.

The hiring process takes a while. I wasn't fully aware of how deep the problems were until probably a year-and-a-half ago. So, really focusing in on last year's budget, when we had about \$1 million in the program, and then adding an additional \$1.7 million this year.

Mr. HUFFMAN. I appreciate that. But in terms of the number of personnel, wouldn't you agree that the numbers we are talking about are not a lot to stand up a prevention and response program for over 12,000 employees, plus all those affiliates that we mentioned?

Dr. JACOBS. Oh, yes——

Mr. HUFFMAN. Do you feel like that is an adequate number?

Dr. JACOBS. No, not at all. I completely agree with you. We definitely need more people.

Mr. HUFFMAN. What would be the right number?

Dr. JACOBS. I think we would probably have to scale up. I would like at least one victim advocate in the various regions.

We also have contracts with agencies like STAR to help us out, as well. We have six different contracts, so we actually have, under contract, a lot of individuals working on this. But I would like to see actual hires in the agency, FTEs, working on this.

Mr. HUFFMAN. Does your Fiscal Year 2020 budget request reflect the staffing that would get you the number you would like to see?

Dr. JACOBS. The additional \$1.7—some of that would go to staffing, yes.

Mr. HUFFMAN. OK, moving on, we all know that female employees are disproportionately harmed by sexual harassment and assault, especially working in remote locations such as some of these fisheries assignments for observers and monitors. They are often the sole NOAA-affiliated employee on these vessels, but they are a very important part of our fishery management framework. It troubles me that so many observers have reported sexual harassment, and surely there are a lot more who have experienced it and not bothered to report it.

Last question—I know I am out of time, I hope there might be another round—Dr. Jacobs, do you think that the resources and services that are available to NOAA employees are also available to affiliates and contractors, such as the observers in so many cases?

Dr. JACOBS. They are available, but a lot of the things, for example, the module, are not—the training is not necessarily mandatory.

So, when some of the fisheries—the observer program, when they do go through training, it is a couple-week-long course, and there are a couple hours on SASH. But when it comes to these modules and other things, we don't necessarily have the same authorities with our contractors that we do the FTEs—

Mr. HUFFMAN. Do you think they know those resources are available to them?

Dr. JACOBS. Well, probably not. We are in the process of trying to make them more aware of this, so this is part of the awareness and outreach that we are doing.

Mr. HUFFMAN. I am out of time, Mr. Chair, but thank you.

Mr. Cox. Thank you. And we will have subsequent rounds, as well.

Dr. Jacobs, as I mentioned in my earlier statement, sexual harassment is certainly not a problem that is just limited to NOAA, and in a previous hearing we invited the Department of the Interior to visit to discuss their issues with sexual harassment and how they were addressing that.

One of the things that helped Interior better understand how to best address their problem was a department-wide climate survey that the Obama administration had administered in early 2017. And the survey gave the Department really invaluable insight into the different kinds of harassment that was occurring, whether or not the victims had reported that harassment, and why they chose to report it or not.

The survey also showed that while harassment was an issue across the Department, there were nuances that differentiated the individual bureaus within the Department. Having that information helped each bureau draft and implement their own tailored action plans. And given the information of that survey, does NOAA have plans in place to conduct an agency-wide workplace environment survey?

And if they did or didn't, what are the challenges in doing that?

Dr. JACOBS. I am sure we will do additional surveys. But, as part of the training module that I released on February 7, the beginning of the module has a survey in it asking a lot of questions about not just your perception of your workplace environment, but do you feel like you know where to go, do you know what to do? And then, at the end of the training session, there is an additional survey.

I would expect that the results of those surveys, after the training module is completed, will give us a lot of information, and we will use that to go forward to see when and where we need to do additional surveys.

Mr. COX. Great, and thank you. And back to you, in your latest report to Congress—which we thank you so much for delivering this week—it shows up that the fisheries observer program is in dire need of support to prevent and respond to assault and harassment of observers, in general.

As we have heard today, observers are in charge of making sure that fishing vessels and crews are in compliance with fishing regulations. And, in that sense, their work can directly impact how profitable a given fishing trip is for the crew. For example, observers are responsible for making sure certain fishing quotas aren't exceeded. And, as you can imagine, this can put them in a potentially precarious, unwelcome position on the boat.

We have received written statements from observers, and they describe some of these harassments and threats. In fact, in one instance, a fellow was on a fishing vessel in the South Pacific. After refusing to lie about how much tuna the crew caught, he was harassed and put in an environment of hostility and fear for his life. And, certainly, after he reported this and experiences of reporting other violations, including illegal dumping, there is no question that these observers need resources and support to help them navigate these potentially dangerous situations.

I think in your testimony you stated that the regional observer programs are responsible for providing these resources. Does this mean that observers in every region receive identical training services and communication devices, and that all of those are identical to what was forwarded to NOAA employees?

Dr. JACOBS. They would have access to the same thing that the NOAA employees have. In addition to that, the Office of Law Enforcement provides a tremendous amount of outreach, education, and compliance assistance.

That said, because of these vessels, sometimes they are in waters that are under Coast Guard jurisdiction or even beyond. Really, the only leverage we have is whether or not we allow an observer on the boat. If the observer is not on the boat, the boat can't go fish, because of the quotas. So, we do have some leverage with respect to actual observers on boats. But beyond that, what happens on the boat is up to the Coast Guard.

Or, in international waters—

Mr. COX. Well, thanks—so let's say, for example, you have an observer on a boat in the Gulf of Mexico who is assaulted. And he wishes to report this immediately, and he is going to disembark the vessel. Walk me through what they can do, what communication device you are certain that they have on their person, and what NOAA's immediate follow-up responses would be.

Dr. JACOBS. They would be equipped with a beacon. It is a transponder device that relays a signal to a satellite. It notifies the Coast Guard. The Coast Guard wouldn't know the type of alert. I mean, you could alert or signal this beacon whether the ship was sinking or the observer feels threatened. The Coast Guard will respond as fast as possible.

In that case, then we are alerted. And depending on where they are, we get services and victim advocates in contact with them to figure out what the next steps would be.

Mr. COX. Great, thank you. I am going to recognize the gentleman from California once again for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chair. I appreciate the extra time to continue this conversation.

Ms. DALE, I wonder if you could talk a little more about STAR's relationship with NOAA, and how that works.

Ms. DALE. Thank you for the question. Absolutely.

STAR has been responding to observers being harmed on boats for many, many, many years as one of the leading victim advocacy services through Alaska. We have been providing training to certain portions of NOAA observers, their supporters. So, that looks like prevention and response training, making sure that they know how to respond appropriately if an observer is harmed, but also providing a multi-disciplinary, centralized response throughout Alaska if an observer is harmed.

We have our marine highway system that is, literally, non-existent right now. Ferries are not running. People are not able to get in or out of many, many hub communities. And Anchorage being the easiest to access, and the largest, we are able to provide those services to observers that are harmed as soon as possible. So, with us having that relationship with NOAA, we are able to provide the best response services.

Mr. HUFFMAN. Thank you. And since you began that partnership with NOAA—two years, did you say?

Ms. DALE. Well, we have just gone into contract very recently, it just started this year.

Mr. HUFFMAN. OK.

