



## Regulations and Compliance

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## Overview of Federal Groundfish Regulations

Federal fisheries regulations of the West Coast of the United States are developed by the Pacific Fisheries Management Council, approved by the U.S. Department of Commerce and administered by the National Marine Fisheries Service. In addition to fisheries regulations, commercial fishers are required to comply with many other regulations, such as those authorized by the Marine Mammal Protection Act and the Endangered Species Act.

The regulations contained in this section of your manual are enforced by the NOAA / National Marine Fisheries Service (NMFS) Office of Law Enforcement (OLE), Northwest (NWD) and Southwest Divisions (SWD), the U. S. Coast Guard, and Washington, Oregon and California natural resource law enforcement officers (who are deputized as federal officers of NMFS under Cooperative Enforcement Agreements). OLE agents and officers work closely with Observer Program staff and with other federal, state, and local law enforcement agencies.

Groundfish regulations off the West Coast are designed to conserve overfished groundfish stocks and to protect essential fish habitat and endangered species. Regulatory tools used to manage the fisheries include Conservation Areas, fishing seasons, gear limits, catch quotas and trip limits.

## Observer Role In Regulatory Compliance

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.

The observer's role in monitoring compliance with fisheries regulations is quite different from the role of an OLE Special Agent or Fishery Enforcement Officer. Observers are not enforcement personnel and are not empowered to issue citations, or take enforcement action. Observers must not advise the crew of regulations, interpret regulations, waive regulatory requirements or enforce regulations. As an observer, you are responsible to monitor the activities aboard your assigned vessels, you may inform the captain of suspected violations that you witness, and you must document any suspected violations related to marine resources or their environment.

In the past, some observers have misinterpreted their role by either exceeding their assigned duties or by demonstrating a lackadaisical attitude about compliance. Either of these patterns of behavior may be damaging to the resource and other observers and could place your certification in jeopardy. If you have any questions regarding your role in fisheries compliance, contact an Observer Program staff member.

Follow the guidance in this section regarding documenting and reporting the potential violations. This chapter contains excerpts of regulations specific to your work as an observer. However, this Manual does not contain the entire text of any regulation. If a fisher has a question regarding the intent, scope or applicability of a regulation, refer him/her to an OLE field office or an Observer Program staff member, see “Contact Addresses” in the Appendix.

## Steps to Take if You Suspect a Violation

Gathering facts and documenting a suspected violation should be done as part of your routine duties. Common sense and good judgment should prevail if you suspect a violation has occurred. Your role is straightforward: Identify, Inform, Document and Report. The actions you take will depend upon the type of suspected violation, the circumstances under which it occurred, and the actions and demeanor of vessel or plant personnel.

### *Identify*

Routine observation of all activities aboard a vessel is your first step in identifying compliance infractions. You may notice an obvious violation, such as a crew member discarding catch or plastic bags overboard. Other violations may need some research. You may need to double check your measurements, calculations, methods, scale calibrations, logbook entries or production figures. Ask the operator, plant manager, or other crew member to clarify any questions you have. By asking questions you may determine that no violation occurred. You can

contact Observer Program staff or OLE personnel to see if a particular action is a violation.

### *Inform*

If you think a violation has occurred, notify the vessel’s captain or the plant manager as soon as possible. Informing the captain of suspected violations is encouraged by the Observer Program unless the captain or manager has failed to respond to previous reports, or you feel that it may lead to a potential harassment situation. In these cases, you must document your reasons for not reporting the incident in your Daily Notes section of your logbook.

Effective communication requires some familiarity with the regulations, good judgment and tact. If you do witness a suspected violation, organize the facts and approach the skipper or manager in a calm and reasonable manner. Informing the captain provides the opportunity to correct problems and prevent future violations.

The Captain/manager’s response may shape how the violation eventually is handled. In most cases, the problem will be remedied immediately. If your statements are ignored and the violations continue, good documentation is required for OLE to deal with the problem. You are in the best position to advise NMFS on the circumstances of the suspected violation and the apparent intent of the captain/manager.

## **Document**

If the vessel you are covering is charged with a violation that occurred while an observer was onboard, all parties concerned will have a legal right to inspect your logbook or any other evidence known to exist. It is important to make your entries factual and to avoid personal opinions. Do not use your logbook to blow off steam. Statements such as, “the deck boss is a slob,” are irrelevant to whether a fisheries violation has been committed.

When documenting *fishing violations*, it is important to *remain unemotional* about the violation. If you are experiencing *harassment or intimidation*, it is critical that you document your feelings and emotions surrounding the incident.

When you write a statement, it will be much easier if you have taken the time to document the violation as outlined. In view of the importance of your logbook and other types of documentation, you should take *special care to safeguard them against loss and tampering*.

