UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
1315 East West Highway
Silver Spring, Maryland 20910

January 25, 2013

MEMORANDUM FOR: Mack Cato
Director, Audits, Internal Controls
And Information Management Office

FROM: for Samuel D. Rauch III

SUBJECT: Inspector General Action Referral No. PPC-CI-12-0221-H
Re: NMFS Southeast Observer Program Management

The attached is in response to your subject referral from the Department of Commerce (DOC) Office of Inspector General (OIG). That referral was based on a complaint alleging that the Atlantic Pelagic Longline Observer Program of the Southeast Observer Program allowed reporting deficiencies and irregularities in the management of its observer program.

Once the recommended actions are completed, this case should be considered administratively closed. Captain Mark P. Ablondi, NOAA of the Office of Deputy Assistant Administrator for Operations, NOAA Fisheries Service has reviewed this entire case independently on the merits and will maintain custody of the case file materials, for record purposes.

National Oceanic and Atmospheric Administration

Administrative Inquiry of
National Marine Fisheries Service's
Southeast Observer Program Management

0ffice of Inspector General
Report No. PPC-CI-12-0221-H
January 25, 2013

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Introduction

This report presents the results of the National Marine Fisheries Service (NMFS) administrative inquiry of the Southeast Observer Programs, specifically the Atlantic Pelagic Longline Observer Program (POP). The objectives of the inquiry were to determine the merits of the allegations raised by a fisheries observer named Jonathan Combs in a complaint filed with the Department of Commerce, Office of the Inspector General (OIG) and where necessary, to recommend corrective actions to address the complaints.

The NMFS National Observer Program (NOP) received an informal letter of allegations against the POP from Mr. Combs on November 19, 2011 followed by the formal complaint filed by Public Employees for Environmental Responsibility (PEER) and the Association for Professional Observers (APO) on December 1, 2011 on behalf of Mr. Combs with the OIG. The OIG formally referred the investigation to NMFS on December 14, 2011.

Based on the allegations in the complaint, the goals of the investigation were to determine whether NMFS (1) failed to report major marine resource violations, e.g., shark-finning and marine pollution; (2) subjected fisheries observers to unsafe conditions, e.g., pressured to accept inadequate accommodations and pre-deployment safety checklist violations; and (3) tolerated improper accommodations for observers, e.g., sleeping accommodations equivalent to those provided to the crew[1].

The NMFS Southeast Fisheries Science Center manages four separate commercial fisheries observer programs: the Southeast Shrimp Trawl Observer Program, the Southeast Shark Driftnet and Bottom Longline Observer Program, the Gulf of Mexico Reef Fish Fishery Observer Program, and the POP. Collectively the programs are referred to as the Southeast Observer Programs. Any recommendations in the report are directed primarily at the POP and the National Observer Program which is responsible for implementing national policies and priorities for observer programs. Oversight for implementing the recommendations would be the responsibility of the specific laboratory in which the program is located. Supervision for the program staff would also be at the laboratory level.

The inquiry, which focused primarily on the POP but also reviewed all Southeast Observer Programs, found that there were instances when the POP process for reporting marine resource violations were inadequate and circumstances in which the POP may have subjected observers to unsafe conditions. NMFS has proposed specific actions to remedy these

[1] Other allegations not specified in the APO/PEER complaint but included in a separate written statement by Jonathan Combs are also addressed.

situations. The inquiry did not find that the POP tolerated improper accommodations for observers, but provides recommendations to address some of the concerns raised with regard to this issue. In addition the report addresses specific concerns raised by Mr. Combs in the informal letter sent to the NMFS NOP that were not included in the formal OIG complaint.

Based on the findings in this report, NMFS recommends that the Southeast Observer Programs develop and implement procedures for reporting marine resource violations to the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement (OLE). NMFS also recommends that the Southeast Observer Programs review all policies, procedures, and controls for observer refresher safety training to ensure that fisheries observers are not subjected to unsafe conditions. Furthermore, all policies, procedures, and controls, including processes for reporting marine resource violations, must be consistent across all observer programs, and procedures must be documented and included in observer orientation and refresher training. The National Observer Program shall review all regional observer programs for policy, procedure and control consistencies as applicable and report back to the Director, Science and Technology with recommendations.

Background

In a letter dated December 1, 2011 the APO and PEER requested that the OIG investigate the NMFS Southeast Observer Programs based on allegations from a fisheries observer named Jonathan Combs (Appendix 1).

The APO and PEER requested an investigation of the Southeast Observer Program's management practices for the handling of observer reports of vessel non-compliance with fisheries regulations and other applicable law and the Program's compliance with regulations for observer safety and vessel accommodations. In their letter, the APO and PEER reference claims from an observer employed by IAP Services Inc. which provided observer services to the Southeast Observer Program. The observer claimed that the POP disregarded observer reports of vessel non-compliance with applicable regulations and only referred such reports to NOAA OLE upon request. In addition, the observer claims to have been pressured to board vessels with unsafe conditions and inadequate accommodations.

In a memorandum dated December 14, 2011 from the OIG to NMFS, the OIG referred the inquiry to NMFS and requested a formal response, together with any inquiry report and supporting documents within sixty calendar days of the date of the memorandum. The NMFS was granted extensions allowing independent observer interviews to continue through July 2012.

The OIG requested that NMFS provide the following:

- Results of any internal reviews, evaluations, or inquiries that NMFS has conducted since January 1, 2008, to present regarding its National Observer Program, particularly the Southeast Observer Program and/or the Pelagic Observer Program;
- Mechanisms NMFS has in place to ensure that fisheries observers are encouraged to document evident marine resource violations (e.g., shark-finning and marine pollution), and directly report such potential violations to NOAA OLE;
- Internal control processes by which NMFS ensures that fisheries observers are encouraged to directly report to NMFS any mistreatment aboard fishery vessels (i.e., unsafe conditions, harassment or other abusive treatment, or improper accommodations), and how reported instances of mistreatment are addressed; and
- All complaints of observer mistreatment, nationwide, reported to NMFS since January 1, 2008, to present, and any associated reports presenting findings and resultant actions.

Where available the responsive materials have been provided in Appendices 2-11, respectively.

