

**National Review of  
Observer Program Policies and Procedures  
with Recommendations with Respect to the 2013  
Administrative Inquiry Action Items**

**National Observer Program and Advisory Team**

**March 2014**

**U.S. Department of Commerce  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910**



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## Background

Fisheries observers act as independent monitors to record information from the fishing operations of U.S. commercial fishing vessels and processors. Their resulting data is used by the National Marine Fisheries Service (NMFS) to support science, conservation, and management activities that include bycatch reduction, stock assessments, monitoring protected species interactions, gear research, and fisheries regulations as mandated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA), Endangered Species Act (ESA), and Marine Mammal Protection Act (MMPA).

Observers are not directly employed by NMFS; rather, they are the employees of private observer provider companies contracted by NMFS to manage observer logistics. NMFS is then responsible for ensuring that quality data is obtained from these observers. This is accomplished through observer training before deployment and, in most instances, observer debriefing after deployment. NMFS also manages the gear used by observers and their resulting data, specimens, and depositions. In FY 2012 more than 900 observers were deployed in 47 fisheries across six NMFS geographical regions—Northeast, Southeast, Southwest, Pacific Islands, Northwest, and Alaska. NMFS has an established observer program in each geographic region to administer the observer-related activities listed above.

The National Observer Program (NOP) provides national-level coordination of the regional observer programs. In addition to handling national program administration, budgeting, and planning, the NOP works with the regional observer programs to develop national policy, observer data quality standards, and observer and marine safety instructor training standards. Regional observer programs use Update Forms to document their progress on outstanding issues to the NOP prior to bi-annual meetings.

### *Problem statement*

On December 1, 2011, the Association for Professional Observers (APO) and Public Employees for Environmental Responsibility (PEER) requested an Office of Inspector General (OIG) investigation of the management practices and handling of observer reports regarding vessel non-compliance with fisheries regulations and other applicable law, and compliance with regulations for observer safety and vessel accommodations by the Southeast Observer Programs. The APO and PEER claimed that one of the Southeast Fisheries Observer Programs—the Atlantic Pelagic Longline Observer Program (POP)—disregarded observer reports of vessel non-compliance with applicable regulations and only referred such reports to the NMFS Office of Law Enforcement (OLE) when requested to do so by OLE. In addition, the APO and PEER claimed that observers had been pressured by NMFS and their contractor, IAP Services, Inc., to board vessels with unsafe conditions and inadequate accommodations.

In response to these allegations, the OIG directed NMFS to conduct an inquiry into the issues raised in the complaint and submit a formal response detailing the results (OIG Complaint Action Referral No. PPC-CI-12-0221-H). The NMFS Administrative Inquiry that followed was dated January 25, 2013, and included a number of action items, responsible parties, and due dates (Table 1, Appendix 1). Upon

review of the NMFS Administrative Inquiry, OIG Complaint Action Referral No. PPC-CI-12-0221-H was closed in March 2013.

Table 1. Summary of 2013 NMFS Administrative Inquiry Action items.

| # | Entity  | Action  |
|---|---|---|
| 1 | Southeast Observer Programs<br>Office of Law Enforcement<br>(OLE) | Develop a uniform, transparent, and consistent procedure for collecting and reporting all potential marine resource violations to NOAA OLE, including MARPOL <sup>1</sup> violations  |
| 2 | Southeast Observer Programs                                       | Review safety procedures and ensure that no observers are deployed on vessels that fail to pass the pre-trip vessel safety checklist. Valise life raft should only be used if the vessel's hydrostatic release equipped life raft does not have sufficient capacity for an observer. The valise life raft shall not be used in lieu of an expired hydrostatic release. Valise life raft is to be used in addition to, not as a substitute for, the vessel's life raft if the vessel's life raft capacity is exceeded. |
| 3 | Southeast Atlantic Pelagic<br>Longline Observer Program<br>(POP)  | Execute minimum marine safety training and refresher training for observers without exception (minimum once every three years). Observers should not be allowed to deploy until they have completed refresher training.   |
| 4 | Southeast Observer Programs<br>Office of Law Enforcement          | Develop policies and procedures to standardize the legal collection of data on drug and alcohol use during observer deployments, and forward such information to appropriate law enforcement agencies. These procedures must be covered by the Statement of Work for Observer Contractors. Reportable to the NMFS Deputy Assistant Administrator for Operations.  |
| 5 | National Observer Program<br>(NOP)                                | Review current policy and regulations for equal accommodations (accommodations equivalent to the crew) for observers with particular focus on small vessels that have space limitations. The NOP will review potential solutions and alternatives (e.g. technology) to collect data on vessels that are considered too small, inadequate, or unsafe and report to the NMFS Director of the Office of Science and Technology.  |
| 6 | Southeast Observer Programs                                       | Develop policies, procedures, and timelines for advance notice given to observers in the event they are offered a deployment.   |
| 7 | Southeast Atlantic Pelagic<br>Longline Observer Program           | Develop a transparent system of tracking observers and their relative placement in line (or the rotation) for fishing vessel trips. Policy shall note the criteria used for substituting observers due to government cost-saving efforts (e.g. location/logistics).   |
| 8 | Southeast Atlantic Pelagic<br>Longline Observer Program           | Develop formal communication process for observers to provide any concerns they have about the program.   |
| 9 | Southeast Observer Programs                                       | Develop contractual list of responsibilities for SEFSC Observer Program staff, and duties for managers of contract observers.   |

<sup>1</sup> The International Convention for the Prevention of Pollution from Ships (MARPOL).

*Purpose*

The purpose of this document is to demonstrate that NMFS will comply, as appropriate, with the findings of the Administrative Inquiry and that all policies, procedures, and controls are consistent across all observer programs. In their role of oversight, the NOP will review all regional observer programs' policies and procedures as they relate to the Administrative Inquiry and report back to the Director, Science and Technology (S&T) with recommendations. Toward this end, the NOP compiled information from each of the regional observer programs related to the nine action items in Table 1 (Appendix 2). Subsequently the NOP and the National Observer Program Advisory Team (NOPAT) reviewed the information and provided recommendations to address gaps in the form of this report. What follows is a summary of those findings and recommendations organized by the items in Table 1. Following the release of this report, the NOP will report quarterly to the S&T Director on progress toward implementing the recommendations contained herein.

**1. Develop a uniform, transparent, and consistent procedure for collecting and reporting all potential marine resource violations to NOAA OLE, including MARPOL violations**

The primary responsibility of NMFS trained observers is to collect scientific data for management of the fishery. However, another important function of observers is to collect information on potential violations that occur during observer deployments onto vessels and into processing facilities. These potential violations are reported by NMFS to OLE, the United States Coast Guard (USCG), and, in some cases, both. Observers are not enforcement agents and thus are not authorized to issue citations, provide regulatory advice, interpret regulations, waive regulatory requirements, or enforce regulations. This longstanding NMFS policy is designed to draw a clear distinction between the data collection and reporting requirements of observers and the enforcement of regulations by OLE. This separation of responsibilities serves to protect observers from harassment, intimidation, or assault that might occur if an observer were to attempt to enforce potential violations during an at-sea deployment.

Federal regulations provide clear and unambiguous language prohibiting anyone from assaulting, harassing, opposing, impeding, intimidating, or interfering with a NMFS-approved observer (50 CFR §600.725(o), (t), and (u)). Not surprisingly, all observer programs collect data on potential violations that are considered serious, affect observer safety, involve observer assault or harassment, or include other major violations. Furthermore, when cases of alleged assault, harassment, or interference are reported by an observer, the information is immediately relayed from the observer programs to OLE.

There is less consistency across observer programs when it comes to their reporting of marine resource violations that do not directly affect observer health or safety (e.g., a vessel's failure to comply with MARPOL). Given the volume, complexity, and sometimes ephemeral nature of regulations that define marine resource violations, it may be unrealistic to expect observers or even NMFS staff to be aware of every potential violation, unless they have studied in maritime law. Prioritization is necessary, and observer programs have prioritized documentation of potential fishing violations over, for example, MARPOL violations when instructing observers. This prioritization is not the same as ignoring potential



violations. All observer programs train and require observers to document all potential violations, have procedures in place to vet the information for completeness, and have ways to report information to appropriate authorities. The Alaskan Marine Mammal Observer program (AMMOP), which primarily monitors marine mammal interactions with state managed commercial fisheries, in contrast is informed of potential marine violations through the observer provider company and not the observers themselves.

To summarize, while all but one observer program inform observers of their role in reporting potential marine resource violations, it is up to the appropriate authorities to determine whether the potential violation is valid, and it is the responsibility of the vessel operators and crew to know and comply with all appropriate regulations (50 CFR § 600.725(k)(w)).

### *Recommendations*

For programs that do not have specific policies and procedures for collecting information on potential marine resource violations that include MARPOL, the following materials should be included in observer policy documents or training manuals and materials:

1) *Each observer program training manual will include a section/module on Regulations and Compliance<sup>2</sup>. The Regulations and Compliance section should be developed jointly by the observer program and OLE to ensure that the appropriate regulations are included and the process for how observer reports are relayed to the appropriate authorities is clearly described.*

2) *Each observer training manual and training materials should include the following specific instructions:*

*“Observers should monitor for and document compliance infractions and suspected violations in their logbook and complete a written statement during debriefing. Any compliance issues that are witnessed should be documented thoroughly in the logbook and the observer program staff, lead observer, or debriefer should be notified.”*

3) *Each observer program manual should include a section on MARPOL regulations and describe what information should be collected by observers<sup>3</sup>.*

4) *Items 1-3 should be covered during observer training, where applicable.*

5) *Each observer program should establish a process for reporting potential regulatory violations to OLE and/or the USCG, and this process should be documented in training materials.*

6) *Each observer program will report on their progress on items 1-5 above to the NOP in the NOPAT Update Form prior to bi-annual meetings.*

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<sup>2</sup> See Chapter 20 of the [2013 NPGOP Observer Sampling Manual](#) for appropriate example.

<sup>3</sup> See Section 20-20 of the [2013 NPGOP Observer Sampling Manual](#) for an appropriate example.