Suspected violations should be documented in your logbook under the Daily Notes section. You may also document violations on your deck sheets, data forms, computer, or other location. Remember that copies of your logbook and other documentation must be included with your final statement(s) during debriefing. Any of these documents may be used as evidence.

Your documentation must be thorough and factual. Subjective comments should be left out, as they may make you appear partial and could jeopardize an

enforcement case. All written comments must be in ink, and events should be recorded in chronological order. Good documentation contributes to your credibility as a witness.

All logbook entries of suspected violations should contain the following basic elements:

- **Who:** Identify the vessel or plant by name, permit number and vessel type.
  - Identify the individuals and witnesses involved by first and last name, position (skipper, engineer, deckhand, etc.) and function or duties.
  - Identify who was notified and how they handled the potential violation.
- **What:** Describe events and circumstances in narrative form.
  - Include what made you suspicious.
  - Detail what was discovered when you looked into the matter.
  - Describe what occurred (or didn't) as a result of your discussions with the captain and crew.
  - Use direct quotes whenever possible.
  - Record each instance of a suspected violation.
- **When:** Identify the exact or approximate time of the suspected violation - hour, day, month, year.
  - Document the haul or delivery number if appropriate.
- **Where:** Identify your vessel's position at the time of the suspected violation.
  - Include latitude/longitude or statistical reporting area. If a vessel's exact position is not known, use the closest approximation from the last haul or

non-fishing day position.

- Describe where the suspected violation occurred. Draw a diagram identifying the area specifically, if applicable.
- **Why and How:** Try to determine why and how the suspected violation occurred. Document your own observations and conversations with crew members. Be as objective as possible and cite factors which may provide mitigating or aggravating information. Consider the following:
  - Could the problem be due to a mistake, such as a mathematical or transcription error?
  - Were there circumstances beyond the control of vessel or plant personnel, such as severe weather, mechanical breakdowns, or injuries?
  - Was the suspected violation was intentional? On whose orders or with whose knowledge do you think it was done and why?
  - Describe any effect the violation had on your ability to perform your duties.
  - If you felt harassed or intimidated as a result, describe how the actions made you feel.

**Tip:** When documenting fishing violations, notes should be matter of fact. When documenting instances of harassment or intimidation, it is critical that you express your feelings and emotions surrounding the incident

### **Report**

Observers must report all suspected violations of fisheries regulations to NMFS. Notification will usually occur through an outlined process, however, there may be times in which observers may need to contact OLE directly.

### **Immediate Notification to OLE**

If a problem you have witnessed continues and you feel the situation has interfered with your ability to complete your duties or is causing a hostile work environment, or if you are the subject of harassment, assault, intimidation or other adverse action, you must report the situation immediately to the Observer Program or your contractor and/or OLE. Depending on your circumstance, NMFS and your contractor may be able to assist you directly. You are the best judge of your situation. You may choose to include information in your in-season report about how NMFS might help. Otherwise, for your safety and privacy, the Observer Program and OLE may wait to take action until you have disembarked the vessel or have been debriefed.

### **Notification During Debriefing**

If you have witnessed a suspected violation, this should be discussed with your debriefer. You may be asked to clarify your notes or to complete a written statement describing what you saw. Your statement should not contain repeated details from other documentation. The statement should contain the basic elements of the violation, details not in your Daily Notes and references to other documentation. References should include page numbers, dates and/or haul or form numbers.

### **Completing Written Statements**

If you are requested to write and submit a statement, it will be forwarded to OLE. Provide the Observer Program with a reliable phone number or e-mail address so they

may reach you. Your responsibility as a groundfish observer regarding suspected violations may require a phone call with a Special Agent or state enforcement officer.

Most times, when you inform the vessel captain of a potential violation, they will take steps to change that behavior. Therefore, most complaints submitted by observers fall into the 'voluntary compliance' category. The majority of these complaints may not result in an enforcement action against the fishing company.

More egregious violations may be dealt with by a Summary Settlement or other civil or criminal prosecution. The Summary Settlement system allows NMFS Enforcement agents and officers to levy fines up to \$5,000 on an individual or a vessel company for certain violation types. More serious violations can end up in civil or criminal prosecutions involving attorneys. These prosecutions rarely end up in court trials or hearings. You are required to cooperate with OLE and NOAA Fisheries General Counsel while this process is underway.

If your written statement is not acted upon, it will still be added to a database. Over time, this allows enforcement to identify patterns of behavior. If a pattern of behavior is established, the eventual result may be a prosecution. Without complete, objective documentation of suspected violations, OLE has no background to pursue these investigations. Your detailed notes are the best source of the facts and the intent.

