



May 15, 2013

MEMORANDUM FOR: A.I.S., Inc.,  
East West Technical Services,  
Fathoms Research LLC, and  
MRAG Americas  
At-Sea Monitors, Industry Funded Scallop Observers, and  
Northeast Fisheries Observer Program Observers

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

SUBJECT: Regulatory Compliance Folder

The Northeast Fisheries Observer Program provides observer coverage for 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 issued to observers during initial training to inform you of fisheries regulations, requirements under these Acts, and how to report a compliance issue, should one occur. The topics addressed in this memo include:

- 1) Permits; 2) Observer Requirements and Regulations; 3) Observer Duties and Outreach Information; 4) Safety Information; 5) Office of Law Enforcement (OLE) Safety Deficiency Letter and Vessel Selection Letter; 6) Observer Incident Report Instructions; 7) Enforcement Boarding Report; 8) Data Release Forms; 9) Fishermen's Comment Card; 10) Harassment Warning and Victim Support Contact Information; 11) Letter of Introduction; 12) Provider proof of insurance.

The following documents should be included in the blue plastic expandable file case issued at initial training (i.e. Regulatory Compliance Folder):

SECTION	DOCUMENT	# COPIES	PROGRAM
Front	NEFOP Memo 13-006 (this document)	1	NEFOP, ASM, IFS
Front	NMFS Permit: Permit No. 15112: Sea Turtles	1	NEFOP, ASM, IFS
Front	Federal Fish and Wildlife Permit: Migratory Birds	1	NEFOP, ASM, IFS
Front	NEFSC Memo: Marine Mammals and Highly Migratory Species	1	NEFOP, ASM, IFS
(A)	Observer Regulations	1	NEFOP, ASM, IFS
(A)	Observer Health and Safety	1	NEFOP, ASM, IFS
(A)	Endangered Species Act	1	NEFOP, ASM, IFS

SECTION	DOCUMENT	# COPIES	PROGRAM
(A)	Marine Mammal Protection Act Info Sheets	1	NEFOP, IFS
(A)	2013 List of Fisheries Information Sheet	1	NEFOP, IFS
(A)	Multispecies: Framework 47	1	NEFOP, ASM
(A)	Multispecies: Framework 48/50 Bulletins	1	NEFOP, ASM
(A)	Scallop: Amendment 13	1	NEFOP, IFS
(A)	Scallop: Framework 24 Bulletin	1	NEFOP, IFS
(A)	Multispecies Information Sheet: Minimum Size Limits	1	NEFOP, ASM, IFS
(A)	2013 NEFOP Seaday Schedule	1	NEFOP
(B)	NEFOP Observer Duty Sheet	10	NEFOP
(B)	ASM Observer Duty Sheet	10	ASM
(B)	IFS Observer Duty Sheet	10	IFS
(B)	NEFOP vs. ASM	5	NEFOP, ASM
(B)	ASM Fact Sheet	5	NEFOP, ASM
(B)	Late Observer Policy	5	NEFOP, ASM, IFS
(B)	Late Observer Policy: Set Only Trips	3	NEFOP, ASM
(B)	Pre-Trip Notification System: Contact Info	3	NEFOP, ASM
(B)	Pre-Trip Notification System: Multispecies	3	NEFOP, ASM
(B)	Pre-Trip Notification System: Longfin	3	NEFOP, ASM
(B)	IFS Call In Guide	3	IFS, NEFOP
(B)	Small Mesh Pre-Briefing Guide	1	NEFOP
(B)	Port Agent Information	1	NEFOP, ASM, IFS
(CD)	Pre-Trip Vessel Safety Checklist	1	NEFOP, ASM, IFS
(CD)	USCG Fishing Vessel Safety Examination Form	1	NEFOP, ASM, IFS
(CD)	Safety Decal with Contact Information	5	NEFOP, ASM, IFS
(CD)	EVIC (EPRIB Visual Inspection Card)	10	NEFOP, ASM, IFS
(CD)	Federal Requirements for Commercial Fishing Vessels: USCG pamphlet	1	NEFOP, ASM, IFS
(EF)	OLE Safety Deficiency Letter	6	NEFOP, ASM, IFS
(EF)	Vessel Selection Form	1	NEFOP, ASM, IFS
(GHI)	Incident Form Instructions	1	NEFOP, ASM, IFS
(GHI)	Addressed, stamped envelopes	5	NEFOP, ASM, IFS
(JKL)	Enforcement Boarding Report	1	NEFOP, ASM, IFS
(MN)	Data Release Form	10	NEFOP, ASM, IFS
(OPQ)	Fishermen's Comment Card	10	NEFOP, ASM, IFS
(RS)	Observer Harassment Warning	1	NEFOP, ASM, IFS
(RS)	Victim Support Contact Information	1	NEFOP, ASM, IFS