Methodology

The OIG referred the inquiry to NMFS on December 14, 2012 and requested NMFS to conduct its own administrative inquiry into the allegations. The OIG informed NMFS that the OIG would be reviewing the alleged whistleblower reprisal referenced in the complaint correspondence and that NMFS should not address this issue. The NMFS convened a team of headquarters and National Observer Program (NOP) staff to conduct the administrative inquiry (Appendix 6). On March 5, 2012 Captain Mark P. Ablondi, NOAA Executive Officer, was assigned by the Deputy Assistant Administrator of Fisheries to lead the administrative inquiry. Mr. Combs was interviewed By Captain Ablondi on April 12, 2012 and by Captain Ablondi and Chris Rilling (NOP Manager) on April 20, 2012. Captain Ablondi and Mr. Rilling interviewed Southeast Observer Program staff on April 20, 2012 and requested Southeast Observer Program staff to provide written responses to each of the allegations raised in the complaint (Appendix 7). The questions and responses from the interviews are provided in Appendix 8. Additional observer interviews were conducted from a pool of 151 past and present Southeast observers. Seventy-five observers were randomly selected for voluntary interviews. After consultation with OIG and APO, the interview time period was extended twice in an effort to increase observer input. The last observer interview was conducted on July 10, 2012. Twelve observers voluntarily participated in the interviews and all but one requested that their identities remain anonymous. For consistency, all voluntary observers interviewed are listed anonymously. Eight

of the twelve randomly selected observers had extensive experience in other observer programs and commercial fisheries covering all U.S. regions currently under observer programs. Based on their experience, the random interviewees are considered a dedicated group of professional observers.

Sample questions and anonymous responses are provided in Appendix 9 for SEFSC Observer Program staff and Appendix 11 for observers. The Appendix 11 observer interviews are split into two groups corresponding to an expansion of the interview questions for observers #7-12 based on the follow-up discussions that consistently arose during observer #1-6 interviews. Based on a review of the allegations in the APO PEER complaint filed with the OIG, the Southeast Observer Program's written responses to the allegations, the interviews with Mr. Combs, the Southeast Observer Program staff and the twelve random observers, this inquiry developed the following list of findings and recommendations. Unless otherwise noted, action items are due to the Director of the Office of Science and Technology, National Marine Fisheries Service, NOAA.

Findings and Actions

a) The complaint filed with the OIG alleges that Mr. Combs was never instructed during training on protocols to follow should observers witness a violation and that alleged violations were not forwarded to OLE.

Finding: NMFS determined that the process used by Southeast Observer Programs, specifically the POP, for reporting marine resource violations is inadequate.

The POP may have a process for collecting information on marine resource violations, but there is no uniform or consistent procedure for training observers on the collection of such data or for transmitting the information to NOAA OLE. At least one observer program in the Southeast, the Shark Observer Program, routinely forwards information on potential violations to OLE whereas the POP does not. The Southeast Observer Program staff explained that the information is provided to OLE upon request however this is inadequate for appropriate and timely pursuit of potential marine resource violations. Similarly, there is no uniform or consistent procedure for reporting International Convention for the Prevention of Pollution from Ships (MARPOL) violations.

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.

b) The complaint filed with the OIG alleges that Mr. Combs was pressured to deploy on vessels that had allegedly failed the pre-deployment safety checklist.

Finding: NMFS determined that the Southeast Observer Programs, specifically the POP, allowed Mr. Combs to deploy after a vessel had apparently failed the pre-deployment safety checklist.

The POP claimed that Mr. Combs was not pressured and that observers are allowed to decline a trip for documented health and safety concerns, even if the vessel has a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Decal and passes the POP pre-trip safety checklist. In cases where the vessel meets USCG and POP safety checklist requirements and the observer chooses not to sail, the POP requires a written statement from the observer documenting the concerns.

In the example described by Mr. Combs, he was approved to deploy on a vessel, F/V Charleston Star even though Mr. Combs alleged that the vessel's liferaft had an expired hydrostatic release. NMFS found that the vessel safety checklists for F/V Charleston Star on trips prior to and subsequent to Mr. Combs' October 2010 trip in question showed a current (i.e., non-expired) hydrostatic release date.[2] However the POP did not have this information at the time. Given that an expired hydrostatic release is considered a safety hazard and a "no-go" for observer deployment, Mr. Combs should not have deployed on this particular trip, despite the fact that he was carrying a spare (valise) liferaft which is not equipped with, nor is it a substitute for, a float-free liferaft rigged with a hydrostatic release.

Communication between the observer and POP personnel is essential relative to the status of vessel safety equipment and the pre-sail decision process. Questions from offsite POP

[2] The safety checklist from a January 2010 trip # C02058 showed an expiration date of Aug 2011; the October 2010 trip #T03026 by Mr. Combs showed an expiration date of Aug 2010; the July 2011 trip #E05031 showed an expiration date of April 2013.

personnel should not be considered pressuring an observer as the goal is to establish the current condition of the vessel and/or equipment in question. Had there been further investigation on this specific case aboard F/V Charleston Star in October 2010, the POP and Mr. Combs may have determined through review of other safety checklists that the hydrostatic release may not have been expired.

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.

c) Mr. Combs alleges that he was deployed prior to taking the required three-year safety refresher training.

Finding: NMFS determined that the POP deployed Mr. Combs after his training had expired.

Current national standards require that at a minimum, active observers shall be required to attend a hands-on marine safety training course every three years.

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.

d) Mr. Combs alleges that he was pressured to deploy under unsafe conditions during the Deep water Horizon (DWH) oil spill.

Finding: NMFS determined that Mr. Combs was not pressured to deploy under unsafe conditions during the DWH oil spill.

During the DWH oil spill NMFS closed a large portion of the Gulf of Mexico to all commercial and recreational fishing, including vessels subject to observer coverage and those participating in NMFS-sponsored experiments. No vessels were allowed to fish inside the closed area, but vessels were allowed to fish outside the closed area in areas that were considered safe. Mr. Combs invoked his right not to expose himself to conditions he considered hazardous which was accepted by the POP. Per POP protocol Mr. Combs submitted his request in writing to the POP and remained on standby status, with pay (but no opportunity to earn overtime pay), for the duration of the experiment.

No Action Taken.

e) Mr. Combs alleges that the Southeast Observer Program tolerated drug use aboard fishing vessels.

Finding: NMFS determined that the POP did not tolerate drug use aboard fishing vessels. However, the POP does not have a procedure in place to notify law enforcement officials in the event of drug use that does not result in injury or harassment, but that could be considered a safety concern to observers.

The POP has a policy to notify NOAA OLE or other enforcement officials in cases where drug use results in injury or harassment to the observer. The Southeast Observer Program training materials instruct observers to inform the captain or crew if drug use is witnessed and to immediately report to the observer program coordinator if the drug use affects the observer's safety. The debriefing forms also provide an opportunity to document any drug use aboard the vessel. However the POP does not have a process for reporting drug use that did not result in injury or harassment but was considered a safety concern to the observer.

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.

f) Mr. Combs alleges that the requirement for vessel owners/operators to provide accommodations and food equivalent to those provided to the crew were regularly violated.