## Regulations Applying to Observers

Federal groundfish observers are not exempt from laws or regulations. Observers who falsify data, accept bribes, harass other observers or conspire with someone to do the same may face criminal charges. Observers who violate the Standards of Observer Behavior (see Chapter 2) may face suspension, decertification, and/or other disciplinary action. The collection of reliable data is essential to the effective conservation, management, and scientific understanding of the fishery resources of the United States. As such, false data reports and observer misconduct issues are dealt with seriously by OLE and/or NMFS.

## Regulations Protecting Observers

NMFS strives to promote a safe and harassment-free work environment to protect observers and ultimately contribute to the collection of high quality data. Your employer and vessel/plant owners and operators have the regulatory responsibility to protect you and your data.

It is unlawful for any person to do any of the following [50 CFR §660.12(e)]:

1. Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.
2. Interfere with or bias the sampling procedure employed by an observer, including either mechanically or manually sorting or discarding catch before sampling.
3. Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic

film, papers, or personal effects without the express consent of the observer.

4. Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, and/ or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.
5. Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under subparts C through G of this part. [§660].
6. Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

### Harassment and Assault

The most serious crimes against observers are harassment, assault, and sexual assault. These are criminal offenses. The resulting cases are the highest priority of the OLE. If you find yourself in one of these situations, take care of yourself first. On a vessel, your most immediate support may come from a crew member, inseason advisor, or another observer. For your safety and that of future observers, you must inform your contractor and OLE. After you have made a report, a team will be

assigned to support and help you. The team may consist of an advocate and legal and/or medical professionals. If you are still at sea, this team will take precautions to ensure your situation does not become worse. If necessary, immediate actions will be taken to ensure your safety. Contacts for NMFS Enforcement and other support can be found in the Appendix of this manual.

Second to your safety is the preservation of evidence. This may include gathering physical evidence of the harassment, assault, or sexual assault. While this may be a painful and unpleasant, these actions are necessary to bring the perpetrator to justice. Initially, you may have difficulty remembering details of the crime or you may feel you could have done something to prevent it. These are normal feelings.

### Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to, or rejection of, this conduct explicitly or implicitly affect an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including, but not limited to the following:

- The victim as well as the harasser may be a man or a woman.

- The victim does not have to be of the opposite sex.
- The victim does not have to be the person harassed, but could be anyone affected by the conduct.
- Unlawful sexual harassment may occur without economic injury to the victim.

The harasser must know the conduct is unwelcome. While some behavior is clearly offensive, in most cases it is necessary for the victim to directly inform the harasser that the conduct is unwelcome and that it must stop.

A determination of whether alleged conduct constitutes sexual harassment, and the legality of a particular action, will be made from the facts, on a case by case basis. For more information on sexual harassment or any other form of harassment or discrimination consult the Equal Employment Opportunity Commission (EEOC) Website at [www.eeoc.gov](http://www.eeoc.gov).

### Intimidation

Intimidation is another form of harassment. It is an emotional response to someone's actions toward you. Most common is a captain or crew member directing anger toward you in body language and/or verbally. Some people are affected very little, while others are affected immediately and for some time afterward.

In some cases, you may be able to ignore or defuse this type of behavior. If you do experience an incident that upsets you or causes you to avoid public areas of a vessel or plant, the person's behavior may have intimidated you. You have a right as an observer to work in an

environment free from this kind of harassment.

### Victim Impact and Support

Harassment, assault, and sexual assault disrupt the lives of employees, families, coworkers, and many others. Victims may feel shock, depression, guilt, loss of trust, fear, anger, frustration, humiliation, and embarrassment. They may experience a loss of self-esteem, motivation, and privacy. It is normal for victims of crime to minimize the traumatizing event or event to blame or doubt themselves.

You are not to blame! No matter what choices you make, unless you are the perpetrator it does not give someone the right to assault you or treat you in a way that is clearly unwelcome. The person who chooses to commit an act of violence or control is solely responsible for their crime.

You are not alone. After you have reported the crime, a specially trained team will be assigned to support and help you and to answer your questions. This team may include your contractor, an advocate, a medical professional, the vessel company and captain, a legal professional, NMFS Enforcement, Observer Program staff members, and/or others.

Confidential help is also available. Numerous victim advocacy organizations throughout the West Coast provide confidential support for victims of all sorts of crime including assault, sexual assault, and workplace harassment. They provide immediate crisis support, support at the hospital if an exam is necessary, law

enforcement accompaniment, court and medical accompaniment, individual crisis counseling, support groups, information, and referral. You may contact NMFS OLE if you wish to locate an advocacy organization near you.

### Victim Rights

During the law enforcement investigation, you will be kept informed of the status of your case if you request. Your case agent will remain your principal contact. If you have questions, be sure to contact him or her as soon as possible. A federal investigation can be complex and lengthy. Remember, your interests are important. It is normal to have questions. Your case agent is there to help.