Ms. DALE. We have been providing non-contracted services, but we haven't tracked that since there was no contract in place.

Mr. HUFFMAN. All right, let's say—going back to when you first started working with NOAA, how many calls have you actually received from NOAA employees or contractors?

Ms. DALE. Since we have been keeping track of that information, one.

Mr. HUFFMAN. Only one?

Ms. DALE. Mm-hmm.

Mr. HUFFMAN. That strikes me as a pretty low number. Do you have any idea why that number would be so low?

Ms. DALE. I have some speculations on that. The one phone call that we received was from the Eastern Seaboard, where I have been providing trainings for the last 2 years to their staff on how to respond appropriately. Those observers who are in that program know that if they report, they are going to be responded to appropriately, and not just looking for a law enforcement response.

So, the information that is being relayed in Alaska currently is coming from a law enforcement individual, and they are very well intentioned, and very well-meaning. But the messenger matters whenever we are talking to observers and how they are going to be responded to.

Mr. HUFFMAN. So, no calls at all from Alaska, where you are actually performing this direct service work.

Ms. DALE. Not yet.

Mr. HUFFMAN. Dr. Jacobs, how does NOAA communicate the availability of these types of services and resources to its observers?

Dr. JACOBS. So, agency-wide—I send out all-hands e-mails, we have training. When it comes to communicating to the observers, the contractors that the observers work for are made aware of these. We also rely heavily on the Office of Law Enforcement, who have relationships with the fishermen, the contractors for the observers, and such.

This is why I said earlier, it is a two-pronged approach. We have to set up the victim advocacy and how we process the data and deal with this issue. But we also have to set up a system of outreach so that the victims actually know where to go and what process to follow.

Mr. HUFFMAN. All right. And you are describing a lot of resources that are set up for your personnel, but are these resources available directly for victims, in the same way that STAR is?

Dr. JACOBS. STAR is our victim advocacy in Alaska.

Mr. HUFFMAN. So, STAR is the answer, basically. Do you have plans or contracts in other regions that are like the services that you have contracted with for STAR?

Dr. JACOBS. We have six different contracts. They differ, depending on what they do. Some are more for outreach, some are more for victim advocacy.

When we are dealing with issues in the CONUS, we have one victim advocate, and then others that are trained that are awaiting certification. So, this is an ongoing process that we are trying to staff out.

Mr. HUFFMAN. All right. I appreciate the conversation with all of you. Clearly, NOAA is starting to make some positive changes. I hope this conversation and some of the information we have brought forward and you have shared with us underscores the fact that there is certainly a lot of room for improvement, and we look forward to working with you in that regard.

Thanks, Mr. Chairman.

Mr. COX. Thank you, Representative Huffman.

And Ms. Dale, it is clear here that fishery observers are in this very unique and vulnerable position by being out on fishing boats and vessels alone for days, weeks, and months. In your testimony, you mentioned some examples of tactics fishermen may use to intimidate and manipulate fishery observers early on in the fishing trip, like telling them to shuck scallops or clean the slime line. And, as you note, these behaviors sometimes escalate into sexual assault or harassment.

Could you provide just a little bit more elaboration or color on these behaviors, and how they can lead to harassment and assault?

Ms. DALE. Absolutely. Thank you for the question. We know that, ultimately, sexual harassment and sexual violence is done out of power and control. Those are the components that are always present whenever we have individuals that are experiencing harm. The things that we talked about, shucking scallops or cleaning the slime line, is often identified as hazing. It is an initiation that almost always happens to individuals whenever they step foot onto a boat.

And like I mentioned, all of those components are meant to maintain power and control. That way, the observer, they are immediately with a lesser hand than any of the individuals, the fisher people on the boats. They are utilizing all of these various tactics to maintain leverage over those individuals so they are not able to report the potentially illegal fishing activities that are happening.

Also, like you mentioned, that is how the individuals on the boats are making their money. And if they feel like they are not going to be bringing in the funding for themselves that they potentially would be with the catch, the individuals are experiencing severe amounts of sexual harassment and sexual violence.

Mr. COX. Thanks for that. Ms. Seabrook, Ms. Dale, and Dr. Jacobs, the basic question is whether or not the fishing community recognizes that a culture of intimidation and harassment isn't OK. And is there a culture shift that is happening at all that you see? Or is there still this culture of acceptance for that?

Ms. SEABROOK. I don't really know about the fishing industry, *per se*. But I know that it has happened, and there have been transformations in other industries.

For example, the agricultural industry, when I was speaking about the Coalition of Immokalee Workers, the program that they put in place, that was very worker-centered and survivor-centered, reduced the incidents of sexual harassment and violence in the field and farms in Immokalee, Florida from rampant down to zero. There has not been a single allegation of serious sexual harassment after implementation of the program.

Mr. COX. Ms. Dale?

Ms. DALE. I have not seen a reduction in the culture of harm in the fishing industry. I know that it can happen. I know that work can be done, and it needs to be impacted not just by NOAA, but we need to start impacting that culture change within the fishing industry, as well as the providers, the contractors, and the captains of these boats.

This is pervasive in the fishing industry, and we haven't seen a change in culture yet, a change in the norms. It can happen, I do believe that the work can be done. I don't believe that all of the fishing industry people want to harm individuals and continue this pervasive culture. So, with the work being done, and the information that is being put out, and the partnerships that are happening, we absolutely can see a change in cultural norms on the fishing boats. But it is not happening yet.

Mr. COX. OK. Dr. Jacobs?

Dr. JACOBS. I would completely agree with that. It is a culture shift. It is going to be a long challenge. And I really hope that what we can do, as an agency, is to move in the direction of changing.

I just wanted to thank you for the opportunity to come here today. I know that the subject matter experts are sitting behind me, but this was such a top priority for NOAA. So, thank you for having me here.

I did want to mention that, even though we are really trying to face this culture change head on, and drive it in the direction that we want to, we also are focused on electronic monitoring and artificial intelligence, because I would envision one day that we may not need observers if we could do this through electronic monitoring.

Mr. COX. Great, thank you for that. And we do recognize the positive steps that NOAA has been taking with regard to this.

And if I could follow up, it is that, as we discussed, NOAA is required to provide an annual report to Congress on sexual harassment and sexual assault incidents that are reported each year. And a couple of questions there.

Are the regions submitting this data in any type of standardized way?

Two, are you able to track ongoing investigations through the data that is submitted?

For example, would you be able to see whether or not an investigation is taking an unnecessarily long time?

And, finally, are you able to crack down on disciplinary corrective actions that are being taken when allegations are substantiated?

Dr. JACOBS. This is the reason why we stood up the SASH council. I get regular tag-ups with them. I get quarterly reports.

There are two things that we put in place to address this problem. The short answer is, historically, that data exists, but it is not centralized, it is not in a common format. If we need the information, we have to go dig it up. In some cases, depending on where it is collected, they may not necessarily know exactly where to report it.

Over the last 12 months, we have done a much better job of aggregating these data sets, but this is the one reason why we need to stand up a database. We need to have a centralized database. The centralized database will force everyone to come up with a common format, thereby allowing us to sort through the numbers and get a better analysis, and keep track of the data in better real time.