Finding: NMFS Southeast Observer Programs did not tolerate improper conditions for observers, however recommendations are provided to improve the process of addressing lack of adequate accommodations aboard small vessels.

Many commercial fishing vessels in the Southeast and other parts of the country are small vessels that may not have adequate bunk space. In the case of the POP, observers are notified in advance if a vessel does not have bunk space and are given the option to decline the trip. If an observer declines a trip due to lack of accommodations and the vessel departs for a fishing trip, the vessel may be subject to enforcement action. Vessels owners are regularly informed of the requirement to provide equal accommodations during the observer selection process, but many vessels are unable to comply due to space restrictions on their vessels. In the instances when an observer arrives at a fishing vessel and discovers improper accommodations, the observer has the opportunity to turn down the vessel. It was also reported that Captains and crew offered up their bunks to observers with some observers taking them up on the offer of a bunk, while other observers preferred to sleep on deck. Crew slept in similar conditions (on deck, etc.) as observers and that equal accommodations (accommodations equivalent to the crew) were followed. Where an observer deemed the accommodations improper he/she had the ability to turn down the trip.

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 Science and Technology. Due date: October 30, 2013.

Other Concerns Raised by Mr. Combs

A number of other concerns were raised in the letter by Mr. Combs regarding the NMFS Southeast Observer Programs, but were not specifically included in the APO and PEER complaint filed with the OIG. These concerns are addressed here.

1. Mr. Combs alleges that the NMFS 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.

Finding: NMFS determined that the POP does not have policies, procedures, or timelines for notifying observers in the event they are offered a deployment.

The NMFS POP does not have a 72-hour regulatory notification requirement for vessels selected for observer coverage. The POP selection letter requests that vessels provide five-day advance notice of any planned trips. If a vessel contacts the observer program within five days of departure and an observer is available, then the POP makes an attempt to deploy the observer. Observers have the option of declining a trip and there are no negative repercussions associated with such a refusal. However, the Southeast Observer Programs have no policy, procedures, or timelines regarding advance notice given to observers in the event that they are selected for deployment.

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.

2. Mr. Combs alleges that the POP lacked permits and protocols for collection of protected species samples, and that NMFS instructs observers to avoid declaring protected species samples with U.S. Customs.

Finding: NMFS determined that the POP has the necessary permits and protocols for collection of protected species samples.

The NMFS Southeast Observer Program has protocols and a list of state and federal permits established for protected species. The protocols for collecting and transporting specimens are provided during observer training and described in the permits that each observer is required to carry on all deployments. Copies of the permits are included in Appendix 10.

Mr. Combs was instructed by Larry Beerkircher, the POP manager at the time, to retain his biological samples when returning from Canada rather than shipping them via FedEx. This was to ensure that samples were received in the U.S. in a timely manner and were not held up in Customs or at a FedEx location after the observer had departed and was no longer on site to deal with any issues. Mr. Combs was instructed that it would be easier to pack the samples

(small vials of dimethyl sulfoxide, or DMSO, preservative with small biopsy plugs of tissue) inside his checked bags rather than in his carry-on due to airport policy regarding liquids in carry-on luggage. Mr. Beerkircher recalled that he may have used the term "avoiding hassles"; however, at no point did Mr. Beerkircher instruct Mr. Combs to conceal any item that was required to be declared, nor did he tell him not to declare these samples. Mr. Combs was provided with a permit that allowed for retention and transportation of samples from endangered species, and was expected to follow the lawful instructions provided by Customs Officials to travelers at immigration checkpoints. Of the twelve random observers voluntarily interviewed, seven had foreign observer trip experience and none reported being instructed to not follow appropriate Customs laws relative to protected species samples or any other samples. The fact that protected species permits were current and in order makes it unlikely that POP managers would instruct observers to not follow Customs protocols. Better communications between observers and POP managers along with clearly laid out procedures are recommended.

3. Mr. Combs alleges that the NMFS Southeast Observer Program "blackballs" fisheries observers who do not accept trips or question protocols.

Finding: This inquiry found no proof that the POP harassed or punished observers who refused trips or questioned protocols; however, there is significant belief in the field that an observer's opportunity to sail on future trips will be impacted (i.e., blackballed or penalized) by turning down trips. Fifty percent of the random observers interviewed believe that there was pressure on them to sail and that an observer would be penalized if he/she did not accept trips.

Under current POP policy observers who refuse trips are placed back into rotation (in-line) in the same spot they were previously in and offered the next available trip. Mr. Combs was unwilling (due to reprisal concerns for the affected individual) to provide an example of an observer who was penalized due to questioning protocols. NMFS was unable to find evidence of the Southeast Observer Programs punishing observers for refusing trips or questioning protocols, however based on the interviews there were indications of pressuring observers.

Of the twelve random observers voluntarily interviewed, six reported feeling pressured to deploy or felt the potential for being blackballed for not deploying. Two of those observers were terminated for the following reasons on those referenced trips or potential trips in question. One of these observers failed a urinalysis test twice (did not sail) and was terminated. The second observer was terminated for violation of the company's drug/alcohol policy, though that observer felt that he/she was terminated due to calling 911 and then setting

off an Emergency Position Indicating Radio Beacon (EPIRB) when the fishing vessel's lines were hung up in oil rig gear. A third observer believed that the Galveston lab would not hire him/her because of previous POP work experience and so he/she felt effectively terminated (i.e., not hired) by the Galveston lab but remained actively employed by IAP working for the POP. The remaining three observers felt pressure to adapt to tight schedules, or felt blackballed by not being used in the fishery they were originally hired for (i.e., the belief that the senior observers got the best boats), and receiving less then desirable fishing vessels after voicing concerns.

Examples from the DWH Horizon oil spill indicate that all observers who raised health concerns remained on standby duty, with pay (but no opportunity to earn overtime pay), and did not sail per their request.

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.

4. Mr. Combs alleges that the NMFS Southeast Observer Program lacked standards for fisheries observers participating in the Bluefin Tuna Special Study research project.

Finding: NMFS determined that the POP does not lack standards for fisheries observers participating in the Bluefin Tuna Special Study research project.

The POP has a standard procedure for training all observers selected for the Bluefin Tuna Special Study. These observers receive the same two week observer training course that regular observers do, which includes safety, data forms protocols, species identification, and protected species data collection. These standard procedures are included in the observer training manual.

5. Mr. Combs alleges that NMFS manipulated observer coverage to accommodate a TV reality show filming.

Finding: NMFS determined that the POP did not manipulate observer coverage to accommodate a TV reality show filming.