Below is a list of rights given to victims under the Crime Control Act of 1990:

- The right to be treated with fairness and with respect for your dignity and privacy.
- The right to be reasonably protected from the accused offender.
- The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial.
- The right to confer with the attorney for the Government in the case.
- The right to restitution.
- The right to information about the conviction, sentencing, imprisonment, and release of the offender.

### What to Do if You Experience Harassment

If you experience harassment in any form, address it directly and document it completely. If you can, inform the harasser early of your discomfort, before the situation becomes volatile. This will require you to be assertive, professional and diplomatic. However, by taking this step you will protect yourself as well as the next observers that will follow you. You may even prevent future trouble for the harasser, skipper and/or vessel owner.

**Tip:** Report any cases of harassment to the Observer Program or NMFS OLE as soon as possible. The agency is unable to help you with problems they are unaware of.

Take some time to think about how you will react. If possible, follow these steps:

1. Tell the harasser that his/her comments, actions or advances are unwanted and unwelcome and that you want them stopped. Make sure that your verbal and non-verbal messages to stop are clear. You are the judge of whether another person's actions negatively affect you.
2. Don't fight fire with fire. Keep your behavior professional and avoid being baited into arguments.
3. Document the incident(s) from the very beginning. Even if you are unsure at first if you are experiencing harassment, record the details. They provide you with the full story if the situation escalates. In your logbook, describe the situation including your attempts to end the harassment and the response you receive.
4. If the problem continues, report it to the captain. Tell the full story, explain if your work has been affected, and request that he or she take steps to end the problem. Most captains will take steps to help you.

Document the captain's actions.

5. If the harassment is sudden and severe or is not addressed by the captain, or if the problem is with the captain, report the offense to NMFS and your employer. They will work together to help you while considering your privacy. At your request, arrangements can be made for you to leave the vessel and seek help.
6. If you are concerned for your immediate safety on board, use your cell phone, radio equipment, or other forms of communication to alert your debriefer, OLE or observer provider of the problem. If other communications fail, you may use your PLB to communicate an emergency.

## Partial Summary Of Federal Regulations

This summary of regulations is intended to provide observers with a working knowledge of regulations as they apply to groundfish observer duties. Full regulations are presented in title 50 of the Code of Federal Regulations (50 CFR 660), which implement the Fisheries Management Plan (FMP) for the various West Coast fisheries. *This is not a complete summary, nor is it quoted verbatim from federal law.*

The summary in this manual does not supersede, amend, or detract from federal regulations or law as printed in the Federal Register or the Code of Federal Regulations. This summary does not, nor is it intended to create any rights, substantive or procedural (enforceable at law by any party in any matter, civil or criminal) and it may not be relied on for any such purpose. This summary is for general purposes only.

Complete and the most current information on these regulations and current information on news releases, fishery closures, restricted area maps and regulations may be obtained through the Northwest and Southwest Regional Offices or at <http://www.nwr.noaa.gov> (Northwest) and <http://swr.nmfs.noaa.gov> (Southwest). Supplementary changes to regulations are available at offices of the National Marine Fisheries Service. Substantive supplementary changes to groundfish, marine mammal, safety, and marine pollution regulations are published in the Federal Register. Copies of the various CFR's are available online, at local libraries and in State or Federal Court Buildings. They can be found online at <http://www.ecfr.gov>.

Regulations are organized by (in descending order) subpart, section and paragraph. Regulations for Fisheries off the West Coast States are organized into the following subparts:

Subpart	Includes sections:
General	50 CFR 660.1 - 660.3
West Coast Groundfish Fisheries	50 CFR 660.10 - 660.79
West Coast Groundfish-Limited Entry Trawl Fisheries	50 CFR 660.100 - 660.160
West Coast Groundfish-Limited Entry Fixed Gear Fisheries	50 CFR 660.210 - 660.232
West Coast Groundfish-Open Access Fisheries	50 CFR 660.310 - 660.333

Subpart	Includes sections:
West Coast Groundfish Recreational Fisheries	50 CFR 660.350 - 660.360
West Coast Salmon Fisheries	50 CFR 660.401 - 660.412
Coastal Pelagic Fisheries	50 CFR 660.501 - 660.520
Highly Migratory Fisheries	50 CFR 660.701 - 660.721

Therefore, any citation of tenths (§660.12, § 660.19, etc.) cover the entire West Coast groundfish fishery (catch share, coops, FG and OA). Citations in the one hundreds (any between §660.100-660.199) are for West Coast groundfish limited entry trawl fisheries (which includes the catch share (IFQ) and coop fisheries). Within each section, regulations are organized by paragraph. For example, observer requirements in the shorebased IFQ fishery can be found at paragraph §660.140(h). As some rules can be complex, paragraphs can be further organized down to six levels, for example:

- §660.140(a)
- §660.140(a)(1)
- §660.140(a)(1)(i)
- §660.140(a)(1)(i)(A)
- §660.140(a)(1)(i)(A)(1)
- §660.140(a)(1)(i)(A)(1)(i)

As appropriate, regulations are cited by paragraph. For example, shorebased IFQ program (catch share) regulations are in section 660.140, but if citing a Catch Share vessel responsibility to have on board a valid Commercial Fishing Vessel Safety Decal, the more specific citation is §660.140(h)(2)(ii)(B).