## **2. Review safety procedures and ensure that no observers are deployed on vessels that fail to pass the pre-trip vessel safety checklist.**

Regulations are in place that require observers to participate in a pre-trip vessel safety orientation and conduct a pre-trip safety check (46 CFR §28.270, 50 CFR §600.746(f)). These regulations specify that, prior to the initial deployment of the observer, the vessel owner or operator (or their designee) must accompany the observer on a walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist, and that the vessel owner or operator (or designee) must also accompany the observer in checking the following major items as required by applicable USCG regulations, including:

- Personal flotation devices/ immersion suits.
- Ring buoys.
- Distress signals.
- Fire extinguishing equipment.
- Emergency position indicating radio beacon (EPIRB), when required, that is registered to the vessel at its documented homeport.
- Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage.
- Other fishery-area and vessel-specific items required by the USCG.

In addition to these existing regulations, the NOPAT has developed national safety training standards that include specific requirements pertaining to the pre-trip safety checklist<sup>4</sup>. The national standard states that the observer trainee must be able to do the following:

- Explain the difference between a USCG vessel examination/inspection and a pre-trip vessel safety checklist.
- Describe the observer program's requirements regarding the function of a pre-trip vessel safety checklist.
- Describe the procedures [for] completing a pre-trip vessel safety checklist.
- Understand the observer's role versus the roles of the USCG and the OLE regarding the pre-trip vessel safety checklist.
- Describe some of the problems or obstacles in completing the pre-trip vessel safety checklist, and explain steps to overcome them.
- Complete a pre-trip vessel safety checklist onboard a commercial fishing vessel, or simulate completion of a checklist if a vessel is not available.

In this review of the existing observer programs, it has been determined that all applicable programs include training on how to conduct a vessel safety check and how to fill out the pre-trip safety checklist (Appendix 3). Each observer program has a list of "no-go" items (i.e., items that if missing, expired, or non-functional would prevent the observer from deploying). However, these no-go items are not included in existing regulations, nor is there consistency across programs on which items are included on the no-go list. The NOPAT Safety Committee is in the process of standardizing the list of no-go items on the checklist among programs to ensure consistency and avoid confusion for observers.

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<sup>4</sup> See page 11 [http://www.st.nmfs.noaa.gov/Assets/Observer-Program/pdf/Procedural\\_Directive\\_04-110-01.pdf](http://www.st.nmfs.noaa.gov/Assets/Observer-Program/pdf/Procedural_Directive_04-110-01.pdf)

### Recommendations

- 1) *The NOPAT Safety Committee will finalize the list of “No-Go” items and incorporate them into the national observer safety training standards.*
- 2) *All “No-Go” items will be clearly identified on the pre-trip safety checklist<sup>5</sup>.*
- 3) *Observer programs should explicitly prohibit an observer from deploying if any of the “No-Go” items are missing, expired, or non-functional.*
- 4) *Observer programs will establish a process for reporting “No-Go” deployments to OLE and/or USCG to evaluate potential failure to maintain safe conditions for the protection of the observer(s), refusal to carry an observer, and/or marine safety violations.*
- 5) *Items 1-4 will be included in program policies, training manuals, and observer training, as applicable.*
- 6) *Each observer program will report on the status of this report item on the NOPAT Update Form during their bi-annual meetings.*

### **3. Execute minimum marine safety training and refresher training for observers without exception.**

Safety is a critical component of NMFS observer programs, and all of the programs reviewed here had safety training procedures and refresher training programs in place. NMFS observer programs follow national minimum standards that were designed to prepare observers for the hazards associated with commercial fishing operations (Safety Directive)<sup>6</sup>. The Safety Directive requires observers to attend a hands-on marine safety training course equating to approximately 2½ to 3 days every 3 years. Safety training topics include but are not limited to: risk awareness, conflict resolution, first aid, crisis prevention, emergency response, and survival at sea.

Refresher training for observers is critical for reinforcing safety concepts and skills taught during initial marine safety training. Therefore, NMFS has also included requirements for observer refresher training as a key component of its safety training standards. Refresher training may be taken as part of a NMFS or NMFS-contracted marine safety training, or in the form of a commercially available marine safety course taught by an instructor who has completed USCG-certified marine safety instructor training. At a minimum, active observers must be required to attend a hands-on marine safety training course every 3 years. Topics to be covered in the observer refresher safety course are at the discretion of each regional observer program.

In addition to the requirements and policies outlined for observers above, it is important that observer

<sup>5</sup> See Section 19-2 of the [2013 NPGOP Observer Sampling Manual](#) for an appropriate example.

<sup>6</sup> [http://www.st.nmfs.noaa.gov/Assets/Observer-Program/pdf/Procedural\\_Directive\\_04-110-01.pdf](http://www.st.nmfs.noaa.gov/Assets/Observer-Program/pdf/Procedural_Directive_04-110-01.pdf)

safety trainers remain up-to-date on the latest and best methods to ensure observer safety. Therefore, the Safety Directive also specifies that observer safety trainers must attend marine safety instructor refresher training every 2 years (this requirement is currently being revised to every 3 years). NMFS has determined that, at a minimum, observer safety trainers must complete a USCG-approved Marine Safety Instructor Training course, have prior experience at sea, teach or co-teach at least one marine safety course every year, and attend 24 hours of refresher training on relevant topics every 2 years. In addition, at least one trainer from each observer program should co-teach in a different region once every 3 years to ensure consistency and broaden shared knowledge.

Marine Safety training curricula are reviewed by the NOPAT Safety Advisory Committee for adherence with the minimum safety training standards described above.

### *Recommendations*

- 1) The NOPAT Safety Advisory Committee will continue to review the National Safety Training Standards for observers on a regular basis and provide recommendations for improvements or enhancements to the NOPAT. The time period for review should be determined by the Safety Committee and approved by the NOPAT.*
- 2) Observer programs (and/or their contracted observer providers) will have a documentation and/or notification system to alert observers when their safety training is about to expire.*
- 3) Each observer program will report on the status of this item on the NOPAT Update Form during their bi-annual meetings.*

#### **4. Develop policies and procedures to standardize the legal collection of data on drug and alcohol use during observer deployments, and forward such information to appropriate law enforcement agencies.**

Drug and alcohol abuse aboard commercial fishing vessels is strictly prohibited. Under 33 CFR § 95 no vessel may be operated by an intoxicated individual (defined as any crew member, pilot, or watch stander on any commercial vessel). An individual operating a commercial vessel is considered intoxicated at a blood alcohol concentration of .04 or more, or when the effect of the intoxicant consumed is easily observed in the individual's general appearance or behavior.

Observers are instructed to immediately report any drug or alcohol use that affects the observer's safety to their respective observer program, and the debriefing process provides an opportunity to document any drug use aboard the vessel. However, while all observer programs have a policy to notify OLE or other enforcement officials in cases where drug or alcohol use results in injury or harassment *to the observer*, most programs do not have a standard process for reporting drug use that did not result in direct injury or harassment to the observer, but was considered a safety concern *by the observer*.

Some programs have policies and procedures in place to report any drug or alcohol use that was considered to impair or compromise the observer's safety, either prior to and leading up to a trip, or

during a trip. For example, the Northeast Groundfish Observer Program has developed “Drug Awareness” training, with the help of the USCG. The training is designed to help observers recognize the signs and symptoms of possible drug use. Every observer within the North Pacific Groundfish Observer Program completes an electronic survey for every vessel they are on board during their post-cruise debriefing with NMFS, and is asked, “Were alcohol and/or drugs used by vessel personnel to a degree that you felt your safety was compromised?” An affirmative response would trigger the completion of a statement for forwarding to OLE and/or USCG. The Alaska Marine Mammal Observer Program requires contracted vessels carrying observers to have in place a code of conduct that prohibits the possession, use, or distribution of all illegal drugs and prohibits excessive drinking of alcoholic beverages.

### *Recommendations*

- 1) Observer programs will include information on drug and alcohol use in their training manuals and/or training materials.*
- 2) Observer programs will include specific questions during debriefing regarding drug or alcohol use that compromised the observer’s safety. An affirmative response should be reported to OLE and/or USCG.*
- 3) Each observer program will establish a process for reporting drug and alcohol use that compromises the observer’s safety to NOAA OLE and/or the USCG, and this process should be documented in observer training materials.*

## **5. Review current policy and regulations for equal accommodations (accommodations equivalent to the crew) for observers with particular focus on small vessels that have space limitations.**

Lack of adequate accommodations (primarily lack of bunk space and toilet) is a common problem facing observers and observer programs in many regions. Federal regulations specify that an owner or operator of a vessel on which a NMFS-approved observer is embarked must provide accommodations and food equivalent to those provided to the crew (50 CFR § 622.27 (c)(1)). This has been interpreted to mean that, once deployed onto a vessel, an observer must be treated equal to the crew. Furthermore, regulations exist that seem to clearly specify vessels cannot fish without an observer if required to carry one. For example, 50 CFR §600.74(i) states: “A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this section, and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.” In addition, there are summary settlement amounts in place to enforce this statute by OLE<sup>7</sup>.

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<sup>7</sup> OLE national and regional Summary Settlement Schedules include new penalties for observer-related violations: interfere with observer ability to perform duties (\$1,000); fail to demonstrate proof of passing USCG safety examination (\$500); fail to maintain safe conditions for protection of observers (\$1,000); fail to provide adequate accommodations (\$1,000).

However, the issue of whether a vessel can fish with or without an observer due to accommodations becomes more confusing when we consider safety. For example, the MSA (16 USC 1853 §303(b)(8)) states: “Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery; *except that such a vessel shall not be required to carry an observer on board if the facilities of the vessel for the quartering of an 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*” (italics added). The MMPA contains similar language in Category I and II fisheries. Under 50 CFR §229.7 (a)(3) the document states “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*” (italics added). The ESA contains nearly identical language. Under 50 CFR §222.404(b) “Consistent with 16 U.S.C. 1881(b), *vessels where the facilities for accommodating an observer or carrying out observer functions are so inadequate or unsafe (due to size or quality of equipment, for example) that the health or safety of the observer or the safe operation of the vessel would be jeopardized, would not be required to take observers under this rule*” (italics added).