The POP policy allows substitutions of vessels that have the same owner, if the substitute vessel fishes the same type of gear, and will be fishing in the same statistical area and selection quarter as the vessel originally selected, which was the case in the example cited by Mr. Combs.

6. Mr. Combs alleges that observers in the POP have no appeal process, nor any avenue to express their concerns.

Finding: NMFS determined that the POP did not provide routine, transparent, and consistent process for feedback to IAP Services on the observer's performance.

Fisheries observers are contractors hired by observer service providers such as IAP Services Inc., and it is the employer's responsibility to provide an opportunity for employees to express their concerns regarding their employment status. However, NMFS observer programs are responsible for providing routine, transparent, and consistent process for feedback to the observer provider on the observer's performance. The Southeast Observer Programs did not have in place a formal mechanism for providing this information to the observer 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 SEFSC Observer Program coordinators, especially given the level of coordination and interaction that takes place between contractor staff and SEFSC Observer Program coordinators.

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.

Follow-up on Actions

NMFS Southeast Observer Programs and the National Observer Program will provide regular updates to the Director, Office of Science and Technology on the status of implementing the actions required in this document.

Action Summary Table

#	Action	Due Date	Responsibility
1	Develop a uniform, transparent, and consistent procedure for collecting and reporting all potential marine resource violations to NOAA OLE	September 30, 2013	Pelagic Observer Program & Office of Law Enforcement *Reportable to DAA of Operations
2	Review safety procedures, develop and execute as necessary so that no observers deploy on vessels that fail to pass pre-trip safety checklist	April 30, 2013	SEFSC Observer Program
3	Execute minimum marine safety training and refresher training for observers without exception	March 29, 2013	National Observer Program, SEFSC Observer Program & Pelagic Observer Program
4	Develop policies and procedures to standardize the collection of drug/alcohol use data during observer deployments	September 30, 2013	National Observer Program & Office of Law Enforcement *Reportable to DAA of Operations
5	Review current policy and regulations for equal accommodations of observers	October 30, 2013	National Observer Program
6	Develop policies, procedures and timelines for advanced notice to observers prior to deployment	June 30, 2013	SEFSC Observer Program
7	Develop transparent observer tracking system	June 30, 2013	Pelagic Observer Program
8	Develop formal communication process for observers' concerns	September 30, 2013	Pelagic Observer Program
9	Develop contractual list of responsibilities for SEFSC Staff and duties for managers of contract observers	September 30, 2013	SEFSC Observer Program

Appendix 1: PEER APO Complaint Filed with the OIG.

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Inspector General Todd Zinser
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Washington, DC 20230

National Marine Fisheries Service (NMFS) Southeast Observer Programs – Region-wide Mismanagement and Illegal Activities

Dear General Zinser:

This is a request for investigation filed by the Association for Professional Observers and Public Employees for Environmental Responsibility (PEER) into reported violations and gross mismanagement in the Southeast NMFS Observer Programs, the Pelagic Observer Program (POP) in particular. We request that an investigation be conducted on the protocols and practices of this and other Southeast Observer Programs, with respect to NMFS' disregard for the safety and welfare of Fisheries Observers and witnessed fisheries violations.

The Association for Professional Observers is a non-profit organization that advocates for the safety and welfare of Fisheries Observers and also for the integrity of our nation's Fisheries Monitoring Programs. PEER is a non-profit service organization dedicated to defending public servants who protect our environment.

Enclosed is a statement written on November 18, 2011 by Jonathan Combs, a Fisheries Observer with the POP. He said that he originally sent a similar statement with more details to the National Observer Program on that same day. His statement reflects what other Fisheries Observers have also reported. The only reason Mr. Combs is able to go on record is because he was fired without cause by NMFS for attempting to gain clarification on NMFS protocols that were contrary to the support of Fisheries Observers in the program and/or conflicting with what he knew to be federal law.

This statement outlines three major substantive and two organizational concerns, which we are asking the OIG to review. Specifically:

I. Failure to Report Major Marine Resource Violations

In contrast with the POP, the NMFS North Pacific Groundfish Observer Program (NPGOP) outlines for Observers in their field manual their role in regulatory compliance and instructs Observers how to legally document violations[1]. Observers in the NPGOP are asked during debriefing if they witnessed any violations. If so, they are instructed to write an affidavit for NMFS Enforcement and the case is then pursued. POP provides no similar guidance to Observers, should they witness a violation, nor is any guidance available from reviewing POP materials. In fact, it appears that only one of the six Observer Programs managed by this region includes the reporting of violations as an objective of the Program.

[1] North Pacific Groundfish Observer Program Manual, 2011. Page 20-1 – 20-3

Observers reported that Mr. Larry Beerkircher, who was the NMFS trainer and de-briefer for the POP program until last year, told Observers during two separate trainings that they would witness fisheries violations, such as shark-finning (taking fins off live sharks and discarding the mutilated animal alive) and marine pollution ("MARPOL"), but that these violations were not of interest to the POP. He told them that "if you have a problem with MARPOL violations, you better get out of the program now." Mr. Beerkircher said that it was just the "culture of the fishermen" and that they (Observers) should just accept that.

He specifically instructed them to enter violations into their field diary so that NMFS would legally be covered, but were told that the violations would not be pursued unless someone asked for the information. Moreover, the field diaries would not likely be examined because they were told that there is no communication between the POP and other agencies or even between departments of their own agency.

Observers afterwards expressed consternation at the POP staffs' lack of concern for fisheries law and the lack of cooperation or coordination with regard to the enforcement of fisheries law, especially coming from the very agency charged with the enforcement of many of these laws.

At least two Observers have reported having witnessed shark-finning and daily MARPOL violations. Mr. Combs reported that he did not document MARPOL violations in his field diary because he was told during training that POP did not care about these violations but recalls having seen it daily. These observers recall that "every observer" they spoke with about MARPOL violations experienced the same thing. Mr. Combs also witnessed crewmembers shooting seabirds two days in a row. When Observers reported these violations during their debriefing, Mr. Beerkircher told them, again, that writing the details in their field diary was sufficient but that the violations would not be pursued unless someone requested the information.

When Mr. Combs reported shark-finning on a vessel that was contracted by NMFS for a bycatch mitigation study on hook design, Mr. Beerkircher "chuckled at the fact that the boat did it while [the Observer] was on board and while they were working under a government contract." As far as he knew this was not reported to NMFS enforcement.

Similarly, Mr. Combs further reports POP staff instructing him to take actions that would have broken laws with U.S. Customs, regarding the carrying of samples of endangered species.

II. Subjecting Fisheries Observers to Unsafe Conditions.

Mr. Combs describes how NMFS and/or IAP Services, Inc. [the Observer Provider] pressured Fisheries Observers to take unsafe assignments, disregarded safety violations, and neglected medical support to Fisheries Observers.