50 Code of Federal Regulations (CFR) Part 660 contains Federal Regulations for Fisheries of the Exclusive Economic Zone off the West Coast of the U.S. The Part is made up of several Subparts, and each Subpart is split into Sections, notated by the symbol §. Each Section is further split into the paragraphs that we most frequently reference. Each paragraph has several levels of designation as described below:

- |         |      |       |        |      |
|---------|------|-------|--------|------|
| Level 1 | (a), | (b),  | (c),   | etc. |
| Level 2 | (1), | (2),  | (3),   | etc. |
| Level 3 | (i), | (ii), | (iii), | etc. |
| Level 4 | (A), | (B),  | (C),   | etc. |
| Level 5 | (1), | (2),  | (3),   | etc. |
| Level 6 | (i), | (ii), | (iii), | etc. |

### Observer Program regulations for the Catch Share fishery and Mothership catcher vessels (§660.140, §660.150)

The purpose of the Groundfish Observer Program is to allow observers to collect fisheries data deemed by the NMFS Regional Administrator necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their habitat. Regulations are written to accomplish this purpose.

Regulations addressing observers deployed on shorebased catch share and mothership catcher vessels can predominantly be found in §660.140(h) and §660.150(j). As the shorebased and mothership catcher vessels are similar fleets, these observer regulations are very similar as opposed to those for motherships and catcher processors targeting Pacific hake.

### Observer Coverage Requirements (§660.140(h)(1) and §660.150(j)(1))

Vessels must carry an observer on each day they fish. Shorebased observers must not work more than 22 calendar days in a month (no monthly limit for mothership catcher vessels). In case of an observer being unable to sample, vessels must be in port within 36 hours after the last haul sampled by the observer. Any boarding refusals must be reported to NMFS by an observer provider.

### Vessel Responsibilities (§660.140(h)(2) and §660.150(j)(2))

An operator and/or crew of a vessel required to carry an observer must provide:

- **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.
- **Safe conditions:** Maintain safe conditions on board including adherence to all U.S. Coast Guard and other applicable rules and have on board a valid Commercial Fishing Vessel Safety Decal.
- **Vessel position:** Allow observer(s) access to and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.
- **Access:** Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh or store fish or fish products at any time.

- **Prior notification:** Notify observer(s) at least 15 minutes before fish are brought on board, of fish or fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not be notified.
- **Records:** Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.
- **Assistance:** Provide all reasonable assistance to observer including measuring decks, providing sampling/work space, collecting samples, collect biological samples, provide time between hauls to sample and record catch, sorting retained and discarded catch into quota pound groupings, stowing all catch before the next haul is brought aboard.
- **Sample station:** Provide observer a sample station that is accessible and limits hazard to the extent possible.
- **Transfers at sea:** No transfers are allowed between catcher vessels. Transfers that take place between a mothership and a mothership catcher vessel must be during daylight hours, notify observer(s) at least 3 hours before transfer, provide safe pilot ladder, provide an experienced crew and done only with agreement of the observer(s) involved.

### Observer provider responsibilities (§660.140(h)(5) and §660.150(j)(5))

Observer provider companies are responsible to provide all logistics at the site of a processing facility and to provide all logistics to place and maintain observers aboard fishing vessels. This includes all travel arrangements, lodging and per diem, and any other services required.

Observer providers must:

- Provide qualified candidates to serve as observers. Candidates must have a Bachelor's degree in a natural science (with a minimum of 30 semester hours in applicable biological sciences), completed a minimum of five semester hours in both math and statistics and have computers skills to work competently with standard database software and computer hardware. Providers must also provide candidates with any NMFS information describing observer duties prior to their hiring.
- Have a written and signed contract with each of their observers.
- Ensure that observers complete their duties in a timely manner including submitting to NMFS all their data by program deadlines, reporting for scheduled debriefing, completing all debriefing responsibilities and return all sampling and safety gear to the observer program at the termination of their contract.
- Provide certified observers able to complete their duties to vessels.
- Respond to industry requests for observers.
- Provide observer salary, any other benefits and personal services in accordance with the terms of each observer's contract.
- Provide observer deployment logistics ensuring:
  - each observer has an individually assigned cost-free cell phone,
  - each observer's deployments are tracked,
  - observers remain available to NOAA OLE and the observer program until the end of their debriefing,
  - observers receive all necessary transportation to the initial location of deployment, subsequent vessel assignments and to the debriefing location when a deployment ends for any reason and
- receives lodging, per diem and any other services necessary to observer assigned to fishing vessels. An observer under contract may be housed on a vessel to which they're assigned (not to exceed 24 hours before departure or after arrival to port following any assigned duties). At least one crew member must be aboard while an observer is housed aboard. Otherwise, each contracted observer between vessel deployments, shall be provided with accommodations as per the contract with each observer.
- Not deploy an observer on the same vessel for more than 90 calendar days in a 12 month period.
- Verify a vessel's safety decal before an observer may get underway aboard that vessel by either a provider employee (including the observer) visually inspecting the decal aboard the vessel or receiving a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.
- Maintain communication with observers on a 24 hour basis to handle emergencies or problems concerning logistics.
- Maintain communication with the observer program office by submission of:
  - candidate/observer names and background information for trainings, briefings and debriefings,
  - statements from a licensed physician that confirm each observer does not have health problems or conditions that would jeopardize

that individual's safety or the safety of others while deployed or prevent them from performing their duties satisfactorily,

- copies of certificates of insurance to verify marine liability, US longshore and harbor workers' comp, state worker's comp and general liability coverage,
  - copies of contracts with vessels and observers if requested,
  - any changes in company management or contact information,
  - help ensure biological samples are properly stored and transported to NMFS,
  - weekly update of observers' deployment information,
  - copies of any informational material distributed to vessels,
  - any information regarding potential observer harassment,
  - any information regarding vessels violating fishery prohibitions,
  - any concerns about vessel safety or marine casualty,
  - any observer illness preventing an observer from completing their duties,
  - and any information, allegations or reports regarding observer conflict of interest or breach in their standards of behavior.
- Replace lost or damaged observer gear,
  - Maintain data confidentiality,
  - Have no conflict of interest,
  - Develop, maintain and submit to NMFS a conduct

and behavior policy for their observers,

- and may refuse to deploy an observer aboard a vessel if provider has determined that the requesting vessel is inadequate or unsafe pursuant to the applicable regulations.

### **Observer certification and responsibilities (§660.140(h)(6) and §660.150(j)(6))**

Observers must:

- Be employed by a permitted observer provider, be physically fit and have successfully completed all required training and not be decertified in another program in order to be certified by the observer program,
- Successfully perform their assigned duties, accurately record their data, write complete reports, accurately report any observations of suspected violations, not disclose data and observations made on board, successfully complete any required trainings and annual briefings to maintain their certification,
- Not have a conflict of interest, and;
- Meet standards of behavior including performing their duties as described in the observer manual, report any time they refuse to board a vessel, accurately recording their data and not disclosing collected data and observations.

Observers may be suspended or decertified when it is alleged that the observer has not met applicable standards, including any of the following: failed to satisfactorily perform duties as described or directed by the observer program, failed to abide by the standards of conduct for observers, including conflicts of interest or upon conviction of a crime or upon entry of a civil judgment.

## Regulations Concerning Shark Finning 50CFR§600.1203

The Magnuson Act prohibits the removal of shark fin(s) and the discard of the carcass at sea. It is unlawful for any person to 'engage in shark finning'. Shark finning is defined as "taking a shark, removing a fin or fins, and returning the remainder of the shark to the sea". Note: fins may not be consumed at sea if the remainder of the shark is discarded.

## Regulations Concerning Taking of Marine Mammals 50 CFR §216 and §229

### Definitions §216.3

Marine mammals means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any parts thereof, including but not limited to, any raw dressed or dyed fur or skin: Cetacea (whales and porpoises), Pinnipedia (seals and sea lions), other than walrus.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill, any marine mammal. This includes, without limitation, any of the following:

- The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary;
- tagging a marine mammal; or

- the negligent or intentional operation of aircraft or vessel, feeding or attempting to feed a marine mammal in the wild, or the doing of other negligent or intentional acts which result in the disturbing or molesting of a marine mammal.

Feeding is defined as "offering, giving, or attempting to give food or nonfood items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does *not* include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish by-products from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity."

**Tip:** It is unlawful and harmful to intentionally feed or attempt to feed any marine mammal.

### Prohibited Uses, Possession, Transportation, and Sales §216.13

It is unlawful for:

- Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with the prohibited taking or unlawful importation of any marine mammal or marine mammal product; or
- Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal product made from any such marine mammal.