The MSA, MMPA, and ESA all provide similar language pertaining to safety of the observer and crew, yet name different authorized agencies to make the determination (NMFS in the MSA, and NMFS or the provider services contractor in the MMPA) and do not define what the “health or safety of the observer or the safe operation of the vessel” actually means.

Therefore, the decision as to whether there is adequate space onboard for observers to perform their duties is largely up to the observers themselves, in an assessment made prior to embarking on a fishing trip. Because they are standing on the vessel, they can assess the situation first-hand.<sup>8</sup> Under the observer programs reviewed, observers are given the option to decline a trip aboard a vessel due to lack of adequate accommodations or unsafe conditions. Unfortunately, carrying an observer is an unpopular part of business for many vessel operators, and vessels have manipulated their space onboard or carried extra crew members in an attempt to avoid observer coverage through observer refusal.

The Administrative Inquiry that prompted this report specified that the NOP needs to review potential solutions and alternatives (e.g. technology) to collect data on vessels considered too small, inadequate, or unsafe. There is authority for the establishment of completely alternative observer programs to the ones currently in use. For example, under 50 CFR §229.7 (e) the MMPA states: “The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore.”

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<sup>8</sup> However, the Secretary does have the authority to promulgate regulations for determining when facilities are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized and actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe (16 USC 1881b §403(b)(8)).



A suite of NMFS efforts to address the potential application of technologies for the purposes of supplementing observers; these efforts are numerous and beyond the scope of this document<sup>9</sup>. The NOP is actively engaged in supporting the development of technologies to collect fishery-dependent information through a call for research proposals.

In summary, two items in particular remain to be addressed. First, the apparent inconsistency between the observer requirements in the MSA (16 USC 1853 §303(b)(8)) and the MSA observer regulations (50 CFR §600.746(i)) needs to be resolved. Second, consistent language across the various regulations (i.e., MSA, MMPA, and ESA) needs to be established.

As indicated by the questions posed under each of the areas of concern, a range of potential solutions could begin to address some of these concerns. The proposed solutions could include standard procedures for issuing waivers to vessels having inadequate accommodations, new operating and/or training procedures, regulatory changes, and/or electronic monitoring alternatives.

### *Recommendation*

*The NOP/NOPAT will identify gaps in the existing regulations, policies, and procedures and recommend actionable alternatives which could be implemented to close these gaps. The effort should be designed to a) improve safety, b) provide objective guidance to managers who must make decisions to place observers on vessels, c) provide objective guidance to vessels owners as to what actions are required of them to make their vessels adequate for coverage, and d) identify responsible agency(ies) to determine vessel safety and remediation decisions.*

## **6. Develop policies, procedures, and timelines for advance notice given to observers in the event they are offered a deployment.**

One of the complaints raised by APO/PEER was that the Southeast Pelagic Longline Observer Program (POP) ignored the 72-hour notice required by vessels prior to departure, and that observers were expected to be available to deploy in less than 72 hours. The OIG Administrative Inquiry found that the POP does not have a 72-hour regulatory notification requirement for vessels selected for observer coverage. The POP selection letter requests that vessels provide 5-day advance notice of any planned trips. If a vessel contacts the observer program within 5 days of departure and an observer is available, the POP makes an attempt to deploy the observer. Observers have the option of declining a trip, and no negative repercussions are associated with such a refusal.

The OIG Administrative Inquiry found that the Southeast Observer Programs did not have policies, procedures, or timelines regarding advance notice given to observers in the event they are selected for deployment. Currently, observer programs have different advance notification periods for vessels (and hence observers) selected for observer coverage. Some observer programs—most notably those in the Northeast and Northwest regions—have electronic systems that alert both vessel owners and observer providers that a vessel has been selected for observer coverage. Although the incorporation of such

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<sup>9</sup> Various documents are available online at [http://www.nmfs.noaa.gov/op/outreach/18\\_em\\_er\\_discussion\\_draft.html](http://www.nmfs.noaa.gov/op/outreach/18_em_er_discussion_draft.html)

systems may be cost-prohibitive to implement across all observer programs and for every type of vessel, observer programs should have policies and procedures describing the timeline for advance notice given to observers in the event they are selected for deployment. Notification timelines need be tailored to accommodate the type of fishery, applicable regulations, and logistical aspects of observer deployment. However, such measures will only benefit those observers who have direct contact with NMFS or a NMFS notification system. Since observers are contract employees hired by observer provider companies, in many cases the provider companies, and not NMFS, are responsible for notifying observers when they have been selected for coverage. In situations where NMFS does not control the selection of observers, the requirement for advance notice (including timelines) may need to be included in the terms and conditions of the contract between NMFS and the observer provider to ensure that observers under NMFS contract are notified in advance of their deployment according to NMFS policies.

### *Recommendation*

- 1) *Observer programs will, when practicable, develop policies, procedures, and timelines regarding advance notice given to observers in the event they are selected for deployment, when practicable. If observer provider companies are responsible for notifying observers, then NMFS should include a requirement to provide timelines for advance notice in the contracts with observer providers.*

## **7. Develop a transparent system of tracking observers and their relative placement in line (or the rotation) for fishing vessel trips.**

Many observers in the Southeast feel pressure to deploy on assigned trips and believe there is a penalty for refusal, in the form of a future assignment to less desirable vessels or longer wait periods for their next assignment. Although the OIG Administrative Inquiry found no evidence that observers who refused trips were punished in this manner, the fact that half of the respondents believed this to be true warrants further investigation. It is clear that a transparent process for how observers are assigned to trips by their provider companies and/or NMFS is needed, particularly in cases where the observer had refused a prior trip for any reason.

### *Recommendation*

*Observer programs will, provide a transparent<sup>10</sup> observer tracking system with a clear and unbiased process for bringing observers who refuse a trip back into the rotation process. If observer provider companies are responsible for selecting observers, then NMFS will include a requirement to provide a transparent observer tracking system in the contract with the observer provider.*

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<sup>10</sup> Transparent means that the process for selecting an observer for deployment is clearly described and understood by the agency, observer providers, and observers. This does not mean that the vessel selection process, including observer names, should be made public.



**8. Develop a formal communication process for observers to provide any concerns they have about the program.**

Fisheries observers are contractors hired by observer service providers, and those providers have the responsibility to provide an opportunity for employees to express their concerns regarding their employment status. In contrast, NMFS observer programs are responsible for providing a routine, transparent, and consistent process for feedback to the observer service provider on the observer's performance. The OIG Administrative Inquiry found that the POP did not provide a routine, transparent, and consistent process for feedback to the observer provider company, IAP Services, Inc., on the observer's performance, and the other Southeast Observer Programs lacked a formal mechanism for providing this information to the observer service provider at the time the complaint was filed.

To ensure that observer issues are promptly and appropriately addressed, there is a need to better define the responsibilities of contract firms managing observers and the role of observer program coordinators, especially given the level of coordination and interaction between contractor staff and observer program coordinators.

*Recommendation*

- 1) Observer programs will develop a formal communication process for observers to provide any concerns they have about the program. This could be done during the debriefing process or some other prescribed time during the observer's employment.*

**9. Develop a contractual list of responsibilities for SEFSC Observer Program staff, and duties for managers of contract observers.**

As described throughout this document, fisheries observers are contract employees who work for observer service provider companies. Because some roles and responsibilities are shared by observer service providers and NMFS observer programs, they may not be clearly articulated or understood by NMFS observer program staff or observer service providers.

*Recommendation*

- 1) Observer programs in conjunction with NOAA Acquisition personnel will develop a list of clear responsibilities for observer program staff, and a list of duties for managers of contract observers.*

## Appendix 1. Full Text of Action Items from OIG Report.

**Action #1:** The POP, in conjunction with NOAA OLE, shall develop a uniform, transparent, and consistent procedure for collecting and reporting all potential marine resource violations to NOAA OLE. The NMFS Southeast Observer Programs shall also develop a uniform, transparent, and consistent procedure for collecting and reporting all potential MARPOL violations to appropriate enforcement agencies. Furthermore, Southeast Observer Programs shall coordinate with NOAA OLE to provide training to all current and future fisheries observers on the process for reporting potential marine resource and MARPOL violations. Due date: September 30, 2013 to the Deputy Assistant Administrator for Operations, NMFS.

**Action #2:** The NMFS Southeast Observer Programs shall review all safety procedures and ensure that no observers are deployed on vessels that fail to pass the vessel safety checklist. Observers shall be instructed to complete the vessel safety checklist in full prior to reporting back to supervisors. The NMFS Southeast Observer Program shall not allow observers to deploy on vessels that have unmarked or expired hydrostatic release dates. The valise liferaft should only be used if the vessel's hydrostatic release equipped liferaft (vessel's liferaft) does not have sufficient capacity for the observer. The valise liferaft shall not be used in lieu of an expired hydrostatic release. In the example cited by Mr. Combs, the valise liferaft did not have sufficient capacity for both Mr. Combs and the crew; furthermore, the valise liferaft is not an approved substitute for a vessel's liferaft. Observer training shall specifically emphasize that POP-provided valise liferafts are in addition to vessel liferafts if the vessel's liferaft capacity is exceeded (for the purpose of meeting exceeded capacity over the vessel liferaft). Valise liferafts shall be stowed in an unobstructed manner and be readily accessible for launching in an emergency (Appendix 7, Attachment #4). Due Date: April 30, 2013.

**Action #3:** The NMFS Southeast Observer Programs, specifically the POP, shall ensure that all observers attend a marine safety training course at a minimum once every three years, and observers shall not be allowed to deploy until they have completed the refresher training. POP shall provide oversight and tracking procedures. Due date: March 29, 2013.

**Action #4:** The NMFS Southeast Observer Program in conjunction with NMFS OLE shall develop policies and procedures to standardize the legal collection of data on drug and alcohol use during observer deployments, and shall forward such information to appropriate law enforcement agencies. To be effective, such procedures must be covered by the Statement of Work for Observer Contractors. Due date: September 30, 2013 to the Deputy Assistant Administrator for Operations, NMFS.