All observer programs have protocols that stipulate that certain safety features must be present on a vessel and these are listed on a "Pre-trip Safety Check List" that Observers follow before departure. This list does not guarantee that a vessel is seaworthy but rather lists a *minimum* of safety features that can lessen safety risks at sea. Certain critical features trigger a "no-go", meaning if the item is expired, not properly installed or non-existing, the Observer must not accept the assignment.

However, Mr. Combs' reports that NMFS POP staff and his contractor, Mr. Chad Lefferson, IAP Services, Inc., pressured him to take assignments that had indicated a "no-go" status. In two instances he found expired stickers for hydrostatic releases and one expired sticker for an EPIRB. The POP program manager, Mr. Kenneth Keene, pressured him to take the assignment regardless.

Instead of the program coordinators contacting the vessels to enforce Observer safety laws, other Observers have reported that they were instructed by NMFS POP staff to either fix the problem themselves or talk the captain into fixing the problem. For example, Mr. Combs disclosed that some vessels' hydrostatic releases did not have any expiration date at all. A properly maintained hydrostatic release to a vessel's life raft could mean a matter of life or death in a vessel sinking and its proper maintenance shouldn't be dismissed. This is why it is considered by all US Observer Programs to trigger a "no-go" if it doesn't follow the Coast Guard's protocol. In those instances, he was instructed by POP staff to "tell the captain to scratch in a date" – in other words: to lie.

During the Gulf of Mexico BP oil spill in 2010, Observers felt pressured to take assignments right in the middle of the oil spill, exposing them to hazardous levels of toxic fumes and liquids. These assignments were made by NMFS POP staff even after one observer had reported becoming ill because of his exposure to the spill. IAP Services initially denied this Observer access to medical attention for an entire week upon his return. POP and IAP staff pressured other Observers into taking assignments in the same area as the spill, dismissing the Observer's illness and giving them false safety information to marginalize the actual risks.

Because of the other Observers' health reaction to the exposure, these Observers requested that POP staff require that vessels must take the Observers back to port if they begin to feel ill. Mr. Beerkircher refused, saying that NMFS "can't tell fishermen where and when to fish", which is completely untrue. Instead, he instructed Observers that their only option would be to call the Coast Guard to rescue them if they felt that was necessary.

Relying upon a costly Coast Guard rescue operation was not only fiscally irresponsible but showed a total disregard for preventative measures to ensure Observer safety during an environmental crisis. NMFS should have exercised precaution with regard to Observer safety, especially during a time when the Coast Guard was most likely not available because they were dealing with the enormity of the spill. When Observers still refused to take the assignments, IAP Services and NMFS increased the pressure, requiring them to sign a legal document describing their reason for refusing the assignments. It should have been a non-issue.

As an illustration of the broken safety culture within NMFS, Mr. Combs states that POP staff knows of specific vessels that engage in heavy drug use, yet they show little concern for the Observers' safety on those vessels. He reported POP staff joking about it when Observers are assigned to those vessels and also joking about "punishment trips" – vessels with known hardships, safety problems and disregard for fisheries laws that were assigned to some Observers as "punishment".

Moreover, Mr. Combs was told during a "safety refresher" course (safety training recertification every three years) regarding what to do if he should witness drug use on a vessel. He was told by Mike Harrelson of the NMFS Galveston lab to "request the captain and crew to go out on deck to do it and to not do such things during wheel watches".

Apparently, NMFS plays absolutely no role in ensuring Observer safety. Observers' relations with fishermen are often difficult enough without having to play the cop just to protect themselves, especially when everyone knows Observers carry no authority.

III. Tolerance for Improper Accommodations for Observers

National law prohibits a vessel from commercial fishing if it cannot accommodate an Observer[2]. Reports we have received indicate that this requirement is often ignored with official approval by NMFS.

[2] 50cfr Part 600.746(i)

[3] 50CFR Part 600.746; 50CFR Part 229.7(c)(4)(i) and (d)(2); 50CFR Part 635.7(e)(1) and/or 50CFR Part 622.8(c)(1)

For example, Mr. Combs reported that the rule regarding the equal accommodations for Fisheries Observers[3] which states that the owner/operator of a vessel must "provide accommodations and food that are equivalent to those provided to the crew" is regularly violated. Observers are sometimes forced to sleep at the galley table or on the floor, while crewmembers all have bunks. This means the Observer would lack any personal space and be forced to attempt to sleep where crewmembers were watching movies, smoking cigarettes and stepping over the Observer. In another instance, he met resistance from crewmembers when

he requested that they move equipment out of a bunk that was only being used as storage. Observers believe that these violations are region-wide.

In fact, Observers are informed of these conditions before being hired[4] but they are not told that vessels will be breaking the equal accommodations law. NMFS is essentially telling Observer candidates before hire that they will witness violation of laws that are supposed to protect Observer welfare, but that everyone will be ignoring these laws and that accepting this is a condition of being hired.

[4] IAP Services, Inc.. Fishery Observer job descriptions: "Work can be performed on a variety of vessels including small boats without facilities such as rest rooms or bunks".

Observers are told they have the right to refuse a vessel but they report pressure by NMFS and their contractor, IAP Services, Inc., to accept these assignments. Mr Combs believes that NMFS has never informed the vessels of this regulation or suggested to the vessels that they are required to comply. Observers in at least two Southeast programs report that vessels are allowed by NMFS to refuse female observers, which is against federal law, and that NMFS just sends a male Observer to accommodate them.

Organizational Concerns

The root causes for the above substantive concerns stems from organizational dysfunction that is within the purview of the OIG. Those root causes include:

☐The lack of whistleblower protection for Observers, including the likelihood of removal without cause and blackballing. Mr. Combs is Exhibit A. Not surprisingly, Observers are reluctant to come forward for fear of reprisal; and

☐A hostile work environment, not only on the vessels, but also with NMFS. The lack of concern for fisheries law by NMFS is contrary to the public trust, which wrongly assumes that NMFS monitoring programs are ensuring compliance with fisheries regulations. It also appears that this program is severely out of line with NMFS National Standards regarding Observer welfare and safety.

This organizational breakdown puts Observers in an untenable position. Observers are told up front by NMFS that their reports of witnessing illegal activity will essentially be ignored. Observers fear that challenging any policy, written or unwritten, legal or illegal, will result in a loss of their job. NMFS should be in solidarity with their observers, supporting them with sound transparent policies and protocols to ensure their safety and wellbeing. Without

backing from NMFS, Observers are vulnerable to both professional and physical danger.

