



June 25, 2012

MEMORANDUM FOR: Northeast Fisheries Observer Program Observers

FROM: Amy S. Van Atten
Branch Chief, Fisheries Sampling Branch

Sara Welch
FOR Amy Van Atten

SUBJECT: Observer Program Regulatory Compliance

The Northeast Fisheries Observer Program is providing observer coverage of Category I and II fisheries under the authority of the Marine Mammal Protection Act (MMPA) of 1972 AND various other fisheries under the 1996 Magnuson-Stevens Fishery Conservation and Management Act (MSA) amendments. The following documents are included with this memo to inform you of fisheries regulations, requirements under these Acts and how to report a potential compliance issue, if one should occur. The topics addressed in this memo generally include:

1) Observer Requirements and Regulations; 2) Observer Duties and Outreach Information; 3) Safety Information; 4) OLE Safety Deficiency Letter; 5) Observer Incident Report; 6) Enforcement Boarding Report; 7) Data Release Forms; 8) Fishermen's Comment Card; 9) Harassment Warning; 10) Letter of Introduction; 11) Insurance.

Enclosures in the plastic expandable file case include (section identifier and number of copies in parentheses) (also available on <http://www.nefsc.noaa.gov/femad/fsb/>):

- (A) Observer Regulations: *Federal Regulations, Title 50; Part 600-Magnuson-Stevens Act Provisions* (1)
- (A) Sector Monitoring Regulations: *Federal Regulations, Title 15 & 50, Part 902 & 648-Magnuson-Stevens Act Provisions* (1)
- (A) Observer Health and Safety: *Nov. 1, 2007* (1)
- (A) Endangered Species Act: *Final Rule: Aug. 3, 2007* (1)
- (A) 2012 List of Fisheries: *Nov. 29, 2011* (1)
- (A) Framework 47: *Groundfish: May 2, 2012* (1)
- (A) Amendment 13: *Sea Scallop Fishery: June 13, 2007* (1)
- (A) Multispecies Information Sheet: *Minimum Size Limits: 06/12* (1)

- (B) What to Expect During an Observed Trip: *08/10* (10)
- (B) ASM Duties: *What to Expect During an Observed Trip: 07/10* (10)
- (B) Observer Sampling in the Scallop Fishery: *Feb. 4, 2009* (3)
- (B) ASM Monitors vs. NEFOP Observers: *06/12* (5)
- (B) ASM Fact Sheet: *Roles and Responsibilities* (5)
- (B) Late Observer Policy: *06/05/12* (5)



- Late Observer Policy for Set Only Trips: *Sept. 4, 2012* (2)
- (B) Pre-Trip Notification System (PTNS):
Contact Information (3)
Multispecies Instructions: *01/10/2011* (3)
Loligo Instructions: *01/10/2011* (3)
- (B) Industry Funded Scallop Call In Guide: *June 30, 2011* (5)
- (B) Loligo Pre-Briefing Guide: *05/12* (1)

- (CD) Pre-Trip Vessel Safety Checklist (1)
- (CD) Fishing Vessel Safety Examination Form (1)
- (CD) Safety Decal with Contact Numbers (10)
- (CD) EVIC cards (10)
- (CD) Federal Requirements for Commercial Fishing Vessels (1)

- (EF) Office of Law Enforcement Safety Deficiency Letter (6)

- (GHI) Incident Report example and instructions (1)
- (GHI) Pre-stamped, Addressed envelopes (5)

- (JKL) Enforcement Boarding Report example and instructions (1)

- (MN) Data Release Forms (10)

- (OPQ) Fishermen's Comment Card (10)

- (RS) Harassment Warning (1)

- (TUV) Letter of Introduction (1)

- (W) Copy of Insurance (1)

- (XYZ) Other

Please keep this folder with you on deployments in case the captain would like to request any of the information. You may wish to file any other forms that are commonly requested by fishermen in the folder, such as Meal Reimbursement Forms or NEFOP Introduction Booklets.

1. Observer Requirements

Vessel owners and operators selected for observer coverage are responsible for complying with regulations set forth by the Marine Mammal Protection Act (50 CFR § 229.7) and the Magnuson-Stevens Act (50 CFR § 600.746), which state the following:



The observer requirements for participants in Category I and II fisheries are [50 CFR § 229.7(c)]: If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips. After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips. NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized. The MSA Health and Safety Regulations hold the vessel out of compliance if they continue to fish without an observer due to safety inadequacies that have not been fixed [50 CFR § 600.746(d)(2)]. The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including: providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator; allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved; allowing the observer access to all areas of the vessel necessary to conduct observer duties; allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties; providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer; sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible; notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end; not impairing or in any way interfering with the research or observations being carried out; and complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

It is unlawful to fail to take an assigned observer on a fishing trip [50 CFR § 229.7(c)(1)]. It is unlawful for any person to assault, harm, harass (including sexual harassment), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or to attempt the same. This includes any action which has the purpose or effect of interfering with the observer's responsibilities, or which creates an intimidating, hostile, or offensive environment [50 CFR § 229.3(b)].