**Action #5:** The NMFS National Observer Program in conjunction with the Southeast Observer Programs and other NMFS observer programs shall review the current policy and regulations regarding equal accommodations (accommodations equivalent to the crew) for observers with particular focus on small vessels that have space limitations. The NOP will review potential solutions and alternatives (e.g., technology) to collect data on vessels that are considered too small, inadequate or unsafe and report back to Director of the Office of Science and Technology. Due date: October 30, 2013.

**Action #6:** The Southeast Observer Programs shall develop policies, procedures, and timelines regarding advance notice given to observers in the event that they are offered a deployment. Due date: June 30, 2013.

**Action #7:** The POP shall set up a transparent system of tracking observers and their relative placement in line (or in the rotation) for fishing vessel trips. POP policy shall note criteria for substituting observers (when not used 'next-in-line') due to government costs saving efforts; e.g., relative to port location/logistics when applicable. Due date: June 30, 2013.

**Action #8:** The POP shall develop a formal communication process for observers to provide any concerns they have about the program. This could be done during the debriefing process or some other prescribed time during the observer's employment. Due date: September 30, 2013.

**Action #9:** SEFSC Observer Program in conjunction with NOAA Acquisition personnel shall develop a list of clear responsibilities for SEFSC Observer Program staff, and a list of duties for managers of contract observers (e.g. IAP Services, Inc.). Due date: September 30, 2013.

## **Appendix 2. Responses from each of the observer programs on Action Items 1-9 from the OIG Report.**

### **Alaska – North Pacific Groundfish Observer Program**

#### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

Many of the issues are covered in our training manual available at:

[http://www.afsc.noaa.gov/FMA/Manual\\_pages/MANUAL\\_pdfs/manual2013.pdf](http://www.afsc.noaa.gov/FMA/Manual_pages/MANUAL_pdfs/manual2013.pdf)

Our fundamental standards of behavior address this issue up front. We state:

“You must accurately record your sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.”

Manual, page 2-2 outlines principle duties including:

“Monitor for and document compliance infractions and suspected violations in your logbook and complete written statements.”

Page 2-11:

“Daily Notes Section

Use the Daily Notes section to document on problems that occurred while you were aboard the vessel, any illnesses or injuries you suffered, your methods for catch estimates, the reasons you chose all sampling methods, and any circumstances that affected your sampling duties or caused you to change your sampling design. The complete details of your sampling methods should also be recorded in the “Sample Design Detail” section of your logbook. Record the circumstances surrounding any violation you witness, including harassment, mishandling of prohibited species, interference with your duties, harassing or harming marine mammals, and MARPOL (marine pollution) violations.”

Page 2-12:

“Your logbook is archived and used as a reference to provide more information about your data. It may also be used as evidence if regulatory infractions occurred. Therefore, your calculations may be recorded in pencil, but all other entries must be in ink. If you need to make a correction, draw a single line through the incorrect word(s) and continue with the correct wording. Do not completely cross-out anything, use correction fluid, or tear out pages or parts of pages! If you obscure any part of an original entry, you leave the reader wondering what was originally there. This may affect the validity of your logbook and data.”

Chapter 20 provides an entire chapter on Regulations and Compliance including clearly defining the observers’ role in regulatory compliance, and follow up debriefing procedures. Please see this manual chapter for further detail.

Staff from the Office of Law enforcement also presents material on the observers' role to the three week initial class, and subsequent 4 day annual briefings. That presentation can be provided if needed.

**2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

Manual page 2

Safety is always your first responsibility! You must receive a safety orientation and you must complete your Vessel Safety Checklist before the vessel leaves the dock. For instructions on recording safety drills in your logbook see "Emergency Drills and Date(s) Conducted" on page 19-6.

Manual page 2-3:

**SAFETY ORIENTATION**

The very first thing you will need to do upon boarding a new vessel is to ensure the U.S. Coast Guard Commercial Fishing Vessel Safety Examination Decal (see page 19-2) is valid based on the information noted on the face of the decal. You may not board a vessel that does not have a current decal. If the vessel does not have a current decal, inform the captain that you are not able to board the vessel without one and immediately inform your employer. Document the decal information in your logbook.

(Please note that the mothership Ocean Phoenix is not required to have this safety decal.) Before boarding your vessel ensure the embarkation point is safe and free of obstacles, and that someone is around to watch you. Always wear a PFD when embarking and disembarking a vessel. Upon boarding the vessel, introducing yourself to the captain should be a priority. Present to the captain the "Letter of Introduction" and use it as a tool to answer any questions the vessel may have. It's important at this meeting to set the tone for a friendly but business-like working relationship. If the captain is receptive, take this opportunity to mention the following points:

- Tell the captain that it is important for you to routinely see the ship's fishing logs.
- Ask to be informed, in advance, of changes in the fishing schedule so that you may adjust your schedule accordingly.
- Ask to be notified if any marine mammals or short-tailed albatross are found in the catches, regardless of time of day. Request that these animals be held for your examination. Ask to be notified, if possible, of marine mammal and short-tailed albatross sightings.
- Ask how you will be notified of haul backs. Devise a plan with the captain and/or mate.
- Before leaving the dock you must be given a safety orientation and you must complete the Vessel Safety Checklist in your logbook. After this, if you have any questions or concerns that have not been addressed, ask the captain. Notify your employer and report in your log any unresolved safety problems."

Chapter 19 provides an entire chapter dedicated to Health and Safety information. Please see our manual for that entire chapter.

**3) Procedures for executing minimum marine safety training and refresher training for observers.**

Chapter 19 provides health and safety information. Our initial three week training includes 18 hours of safety training including:

Cold water survival and Emergency response, Cold water survival: water activity and in class drills, back care and lifting, embarking and disembarking, vessel decals and safety equipment, the safety checklist, , sea sickness, and the seven steps of survival.

A four day refresher training is required of all observers each year, and every other year we repeat the cold water survival: water activity during this refresher.

The water activity includes donning a survival suit, jumping into the water (Lake Washington), and entering a life raft from the water.

**4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

Observers are required to follow the drug and alcohol use policies of their employer. Our manual states:

“For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer’s deployment that contains the following provisions:

- Drug and alcohol policies”

Example policies can be provided if needed. It is the observers’ use of alcohol and drugs where we have had the most experience, and one fatality. Observer providers are required by regulation to report violations of their drug and alcohol policies to NMFS.

We also screen for drug and alcohol issues on vessels by systematically asking questions in an electronic survey. Every observer completes this survey for every vessel they are on board during their post cruise debriefing with NMFS. Every observer is asked the question “*Were alcohol and/or drugs used by vessel personnel to a degree that you felt your safety was compromised?*” An affirmative response to the drug and alcohol question would trigger the completion of a statement for forwarding to Office of Law Enforcement and/or USCG. Instances of alcohol or drug use by vessel personnel would be reported to NMFS enforcement and or the USCG.

**5) Review current policy and regulations for equal accommodations of observers;**

We have a regulated standard in Alaska applicable to all observers, but we are happy to review that language if needed. We enforce that standard. It is consistent with the National 600 regulations.

**6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment.**

We defer to the contractors in this regard. In most Alaskan cases, the observers are on travel to remote ports and are in stand by status for deployment. We do require deployment information during training noting that is flexible.

**7) Develop transparent observer tracking system;**

We have a well-developed tracking system that is transparent to Observer Program staff, OLE, USCG, but not the general public. We provide deployment histories to contractors upon request (for their employees only). We may need to clarify who the system should be transparent to. There are important confidentiality issues to consider.

**8) Develop formal communication process for observers' concerns;**

For legal infractions, we have a clearly defined process of statements to OLE and support in the event the observer is subject to a victim crime. We also provide multiple contacts for cases of sexual assault, and OLE has recently trained our staff in this regard (something we recommend). For issues with permitted observer providers, we have a staff point of contact who will listen to and follow up on complaints and issues that are within our scope of control, and we refer observers to their employer or respective union contact when the issue is between employer and employee (contractual disputes most common).

**9) Develop contractual list of responsibilities for staff and duties for managers of contract observers.**

A portion of our observer program utilizes non-personal service contracts with observer providers and does not permit Federal employees to manage contract observers.

**Overall**

During deployment, we monitor in-season reports of major safety, marine casualty, and compliance issues that require immediate action. The immediate action issues include any victim crimes involving the observer as well as wheel watch and any drug or alcohol issues (unsafe conditions, or subsequent behavior) that impact the observers' safety. Issues that come up which require immediate action are forwarded to OLE directly upon receipt.

Weekly reports of issues are summarized in an Excel spreadsheet which is circulated to the USCG, NMFS managers, and OLE. After deployment, we maintain an extensive process of documenting potential violations in written statements which are stored in our database, and forwarded as a signed hardcopy to OLE, or the USCG, depending on the respective issue. Processes are documented on a debriefing continuity file which outlines procedures and practices for staff to follow. An excerpt of that document relative to the completion of statements documenting potential violations is attached.

Enforcement staff is co-located with our offices in Anchorage and Seattle, and that close proximity allows for direct referral of potential violations to OLE with follow up in-person interviews if needed. OLE staff is available to provide training to staff and observers on compliance issues. For example, Office of law enforcement staff have 4 hours of class time dedicated to the compliance role in our initial 3 week observer training class. The USCG has an additional 2.5 hours of class time.

## Alaska Marine Mammal Observer Program

### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

The Alaska Marine Mammal Observer Program (AMMOP) collects marine mammal interaction data in state-managed fisheries only, so we do not monitor fishing regulations. OLE provides harassment training to all AMMOP observers in the pre-season training, and guidance on how to write up an affidavit is provided at that time. The AMMOP manager has a weekly conference call with the observer provider during the fishing season. During that call, the observer provider informs NMFS if there are any situations that might constitute a violation of observer regulations. The AMMOP manager also has a pre-season check in with OLE and sends weekly updates throughout the season to inform OLE if there are any situations that require their interaction with permit holders. The weekly email includes a negative report if there are no circumstances in which OLE support is needed.