Investigation Request

We therefore urgently request that the Inspector General conduct a region-wide investigation of the not only the POP but all Observer Programs within the Southeast Region of NMFS and that standards and protocols be instituted. We would strongly suggest that the OIG:

1. Survey or systematically interview all current and recently separated Observers throughout the region;

2. Audit field diaries or motes to check which recorded violations were ever officially reported and/or pursued;

3. Review all Southeast Observer Program protocols and policies for how each Program processes witnessed violations and recommend protocols and rules that would facilitate the coordination and cooperation between the Observer Programs and other agencies, and departments within NOAA, to process fisheries violations witnessed by Observers.

4. Recommend protocols and rules that would effectively protect Observers who report violations from reprisal, including standards for performance evaluations, transparency of the evaluations to Observers with steps they must take to prevent removal from the program, and an appeal process that Observers can follow to defend themselves from wrongful firing.

5. Review all Southeast Observer Program and Contractor policies and practices regarding the safety and wellbeing of Fisheries Observers, including whether and the extent to which–

a) NMFS provides a clear written explanation upon vessel selection for Observer coverage to the Owner/Operator of the vessel regarding laws that protect Observers and their responsibilities to accommodate an Observer and provide a copy to the Observer prior to deployment.

b) NMFS enforces laws protecting the health and safety of Fisheries Observers, especially with respect to the vessel's responsibility to fix any deficiencies of the vessel preventing accommodation of the Observer and does not allow the vessel to fish until the problem is resolved and that NMFS, not the Observer, ensures the problem is resolved.

6. Review each of the Southeast Observer Programs current policies and practices regarding Observer placement randomly without regard to race, color, religion, sex, or national origin as required under Federal Equal Opportunity Laws.

Thank you for your consideration of this request. Feel free to contact us for additional supporting information or clarification of any details provided herein.

Sincerely,

Elizabeth Mitchell, President
Association for Professional Observers

Jeff Ruch
PEER Executive Director

Appendix 2: Internal reviews, evaluations, or inquiries that NMFS has conducted since January 1, 2008.

To date there have been no internal reviews, evaluations, or inquiries that NMFS has conducted since January 1, 2008.

Appendix 3: Mechanisms NMFS has in place to ensure that fisheries observers are encouraged to document evident marine resource violations.

POP fisheries observers record potential marine resource violations on the data forms: gear log, haul log, animal log, sea bird form, mammal form, turtle life history form, and/or sea turtle release gear checklist. Evident marine resource violations witnessed by a POP observer are instructed to be written in to the field diary for that trip. On page 8 of the POP manual, the Field Diary section states, "The field diary should be used to document events or actions that occur during a single deployment and backup data information." The POP manual then has another section called "Field Diary Guidelines", which instructs the observer to write in marine mammal and sea turtle sightings and interactions as well as Compliance situations. In training, the observers are told repeatedly to document all observed violations in their field diary, and keep that diary in a safe place. They are also told that if they feel that their diary may not be secure, that they can use cryptic words to describe the violation which can be translated later during debriefing, as not to alert the potential violators of the documentation.

Appendix 4: Internal control processes by which NMFS ensures that fisheries observers are encouraged to directly report to NMFS any mistreatment aboard fishery vessels.

I. Initial observer training

A. Conflict resolution/Harassment module
   1. Conflict resolution
      a. Describe common conflict situations on vessels
      b. Discuss methods to avoid and/or mitigate conflict
   2. Harassment
      a. Discuss/define harassment
      b. Response
         i Personal safety-ways to request evacuation from vessel if necessary (Sat phone, EPIRB).
         ii Documentation-(who/what/ where/when)

B. Safety module
   1. Safety checklist-instructed to complete before deployment and notify POP staff about deficiencies
   2. Discussion of refusal policy-observer can refuse a trip for any documented concern with no repercussions

C. General Field Instructions module
   1. Re-emphasizes the trip refusal policy

II. Pre deployment

A. Observer is briefed on vessel, using debriefing reports from recent trips by other observers
   1. If observer has a concern, refusal policy is re-emphasized. If the observer decides to travel to the vessel, a discussion on how potential problem situations will be dealt with.

B. Observer travels to vessel and completes safety checklist and inspects accommodations.
   1. If the vessel does not pass the safety checklist:

i Vessel is given notification of the deficiencies and a chance to rectify them.

ii If the vessel departs and fishes without rectifying the deficiencies, the vessel will be reported to OLE at the end of the selection quarter via a written noncompliance report to the SEFSC-OLE liaison.

   2. If the observer determines the accommodations are inadequate:

i Vessel is given notification of the deficiencies and a chance to rectify them.

ii If the vessel departs and fishes without rectifying the deficiencies, the vessel will be reported to OLE at the end of the selection quarter via a written noncompliance report to the SEFSC-OLE liaison.

III. During deployment

A. Observers instructed to report via sat. phone once per week during deployments and report (among other things) work status code
   1. Code 4: Observer is requesting extraction. OLE and USCG will be notified
   2. Code 3: some type of situation has occurred, documentation has commenced, OLE is notified.
B. Observers can also contact USCG directly via sat phone and request extractions
C. If above has failed, observer can activate their personal EPIRB

IV. Post deployment

A. Debriefing
   1. Debriefer reviews data, field notes, communications during trip
   2. During debriefing, observer is asked about concerns found in (1.).
   3. Even if there are no concerns, debriefing form standard question asks about problem situations during the trip.
B. Harassment documentation
   1. If observer feels harassment occurs, observer is told to write a statement of what happened, to submit to the POP. This statement is kept in the vessel history folder for the use of future observers.
   2. OLE is contacted (or updated if already contacted via III A. above). This normally happens the same day the observer describes the harassment to the POP staff (usually upon vessel landing). Depending on where the vessel landed, POP staff will either contact an OLE agent in that area or the SEFSC-OLE liaison.

V. **Refresher/update trainings** (happens once a year minimum)

A. An enforcement/compliance discussion is conducted during update trainings. Common situations, new solutions, and emerging issues are dealt with. Refusal policy re-emphasized.

Appendix 5: All complaints of observer mistreatment, nationwide, reported to NMFS since January 1, 2008, to present, and any associated reports presenting findings and resultant actions.