But the short answer is the data does exist, it is not centrally located, and we need a common format. Hence, the database.

Mr. COX. Great, thank you for that.

Ms. Seabrook, it would be great if you could weigh in on that—is it important to have standardized data tracking across an organization?

And how does that help the organization better address a sexual harassment problem?

Ms. SEABROOK. Yes, absolutely. Transparency is key. If survivors don't see that the system is working, then they will not have confidence in the system, and they won't engage the policies of the organization.

I would also make a recommendation that in the annual report, if possible, there could be an annual climate survey, because I think what is really important—it is not just tracking when reports are made, but you really want to track who hasn't made a report and why. That is really critical and valuable information for the agency to gather.

And then, also, what is critical about a climate survey is that it is anonymous. If employees or contractors feel that there is any way that that information can be tracked back to them, we have seen that that kind of reduces the confidence that they have in that climate survey.

Mr. Cox. Thank you. And I want to touch on this, as well—the one thing I know and have learned is an important component of any anti-harassment program is a way to hold managers and supervisors accountable when they don't take the steps they need to report or follow up on incidents of harassment. Can you provide a little bit more—once again, elaborate on that. Why is it important? What are some of the ways that the agency can help with that regard?

Ms. SEABROOK. Sure. We have helped other Federal agencies with implementing their policies and practices. One recommendation that we have made to agencies and to other organizations outside of the Federal Government is to have adherence to the policy, as part of the annual performance evaluation.

So, if the manager has a track record of ignoring reports, not following through with investigations, or minimizing reports, then that is actually reflected on the performance evaluation and taken into account, in terms of ratings going forward.

Mr. Cox. That is a great point. Thank you very much.

I want to thank you all again for answering the questions and for being here today. I think it has been very informative.

I would like to give each of you an opportunity to describe whatever else you think needs to be done, and how we can ensure that happens.

We can start with you, Ms. Seabrook, then Ms. Dale, then Dr. Jacobs.

Ms. SEABROOK. You mentioned before—or, actually, no, I think maybe it was Ms. Dale that mentioned before—about the law enforcement response. There is something within the policy that I noticed that may inhibit a survivor from coming forward.

If you look at Section 6.01, it talks about employees who observe, or the object of sexual harassment, da da da da, should report. Swift reporting allows appropriate law enforcement authorities and the agency to take measures to ensure that offensive behavior stops.

There is always a concern to me, because we know that the criminal justice system is not as trauma-informed and responsive to the needs of survivors. It can be a very inhibiting factor, especially if you put that first within the policy.

So, my recommendation would be to take out “law enforcement” entirely, and just leave it as “the agency,” because the agency may conclude that law enforcement is necessary to be reported to, but at least that gives the survivor some confidence in the fact that

there is going to be a process, and it is not just going to go directly to a law enforcement report. That is one thing I definitely saw.

Mr. COX. All right, thank you.

Ms. DALE?

Ms. DALE. Best practices, whenever responding to an individual that has been harmed, is a multi-disciplinary approach. And to make sure that individuals and observers that are reporting are only having to relay their information or their story one time to as few people as possible, to help make sure that they are not re-traumatized continually, I think, is very, very important, and key, and can really be a part of this response to observers.

Making sure that those best practices are in place, and supporting NOAA as an agency in the work that is being done, to make sure that our observers are safe.

Mr. COX. Great point. Thank you so much for that.

Ms. DALE. Thank you.

Mr. COX. And we will conclude with Dr. Jacobs.

Dr. JACOBS. I think I actually had the chance to cover most of the things, but I would like to highlight one thing that I haven't talked about, and that is OMAO. And I really have to give a tremendous amount of credit to Admiral Silah and Admiral Hann for really cracking down on what was going on in OMAO. And that really sent a message, particularly through the vessels and the fleet, that there is a zero tolerance with this.

I would also look forward to working with you on how we can look at the language in the MSA, because this complicates the job of the law enforcement agency. They have a really good working relationship with a lot of the local observer community. But if they are in a situation with observers that, depending on where an incident happened, the observer may have to report it either to us or to local law enforcement officials, it really complicates the situation. And it also erodes the trust in the observers, with whether or not they actually think that the NOAA law enforcement is going to have complete control, and have their back, and be able to defend them, whether the incident actually happened on a vessel or in port.

Basically, my job is to clear the deck, to make sure that everyone in NOAA feels safe and has the ability to do their job. This is why this is such a high priority for me. And I really, really appreciate your support.

Mr. COX. Great. Thank you, once again, to all the witnesses.

Before we close, I ask for unanimous consent to enter the following documents into the record: a statement from the Association for Professional Observers; an anonymous statement from a NOAA scientist; a statement from fishery observer, Simione Cagilaba; and a statement from fishery observer, Patrick Carroll.

Hearing no objection, so ordered.

Once again, I want to thank all the witnesses for being here today.

The members of the Committee may have some additional questions for the witnesses, and we will ask you to respond to these in writing.

Under Committee Rule 3(o), members of the Committee must submit witness questions within 3 business days following the

hearing, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, without objection, the Committee stands adjourned.

[Whereupon, at 4:03 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Statement for the Record

An Anonymous NOAA Scientist

Chairman Cox, Ranking Member Gohmert, and members of the Committee: thank you for inviting me to submit my testimony.

I have been a sea-going scientist for the NOAA National Marine Fisheries Service for almost 20 years and have experienced sexual harassment at sea on multiple occasions. I've also been involved in other instances where my female colleagues reported being sexually harassed and disrespected at sea.

In my experience, sexual harassment at sea happens in different ways. Young female scientists are targeted by offensive men and are made to feel very uncomfortable. These men target young women because they prey on the women's desire to perform well in the early parts of their career. This happened to me many times when I was in my twenties (about 20 years ago), to several of my coworkers in the same age range, and this continues to happen to my young female staff.

Now that I am a supervisor, I have a separate meeting with my young female staff to review the cruise staff list, so we can discuss who can be seen as an ally if harassment takes place and who to never be alone with. The reason we work together to identify allies is because not everyone will stand up and provide vocal support in these situations.

In this testimony, I would like to share my personal experience of at-sea harassment on a NOAA vessel, both as a survivor and as the supervisor of a survivor.

I participated on my first NOAA/NMFS cruise in 2003. My job as part of the science team was to assist in recording net-tow information while our nets were in the water collecting small invertebrates and fishes. Each time I was on deck, I was accompanied by a deck department crew member who was there to operate the ship's machinery (e.g. crane or winch) to which our nets were attached.

Unfortunately, this accompaniment required me to stand in a very small space with the deck staff person. There were many times during that first cruise when the two deck staff that had alternating schedules, would make grotesquely inappropriate comments to me about the types of sexual activities they liked engaging in with women my age. One of them in particular would lean on me and breathe down my neck.

To say that I was uncomfortable would be an understatement, but I didn't know what to do. This was my first cruise and I wanted to do well because I really liked the work. Unbeknownst to me, a crew person in the engineering department witnessed this behavior multiple times and submitted a formal harassment complaint. I was made aware of this complaint after the cruise when I received an email from the Executive Officer (XO) on the ship saying a sexual harassment complaint had been submitted, that the two accused deck staff had been informed that the complaint had been submitted regarding their behavior toward me, and that the XO and Commanding Officer (CO) were planning a visit to the NOAA science center where I worked to meet with me and retrieve my statement on the matter.