### **2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

AMMOP observers do not deploy aboard commercial fishing vessels for any reason. Data is collected from independent vessels which are operated by contracted, licensed operators. These vessels are owned or leased by the contracted observer provider to this program. The contract requires each vessel pass a USCG safety inspection and must meet additional safety standards prescribed in the contract. Further, prior to deployment on each trip aboard one of these vessels, the observer and contracted boat operator together must develop, document, and submit a float plan on an official AMMOP float plan form. This form includes details of the intended trip, communications schedule with the program field lead, and a safety equipment check list. Each item on the safety checklist must be identified on the boat and individually checked off on the form for each trip. The float plans must be signed by the AMMOP float plan custodian and boat operator prior to the observer leaving on the vessel.

### **3) Procedures for executing minimum marine safety training and refresher training for observers.**

Prior to each fishing season (June - October) contracted AMMOP observers and boat operators are required by contract to complete safety training that meets or exceeds the national observer safety standards. The content of the training curriculum is overseen by the AMMOP manager to ensure that all topics are sufficiently covered. The safety training is contracted through the Alaska Marine Safety Education Association (AMSEA) and is conducted by instructors certified by AMSEA. Additionally, the boat operator safety training meets the requirements of the NOAA Small Boat Program.

### **4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

The observer provider contract includes an observer standard of conduct requirement that, among other things, prohibits the possession, use, or distribution of all illegal drugs and prohibits excessive drinking of alcoholic beverages. Breaking of these requirements is grounds for termination. The contract requires the contractor to develop a similar code of conduct for boat operators and the contractor has submitted it to the AMMOP. AMMOP has no specific procedures for collecting data on drug or alcohol use either by observers, boat operators, or permit holders. However, the observer provider contracts with observers and



boat operators specify that observers and boat operators are subject to random drug testing or to drug testing if use is suspected.

#### **5) Review current policy and regulations for equal accommodations of observers.**

The AMMOP observers conduct work from support vessels, they are not onboard the commercial fishing vessels they are observing. Thus, neither are they housed onboard commercial fishing vessels. They typically are housed on land in accommodations located by the observer provider. The observer provider contract includes specifications regarding housing and accommodations for observers. The specifications include descriptions for remote housing, the expectation for reasonable privacy for both female and male observers and also the use of accommodations that are not on the vessel being observed. The contract also specifies that any subcontract agreements for any housing for observers under this contract must be approved and that the government reserves the right to cancel the use of such facilities if warranted. The contract further specifies that the observers are to be ensured a supply of sufficient food and water when deployed on support vessels or in remote camps. However, if observers are provided meals by fishermen at any time, fishermen must be given the option of completing a claim form for reimbursement of \$25 per day per observer.

#### **6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment.**

The observer provider contract requires that the contractors shall provide logistical support for observers during each phase of their employment period including: training; travel; field posts, including land-based duties and at-sea data collection deployment; and primary and final debriefing. The Contractor shall provide all necessary logistical and administrative support to deploy observers to and from ports from which vessels depart and return as well as on the fishing grounds. In the event of the vacancy of an observer, either foreseeable or unforeseeable, (due to illness, employee termination, etc.), the Contractor shall provide a trained replacement observer to be in place and ready to work by the next fishery opener to ensure that prescribed coverage levels are met. The Contractor must notify the COTR of any observer vacancy and substitution within 24 hours of the event.

The Contractor shall develop and maintain a communications plan that includes the following elements:

- 1.) The Contractor shall provide a toll free telephone number or some other communication alternative, monitored 24 hours a day, which fishermen and Observers can use to call in vessel departure and arrival information; handle Observer emergencies and/or problems related to Observer logistics when they are at sea, in transit, or in port awaiting vessel reassignment.
- 2.) Means by which permit holders are informed that they have been selected for observation during any particular opener.
- 3.) Means by which all permit holders actively fishing in the areas to be observed during any fishing season are made aware of these communications methods.
- 4.) All field offices, including any permanent remote sites set up as field offices, shall be capable of reliable internet data and email transmission.
- 5.) The Contractor shall maintain a communications log for each contact with a fishing vessel representative whether made at the docks, in person, by telephone, fax, or by E-mail. The communication log information will be used by NMFS to determine whether vessels provide adequate notice prior to departing from port.

A weekly conference call will be scheduled to discuss ongoing operations, including, but not limited to, details of coverage achieved and fishing effort during the most recent fishery opener and anticipated coverage needs and fishing effort for the next opener.

**7) Develop transparent observer tracking system.**

The observer provider contract requires that the Contractor shall follow equal opportunity employer guidelines. In the performance of this contract, the Contractor shall not discriminate in recruiting, hiring, deploying, promoting, demoting, or terminating practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, sexual preference, or physical handicap and shall comply with the provisions of the Federal Civil Rights Act of 1964, as amended. Observers must either be a U.S. citizen, or a non-citizen who has legal visa status with the Immigration and Naturalization Service (INS).

The Contractor shall assign Observers to vessels without regard to preference expressed by vessel owners or operators with respect to Observer race, gender, age, religion, or sexual orientation nor shall the Contractor consider Observer's expressed preference.

**8) Develop formal communication process for observers' concerns.**

The observer provider contract includes a requirement that they ensure that all observers have daily access to an internet-based communications site maintained by NMFS that serves as a primary source of direct communications between NMFS and observers in the field. An exception exists in cases of temporary deployment to remote sites. The contract also requires that the observer provider has developed an approved Emergency Action Plan that details contractor response to emergencies involving observers or vessel personnel. The EAP shall include communications protocol and appropriate contact information in an emergency.

**9) Develop contractual list of responsibilities for staff and duties for managers of contract observers.**

The observer provider contract for AMMOP does include very detailed and specific list of duties for the observer provider (that is responsible for directly managing the contract observers) and for the observers.

## Northwest Fisheries Observer Program

### Links to online manuals:

[http://www.nwfsc.noaa.gov/research/divisions/fram/observation/data\\_collection/training.cfm](http://www.nwfsc.noaa.gov/research/divisions/fram/observation/data_collection/training.cfm)

[http://www.nwfsc.noaa.gov/research/divisions/fram/observation/data\\_collection/manuals/a\\_shop\\_manual\\_1152013.pdf](http://www.nwfsc.noaa.gov/research/divisions/fram/observation/data_collection/manuals/a_shop_manual_1152013.pdf)

**Reports are designated West Coast Groundfish Observer Program (WCGOP) or At-Sea Hake Observer Program (A-SHOP) if procedures differ.**

### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

#### WCGOP:

Marine resource violations are documented by observers in their logbook and discussed during observer debriefings. Logbook entries are reviewed by debriefers monthly or at the end of their cruise. If needed, a statement for the Office of Law Enforcement (OLE) is generated which outlines what the observer saw including; who, what, where, when and how. Relevant logbook pages are copied and are included with the observer's statement. Signed statements and logbook pages are delivered to OLE as they are brought to the attention of the program.

Observers are trained and referenced to:

WCGOP Training Manual p. 2-5 Standards of Conduct: Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violation of regulations relevant to the conservation of marine resources or their environment in a timely fashion.

WCGOP Training Manual p. 9-34: Requires observers to note (in their logbook) whether problems or accidents occurred during the deployment and check that one of several listed concerns did or did not took place. In particular, MARPOL violations are one issue for which further detail is required.

WCGOP Training Manual p 12-3: Observers should monitor for and document compliance infractions and suspected violations in their logbook and complete a written statement during debriefing. Any compliance issues that are witnessed should be documented thoroughly in the logbook and the observer program staff, lead observer, or debriefer should be notified.

WCGOP Training Manual p. 12-20 and 12-21 provides more detailed information about MARPOL regulations, including Observer Responsibilities: Observers are responsible for the documentation of what was discharged into the ocean (refer to categories above), how it occurred (accident, purposeful, mishap, etc.), quantity discharged, where it occurred (distance offshore or geographical position, as best as can be determined), who discarded it, and when (date and time). If they are aware of why it was discarded, that can be included. If they know they are within, or passing through a special area, such as a marine sanctuary, they should also include that information.

#### A-SHOP:

During Training and Briefing observers are given a brief summary of MARPOL regulations found at 33 CFR parts 151 and Appendix A, including the area (distance from shore), waste category, and requirement/prohibition. Staff from the NOAA Office of Law Enforcement also presents material on the observers' role in compliance during the three week training class, and subsequent 4 day annual briefings. Reference in NPGOP manual on page 42.

**2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

WCGOP:

WCGOP requires that all observers complete a safety checklist before the first trip, each month, on a vessel. This logbook is submitted monthly to the observer program for review. A current USCG sticker is a required element of the checklist and if it is not available an observer is trained to refuse the trip. Further copies or photos of the safety checklist are submitted to the observer program prior to departure.

WCGOP Training Manual reference:

WCGOP Training Manual p. 9-27: The Vessel Safety Orientation Checklist is designed to facilitate the initial safety check. Always verify all the items on the checklist before embarking on a vessel for the first time. Write thorough comments on any items that are unavailable, unsafe or look inadequate. Always advise your provider and a coordinator immediately of any unsafe situation and NEVER leave on a vessel that you do not feel is safe.

A-SHOP:

Manual page 4: Safety must be every observer's top priority. When you board your vessel, both observers need to physically locate each piece of equipment on the vessel safety checklist, fill out the checklist and sign the form. This is mandatory. Observers who fail to complete the vessel safety checklist will receive automatic zeroes as evaluation scores, because they have failed to recognize safety as their number one priority. As an observer, you must take responsibility for your own safety and do everything in your power to be aware of and avoid known dangerous situations.

This manual is a supplement to the North Pacific Groundfish Observer Manual, which is more detailed, particularly about safety. Please review Chapter 19 in the Alaska manual for an in-depth safety review.

See the NPGOP response, as the A-SHOP mirrors the procedures and trainings.