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2007 TO 12/31/2007

Incident	Location	Date	Regulation	Violation Description	Status
I0700840	AK	3/13/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701012	AK	3/20/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - EMIS
I0701723	AK	4/17/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Lack of Evidence
I0701356	AK	4/27/2007	18 USC 1857(1)(L)	SEXUALLY HARASS AN OBSERVER	Criminally Prosecuted
I0701561	PI	5/7/2007	50 CFR 600.725(o)	SEXUALLY HARASS AN OBSERVER	Closed - Lack of Evidence
I0701762	PI	5/31/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Case Adjudicated
I0702929	NE	8/7/2007	50 CFR 648.14(a)(8)	OBSERVER ASSAULT	Closed - EMIS
I0703739	NE	9/12/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - Information Only
I0704448	SE	10/23/2007	50 CFR 600.725(o)	HARASS AN OBSERVER	Closed - EMIS
I0704024	AK	10/8/2007	50 CFR 679.7(g)(5)	SEXUALLY HARASS AN OBSERVER	Case Open
I0704176	AK	10/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704527	NE	11/16/2007	50 CFR 648.14(a)(8)	HARASS AN OBSERVER	Case Adjudicated
I0704656	AK	11/29/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed - Information Only
I0704645	AK	12/5/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open
I0704665	AK	12/11/2007	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Case Open

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OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2008 TO 12/31/2008

Incident	Date	Regulation	Violation Description	Status
I0800243	01/23/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed - Unfounded
I0800954	03/14/2008	50CFR600.725(w)	OBSERVER SAFETY	Closed (EMIS)
I0800954	03/14/2008	50CFR600.725(t)	OBSERVER INTIMIDATION	Closed (EMIS)
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0801387	04/14/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated

I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Case Initiated
I0801422	04/15/2008	50CFR648.14(a)(79)	OBSERVER ACCOMODATION	Case Initiated
I0801488	04/20/2008	50CFR600.725(w)	OBSERVER SAFETY ISSUE	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0801804	05/07/2008	50CFR600.725(w)	OBSERVER SAFETY	Case Initiated
I0802912	07/17/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803122	08/05/2008	50CFR648.14(a)(8)	HARASS AN OBSERVER	Closed (EMIS)
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0803188	08/06/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT	Closed - Unfounded
I0803764	09/09/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0803955	09/24/2008	50CFR648.14(a)(8)	OBSERVER INTIMIDATION	Case Initiated
I0804830	09/19/2008	50CFR648.14(a)(8)	OBSERVER INTERFERENCE	Closed - Unfounded
I0804868	11/10/2008	50CFR648.14(a)(8)	OBSERVER HARASSMENT HOSTILE ENVIRONMENT	Case Initiated
I0804969	12/04/2008	50CFR600.725(o)	SEXUALLY HARRASS AN OBSERVER	Case Initiated

OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2009 TO 12/31/2009

Incident	Location	Date	Regulation	Violation Description	Status
I0901245	AK	N/A	50 CFR 679.7(g)(1)	IMTIMIDATE, SEXUALLY HARASS AN OBSERVER	Closed--Lack of Evidence
I0901534	AK	1/20/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Open Investigation
I0901714	AK	2/2/2009	50 CFR 679.7(g)(3)	TAMPER WITH OBSERVER EQUIPMENT	Open Investigation
I0909121	AK	1/28/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Open Investigation
I0901984	AK	2/23/2009	50 CFR 679.7(g)(1)	CREATE AN OFFENSIVE WORK ENVIRONMENT	Open Investigation
I0902151	AK	2/17/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Closed--Verbal Warning
I0901434	AK	4/8/2009	50 CFR 679.7(g)(5)	OBSERVER THREAT	Open Investigation
I0902415	AK	6/4/2009	50 CFR 679.7(g)(5)	INTIMIDATING, HOSTILE, WORK ENVIRONMENT	Closed--Verbal Warning
I0903126	AK	5/23/2009	50 CFR 679.7(g)(5)	HARASS AN OBSERVER	Open Investigation
I0903356	AK	8/1/2009	50 CFR 600.725(o)	OBSERVER HARASSMENT observer v observer	Open Investigation
I0903516	AK	N/A	50 CFR 679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed--Lack of Evidence

I0904367	AK	10/15/2009	50 CFR 679.7(g)(4)	TAMPER/DESTROY OBSERVER'S EQUIPMENT	Open Investigation
I1000251	AK	11/17/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT observer v observer	Open Investigation
I1000820	AK	11/6/2009	50 CFR 679.7(g)(5)	OBSERVER HARASSMENT	Open Investigation
I0900875	NE	3/11/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Verbal Warning
I0901122	NE	3/5/2009	50 CFR 648.14(e)(8)	UNWELCOME SEXUAL SOUNDS TO OBSERVER	Closed--Verbal Warning
I0902123	NE	6/2/2009	50 CFR 600.725(o)	UNWANTED ATTENTION FROM CREWMEMBER	Closed--Lack of Evidence
I0902537	NE	3/14/2009	50 CFR 600.725(o)	CREWMEMBER MADE RACIST COMMENTS	Closed--Lack of Evidence
I0902601	NE	7/14/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & THEATENED OBSERVER	Open--Forwarded to GCEL
I0902681	NE	7/3/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Closed--Lack of Evidence
I0902682	NE	7/5/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Verbal Warning
I0903576	NE	9/1/2009	50 CFR 648.14(e)(1)	OPERATOR YELLED AT & INSULTED OBSERVER	Closed--Lack of Evidence
I0904013	NE	10/20/2009	50 CFR 648.14(e)(1)	HOSTILE ENVIRONMENT & INSULTED OBSERVER	Open--Forwarded to GCEL
I0901170	PI	3/6/2009	16 USC 1857(L)	HARASS AN OBSERVER	Open Investigation
I0901370	PI	4/20/2009	50 CFR 600.725(o)	HARASS AN OBSERVER	Open--Forwarded to GCEL
I0902200	PI	6/2/2009	16 USC 1857(L)	HARASS AN OBSERVER	Hearing requested
I0902568	PI	6/13/2009	50 CFR 666.22	THREATEN OBSERVER WITH KNIFE	Hearing requested
I1000128	PI	12/16/2009	16 USC 1857(L)	HARASS & INTIMIDTE AN OBSERVER	Open Investigation

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OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2010 TO 12/31/2010

INCIDENT	Date	Regulation	Violation Description	Status
I1001010	4/19/2010	16USC1857(L)	HARASS AN OBSERVER	Open
I1001296	5/13/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Closed-Adjudicated
I1002602	8/11/2010	16USC1857(L)	INTIMIDATE AN OBSERVER	Sent to GCEL
I1002013	6/28/2010	50 CFR 600.725	SEXUAL HARASSMENT OF OBSERVER	Closed-Declined by GC