I was shocked by this email and scared that this would affect what my supervisor and coworkers thought of me. I was also afraid of the potential retaliation from these crew members because the XO's email clearly stated that the two accused staff were told they were being accused of harassing me, using my name and implying that I had been the one to submit the complaint. I informed my supervisor of the situation and he encouraged me to write my statement and agreed to be present for the meeting with the XO and CO.

During that meeting I told the XO and CO that I reviewed the NOAA Sexual Harassment Policy and brought highlighted copies to the meeting to show them that they were not supposed to divulge my name to the accused. They mostly brushed over that point. When they asked if I wrote my statement, I slid it across the table. The CO used his folder to catch the document mid-slide, he then told me that if he took my statement then this matter was "out of his hands", but if I took my

statement back, then he could handle this matter “in-house.” I had no idea what that meant and needed guidance on how to make a choice. The CO said if he took my statement he would have to report it above him which would initiate a formal investigation, likely involving NOAA lawyers from headquarters. My supervisor then said that situation could get very ugly and complicated. I then asked what the CO meant by the “in-house” option. He said he would personally make sure the two accused staff would not engage in this bad behavior again.

I interpreted the CO’s explanation of what it would mean to formally submit my statement as the option that would severely tarnish my reputation and potentially jeopardize my career path. I then took my statement back because I was young, inexperienced, and afraid. I had graduated from college only six months prior to this situation, was a contract employee, and wanted to excel at my job and please my supervisor.

Right after that meeting, I went back to the lab where I worked to tell my coworkers about the meeting. None of them were surprised about the harassment I experienced with the two deck staff. They all confirmed that those two (and others) on the ship routinely targeted the new young women that joined the science party at sea. My coworkers told me I made the right decision to not submit my statement because during the likely formal investigation, the lawyers would probably turn it around to make it seem like I was inviting the sexual behavior by scrutinizing what I wore on the ship and for not telling these much older men to stop talking to me. I found all of this confusing, frustrating, and disappointing.

Over the subsequent years, I would sail on that same ship with those same two deck staff. In fact, I was back on that ship just a few months later. One of the two accused, came to me immediately to apologize for his behavior. I happily accepted his apology and never had an issue with him again. We continued to work together for the next 15 years until he retired.

My interactions with the other accused person did not go well. I suffered retaliation from him for many years. To my face, he pretended I was not there, and refused to talk to me even when we had to work together. However, I found out later that he was saying horrible things about me to other science staff, such as claiming that I was unprofessional, sexually inappropriate, and a liar. He also directly threatened my safety at a port in Mexico, by telling at-sea supervisor that I should be careful because he could make me disappear while the ship was docked at this foreign port. My at-sea supervisor’s response was to tell this person to stop saying things like that. I know this because he (my at-sea supervisor) reported this to me. He also warned me to steer clear of this person for the several days we were in port. Clearly this direct threat should have been handled differently, and I did not for one second feel safe while we were in that port.

This same deck person would go on to harass young women until he retired. I know because many years later I was on a cruise where one of my young female staff came to me in tears to say she was sexually harassed by this same person. I immediately called a safety meeting with the deck department chief, the XO, and CO and told them of the matter. The immediate result was that the offensive deck person could no longer work alone with female science staff, which meant he had to change his work schedule for the remainder of the cruise. I wrote a formal statement to submit to my supervisor regarding the incident that would be included in the final cruise report, which is submitted to the CO and Office of Marine and Aviation Operations (OMAO), but I never received a response, and no action of which I am aware was taken.

In 2015, I participated on a NOAA cruise as a watch leader with my coworker as the chief scientist. We both witnessed the chief engineering electronics technician (EET; in charge of all electronic systems on the ship) being visibly drunk the first day we set sail. My coworker and I both told him that he should get some coffee and sober up. He laughed it off and said he was fine as he staggered away.

Shortly after that, this crew person started following me around which lasted for the next three days. He was drunk each time I saw him. There was one interaction I was able to avoid because my coworker/chief scientist saw the EET coming so I hid in a small room adjacent to the lab. When he saw that I wasn’t in there, he left. The EET once followed me into my stateroom. I had my door open and only went in to retrieve a sweatshirt. He was saying many inappropriate things to me, very loudly. I told him that he needed to stop following me and should get sober so he could do his job properly.

I told one of the NOAA Corps Officers that the chief scientist and I had interacted with the chief EET who appeared to be drunk and we felt concerned that our safety would be jeopardized if he didn’t sober up. I also told the officer that the chief EET was inappropriately following me around and professing love. The officer told me he

was aware of the situation and would take care of it. The next time I saw the chief EET, several days later, he was sober and avoiding eye contact.

When I got back to land, I discussed the situation with my coworker who had been the chief scientist and told him that after thinking more about what we observed and experienced, I was not satisfied with how things were handled. I went to our supervisors and explained the situation. They were not sure how to proceed, so I said I would go to the deputy director of our science center.

During the meeting with the center deputy director, he asked the chief scientist if he had been aware that the chief EET was drunk and harassing me. I was extremely disappointed that the chief scientist, who had witnessed the harassment and discussed it with me, chose to deny that it had occurred. However, the safety issues were a concern, and the center deputy director said she would bring this up at her next OMAO meeting. That prompted a phone meeting with the ship's CO, my division deputy director, the center deputy director, and myself, where the CO denied that he had been aware of the situation. I find that impossible to believe, since the entire ship talked about the chief EET's drunken state for three days. There was little else discussed during that phone call, and I have not received any follow-up since.

Women on NOAA ships also experience disrespect to which our male colleagues are not subjected. A few years ago, I was a supervisor on a NOAA ship, and in charge of science operations for part of the day. During one of these occasions, one of the officers did not want to go to the location I requested and said instead that where we were headed was close enough. I told him it was not close enough and since the weather was permissible, I wanted to head to the new location. He then told me that my opinion didn't matter. The other officers heard him and said nothing. I told him that I was in charge of the science operations and needed him to change our bearing to get to the new location. He again told me my opinion didn't matter. I then told him that he should wake up the chief scientist and the CO to tell them his thoughts about my opinion. He didn't respond, and then changed the ship's bearing so we could get to the new location.

On a NOAA cruise just two months ago, my two female staff were in charge, one as the chief scientist and the other as the watch leader (in charge when the chief scientist is off watch). The two female scientists noticed the ship's winch, which tows the scientific equipment, was not behaving properly. This is a severe safety issue, as a broken winch can maim or kill anyone standing on the ship's deck. These women both reported the potential winch malfunction to the officers on watch as well as the XO and CO during the safety meeting. Their warning was ignored, and the wire broke a few days later, resulting in lost equipment, but fortunately no injuries.

During the post cruise meeting, the female watch leader told the CO that the winch was a major problem and needed to be investigated and tested. His response to her was, "we can't make everything here warm and fuzzy for you." The CO then turned to our male colleague, and asked if he had anything to add. This male colleague was not on the cruise, had no leadership position, and was only present to help pack up our gear.