Relevant regulations:

50 CFR 660, Subpart D

**§660.140(h)(2)(ii) Safe conditions.**

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S.

Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse boarding or re-boarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

**§660.140(h)(5)(ix) Verify vessel's safety decal.** An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (h)(2)(ii)(B) of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(A) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

***Updates to regulations currently under review:***

(ix) Verify vessel's Commercial Fishing Vessel Safety Decal. An observer provider must ensure that the observer completes a current observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program. One of the following acceptable means of verification must be used to verify the decal validity:

**§660.140(h)(5)(xi)(I) Other reports.** Reports of the following must be submitted in writing to the West Coast Groundfish Observer Program Office by the observer provider via fax or e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05– 1(a)(1) through (7); (xvi)

**§660.140(h)(6)(xvi) Refusal to deploy an observer.** Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those described at § 600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

**3) Procedures for executing minimum marine safety training and refresher training for observers.**

WCGOP and ASHOP observer programs require that observers participate in an intense safety briefing each year, usually lasting 1-3 days. Observers are not able to be deployed without this briefing in any fishery covered by the observer programs. Status and dates of trainings and briefings are maintained by

staff and are now being tracked in an online database (ObsLog).

A-SHOP observers' initial safety training is part of the certification process and an annual refresher training is required. A-SHOP observers complete a refresher training both as part of the required NPGOP annual briefing, as well as during the required annual 3-day hake briefing. An observer's deployment endorsement is contingent on successfully completing the safety refresher drills and the observers actively participate in water drills yearly.

WCGOP Training Manual p. 2-7 Training: Trainees must pass a safety test and effectively participate in on-land, in-water, and on-board safety drills. Trainees must also demonstrate the use of vessel safety equipment. Additionally, trainees must be able to demonstrate that they have the attitude and ability required to perform a difficult job, independently and to act professionally in stressful situations.

WCGOP Training Manual p. 10-20 Maintaining WCGOP Observer Status:

Observers continuing with the program must:

1. Adhere to WCGOP Standards of Conduct, Data Confidentiality, and Conflict of Interest requirements. (See Chapter 2, West Coast Groundfish Observer Program).
2. Demonstrate proficiency during each trip.
3. Receive satisfactory performance evaluations.
4. Maintain current First Aid and CPR certifications.
5. Pass a yearly fish test.
6. Complete a yearly WCGOP approved safety training course.
7. Complete an annual briefing or training and attend any other briefings or trainings as instructed by the Observer program to maintain their training, annual and deployment endorsements.

#### **4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

WCGOP and A-SHOP observers are required to document drug and alcohol use by crew members in their logbook. They are told to report the use to the captain, if appropriate, and contact their provider or observer staff if they feel they are in danger. Incidents involving drug or alcohol use are immediately reported to OLE.

The safety survey of the WCGOP observer logbook, described in the WCGOP manual p. 9-34, lists a specific question: Were alcohol and/or drugs used by vessel personnel to a degree that you felt your safety was compromised? Answer yes or no and please include observations including trip date(s) and incident date(s).

Additionally, this issue is addressed in a follow up question via the exit survey at the end of each observer's contract.

A-SHOP also screens for drug and alcohol issues on vessels by systematically asking questions in an

electronic survey. Every observer completes this survey for every vessel they are on board during their post cruise debriefing with NMFS. Every observer is asked the question “*Were alcohol and/or drugs used by vessel personnel to a degree that you felt your safety was compromised?*” An affirmative response to the drug and alcohol question would trigger the completion of a statement for forwarding to Office of Law Enforcement and/or USCG. Instances of alcohol or drug use by vessel personnel would be reported to NMFS enforcement and or the USCG.

## **5) Review current policy and regulations for equal accommodations of observers**

Relevant regulations:

A-SHOP:

### **§ 660.150, 50 CFR 660, Subpart D**

(2) Vessel responsibilities. An operator and/or crew of a vessel required to carry an observer must provide:

(i) Accommodations and food

(A) Motherships. Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(B) Catcher vessels

(1) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(2) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

WCGOP:

**§660.140(h)(2)** Vessel responsibilities. An operator and/or crew of a vessel required to carry an observer must provide:

(i) Accommodations and food.

(A) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(B) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or their designee.

**§660.216 & §660.316(e)(1)** Accommodations and food. An operator of a vessel required to carry one or



more observer(s) must provide accommodations and food that are Equivalent to those provided to the crew.

## **6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment**

### **WCGOP:**

In the non-catch share fisheries coordination is handled by the WCGOP. WCGOP requires that vessels must give the observer program 24hr notice prior to entering the fishery. After initial notification the vessel may place observers on 4hr notice for weather delays. Observers are notified as soon as possible after the initial notification. Vessels often contact the observers in their port directly to provide the most advanced notice as possible. Observers are stationed across the west coast and typically only deal with those vessels in their port area. If an observer is needed to travel to another port, they are given as much notice as possible.

In the catch share fishery observer deployment procedures are handled between the observer and the observer provider.

If issues arose with advanced notice, observers can document these concerns in their logbook or in their exit survey or discuss with their provider.

### **A-SHOP:**

Observer deployment procedures are handled between the observer and the observer provider. The Program does request deployment information from the providers, both during training and with 48-hour advance notice mid-season, so the program can deploy gear sets, etc. The document “A-SHOP Observer Provider Expectations & Guidelines” outlines this and is given to the observer providers each season.

Relevant regulations:

50 CFR 660, Subpart E

**§660.216 & §660.316(b) Notice of departure basic rule.** At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) **Optional notice—weather delays.** A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(2) **Optional notice—back-to-back fishing trips.** A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.



**7) Develop transparent observer tracking system**

WCGOP:

The recently developed Observer Logistics Database (ObsLog) is used to track observer activity, contacts, certifications and endorsements, as well as trainings, briefings, and debriefings. Vessel safety checklists and incidents (injuries, refusals, safety issues, etc.) can also be entered into ObsLog. Currently, safety checklists and incidents are handled by WCGOP coordinators. This process will move entirely to ObsLog when current regulations are approved, hopefully in May 2014 (see text in response to #2 above). These new regulations provide language requiring providers to submit vessel safety checklists to the program. Providers will enter the majority of this information, including deployments on vessels. Early in 2014 Office of Law Enforcement (OLE) and United States Coast Guard (USCG) personnel working with the observer program will have access to ObsLog in order to facilitate transparency and increase efficiency in information transfers. OLE and USCG staff with access will be able to log in to the database to view safety checklists and incidents stored there. They will also be able to access observer statements of fact that are completed for more serious incidents or requested by OLE. OLE staff were consulted during the development of ObsLog to ensure that they would have access to the information they need.

A-SHOP:

Observer logistics are stored and tracked in an existing logistics database. See the NPGOP response as A-SHOP observers are certified NPGOP observers and utilize NPGOP databases and procedures.

**8) Develop formal communications process for observers' concerns**

Observers in both programs have multiple options for communicating their concerns regarding the observer program, providers, safety or anything else. Observers are encouraged to bring concerns to any staff member at any time, or to their provider. Observers are also able to contact OLE directly. Concerns would then be dealt with within the Program or at a higher level, if necessary. Observers can also document concerns in their logbook or by completing an exit survey at the end of a contract. Observers are encouraged to bring up concerns during their debriefing interview where they are face to face with program debriefers.

**9) Develop contractual list of responsibilities for staff and duties for managers of contract observers.**

N/A

## Southwest Region Observer Program

### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

Observers are trained to recognize potential marine resource violations using a training module jointly developed by Southwest Region (SWR) observer program and OLE staff. Training topics include observer harassment and interference, MMPA, ESA, shark finning and MARPOL. Observers document potential marine resource violations in their Greenbook and Post-Cruise Questionnaire. These documents are examined by contractor and observer program staff at the conclusion of observed trips. If an observer documents a potential violation, it is referred to OLE or U.S. Coast Guard.

### **2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

During observer training, observers are trained how to complete a pre-trip safety checklist. They are instructed to complete the checklist prior to every vessel deployment. They are told to never depart on a vessel that has not passed the pre-trip safety check. If a vessel fails the safety check, the observer contacts the observer provider, who then works with the vessel owner/operator to correct noted deficiencies prior to the observer being allowed to depart port on the vessel. The observer provider can contact SWR observer program staff if the provider needs assistance communicating safety requirements to the vessel owner/operator.

### **3) Procedures for executing minimum marine safety training and refresher training for observers.**

Observer safety training includes, at a minimum, topics and skills identified in the safety training policy. New and returning observers complete safety training every 12 months. SWR observer program staff complete marine safety instructor training every 2 years, in accordance with the safety training policy.

### **4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

Observers are trained to recognize and document all drug use and alcohol use that makes them feel unsafe aboard vessels. Observers document drug and alcohol use in their Greenbook and Post-Cruise Questionnaire. These documents are examined by contractor and observer program staff at the conclusion of observed trips. If an observer documents drug or alcohol use, it is referred to U.S. Coast Guard.

### **5) Review current policy and regulations for equal accommodations of observers;**

Observers are deployed under MSA and/or MMPA authority. Equal accommodations for observers are required at 50CFR 660.720(h) and 50CFR 229.7(c)(4)(i).

### **6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment;**

The observer contractor is responsible for deploying observers. Observers are told during training that deployment may be on short notice and of uncertain duration.

**7) Develop transparent observer tracking system;**

The observer contractor is responsible for deploying observers and keeping track of the order in which observers are scheduled to deploy. We will include the requirement for a transparent tracking system in the next observer contract solicitation.

**8) Develop formal communication process for observers' concerns;**

During training observers are instructed to bring their concerns to contractor staff, NMFS observer program staff, or NMFS OLE in this order. They are told to skip a level if they are not comfortable talking about their concern at a certain level.

**9) Develop contractual list of responsibilities for staff and duties for managers of contract observers.**

We have a non-personal service contract with our observer provider that does not permit Federal employees to manage contract observers.

