

**Written Testimony of Simone S.B Cagilaba
US Multilateral Treaty Observer, South Pacific
(1997 – 2015)**

**Before the House Committee on Natural Resources,
Subcommittee on Oversight and Investigations**

**Sexual Harassment at the
National Oceanic and Atmospheric Administration**

**February 27, 2020
2:00 PM**

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. Lastly, 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 [REDACTED], 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 for 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 workbook. **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 [REDACTED], and [REDACTED] 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 [REDACTED] 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 standardized 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.

Simione Cagilaba