Conditions for women's safety on NOAA vessels have improved in the time that I've been with NOAA/NMFS, but much more needs to be done to make the at-sea workplace an environment that protects the mental and physical health of women. I ask that the Committee explore ways to improve the culture on NOAA vessels, particularly the interplay between the science crew and ship's crew. If complaints are not taken seriously and junior staff are intimidated and abused, NOAA's ability to carry out its critical missions in an ever-changing ocean will be severely compromised.

Thank you for the opportunity to share my experience and story.

Statement for the Record

**Elizabeth Mitchell
Association for Professional Observers**

Dear Chairman Cox and members of the Oversight and Investigations Committee:

Thank you for the opportunity to share our organization's perspective on preventing harassment and needed response at the National Oceanic and Atmospheric Administration (NOAA). My name is Elizabeth Mitchell and I've been a fisheries observer for 25 years (1983–2008). I've worked in several programs, but mostly in the North Pacific Observer Program out of NOAA's Alaska Fisheries Science Center. I've been volunteering for the Association for Professional Observers (APO) since 1996 and became its president in 2000. Our organization's expertise is focused on advocacy for the health and welfare of fisheries observers, both in fish plants on shore and at sea and protected species/endangered species observers.

The APO organized in 1995, due to a lack of contractor support. Observers were stranded at sea without pay because their contractor had gone bankrupt while they were out at sea. Observers attempted to get NOAA to intervene but they refused, demanding of the observers, under threat of lawsuit, the data they had already collected, claiming no authority over the contractor to demand their payment. Despite the fact that observers provide critical data to one of NOAA's primary functions, NOAA refused to help the observers. It remains so to this day, where outsourced observers are falling through legal cracks with little protections.

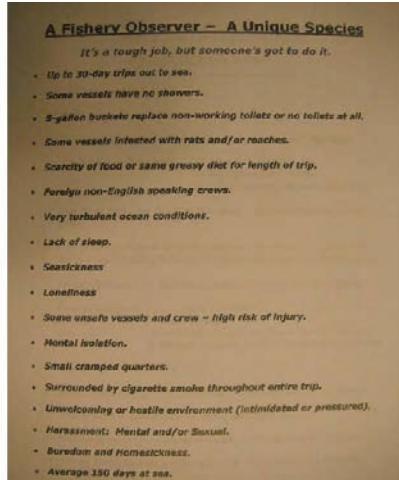
Observers in the North Pacific were forced to unionize due to NOAA's hands-off approach to our welfare but, with the exception of Hawaii observers, the rest of the programs in the country are not unionized and remain vulnerable to abuses. This isn't to say the union is working or is a legitimate replacement for NOAA's responsibility. It is a desperate measure in absence of oversight of worker protections.

Harassment, both sexual and non-sexual, assault, bribery attempts, interference and even murder has plagued fisheries observers for decades and we believe it is more pervasive in the population of observers than of NOAA federal employees. Moreover, I believe we will see a rise in this harassment as ocean resources dwindle, requiring urgent action, implementation and monitoring of anti-harassment/interference policies at all levels—NOAA (including NOAA Contracting Offices), monitored entities (fishing vessels, dredging or oil companies), observer providers and observers. Further, because observers are not federal employees, they frequently fall through legal cracks that increase their vulnerability both in personal safety and job security. **This is why, if nothing else, we desperately need for those protections and worker rights afforded to NOAA federal employees to legally be extended to the observers and those in programs that NOAA mandates observer coverage (such as the dredge programs).**

FACTORS CONTRIBUTING TO OBSERVER HARASSMENT

Workplace harassment is a result of bad company management. Since these are publicly funded programs, public accountability must be the cornerstone of NOAA's responsibly managed observer programs. From start to finish, there should be accountability measures for the factors influencing employee protections:

- **Hiring practices**—NOAA has established hiring standards through the NOAA National Observer Program (NOP) but has not implemented them at the program level. In some programs, they have lowered the requirements, specifically because most people are not willing to put up with the hardships, except those who have little opportunities elsewhere. The pamphlet below used to be the Hawaii program's promotional pamphlet, training done through a local non-profit, the Alu Like program. They accepted workers without formal education, trained them, and then placed them in NMFS observer training reserved for those who met the educational requirements. While meant in jest, the flyer reveals a more serious flaw—that a hostile environment, intimidation and harassment, including sexual harassment, was part of the job. **Observers must know from the onset that harassment is NOT an acceptable condition of employment.**



- **Firing practices**—Most work places practice a ‘progressive disciplinary approach’ toward holding employees accountable for professional performance. In Hawaii, a long-time observer was fired without any evidence of wrongdoing by either his employer or NMFS. This is after he *reported sexual harassment from a captain*. The union agreement required a progressive disciplinary approach to termination. Because the company, who was bound by the union agreement, couldn’t fire him, they turned to the NOAA Contracting Officer Representative (COR) to circumvent the Union Agreement and declare him ‘ineligible’ for the program. NOAA admitted that this is a standard method of getting rid of observers and they are able to do it because NOAA is not the observer’s employer. He said:¹

“As COR I don’t have to give a reason why an observer is no longer allowed to collect data for our program. Although I always do. Basically I do not terminate a contractor’s employee. I am just saying they can no longer work for our program. If the contractor has other work for them in other areas they can still work for the contractor. But the case usually is they are specifically trained for our program and the contractor does not have work for them in other areas. This is one of the BIG advantages of having contract observers. In the past whenever we needed to disqualify an observer’s eligibility from our program, this is how we did it. We meaning I work together with the contractor so we both agree and I send an email to the contractor disqualifying the observer.”

In this way, NOAA is able to fire an observer without the observer having any legal recourse or appeal process normally afforded NOAA’s own employees. **Each time abuses a shady practice and gets away with it, it sends a message to others to “put up and shut up” or this will happen to you. This contributes to an under-reporting of harassment. NOAA needs legislation to close this loophole.**

- **Removal of conflicts of interest**—Observer providers having direct contract with the fishing company with no obligation of public transparency, rather than with NOAA; A port coordinator marrying a prominent local captain whose multiple vessels she is in charge of providing an observer; Hiring a fisherman to monitor his own fishery—these are just some examples of unresolved conflicts of interest in NOAA observer programs and demonstrates a lack of oversight and confidence that NOAA will have the observers’ back.
- **Adequate training**—Training, especially in adequate documentation of violations and one’s own harassment, is extremely vital—especially for observers because they often don’t have a cooperating witness, so their documentation of events must be stellar. Observers need a clear pathway toward

¹ Obtained through the Freedom of Information Act (FOIA).

reporting violations, addressing an emergency at sea, their worker rights, and how to appeal a decision.