SECTION	DOCUMENT	# COPIES	PROGRAM
(TUV)	Letter of Introduction	50	NEFOP, ASM, IFS
(W)	Certificate of Insurance (obtain from service provider)	1	NEFOP, ASM, IFS

**Indicates a new or updated form.**

**Please discard all outdated forms and replace them with the forms provided in this memo.**

Contained within the folder are documents mandatory for all trips (permits, Letter of Introduction, Duty Sheet, Data Release Form, Fishermen's Comment Card, certificate of insurance). **Please keep this folder with you for all deployments.** You may wish to file other forms commonly requested by fishermen in the folder, such as Meal Reimbursement Forms or Introduction Booklets.

### 1. Permits

Permits have traditionally been included in your chesatsheets. In effort to better organize observer materials, the permits are now a part of the regulatory compliance folder. Please update your folders as follows:

The following permits are **no longer required**. Please remove these from your materials:

- National Marine Fisheries Service, Highly Migratory Species Management Division Exempted Fishing Permit; Permit Number: SHK-EFP-09-02
- Memo referencing Permit No. 1448 (Dec. 7, 2009) signed by P. Michael Payne
- Memo referencing marine mammals incidentally killed during fishing operations (July 17, 2009) signed by Nancy B. Thompson, PhD.

The following are current permits issued to you during initial training and should be **placed in your regulatory compliance folder**:

- Federal Fish and Wildlife Permit (authorization to salvage migratory birds)  
Permit Number: MB043513-0, Expiration Date 03/31/2015
- NMFS Permit: Permit No. 15112, Expiration Date Jan. 1, 2016 (authorization to biologically sample sea turtles)

The following is an updated memo that should be added to your regulatory compliance folder (included in this memo):

- NEFSC Memo detailing authorization for observers to sample and retain marine mammals and highly migratory species captured during fishing operations (May 9, 2013) signed by William Karp, PhD.

## 2. Observer Requirements

Vessel owners and operators selected for observer coverage are responsible for complying with regulations set forth by the Marine Mammal Protection Act (MMPA: 50 CFR § 229.7) and the Magnuson-Stevens Act (MSA: 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.

### **3. Observer Duties and Outreach Information**

Observers are required to inform the captain 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.

Observers are required to offer the following outreach materials for every trip:

- Letter of Introduction
- Duty Sheet
- Data Release Form
- Fishermen's Comment Card
- Meal Reimbursement Form for multiday trips (obtained from service provider)

### **4. 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 examination decal. 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 prior to the vessel departing port. A completed Safety Checklist must be sent in with each observed trip.

## 5. Safety Deficiency Reporting (SDR) Requirements

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 (within 12 hours) and following the procedures detailed below.

A vessel is determined to be unsafe to deploy if the vessel is missing or does not have a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination (CFVSE) decal or any of the items listed on the October 2010 Office of Law Enforcement (OLE) letter. If the safety measures cannot be corrected immediately, the observer may not deploy and SDR requirements must be met. Situations requiring SDR include **the following**:

- Vessel does not possess or has an expired USCG CFVSE safety decal
- Vessel does not have one or more safety devices possessing a current date, not in working order, or not in sufficient quantity:
  - 1) Personal floatation devices/immersion suits;
  - 2) Ring buoys or other allowable floatation;
  - 3) Distress signals (i.e. missing or expired flares);
  - 4) Fire extinguishers, when required (i.e. missing or expired);
  - 5) EPIRB, when required (i.e. missing equipment when required; missing or expired hydrostatic release; missing or expired battery date; missing or expired NOAA SARSAT registration);
  - 6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s) (i.e. missing equipment when required; missing or expired hydrostatic release when required; missing or expired raft service)

#### Safety Deficiency Reporting Requirements:

- Complete a Pre-Trip Vessel Safety Checklist (PTVSC);
- Notify the captain of the safety deficiency
- Complete an OLE letter citing the deficiency and give it to the captain;
- Disembark from the vessel and do not complete a trip on the vessel until the corrective measures are met;
- Complete a second OLE letter citing the deficiencies for NMFS;
- Complete the online Incident Report (select Safety Deficiency) within 12 hours;
- Contact your Program Manager immediately;
- Send in the SDR documents (OLE Letter and the Pre-Trip Vessel Safety Checklist) to NMFS within 24 hours

It is critical to report these safety deficiencies completely and accurately, in a timely manner.