The general prohibitions listed under the Magnuson-Stevens Act (50 CFR § 600.746) (MSA) are applicable to any fishing vessel required to carry an observer under any U.S. law and include, but are not limited to: Fail to submit to a USCG safety examination when required by NMFS pursuant to Sec. 600.746. Fish without an observer when the vessel is required to carry an observer.

Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel. Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.



Violations of the MMPA may result in sanctions on Authorization Certificates, civil penalties of up to \$12,000 and criminal penalties. A complete list of MMPA prohibitions can be found at 50 CFR § 229.3. Violations of the MSA may result in sanctions on Federal fisheries/operator permits, civil penalties up to \$120,000 per violation, civil forfeiture of catch/vessel, and/or criminal penalties.

2. Observer Duties and Outreach information

Observers are required to inform the captains and crew of their duties, for every trip they deploy on. Outreach materials are available for observers to hand out in order to assist the observers in discussing their duties, or to educate the industry on the details of the Observer Program requirements.

3. Safety Requirements

On November 1, 2007 NMFS published amendments to the regulations under the Magnuson Stevens Act that address the health and safety of observers stationed aboard commercial fishing vessels. Under the original regulations, observers may not depart on a fishing trip aboard a vessel which does not comply with United States Coast Guard (USCG) safety requirements or that does not display a current Commercial Fishing Vessel Safety Examination decal [50 CFR § 600.746(c)(1)] or does not meet the safety checklist. The updated regulations further clarify and update the prohibitions; clarify the communications requirements, requires pre-trip vessel safety checks, and strengthens the ability of NMFS to assist with observer program compliance issues.

Fishermen can schedule a free dockside examination to obtain a current safety decal by contacting the nearest U.S. Coast Guard Marine Safety Office Dockside Examiner.

All vessels required to carry an observer must meet USCG safety requirements and display a current safety decal (issued within the previous year). Vessels that do not meet these requirements are deemed unsafe for purposes of carrying an observer and must correct noted deficiencies prior to departing port [50 CFR § 600.746(d)(2)]. Failure to meet safety requirements which result in failure of a vessel to take an observer once selected for that trip will constitute a "refusal" and may result in enforcement action against the individual and vessel.

The vessel owner/operator must allow an observer, NMFS, or NMFS-appointed-contractor to visually inspect any safety or accommodation requirement if requested [50 CFR § 600.746(c)(2)]. Observers are required to complete a pre-trip safety check of the emergency equipment and are encouraged to review emergency instructions with the operator prior to the vessel departing port. A completed Safety Checklist must be sent in with each observed trip.

4. Safety Deficiency Reports

Failure to meet safety standards or failure to allow an inspection of safety equipment equate to a trip refusal and must be reported using the online Incident Report and following the procedures detailed below.

For proper documentation of this event, an observer must have:

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- two (2) standard letters from the Office of Law Enforcement (OLE) citing the safety deficiency,
- a Pre-Trip Vessel Safety Checklist, and
- must fill out the online Incident Report and mail a hardcopy

Once a vessel has been determined to be unsafe to deploy either due to a lack of a current decal or failing to meet the top six (6) safety devices on the checklist and the safety measures cannot be corrected immediately:

- Complete a Pre-Trip Vessel Safety Checklist;
- Fill out one OLE letter to the captain citing the deficiency;
- Notify the captain and give him/her the completed letter of deficiency(s);
- Disembark from the vessel and do not complete a trip on the vessel until the corrective measures have been met;
- Complete a second letter citing the deficiencies to send to the office;
- Complete the online Incident Report (select Refusal) and email NEFOP email list;
- Contact your Program Manager by phone once off the vessel;
- UPS the safety refusal documents to NMFS within 12 hours, including the letter citing the deficiency, the Pre-Trip Vessel Safety Checklist, and the signed Incident Report.

It is critical to report these safety deficiencies in a timely manner and to have complete and accurate documentation of the event.

5. Online Incident Report

Observers should fill out the online Incident Report when confronted with a trip refusal, safety deficiency, unsafe vessel, or any type of interference with duties, harassment, intimidation, gear tampering, assault, discard of legal sized groundfish (on sector trips), unmonitored product (for dockside monitors), failure to fully account for catch on dealer report (dockside monitors), not provided sufficient notice of an offload (dockside monitors), description of injuries (mishaps including minor sprains, strains, cuts, abrasions) and serious injuries, captain not showing to vessel, difficulty in setting up a trip or any other situation that the observer feels that NMFS staff should be aware of.

Detailed instructions for filling out this report are included in the folder. Contact Sara Weeks (508) 495-2227 if you have questions or problems with the report. It's important to note that the online Incident Report must be sent electronically with a digital signature, and in addition a hard-copy of the report with a signature must also be sent to the Observer Program, Attention of: Branch Chief, 25 Bernard St. Jean Drive, Falmouth, MA 02536. Please use the pre-labeled, pre-stamped envelopes provided in your blue binder for mail delivery. All incident reports should be submitted in 12 hours of landing or 12 hours of the incident occurring. Hard copies of the reports should also be sent as soon as possible, or within 24 hours.