- **Lack of appeal process**—Most programs do not have an appeal pathway to follow if they disagree with an agency decision.
- **Trauma resources and policies**—At the International Fisheries Observer and Monitoring Conference (IFOMC), observer mental health was highlighted as a significant threat due to the stresses of the job. **NOAA should coordinate the NOP with each program to develop local resources and have this be a part of each program's Emergency Action Plan. Observers must be informed of who, what, where and how they will be rescued if their well-being is threatened.**
- **Effective communication with the vessel**—Observers are working on vessels where English is not the first language. Often stresses develop when the crew is not aware of the observers' duties and their responsibilities. **NOAA should translate and distribute to vessels critical documents that clearly express observer rights and stakeholder responsibilities toward each other.**
- **Enforcement follow-up**. Many observers have complained that they never hear from OLE regarding updates on the investigation of their complaints. In Fiji, an observer reported several violations on board a US purse seine vessel. OLE took 6 months to reach out to him and interview, a delay that likely compromised the investigation. To date, he hasn't heard about the results of his report or the investigation of the US vessel.
- **Public transparency and analysis of observer harassment**—Public oversight of fisheries monitoring programs is necessary to make sure that observers receive adequate support to effectively and safely carry out their duties, free from violence and interference. Transparency imparts the necessary confidence to the observer community and the public that the agency is monitoring the observers' safety to ensure that they may continue to successfully report on this critical information. If observers lack confidence in the system that is supposed to represent and protect them, they cannot be expected to do their job appropriately or effectively. Likewise, without transparency, the public will not have confidence in the veracity of the fisheries monitoring program. Securing the confidence of the public, and of the observers reporting the information, can only be achieved through an open and transparent reporting system.

Yet, most observer programs do not report on observer harassment or compliance information in a systematic or transparent way. Many observer programs also require observers to be sworn to secrecy, but with vague parameters so that you never really know what your rights are, and with threats of punishment should they violate rules of engagement with the public. This secrecy surrounding what observers experience and witness misleads the general public about the true challenges in attaining sustainable fisheries. It also stifles observers from discussing harassment openly.

APO has been attempting to receive observer harassment statistics through FOIA since 2006 but it is obvious that NOAA does not track observer harassment, either nationally or regionally, because each year, the statistics released are plagued with delays and incompatible formats from year to year, making it impossible to follow trends. Only one program in the country reports annually on observer harassment and interference (North Pacific) but the outcomes are impossible to follow. **NOAA should analyze observer harassment in all programs separately and do this annually (with a report that is publicly available) in such a way that allows following each case to outcome to gauge effectiveness of enforcement and influence of other factors.**

- **Lack of adjudication processes**—In the United States, there are only three Administrative Judges, under the Environmental Protection Agency, in the entire country to adjudicate cases of observer harassment. In one harassment case by a repeat offender in the Hawaii longline fishery, NOAA brought this case for prosecution. Despite the observer clearly getting harassed for over a month and having to lock himself into his room as he called the coast guard to be rescued, the EPA Administrative Judge claimed it never turned physical and dismissed the case because the observer was deemed to be able to conduct his assigned duties. I think you'll find that when someone is being abused and they have no control over it, it's common to concentrate on what you do have control over, which, in this case, was carrying out his duties.

While he was able to complete his duties, I don't know of any workplace where someone is expected to tolerate a repeatedly hostile environment. Indeed, NOAA has a warning poster (intended for fishermen) that states, "It is unlawful to . . . harass an observer . . . or create an intimidating, hostile, or offensive environment (my emphasis)". So why did NOAA not appeal? The Magnuson-Stevens Act actually doesn't forbid harassment, offensiveness or a hostile environment. It says, ". . . it is illegal to . . . **forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel . . .**". NOAA needs to analyze observer complaints and figure out exactly all the many ways observers are prevented from doing their job and entering into a hostile environment. The MS language needs to reflect a prohibition of these acts. NOAA should adjust the language in the MSA and other Acts governing US-flagged vessels by **removing the word "forcibly" (because all assault is forcible); add "harass" (no qualifiers); and add, ". . . or create an intimidating, hostile, or offensive environment.**"

- **Lack of National Strategy**—There have been many reviews dating back decades to address these vulnerabilities but we have seen little changes at the program level despite efforts by the National Observer Program (NOP) to bring about standardized best practices. **NOAA should implement best practices and standards developed by the NOP to all programs for every aspect of the observer program management and implement these throughout the nation.**

Types of Observer Employment under NOAA's jurisdiction

- **National—Observer provider contracted directly with the fishing company—portion of the North Pacific (unionized) and Northeast observer programs:** This competitive arrangement with multiple observer providers for the vessels to choose from, has long been recognized as a conflict of interest and a bad arrangement for observers because fishing companies have more influence over the observer. Despite unionizing in the North Pacific program, harassment persists. Because of this, in 2004, NOAA's Office of Inspector General (OIG) recommended that NOAA scrap this model but NOAA ignored the recommendation and brought it to the Northeast. These observer providers are only "certified" by NOAA, further removing NOAA from responsibility.
- **Observer provider contracted directly with NOAA—portion of the North Pacific; Southeast observer programs.** NOAA has potential to have greater control over the contractor's performance by inserting requirements for observer welfare in the observer provider contracts with NOAA. This is currently lacking.
- **Observer provider contracted directly with NOAA but the observers are unionized (Hawaii).** This ideally would be the best model of all employment arrangements for observer protections for contracted observers if NOAA inserted observer protections into its contract and the union covered any gaps. Unfortunately, not only are there gaps in the contract for observer protections but NOAA deliberately and openly admits it regularly circumvents Union protections and are able to do it because they are not the observers' employer.
- **Observer provider hires the observer as an Independent Contractor (Protected Species/Endangered Species Observers)**—These observers are some of the most vulnerable to abuses because NOAA mandates oil and dredge platforms to carry observers but has nothing to do with them or the oversight of these programs. They're not even a program. There's no training, professional standards, debriefing, injury insurance or information on their worker rights or emergency plans. Some observers have to volunteer to be "trained" on the platform by another observer prior to working alone.
- **Non-US Observers are hired by their Regional Observer Program to monitor a US-flagged vessel.** Here NOAA must ensure US-flagged vessels are abiding by US law, including anti-harassment laws.

Thank you for allowing me to submit this testimony and I hope you'll consider the suggestions.

Statement for the Record

**Simione S.B Cagilaba
US Multilateral Treaty Observer, South Pacific (1997-2015)**

Thank you for the opportunity to express myself before this subcommittee. In light of recent fisheries observer disappearances that shook the Scientific Observer tight knit family worldwide, I believe that all those who survived harassment at sea, sexual or nonsexual, should be entitled to share their story. They deserve to be heard since they were the fortunate ones, while others will not be coming home at all. Indeed, observers, who provide critical fisheries data to the National Oceanic and Atmospheric Administration (NOAA), have more threats against them than most NOAA employees.

I served on numerous US-flagged Tuna Purse Seine fishing vessels that operate out of Pago Pago, American Samoa under the US Multilateral Treaty from as far back as 1997 until 2015, in my capacity as Observer from the South Pacific. I intend to highlight certain weak areas which can be improved upon within NOAA when it comes to Observers that operate under their jurisdiction[s].

The majority of my working career revolved around the fisheries sector, where I served under various roles. However, they all dealt with Tuna Fisheries in the South Pacific. As for my professional training and experience, I have worked as a Regional Scientific Observer, Fisheries Enforcement Officer, Fisheries Monitoring and Surveillance Officer, and as a Criminal Investigator at the Fiji Police Academy Detective School. Last, I studied Law at the University of the South Pacific and have remaining 2 more years before receiving a Bachelor of Art of Marine Affairs and Bachelor of Law.