## Pacific Islands Regional Observer Program

### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

During the initial Observer Training Course, observers are given instructions on collecting and reporting potential compliance issues by National Marine Fisheries Service (NMFS), Office of Law Enforcement (OLE) and the United States Coast Guard (USCG), Marine Safety Office and Investigations Division. During the debriefing process, all observers are asked a series of questions pertaining to vessel compliance. Some examples would include; gear infractions, interference/harassment, vessel operations, and protected species handling. If potential violations are discovered the observer completes an incident report which is processed by the program Enforcement Liaisons and sent to the appropriate authority which include OLE, USCG, Department of Homeland Security Customs and Border Protection (DHS/CBP) and Occupational Safety and Health Administration (OSHA). Further investigative interviews with the observer, if warranted, are coordinated with the Observer Program (Program). All incident reports are tracked by type (Enforcement, Safety, MARPOL) and reviewed with the coordinating agencies periodically for updates and case resolutions. Any issues that demand immediate attention or at-sea intervention by Federal authorities are reported real time by observers to the Program using issued satellite phones.

### **2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

Pursuant to 50 CFR §600.746(b), 46 CFR §28.270, NMFS/National Observer Program (NOP), and Program policies, all observers are required to participate in a pre-trip vessel safety orientation with a regional Placement Coordinator and the vessel operator. In the case of observers that conduct these safety orientations themselves, in California ports only, the Placement Coordinator participates via telephone. Each safety orientation is documented on a *Placement Checklist* and submitted, with the trip data for that deployment, for review by the Program. The checklist includes all the mandatory safety equipment and maintenance requirements (pursuant to 46 CFR §28.Subpart A, Subpart B), vessel accommodations (50 CFR §600.746, §665.207), and regional protected species gear and permit requirements. In addition, the observer is required to review the station bill with the vessel operator which completes the safety orientation. Any deficiency with safety equipment or vessel accommodations may be grounds for a placement coordinator to withhold an observer from being deployed on a vessel under 50 CFR §600.746(c),(f), (h) and §229.7(c)3. Observers are required to bring safety deficiencies to the attention of the placement coordinator and/or the Program for resolution. A checklist exists in the observer field manual to determine if an item precludes an observer deploying on that vessel, and what corrective actions may be required. Deficiencies and corrections are logged on the *Placement Checklist*. Due to limited search and rescue resources, combined with the length of fishing trips in American Samoa, pre-trip placements in that fishery also include vessel drills.

Due to special safety concerns identified by the USCG and DHS/CBP, Observers are not deployed on fishing vessels that are ferrying passengers from a foreign port to the Port of Honolulu. These vessels usually exceed the number of personnel aboard for undocumented fishing vessel, which would require reclassification and additional equipment requirements in order to carry an observer. The additional

reclassification creates an unacceptable risk to human safety, and observers are therefore not included on these trips.

### **3) Procedures for executing minimum marine safety training and refresher training for observers.**

Under NMFS/NOP and Program policies, all Program trainers and staff are required to be USCG approved Marine Safety Instructors, or supervised by such during safety trainings. Trainers and staff are required to maintain current CPR/First Aid certifications and update their Marine Safety Instructor training every 3 years. Marine Safety training curriculums are reviewed by the NOP Safety Advisory Committee for adherence with NMFS minimum safety training standards. Observers receive their initial safety training as part of the Programs 120 hour Observer Training Course. The safety portion of this course includes 40 hours of classroom, hands-on, shipboard, and in-water training. A national safety training organization is contracted to provide 18 hours of customized marine safety responder training which results in a wilderness (remote) First Aid Responder certification. All active observers are required to maintain current CPR and First Aid certifications. Observers that have been active for more than 3 years are required to take a 16 hour Safety Refresher that includes classroom, hands-on, shipboard, and in-water training session. Observers that have been inactive for more than one year are required to take the one day Safety Refresher as well.

### **4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

During the initial observer training course, observers are given instructions on collecting and reporting potential compliance issues by OLE and USCG Marine Safety Office and Investigations Division. During this training session, observers are informed of the USCG and NMFS Zero Tolerance policy, and that vessel are required to carry alcohol test kits and under certain situations the captain is required to administer alcohol tests. However, observers are not permitted to submit to an alcohol test conducted by any vessel unless authorized by the Program or the USCG. Observers report illicit drug or alcohol use during the debriefing process and any resulting incident is processed by the Program Enforcement Liaisons to the USCG and OLE.

### **5) Review current policy and regulations for equal accommodations (accommodations equivalent to the crew) for observers with particular focus on small vessels that have space limitations.**

PIROP current policy is that trained observers and port coordinators review observer accommodations with the vessel operator/owner and if accommodations are not found to be in compliance *50 CFR §665.808(j), §600.746(e)*

### **6) Develop policies, procedures and timelines for advanced notice given to observers in the event that they are offered a deployment.**

Per the collective bargaining agreement between the observer service provider and the observer union, observer are required to be given at least 24hrs notification prior to a vessel departure in PIROP monitored fisheries.

**7) Develop a transparent system of tracking observers and their relative placement in line (or the rotation) for fishing vessel trips.**

Per the collective bargaining agreement between the observer service provider and the observer union, a list of observers waiting for deployment, and their subsequent deployment positions, are to be posted on the contractor's website for review by observers. This list and website function are currently in development, and in the interim, observers can review their placement list position through the contracted Port coordinators.

**8) Develop a formal communication process to observers to provide any concerns they have about the program.**

Per the collective bargaining agreement between the observer service provider and the observer union, observers may address employment issues directly to their employer, or through their union representative. Observer concerns relating to the PIROP are addressed directly between observers and program staff during the debriefing process.

**9) Develop contractual list of responsibilities for staff, and duties for managers of contract observers.**

The PIROP has a list of clearly defined responsibilities between the observer service provider and the program through a contractual agreement. Office policies are developed in conjunction with the contracting officer, who is a part of the program staff. Any questions or issues that may overlap with contractual obligations (i.e.: training requirements) are reviewed by the contracting officer.

## Northeast Fisheries Observer Program

### **1) Collect and report all potential marine resource violations to NOAA OLE**

The Northeast Fisheries Observer Program (NEFOP) reports all known marine resource violations, however observers are not trained as compliance officers during their 3-week observer training. Major prohibitions under the MMPA, ESA, and MSA Observer Health and Safety regulations and the fishery being covered are reviewed in training. If an observer is aware of a potential violation, they will annotate it, and report to the program. If additional information is needed from our program that we are not currently collecting, that can be requested and we would evaluate the workload and reporting process to encompass the request. There may be resource violations occurring that we are not aware of, outside of these Acts. We always tell observers to document - if there is any doubt, document it.

### **2) Safety Procedures to ensure no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

An observer may not deploy on a vessel that fails a pre-trip safety checklist. The checklist is required to be completed by the observer prior to every deployment. Our Pre-Trip Safety Checklist is available on our website. If the vessel fails any item on the checklist, the observer hand-issues a Safety Deficiency Letter to the vessel instructing the captain that the observer cannot sail and that the vessel cannot legally fish until the safety deficiency is resolved. There is a phone number for the vessel to call once the issue has been resolved to resume the trip. These are reported directly to Office for Law Enforcement.

### **3) Procedures for executing minimum marine safety training and refresher training for observers**

The NEFOP applies stricter standards than the National Standards. Observers are required to take our 2-day Level II Safety Course every 18 months. Refresher trainings are also required (every year, for example with the At-Sea Monitoring Program), where additional Conflict Resolution Training is completed, as well as testing and re-inspecting safety equipment and protocols. Detailed safety training information is available through the National Observer Program Safety Committee webpage.

### **4) Policies and procedures for collecting drug/alcohol use data during observer deployments**

There is a policy in place to report any drug/alcohol use that was considered to impair or compromise the observer's safety, either prior to and leading up to a trip, or during a trip. This information is shared immediately with OLE and USCG.

More recently we have developed a "Drug Awareness" training, with the help of the USCG, that is currently being given to observers. This will help them recognize the signs and symptoms of possible drug use.

### **5) Review current policy and regulations for equal accommodations of observers.**

The equal accommodations language in the MSA is reviewed with observers during their initial training. It is also provided to them in writing in a memo listing all legal requirements pertaining to the support and protection of observers. Each observer is issued a "Regulatory Compliance Folder" that is a plastic

pocket folder with the memo serving as a cover sheet or review of all that is contained in the folder. It includes the Federal Register Notices and actual wording of the MSA and MMPA observer regulations.

The industry is also informed on these rules through an “Observer Duties” sheet, also contained in the folder. Observers can hand these out to vessels, and they have been sent to permit holders directly.

The observer contracts contain specific language on Equal Employment Opportunity and this is reviewed and enforced.

**6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment.**

This is not detailed in our current contracts, but we ask them to be considerate of the observer’s personal life and to provide as much notice as possible. This will be dependent on the type of fishing trip, length of trip (our trips range from less than 1 day to more than 14 days), port of departure, and observer’s living quarters. We have the contractor assign a primary port to each observer, so they have a general idea of where they would be likely to be deployed on a shorter notice. Some fishing fleets (groundfish, squid, and scallop) provide the Agency with a 48-hour notification prior to a trip departure, as required in Amendments to their Fishery Management Plans. Two providers are assigned to the trip – the first for the first 12 hours, and if they decline or don’t accept, the trip will be offered to a second provider for 12 hours. At the end of that 24-hour period, the Agency notifies the vessel if they have an observer assignment or a release. The provider coordinator/manager then assigns an individual observer, depending on their availability and relative location.

**7) Develop transparent observer tracking system.**

We have a tracking system that is transparent to observer program staff, between the Fisheries Sampling Branch and the observer program provider management staff. Observer providers in the Industry Funded Scallop program are required to report daily to the Agency on observer deployments. Tracking spreadsheets or websites are maintained by the provider and Agency staff has direct access to them. As they contain confidential observer identifiers and proprietary business information, it is not shared across providers or outside the Agency. Each completed trip has a unique observer identifier and reports on accomplishments are shared with providers as requested or needed. The providers are encouraged to have open communication and describe with process that they use to assign trips to observers. Our Statement of Work requires this process to be described in the providers’ proposals in response to the contract requests and is evaluated at time of consideration of contract awards, but this is not a public document. The Agency encourages this to be addressed by the provider and practice transparency with their employees.