6. Observer Procedures During an Enforcement Boarding

The USCG and other enforcement entities make periodic boardings of fishing vessels to inspect them for fisheries and safety violations. NOAA OLE personnel may also be present. If the USCG boards the vessel you are on, introduce yourself. After that, remain in the background and let the boarding party know where you can be found. Do not remove yourself completely from the scene unless asked to do so. Do not join in any discussions between boarding party members and vessel personnel unless asked. The USCG or NOAA OLE personnel have certain objectives to accomplish in every boarding.

If the boarding party has questions or requests your assistance, be cooperative. Most Coast Guard officers are not biologists and you may be of assistance in identifying species of fish and invertebrates on deck or in freezer holds.

Make sure your diary and paperwork are in order in case the boarding party wishes to inspect them. If possible, avoid giving anyone your original logs or your diary. However, they may insist on retaining your paperwork as evidence. An observer cannot refuse to provide the data or logs if they are likely to contain evidence of a violation of the MSA or MMPA. The USCG and NOAA OLE personnel have the authority to seize evidence under both acts. Do not resist the enforcement efforts on scene. If possible, make copies before turning the originals over. If the vessel you are on has no copy machine ask if copies can be made on board the Coast Guard vessel. You may request that copies be obtained at the dock when you land. If this is not a possibility, at least make handwritten copies or summarized notes if there too many logs to transcribe. Generally, the USCG and NOAA OLE will get copies back to the program once back on shore. If they need to contact the National Marine Fisheries Service, have them call the Fisheries Sampling Branch Chief, Amy Van Atten, at 508-495-2266.

If you have information on suspected or actual violations, or other problems, you may or may not wish to relay them to the boarding party. Use your judgment to decide if a potential violation would best be reported to the boarding party or saved for debriefing. The observer's role is not one to report violations; it is to collect non-biased scientific data. The USCG is aware that observers may or may not choose to advise them of witnessed violations dependent on the situation.

If you have no information for the boarding party but someone in the boarding party wishes to question you, find a private location for your conversation. On occasion, an uninformed boarding party member may ask you questions in front of vessel personnel. Should this happen, defer the questions until you can speak in private if this would be better. If that doesn't work, ask if they will accept a written statement from you. If you are questioned in private, answer all questions completely and honestly. Your testimony is one part of the whole investigation. Your role in a Coast Guard boarding is as a source of objective information for the boarding party. The boarding party will conduct their own inspections and investigation, and they may or may not require your assistance. You should cooperate fully, and not hamper the investigation.

When the trip lands, observers should document the event fully, using the Boarding Report form which can be found online at <http://www.nefsc.noaa.gov/femad/fsb/> under the 'forms' section on the right hand side of the website. Observers should then submit the report via email as soon



as possible to Sara Weeks at Sara.Weeks@noaa.gov, Kris Tholke at Kris.Tholke@noaa.gov and to their program manager or area coordinator. The report should include details regarding the boarding such as the vessel name, date, times, what kinds of questions were asked, what items were inspected, what were the areas of concern, what citations were written if any, whether they requested to look at the observer's trip logs, whether they questioned any observer data or equipment, and what questions they specifically asked the observer.

7. Data Release Policy

Vessel owners or captains acting as authorized representatives for an owner may request copies of the raw observer logs. Data cannot be release without submission of a completed Trip Data Release Form. The recipient of the data is responsible for the data upon its release. Release of data for trips in which more than one vessel participated (i.e pair trawl trips) may occur only if captains or owners from both vessels complete and submit a Trip Data Release Form.

Observers should offer the captain a Trip Data Release Form at the completion of every trip. If they request a copy of the trip, have them complete the form with the trip information, vessel information, their signature, and address. The observer should complete the bottom portion of the form, tear it off, and have the captain retain the bottom portion for their records. The remainder of the top form is sent in to NMFS with the trip. NMFS will make copies of the trips and send copies to the requestor. If the captain wants the copies right away, the observer can make copies of the trip and fill in the section on the form that states: Copies Released By and Date. Copies made by observers would be not be "edited". If observers make copies of their trips, make sure not to leave them unattended on a copy machine, or pass them off to non-programmatic staff for copying. For follow up information on data releases, please contact Patricia Yoos at 508-495-2338.

8. Fishermen's Comment Card

Observers should ask fishermen at the end of each trip, if they would like a comment card to fill out. Comment cards provide a good avenue for fishermen to share their thoughts on the performance of the observer overall, for each trip. Comment cards are voluntary. The cards are pre-stamped and can be dropped in the mail by the fishermen. These cards are kept on file and shared with observers during standard debriefings and all cards that discuss any potential data quality issues are researched and dealt with appropriately.