## Collection of Certain Marine Mammal Parts §216.26

- Bones, teeth or ivory (hard parts) of marine mammals may be collected from a beach or from land within 1/4 of a mile of the ocean. (NOTE: The Endangered Species Act contains additional restrictions prohibiting the collection of endangered species parts).
- Unless authorized by exemption, no person may collect or retain any part of a marine mammal that is retrieved in the commercial fishing gear. (NOTE: Observers are not authorized to collect walrus parts from fishing gear).
- No person may purchase, sell, or trade for commercial purpose any marine mammal part collected or imported in violation.

## Marine Mammal Fishery Interaction Regulations §229

Except as noted below, it is unlawful to take any marine mammal incidental to commercial fishing operations.

In addition, it is unlawful to (1) take any California sea otter; or (2) intentionally lethally take any Steller sea lion, any Alaskan sea otter, any cetacean, any depleted species (including the Pribilof Island population of Northern fur seal), or any endangered or threatened marine mammal. If the use of firearms or other means to deter marine mammals results in an injury or mortality of a marine mammal, the taking is presumed to be intentional lethal taking.

Marine mammals killed during fishing operations which are readily accessible to crew members must be brought

aboard the vessel for biological processing, if feasible and if requested by the observer. Marine mammals designated as biological specimens by the observer must be retained in cold storage aboard the vessel, if feasible, until retrieved by authorized NMFS personnel.

Any marine mammal incidentally taken must be immediately returned to the sea with a minimum of further injury and may only be retained if authorized by an observer, by condition of the Exemption Certificate, or by a scientific research permit in possession of the operator.

### Reporting Requirements:

Vessel owners or operators engaged in any commercial fishery must report all incidental mortality and injury of marine mammals in the course of commercial fishing operations to the Assistant Administrator, or appropriate Regional Office, by mail or other means, such as fax or overnight mail specified by the Assistant Administrator. Reports must be sent within 48 hours after the end of each fishing trip during which the incidental mortality or injury occurred, or, for non vessel fisheries, within 48 hours of an occurrence of an incidental mortality or injury. *An observer's report to NMFS does not replace this notification requirement!*

## Observer Procedures During Law Enforcement Boardings

The U.S. Coast Guard, OLE and State Enforcement officers make periodic boardings of fishing vessels to

check for fisheries and safety violations. If enforcement personnel board your vessel, introduce yourself. After that, remain in the background and let the boarding party know where you can be found. Do not join in any discussions between boarding party members and vessel personnel. The Coast Guard, NMFS agent or state officer has certain objectives to accomplish in every boarding. If your assistance is needed, they will ask for it.

If the boarding party has questions or requests your assistance, be cooperative. Most officers are not biologists and you may be of assistance in identifying species of fish and invertebrates in bins, processing areas or holds.

Make sure your logbook and paperwork are in order in case the boarding party wishes to inspect them. *Do not give away your original forms or your logbook!* Make copies as needed. If your vessel has no copy machine ask if copies can be made on board the Coast Guard or state enforcement vessel. If this is not a possibility, the enforcement personnel may make handwritten copies or you may refer them to the Observer Program Office for copies of in-season data.

If you have information on suspected or actual violations, or other problems, you may or may not wish to relay them to the boarding party. Use your judgment to decide if a potential violation would best be reported to the boarding party or saved for debriefing. If a vessel is issued a ticket immediately based on your report, you may be in an awkward position after the enforcement vessel leaves. Enforcement personnel are aware that

observers may or may not choose to advise them of witnessed violations dependent on the situation.

If you have no information for the boarding party but someone in the boarding party wishes to question you, find a private location for your conversation. On occasion, an uninformed boarding party member may ask you questions in front of vessel personnel. Should this happen, defer the questions until you can speak in private. If that doesn't work, ask if they will accept a written statement from you. If you are questioned in private, answer all questions completely and honestly.

Your role in an enforcement boarding is as a source of objective information for the boarding party. The boarding party will conduct their own inspections and investigations, and they may or may not require your assistance. You should cooperate fully, and not hamper the investigation.

## Coast Guard Role in Homeland Security

The U.S. Coast Guard was given additional duties after the September 11, 2001 terrorist attacks. They are now required to obtain information on all vessels that could transport foreign nationals into the country. Prior to entering a port, each vessel must submit the full name, date of birth, nationality, passport number or mariner's documentation number and position or duty on the vessel, as applicable, of each crew and passenger. Observers have reported being asked for their social

security numbers rather than passport numbers. The Observer Program has an agreement with the USCG that any picture ID, such as a driver's license or your observer ID, will suffice and that social security numbers are not needed. Bag searches may also occur and if there are any problems please contact NMFS and your observer provider.

### **Observer Health and Safety §600.746**

An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in this section.

A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations or if it has not passed a USCG safety examination or inspection.