The challenges faced, is not only at sea but sometimes it occurs right on land with the very officials that we rely on for guidance and assistance. I shall break down the problem areas that contribute to the danger of fisheries observers, as follows:

1. Placement Officer(s) colluding with fishing personnel
2. Lack of oversight of NMFS field staff
3. Captain harassment
4. US-flagged vessels owned by foreign entities under a “Flag of Convenience”
5. Lack of training of crew on observer duties
6. Subpar investigative techniques from NOAA/NMFS following complaints.

Before I go into detail, I must take a bit of my time to commend some of the fully owned and operated US Purse Seiners operating in the South Pacific for having been some of the most compliant vessels that I have ever worked on. However, it is almost the total opposite when it comes to US-flagged purse seine vessels (under flag of convenience—FOC) when they are run by non-US citizens, with a “paper captain” (i.e. the captain has no real authority)—something that should be transparent to the world. These vessels carry the most risk for observers, when it comes to compliance requirements.

In regards to the realities of observing whilst out at sea, the challenges normally come through from various levels, that make observing work really difficult. One of the things that I quickly note was that some FOC vessels do harass and interfere regularly with observers.

My ordeal unfolded when I boarded the ████████, a US registered/flagged, Taiwanese-owned Purse Seine Vessel, who's fishing port was Majuro, Marshall Islands. The vessel had a Forum Fisheries Agency (FFA) fishing license which granted them fishing access to all the FFA member countries fishing grounds under the US Multilateral Treaty.

This brings me to one point that I believe needs to be addressed by the US Congress. Foreign nations are accessing fishing grounds of other sovereign nations, using US flag registry, yet they are not bound, as a nation, to the treaty. They can do this because currently US law only requires that there be a US citizen serving as captain on board in order to have the vessel flagged under the United States. On this vessel, there was one US citizen, the US captain who harassed me. All the other officers—another Captain, the Fish Master, Navigator and the Interpreter were Taiwanese. The rest of the crew were Chinese, Taiwanese, Indonesian and South Vietnamese.

This blanket coverage covers all of the FFA member countries and the reporting protocols are more or less the same for each. In our case the Captain made a set within Marshallese waters (Exclusive Economic Zone—EEZ) where we caught fish but the Captain recorded it as “skunk” (meaning they did not catch any fish)

because he didn't want to be charged for it when he offloaded in the Marshall Islands. The Captain asked me to falsify my data to look like they didn't catch anything, so that it would match his records, but I refused. He looked at me angrily and went away. Later on, he again asked me this time more sternly to adjust my records. When I again refused, he became angry.

The second incident occurred within US waters close to Howland and Baker Islands whereby 2 Asian crews, whom I believe were Vietnamese, dumped 10 large bales of plastics and strappings into the sea. Ocean pollution from fishing gear is recognized as a major threat to marine life and is a breach of the International Convention for the Prevention of Pollution from Ships regulations (MARPOL). The captain again attempted to coerce me into ignoring the violation, which I again refused. He became furious and the next day he approached me again and asked me again to falsify my report, which I again refused.

Later in the trip, a third instance emerged where the US captain again attempted to get me to falsify my record regarding fish discards, which I again refused. This time, he then threatened me and said that he will call his "friend in American Samoa", a NMFS officer, namely [REDACTED], to "deal with me".

Keep in mind, while this vessel's home port was Marshall Islands, [REDACTED] was in Pago Pago, American Samoa, so it is curious why the captain would seek assistance from [REDACTED] rather than NOAA staff in Majuro, Marshall Islands, where it was fishing. This indicated to me that the Captain knew [REDACTED] would offer him protection from violations which I refused to hide. Indeed, it appears a conflict of interest that a US captain should exercise such familiarity with a federal agency staff that not only has no authority over the observers, but is the very agency who is in charge of investigating the observer reports in US fisheries monitoring under the Multilateral Treaty.

I knew I did nothing wrong and later in the evening, whilst conducting my duties in the wheelhouse, I heard the Captain talking on the phone disparagingly about me. I was not swayed and I continued on back to my room and updated my work-book. **However, the next day, I received a printout of an email from my supervisors to the Captain, that was cc'd to [REDACTED].** My supervisors in Fiji wrote to me the following, *through the captain, cc-ing [REDACTED]*:

"Bula Captain

*Appreciate that the following information is given to Observer, Simione Cagilaba, currently on your vessel. Simi, we have received information **from NOAA** (my emphasis) and FFA on your performance on board the vessel. Just to remind you that you are an observer and therefore is to confine yourself to duties of an observer and that is to observe and record what you see. You are never to direct or make threats to anybody on board the vessel.*

Thank you, Captain."

I knew that the Captain would do this in order that the authorities would sympathise with him in his attempt to brand me as the offender or aggressor for simply doing my work as any other Observer would. I sent in an explanation to one of my supervisors back in Suva, Fiji Islands, and included the information about [REDACTED]. However, I knew that they have already leaned towards [REDACTED], a long-serving NMFS officer at least since the 1990s.

I later learned that this vessel was a repeat offender, having just prior been fined a large sum for a violation by US courts, which explains why the Captain was so hostile toward me doing my job. Instead of investigating the situation to find out what happened and hear my version of events, the e-mail emboldened the Captain. In doing so, my supervisors and NOAA exposed me to further danger.

From that point on, the atmosphere became very volatile whereby the cook allowed the Vietnamese crews (2 of whom were implicated in the MARPOL incidents) to drink using the vessels rice wine supply, which always ended up with fighting occurring and in some instance heavy chopping knives were used just outside our door. In one instance, my other roommate who was a Chinese national and also the Deck Boss, had to jump for the door to lock it and push against it since the shouting and fighting was getting closer and closer. Now when I sit down and reflect, I realised that was a close call for me since I have identified them previously and thereby threatened their careers. And that led to my unease that I stayed up for most of the time during the night and slept whenever there was a lull in our fishing operation during the day.

At the conclusion of the trip it was noted that the vessel breached the regulations with the following actions;

- Operator or any crew member assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with observers in the performance of their duties.
- Request that an event not be reported by the observer.
- Fail to comply with any Commission Conservation and Management Measures (CMM's)
- Inaccurately record retained "Target Species" in the vessel log for weekly reports
- Inaccurately record "Target Species" Discards
- Land on deck Species of Special Interest (SSI's)
- Dispose of any metal, plastic, chemicals or old fishing gear
- Carry out of date safety equipment.

After attempting several times to disembark, we finally arrived in the Marshall Islands. I immediately relayed my experience to the Marshallese Observer Coordinator, who down played my account of events and told me to get back on the vessel, thereby placing me in further danger. I told the Coordinator that I did not feel safe going again to the same vessel however he was persistent. I later learned that he had a very close relationship between him and the vessel's agent on land, so I was worried my report would be buried. I knew that I had to make this report known since that will be my only chance of getting out of Marshall Islands safely.

My only option was to notify the US Embassy in Majuro, Marshall Islands who acted swiftly and relayed the message to NOAA to keep me from going back on the vessel. It also secured my report from being buried by Fijian officials. NOAA then influenced program officials to release me from my assignment.

