

ENCLOSURE A

IMPORTANT THINGS YOU NEED TO KNOW

(About Carrying an Observer on Your Vessel)

This material is for informational purposes only. Regulations published in the Code of Federal Regulations (CFR) contain the specific requirements that vessels must comply with when carrying observers. If you have any questions regarding observer requirements applicable to your vessel, please contact the National Marine Fisheries Service (NMFS) observer program listed at the end of page 3.

Regulations: *Am I required to carry an observer?*

Fishermen who are required by regulation to carry an observer, or who are notified by NMFS that their vessel has been selected to carry an observer, must do so unless notified otherwise by NMFS. If carrying an observer, fishermen must comply with all U.S. Coast Guard (USCG) and NMFS safety regulations as set out at 50 CFR 600.746. Fishermen that fail to carry an observer on their vessel when required are subject to significant penalties and sanctions.

Safety: *If I carry an observer aboard my boat, will I have to purchase a lot of safety equipment that I would not normally carry?*

The safety and security of observers is one of the highest priorities for NMFS. In order to insure the safety of deployed observers, a list of safety items is required to be aboard all vessels that carry a NMFS observer. Those requirements are set out at 50 CFR 600.746. The items required include a valid Commercial Fishing Safety Decal, which is issued at no cost by the USCG after inspection of the vessel. (If you need to contact the USCG about scheduling a safety inspection of your commercial fishing vessel, the following web site may be of assistance in contacting the USCG District Office in your area: [http://www.uscg.mil/top/units/.](http://www.uscg.mil/top/units/))

Other required safety items are ring buoys, distress signals; fire extinguishing equipment; personal floatation devices for all persons, including the observer(s) that will embark on the voyage; and an emergency position indicating radio beacon (EPIRB), when required, that is registered to the vessel at its documented homeport. A pre-trip meeting in which the skipper and observer jointly inspect the vessel's living and working spaces for safety and other issues is usually required by most observer programs prior to deployment of the observer; even if not required, an informal inspection by the skipper and observer jointly is strongly recommended.

Without the required safety gear you may not carry an observer aboard your vessel. A failure to meet the safety requirements is not a defense to failing to carry an observer when required. If you are required to carry an observer and proceed to fish without one, significant penalties will result. However, the most important consideration regarding this safety equipment is that it is equally important to the safety and survival of you and your crew in the event of an emergency. Compliance with these regulations is an investment in the safety of your vessel and all who are aboard your vessel.

Life Rafts: *What if my life raft isn't big enough to hold the observer?*

Vessels are required to have a USCG applicable survival craft, with sufficient capacity to accommodate the total number of persons aboard the vessel, including any observer that deploys on the vessel.

Accommodations: *Do I have to give the observer a bunk and feed them during the trip?*

An owner or operator of a vessel must provide accommodations and food that are equivalent to those provided to those of the officers aboard the vessel. If there is no distinction between accommodations provided to persons aboard the vessel, then the observer must be given accommodations consistent with all other persons aboard.

Treatment of Observer: *If I carry an observer aboard my vessel, will I be charged with harassment if I make the observer upset?*

As the lawyers like to say, harassment is a “facts and circumstances” kind of thing. Without context, it is generally difficult to say exactly what facts and circumstances might “cross the line” into harassment. However, the key to avoiding such circumstances is to not allow any situation to degenerate into a possible harassment situation. As skipper, we ask you to be alert for these situations and to take the initiative to resolve or defuse them. Open and professional communication between the skipper and the observer is the best tool for insuring that no situation borders on or perhaps even constitutes harassment. NMFS encourages the observer and the skipper to start this communication and rapport process prior to deployment through a formal or informal pre-trip meeting.

While use of common sense and good communication is usually all that is required to insure appropriate treatment of the observer, there should be no doubt as to NMFS’s commitment to protecting the observer. NMFS will not tolerate conduct by anyone that amounts to harassment, intimidation, or abuse of an observer. Any inappropriate treatment of an observer may not only be a civil violation, it may be a criminal violation. Intimidation or harassment of an observer will be prosecuted to the full extent of the law; significant monetary penalties and sanctions may result.

Regulations and Laws: *If I carry an observer aboard my vessel can I ask the observer for guidance about fishery regulations?*

You should not ask the observer for guidance about fishery regulations. First, the observer is a scientist, not an expert in interpreting or applying specific fishery regulations. Second, rendering advice on fishery regulations is not a part of the observer’s duties. Therefore, you cannot legally rely on such advice. If the observer’s opinion is wrong, the fact that the skipper relies on an observer’s opinion is not a defense to any unlawful act. Third, and most importantly, the skipper of a vessel is responsible for knowing the laws and regulations that are applicable to a fishing trip.

Sharing Observer Data With the Skipper: *Can I ask the observer about the data that is being collected? Can I ask the observer for copies of collected data?*

Yes, you can ask about the data being collected and for copies of the collected data. But the data recorded by the observer is only preliminary data and, after review, some entries could change

due to recording errors. Therefore, NMFS recommends that the better practice is for the vessel permit holder to request a copy of the verified data after the trip.

Answering the Observer's Questions Regarding Fishing Activities: *Do I have to answer an observer when they ask me questions about my catch?*

An observer is acting on behalf of NMFS. As such, it is unlawful for any person to fail to provide required information or submit false or inaccurate data or statements to an observer when responding to a question directly related to the observer's official data collection duties.

Observer's Conduct While On Board: *What can I do if the observer acts inappropriately while on board my vessel?*

Observers must conduct themselves in a courteous and professional manner. If the observer does not comport themselves in this fashion, you should contact the observer provider and the NMFS office listed below. Observers may not consume alcohol or any illegal substance while on board a vessel.

Assisting the Observer: *To what extent do I and the crew have to assist the observer in carrying out the observer's duties?*

Observers may sometimes request assistance from the skipper or crew in collecting specimens or in other ways such as setting up sampling stations. It is a requirement for the skipper or crew to render such assistance when the request is reasonable and in connection with the observer's official duties. Observers are expected to make any such requests in a clear and professional manner. As safety permits, the skipper or crew should make good faith efforts to comply with all reasonable requests for such assistance.

If there are concerns or issues about complying with an observer's request for assistance, then the skipper should communicate those concerns or issues to the observer in a professional manner. If a disagreement persists, NMFS encourages the skipper to contact the observer program listed at the end of this handout. Failure to render assistance to the observer when the request is reasonable and when no extenuating circumstance prevents the rendering of such assistance could subject the captain or crew to penalties or sanctions for such failure.

Suspected Violations of Laws or Regulations: *Is the observer a NMFS enforcement officer?*

Observers are not NMFS enforcement personnel. However, if a suspected violation is observed, it is one of the observer's duties to document the facts for investigation by authorized NMFS enforcement personnel. Because any suspected violation remains unproven until investigated, observers are not required or expected to report suspected violations to the captain or crew.

IF YOU HAVE ANY QUESTIONS REGARDING THE REQUIREMENTS THAT YOU MUST COMPLY WITH WHEN CARRYING AN OBSERVER, PLEASE CONTACT: Lyle Enriquez at (562) 980-4025 or Charles Villafana at (562) 980-4033.