**8) Develop formal communication process for observers’ concerns.**

We reinforce to the observers that they can come to FSB directly, particularly with concerns, suggestions, and questions. We would help them seek resolution with the service provider. The FSB holds a discussion session with observer classes to get candid feedback on how things are going in the field. During these sessions the provider management staff is not allowed to attend. This is in an effort to get observers to ask questions or relay problems without fear of retaliation or discrimination. All observer



trainees receive FSB contact information and business cards and are encouraged to contact us with problems. We have a mentor program as well, that is first established in the observer's training – where they get one-on-one time with an FSB staff member to talk about potential concerns and how best to approach them. Editors (those FSB staff reviewing observer data) are assigned to each observer, so they develop a relationship over time and hopefully a mutual trust. Our editors receive this training that serve as a support and mentor to the observer as well as an extension of the initial training. We remind the observers in their training that although they may feel alone in their posts, but to remember that there are 60 people at the Observer Training Center who want to help them succeed, be supported, and be safe. The FSB has had an Observer Liaison position from time to time, but have found that for it to work, it needs a certain personality type that is hard to come by, particularly when working with multiple providers. This continues to be considered and evaluated and considered a benefit to have by our Branch.

**9) Develop contractual list of responsibilities for staff and duties for managers of contract observers.**

We have a non-personal service contract with our observer provider that does not permit Federal employees to manage contract observers.

## Southeast Observer Programs

### **1) Procedures for collecting and reporting all potential marine resource violations to NOAA OLE.**

During initial observer training, observers are instructed to report any known fisheries violations on data sheets or in their logbooks, with the pertinent facts relative to the violation (when, what, where, etc.) recorded. The use of a code-type system is acceptable. Detailed instructions are provided in the observer manual. After documenting the violation(s) observers are instructed to report the violation as soon as safely possible, or on returning to port. For the past several years OLE and USCG have presented at the majority of observer training sessions. Traditionally, fishery violation information has been made available to OLE upon request. In January 2014, the SEFSC observer programs implemented an electronic reporting system (i.e., Google Docs) to report all potential fishery violations inclusive of vessel non-compliance to OLE. In the near future, it is anticipated that incidents involving MARPOL will be transmitted to USCG using the same or similar system. All egregious fishery violations or incidences of observer harassment, intimidation, or assault are reported immediately to OLE.

### **2) Safety procedures to ensure that no observers deploy on vessels that fail to pass the pre-trip safety checklist.**

During observer training, observers are trained how to complete a pre-trip safety checklist. An observer may not deploy on a vessel that fails the pre-trip safety checklist. The checklist is required to be completed by the observer prior to every deployment. The pre-trip safety checklist is available in the observer manual. If a vessel fails the safety check, the observer contacts the Observer Program, who then works with the vessel owner/operator to correct noted deficiencies prior to the observer being allowed to depart on the vessel. The vessel cannot legally fish until the safety deficiency is resolved. The completed pre-safety checklist is transmitted to the Observer Program via email, fax or verbal confirmation. A memo reiterating these policies was sent to the observer provider for distribution to all observers on May 2<sup>nd</sup>, 2013.

### **3) Procedures for executing minimum marine safety training and refresher training for observers.**

New and veteran observers are required to participate in an intensive 3-day safety training session. New observers are trained initially and required thereafter to complete a refresher training every 3 years. Observer safety training exceeds core elements identified in the NOP safety training policy. Observer Program staff complete marine safety instructor (AMSEA) training every 3 years, in accordance with the safety training policy. Observers cannot deploy until training is complete. Program staff maintains status and dates of refresher training, CPR and First Aid. In addition, an electronic tracking and notification has been instituted to alert an observer of their refresher safety-training requirement. This alerts the observer, their contracting company, and program staff at 1 year, 3 month, 1 month, 1 week, and one day intervals for when observer refresher training is due.

### **4) Policies and procedures for collection of drug/alcohol use data during observer deployments.**

Any drug/alcohol use that in anyway jeopardizes observer safety or their ability to perform duties, before, during or after a trip is to be immediately reported to Program staff. A training module to help observers to recognize the signs and symptoms of possible drug use that was developed by the Northeast Fisheries

Observer Program and the USCG will be incorporated into future observer training sessions. A policy for the SEFSC observer programs has been developed in collaboration with OLE and is currently under implementation.

**5) Review current policy and regulations for equal accommodations of observers;**

As a condition of a federal fishing permit, we notify vessel permit holders through certified mail and through pre-trip planning, of the requirement to provide the observer with accommodations and food equivalent to that provided to the crew (noting that they will be reimbursed for reasonable food costs). Due to the small size of many vessels, particularly in the gillnet, shark, reef fish and shrimp skimmer trawl fisheries, the lack of adequate accommodations (e.g., bunk and toilet) on vessels that still possess ample observer sampling space (as evaluated by Program staff and the observer) has been addressed on a trip-by-trip basis. The observer can simply decline the trip and retain his/her position in the deployment rotation. If the observer accepts the trip, the vessel operator is required to provide the observer with a safe place to sleep.

**6) Develop policies, procedures and timelines for advanced notice to observers prior to deployment.**

This has been addressed through a Goggle Docs spreadsheet that has been shared with Program staff and observers that depicts deployment rotation. Information contained includes the observer's name, homeport state, trip number, last trip end date, availability start, availability end, and status (e.g., needs to debrief, complete require training). A snapshot (e.g. revision history) of the spreadsheet is archived every 24-hours or when changes are made. A deployment policy that addresses advanced notification has been developed and implemented by the new SE Observer Provider.

**7) Develop transparent observer tracking system;**

This has been addressed through a Goggle Docs spreadsheet that has been shared with Program staff that depicts observer status. Information contained includes the observer's name, homeport state, trip number, safety check-off complete, gear type, selection period, vessel name and port, date out, date end, call status and last known coordinates, rotation in deployment order, last trip end date, availability start, availability end, and status (e.g., needs to debrief, complete required training). A snapshot (e.g. revision history) of the spreadsheet is archived every 24-hours or when changes are made. . A deployment policy that addresses observer rotation has been developed and implemented by the new SE Observer Provider.

**8) Develop formal communication process for observers' concerns.**

SE observer programs recently transitioned to a new observer provider. Development of a formal communication process is a requirement in the SOW and listed as a new contract deliverable and should be forthcoming from the observer provider. Currently, observers are provided with an anonymous Program Evaluation form where they can provide feedback to the NMFS Observer Staff.

**9) Develop contractual list of responsibilities for SEFSC staff and duties for managers of contract observers.**

We have a non-personal service contract with our observer provider that does not permit Federal employees to manage contract observers. The Federal Program Manager and coordinators provide oversight and communicate to observers on elements of safety training, protocol and procedures. The responsibilities are spelled out in the contract itself.

## Appendix 3. Summary table of status of action items #1-9 for each of the regional observer programs.

| Policies/Procedures  | NPGOP   | AMMOP           | NW  | SW            | PIRO | NE  | SEOP <sup>1</sup> |
|--|---|-----------------|-----|---------------|------|-----|-------------------|
| #1. Collect and report all potential marine resource violations to NOAA OLE                                    | Yes   | <b>Needed</b>   | Yes | Yes           | Yes  | Yes | Yes <sup>2</sup>  |
| #2. Safety Procedures to ensure no observers deploy on vessels that fail to pass the pre-trip safety checklist | Yes   | NA <sup>3</sup> | Yes | Yes           | Yes  | Yes | Yes               |
| #3. Procedures for executing minimum marine safety training and refresher training for observers               | Yes   | Yes             | Yes | Yes           | Yes  | Yes | Yes               |
| #4. Policies and procedures for collecting drug/alcohol use data during observer deployments                   | Yes <sup>4</sup>  | NA <sup>5</sup> | Yes | Yes           | Yes  | Yes | Yes <sup>2</sup>  |
| #5. Review current policy and regulations for equal accommodations of observers                                | Reviewed. Conflicting regulations exist. See text for details.  |                 |     |               |      |     |                   |
| #6. Develop policies, procedures and timelines for advanced notice to observers prior to deployment            | No consistent policies among programs as they are tailored to each region's fisheries and deployment (assignment) processes |                 |     |               |      |     |                   |
| #7. Develop transparent observer tracking system   | Yes   | <b>Needed</b>   | Yes | <b>Needed</b> | Yes  | Yes | Yes               |
| #8. Develop formal communication process for observers' concerns   | Yes   | <b>Needed</b>   | Yes | Yes           | Yes  | Yes | Yes               |
| #9. Develop contractual list of responsibilities for SEFSC staff and duties for managers of contract observers | NA  |                 |     |               |      |     |                   |

<sup>1</sup> The Southeast Fisheries Observer Program is comprised of the Pelagic Observer Program in Miami, FL, the Shark Drift and Bottom Longline Program in Panama City, FL, and the Shrimp Trawl and Reef Fish Observer Programs in Galveston, TX.

<sup>2</sup> Developed and implemented in January 2014 in the Pelagic Observer Program, but still requires development for the Panama City and Galveston Programs.

<sup>3</sup> AMMOP observers do not deploy aboard commercial fishing vessels but rather collect data from alternative platforms, i.e. independent work boats operated by trained captains. All vessels must pass a USCG safety inspection and must meet additional safety standards prescribed in the contract.

<sup>4</sup> AFSC screens for drug and alcohol use on vessels by systematically asking questions in an electronic survey. Every observer completes this survey for every vessel they are on board during their post cruise debriefing with NMFS. An affirmative response to the drug and alcohol question would trigger the completion of a written statement (described in Chapter 20 of the Sampling Manual) for forwarding to Office of Law Enforcement and/or USCG.

<sup>5</sup> AMMOP observers do not deploy aboard commercial fishing vessels and thus do not collect data on drug use. The observer provider contract includes an observer standard of conduct requirement that, among other things, prohibits the possession, use, or distribution of all illegal drugs and prohibits excessive drinking of alcoholic beverages.