I was later fired upon my return to Fiji and it made me realise that some government officials from some Pacific island countries are overly familiar with the fishing company personnel and their boat agents and have been compromised, making our jobs as fisheries observers impossible and dangerous. As a result of getting fired, this further sent ripples throughout the observer community in the Pacific Islands, that:

1. NOAA has unofficial control over our employment *and the reports of witnessed violations that we submit*, which, in my view, is a conflict of interest since NOAA is also charged with protecting the commercial interests of US-flagged fishing vessels.
2. There is a perception of collusion between NOAA and the fishing industry in the region;
3. Observers cannot go against the captain to report what they witness, even if it is illegal.
4. Observers will not feel safe to report openly to their home programs.

The only reason my report of US fishing vessel violations did not get buried by my supervisors is because I reported it to the US Embassy, fearing my life was in danger. However, what followed was a debacle with regard to the investigation of the vessel that followed by NOAA Office of Law Enforcement (OLE) in Hawaii. **It took six (6) months for NOAA OLE in Honolulu to interview me.** Then they went to American Samoa to interview more people, though I'm not certain who. However, given the fact that the captain reported directly to NOAA's ██████████, and ██████████ pressured my supervisors, I imagine he had to provide his account in the investigation. Instead of being held accountable for this, **the investigation was buried by NOAA and ██████████** retired from NOAA a month later. I have yet to hear any result from my ordeal or the reports I submitted regarding even my harassment.

This experience prompted me to come out openly and share my experience so that it will hopefully help colleagues or the relevant agencies into formulating Standard Operating Procedures (SOP) or Laws to protect against the reoccurrence of such incidents.

To conclude I wish to point out a few areas where NOAA, NMFS, and OLE could look into in future to avoid such incidents from ever happening again in any US flagged vessel irrespective if it is US owned or not.

1. The mandatory implementation of SOPs and other accountability measures to cover all stakeholders, with regard to the treatment of Observers (irrespective of nationality) who serve under the US Multilateral Treaty on Fisheries

programme, and on any US fishing vessel operating in non-US waters. This might require that NOAA renegotiate the Treaty.

2. Mandatory SOP for ensuing NOAA OLE investigations so that proper stand-ardized investigatory procedures are followed that allow immediate gathering of evidence, including statements.
3. That there be a mandatory conclusion of every investigation that is publicly accessible. This would stifle any attempts to cover up wrong doing.
4. Clear protocols regarding observer duties be conveyed through a placement meeting between the Captains, crew and Pacific Island observer coordinator, and the observer in multiple languages according to crew nationalities. This should conclude with a legal document describing each stakeholder's responsibilities, translated in multiple languages according to vessel personnel nationalities, that are signed by all and a copy received by all.
5. Since under the treaty, NOAA is responsible for investigating infractions by US-flagged vessels the investigations should be prioritized and followed up within 1 month. A six-month delay will likely render any investigation lost. Since the offences were very clear all that was left to do was to collect the evidence, record the statements to adduce the evidence that will prove the elements of the offence and forward them to Prosecution Office for further sanctions and actions.
6. NMFS officers posted to US outer islands should be rotated with no more than 5 years in the field, so as to maintain their integrity and impartiality.
7. Finally, Observers could be administered Go-Pro cameras to film interactions as a means of evidence gathering and self-protection.

And I pray that this humble testimony of a survivor would be heard and taken heed of. And at the same time acknowledge all my fellow colleague[s] who have been deployed and never came home.

Thank you for reading my testimony and for holding this hearing.

Statement for the Record

Patrick Carroll
U.S. Fisheries Observer, Florida

My name is Patrick Carroll. I started observing in 2000 with the North Pacific Observer Program where I worked for 5 years on a seasonal basis, completing some 550 days of deployment at sea. In 2006, I went to work for the Southeast Observer program at the Galveston Laboratory. I stayed with the latter until my unfair termination in 2018, after completing over 1000 days at sea.

The difference between these programs were significant. I found the North Pacific program to be efficiently run with consideration and thanks given to observers for their work, they also used technology to incorporate observer data rapidly into their database as well as check the raw submitted observer data for errors and discrepancies. Observer provider subcontractors supplied observers to this program but not coordinators or other office personnel. I was extremely satisfied with my experience with the North Pacific Observer program, both in the way I was treated, with respect and thanks, and trained. I was also impressed with the efficiency of the program itself, both in how raw data was handled and how we were trained.

My experience with the North Pacific Observer Program stands in extreme contrast to what I experienced in the Southeast Reef and Shrimp Observer program. My initial training with this program occurred in June 2006. The safety portion of the training was very similar to what I experienced in The Northwest program, but the similarity ended with the protocol training which left much basic information unexplained, as well as their use of paper documents and total lack of digital interface between the raw data and ensuing corrections. What was also interesting in this initial training was a statement by a █████, who was subcontracted then and later hired as a federal coordinator in the Galveston office, that "we could be fired at any time and for any reason" because "Texas was a right to work state". At the time of my initial training in 2006, both of the observer coordinators in the Galveston office were subcontracted employees of █████. Approximately 4 years later this was determined to be a conflict of interest, and they were hired as federal employees, with another subcontracted coordinator who had been hired in the

interim. Approximately 3 years later more coordinators were found to be needed in the office, and were hired as subcontractors, in direct opposition to the determination that this was a conflict of interest.

I unfortunately ran into a problem with one of the subcontracted coordinators, who felt that he could “do whatever he wanted” as to the grading of our submitted trip reports. I complained to my subcontractor manager who spoke to this employee as well as the other subcontracted coordinators, and told them that they could not do whatever they wanted. Soon after this minor complaint against a specific individual, I began to be harassed by both the subcontracted as well as the federal coordinators, in retaliation for my complaint against a single individual. This harassment included increased scrutiny of my performance, arbitrary decisions against me, ostracized at social function, and ultimately violation of my civil rights, based on my age, which apparently they were entirely unaware of, as they in their ardor to punish the squeaky wheel never investigated or considered.

I made my subcontracted manager aware of this situation, to which she was initially commiserate, but then became accusatory to me. This change in her demeanor I can only attribute to her unwillingness to censure coordinators, thereby making the contracting company look irresponsible by placing these people in positions of power which they abused. I cannot tell you how bad it feels to be fired by a manager for insubordination, when 2 weeks before the same manager told you that you were a good employee who produced good work, after 12 years of dedicated service in more than trying circumstances. I and all observers deserve better than this treatment. Observers risk their lives to collect this data which is vital to fisheries management in the United States, yet they are subcontracted and subjected to the whims and circumstances of competitive bidding, non standardized programs and personnel management practices of the lowest bidders. This does not happen with the armed forces, with whom observers are similar in that they risk their lives to a certain degree in the best interest of the nations resources. Commercial fishing is consistently ranked the most dangerous job in the country, the observers who risk their lives providing the data for fisheries management should be treated with respect and program continuity and integrity which is beyond the self interest of subcontracted observer provider companies. Please remember that no one has considered subcontracting the US Coast Guard, Navy or Marines, observers deserve the same respect and guarantees.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE COMMITTEE'S OFFICIAL FILES]

Submissions for the Record by Witness Julie Dale

- Department of Public Safety—2018 Felony Level Sex Offenses, Crime in Alaska Supplemental Report
- STAR Community Prevention & Education Manager Qualifications
- Contract Purchase Order dated September 18, 2019