In the event of a safety issue or special circumstance, observers may use the USCG Marine Safety Fishing Vessel Safety Examination Form to verify the safety decal, life raft, and EPIRB information. These are the only items observers may use the USCG documentation to verify. All other items still require inspection by the observer prior to sailing. When referencing the USCG document, the observer must ensure:

- The vessel was successfully issued a safety decal (i.e. no deficiencies were present)
- There is a decal number recorded on the form
- All equipment is present and current
  - EPIRB (battery, hydrostatic release, NOAA SARSAT registration)
  - Raft (service date, hydrostatic release)
- The form is signed by a Fishing Vessel Safety Examiner

Contact **Mike Tork (508) 495-2339** or **Sara Weeks (508) 495-2227** if you have any questions or problems.

#### **6. Online Observer Incident Report**

Observers should fill out the online Observer Incident Report when confronted with a trip refusal, safety deficiency, unsafe vessel, or any type of interference with duties, harassment, intimidation, gear tampering, assault, concerns about safety, injuries, logistical problems, PTNS non-compliance, or any other situation that warrants documentation. All incident reports should be submitted within 12 hours. The online form can be found at <http://www.nefsc.noaa.gov/fsb/forms/>.

Detailed instructions for filling out this report are included in your regulatory compliance folder, as well as online. Contact **Sara Weeks (508) 495-2227** or **Nichole Rossi (508) 495-2128** if you have questions or problems with the report.

## 7. Observer Procedures During an Enforcement Boarding

The USCG and other enforcement entities make periodic boardings of fishing vessels to inspect for fisheries and safety compliance. NOAA OLE personnel may also be present. If the USCG boards the vessel, introduce yourself and show your federally issued identification (CAC). 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 specifically asked. The USCG and/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 USCG officers are not biologists and may request your assistance identifying species of fish and invertebrates. Observers should not enter the fish hold to assist in identifying fish, rather, you should request fish be brought to deck level for identification.

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 requested by authorized personnel. The USCG and NOAA OLE personnel have the authority to seize evidence under both the MSA and MMPA. 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 USCG 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 NMFS, 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, a 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 speaking in private is not possible, 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 an investigation. Your role in a USCG 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.

Document the event fully in your field diary while at sea. After completion of the trip submit an online Enforcement Boarding Report form within 48 hours of landing. The online form can be found at <http://www.nefsc.noaa.gov/fsb/forms/> under 'Data and Forms' and is emailed to **Sara Weeks** at [Sara.Weeks@noaa.gov](mailto:Sara.Weeks@noaa.gov), **Kris Tholke** at [Kris.Tholke@noaa.gov](mailto:Kris.Tholke@noaa.gov) and to your program manager and/or area coordinator. The report should include details regarding the boarding such as: Trip Id; vessel name; vessel captain's name; date of boarding; begin and end time of boarding; name/number of the boarding vessel; number of personnel in the boarding party; boarding officer's name and rank; asked for your ID (Y/N); request to see data (Y/N); concerns or citations Y/N; trip terminated (Y/N); additional details of the boarding

## **8. 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 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 Data Release Form.

Observers must offer the captain a 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 to NMFS with the associated trip. NMFS will make copies of the trips and send copies to the requestor. For follow up information on data releases, please contact **Patricia Yoos at 508-495-2338**.

## **9. Fishermen's Comment Card**

Observers must offer the captain a Fishermen's Comment Card at the completion of every trip. Comment cards provide a good avenue for fishermen to share their thoughts on the overall performance of the observer for each trip, as well as the program. 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.

ATTACHMENTS:                   NEFOP Memo 13-000 (this document)  
  NEFSC Memo: Marine Mammals + Highly Migratory Species  
  Marine Mammal Protection Act Info Sheets  
  2013 List of Fisheries Information Sheet  
  Multispecies: Framework 48/50 Bulletins  
  Multispecies Information Sheet: Minimum Size Limits  
  Scallop: Framework 24 Bulletin  
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