A vessel that has passed a USCG safety examination or inspection must display one of the following:

- A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years
- A certificate of compliance issued pursuant to 46 CFR 28.710; or
- A valid certificate of inspection pursuant to 46 U.S.C. 3311.
- Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel

owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item. Do not physically manipulate an item, unless necessary and with the guidance of the vessel operator or designee. EPIRBs have been activated and lost as a result of observers' physical examination and improper placement back into its holding bracket.

### **Pre-Trip Safety Check**

Prior to each observed trip, the observer is encouraged to briefly walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to regularly spot check the following major items for compliance with applicable USCG regulations: Personal flotation devices/immersion suits, ring buoys, distress signals, fire extinguishing equipment, emergency position indicating radio beacon (EPIRB), survival craft.

This pre-trip safety check is in addition to completing the Vessel Safety Checklist in the observer logbook. More information on vessel safety regulations and a detailed safety checklist can be found in the Health and Safety chapter.

### **Corrective Measures**

If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

- Submit to and pass a USCG safety examination or inspection; or

- Correct the deficiency that is rendering the vessel inadequate or unsafe before the vessel is boarded by the observer.

The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

## Marine Pollution (MARPOL) Regulations

The International Convention for the Prevention of Pollution From Ships (MARPOL) and five annexes are international agreements that were designed to halt at-sea disposal of wastes. MARPOL Annex V specifically prohibits the at-sea disposal of all plastics. It also eliminates the discharge of other types of vessel generated garbage to specific distances from land. The at-sea disposal restrictions apply to commercial and publicly owned vessels of all sizes and classes.

Vessels complying with MARPOL Annex V have three options for dealing with wastes. 1) non-plastics can be disposed of at sea within the legal restrictions, 2) they can incinerate wastes onboard the vessel, or 3) they can hold the wastes for shoreside disposal at port.

Plastic debris has been a concern of the NMFS since the early 1980's. Studies conducted in the North Pacific have linked debris generated by commercial ground fishing vessels with detrimental impacts to fish, seabirds, and marine mammals. Fur seals and Steller sea lions have been shown to be vulnerable to entanglement in netting, rope, and packing strap discards. Entanglement in debris is thought to contribute to mortality of individuals through starvation, suffocation, infection in resulting wounds, exhaustion, bleeding, drowning, and possibly increased predation. Studies conducted by the NMFS, National Marine Mammal Laboratory indicate entanglement may be contributing to the decline in northern fur seal population. In addition to entanglement in netting and plastic wastes, other species are also affected by ingestion. Stomach analysis of some seabirds and fish have found indigestible plastics.

### Vessel Operator Obligations

Regulations require U.S. recreational and other vessel operators, if their vessel is 26 feet or more in length, to affix one or more placards to their vessel. These placards warn against the discharge of plastic and other forms of garbage within the navigable waters of the United States, and specify discharge restrictions beyond three miles from shore. The placard must also note that State and local regulations may further restrict the disposal of garbage.

### Placards

Operators shall ensure that one or more placards are

displayed in prominent locations and in sufficient numbers so that they can be observed and read by the crew and passengers.

Each placard must be at least nine inches wide and four inches high, made of durable material, and lettered with letters at least 1/8 inch high.

### **Waste Management Plans**

The regulations require U.S. recreational and other U.S. vessel operators, if their vessel is 40 feet or more in length and engaged in commerce or equipped with a galley and berthing, to carry a Waste Management Plan if the vessel operates, or is certified to operate, beyond three nautical miles from shore.

The Waste Management Plan must be in writing and describe procedures for collecting, processing, storing, and properly disposing of garbage in a way that will not violate regulatory requirements. It must also designate the person who is in charge of carrying out the plan.

### **Marina Obligations**

Ports and terminals that conduct business with a commercial vessel must be capable of receiving garbage from the vessel when it docks. Recreational boating facilities, capable of providing wharfage or other services for ten or more recreational vessels, must also provide adequate garbage reception facilities for any vessel that routinely calls. If a marina or terminal does not want to be directly involved in garbage collection and disposal, local firms may be retained to provide the service at the

marina or terminal. Vessels must be conducting business with the facility or marina in order to qualify for the service. Terminals and marinas would not be expected to provide reception services to a vessel whose sole reason for docking was to offload its garbage. The marina or terminal can charge vessel operators reasonable fees for providing the reception service.

### **Reporting Violations**

Vessels denied the ability to offload their garbage wastes at marinas or other terminals should contact the closest U.S. Coast Guard Captain of the Port or Marine Safety Office. Any U.S. citizen may report observations of dumping in violation of Annex V at these same offices.

NOTE: Observers reporting a potential MARPOL V violation will complete a questionnaire or written statement during the debriefing process.

### **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 (distance offshore or geographical position, as best as can be determined), who discarded it, 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.