I1000271	2/5/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - COPPS
I1001959	6/23/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1001615	6/2/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1001836	6/17/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1002085	7/1/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT/HARASSMENT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	HARASS AN OBSERVER	Criminal Prosecution
I1002344	7/23/2010	50CFR648.14(e)(1)	INTIMIDATE AN OBSERVER	Closed - Written Warning
I1002428	7/28/2010	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Verbal Warning
I1002213	7/13/2010	16USC1857(1)(L)	ASSAULT OF AN OBSERVER	Criminal Prosecution
I1002347	7/23/2010	16USC1857(1)(L)	SEXUAL ASSAULT OF AN OBSERVER	Criminal Prosecution
I1000921	4/2/2010	50CFR679.7(g)(1)	INTIMIDATE AN OBSERVER	Closed - Verbal Warning
I1001013	4/19/2010	50 CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001013	4/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Written Warning
I1001177	5/7/2010	50CFR679.7(g)(5)	CREATE HOSTILE WORK ENVIRONMENT	Closed - Summary Settlement
I1003090	8/19/2010	50CFR679.7(g)(5)	SEXUAL HARASSMENT OF OBSERVER	Closed - Verbal Warning
I1004005	10/19/2010	50 CFR 679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Open
I1003993	10/27/2010	50 CFR 679.7(g)(1)	INTERFERE WITH OBSERVER	Closed - Written Warning

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OBSERVER HARASSMENT/INTIMIDATION/ASSAULT CASES 1/1/2011 TO 12/31/2011

Incident	Location	Date	Regulation	Violation Description	Status
I1100557	NE	2/9/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT (Verbal)	Closed - Information Only (Observer

					Declined to Pursue)
I1100861	NE	3/3/2011	50CFR614.14(e)(1)	OBSERVER INTIMIDATION	Closed - Lack of Evidence
I1101497	NE	3/21/2011	50CFR648.14(e)(1)	OBSERVER HARRASSMENT - PASSIVE	Closed - COPPS
I1101558	AK	1/20/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	OPEN
I1101579	NE	3/4/2011	50CFR614.14(e)(1)	ASSAULT, INTIMIDATE, INTERFERE	Closed - Unfounded
I1101592	AK	3/29/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Closed - Lack of ENF Resources
I1101618	NE	4/7/2011	50CFR648.14(e)(1)	OBSERVER HARASSMENT & INTIMIDATION	Open
I1101773	AK	2/22/2011	50CFR679.7(g)(5)	INTIMIDATE, HARASS, CREATE A HOSTILE WORK ENVIRONMENT	Open
I1101816	AK	1/22/2011	50CFR679.7(g)(5)	INTIMIDATE AND COERCE AN OBSERVER RE DATA AND RESULTS	Closed - Information Only
I1101828	AKD	2/8/2011	50CFR679.7(g)(5)	SEXUALLY HARASS AND INTIMIDATE AN OBSERVER	Closed-Verbal Warning
I1102043	AK	3/9/2010	50CFR679.7(g)(5)	INTERFERE WITH OBSERVER PERFORMANCE	Closed - Information Only
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY ASSAULT AN OBSERVER	Open
I1102634	AK	6/13/2011	16 USC 1857(L)	SEXUALLY HARASS AN OBSERVER	Open
I1102931	AK	6/29/2011	50CFR679.7(g)(1)	ASSAULT/IMPEDE/HARASS	Open
I1103062	NE	6/24/2011	50CFR648.14(e)(1)	INTIMIDATE/HARASS	Open
I1103074	NE	6/5/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Lack of Evidence
I1103284	NE	6/21/2011	50CFR600.725(u)(1)	HARASS AN OBSERVER	Open
I1103504	NE	7/4/2011	50CFR600.725(o)	HARASS AN OBSERVER	Closed - COPPS
I1103538	AK	8/1/2011	50CFR679.7(g)(5)	HOSTILE WORK ENVIRONMENT	Closed - COPPS
I1103999	AK	3/9/2011	50CFR679.7(g)(5)	SEXUALLY HARASS OBSERVER	Closed - COPPS
I1104469	AK	6/19/2011	50CFR679.7(g)(5)	FORCIBLY ASSAULT, INTERFERE, INTIMIDATE	Open
I1104474	AK	8/1/2011	50CFR679.7(g)(5)	INTIMIDATE AN OBSERVER	Open

I1104579	NE	9/25/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - COPPS
I1104896	NED	10/6/2011	50CFR648.14(e)(1)	INTIMIDATE OR INTERFERE WITH OBSERVER	Closed - COPPS
I1105058	AKD	5/3/2011	50CFR679.7(g)(1)	SEXUALLY HARASS OBSERVER	Open
I1105058	AKD	5/3/2011	50CFR679.7(g)(5)	HARASS AN OBSERVER	Open
I1105108	AKD	8/13/2011	50CFR679.7(g)(5)	CREATE AN INTIMIDATING, HOSTILE, OFFENSIVE WORK ENVIRONMENT.	Open
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed-Verbal Warning
I1105320	NED	12/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed-Verbal Warning
I1105337	NED	12/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Information Only
I1105340	AKD	9/26/2011	50CFR679.7(g)(5)	CREATE AN INTIMIDATING/OFFENSIVE OR HOSTILE WORK ENVIRONMENT	Closed - Information Only
I1105343	AKD	2/9/2011	50CFR679.7(g)(5)	CREATE AN INTIMIDATING, HOSTILE OR OFFENSIVE WORK ENVIRONMENT	Closed - Information Only
I1105347	AKD	4/14/2011	50CFR679.7(g)(5)	INTERFERE OR INTIMIDATE AN OBSERVER	Closed - Information Only
I1200030	NED	12/19/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	CLOSED-DUPLICATE CASE (I1105320)
I1200113	NED	10/20/2011	50CFR648.14(e)(1)	INTIMIDATION	Closed - Lack of Evidence
I1200120	NED	9/27/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Information Only
I1200858	NED	4/8/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Closed - Unfounded
I1200884	NED	8/25/2011	50CFR648.14(e)(1)	OBSERVER INTIMIDATION	Open
I1200885	NED	7/21/2011	50CFR648.14(e)(1)	HARASS AN OBSERVER	Open

Appendix 6: NMFS Staff Involved in the Administrative Inquiry

A. NMFS Staff Responsible for leading the investigation:

Mark P. Ablondi, Captain NOAA
Executive Officer
National Marine Fisheries Service
Silver Spring, MD

Dr. Theophilus Brainerd
Deputy Director
Southeast Fisheries Science Center
Miami, FL

Chris Rilling
National Observer Program Manager
Office of Science and Technology
Silver Spring, MD

B. NMFS Southeast Observer Program Staff interviewed:

Dr. James Nance
Southeast Observer Program Manager
Southeast Fisheries Science Center
Galveston, TX

Kenneth Keene
Pelagic Observer Program Manager
Southeast Fisheries Science Center
Miami, FL

Lawrence Beerkircher
Pelagic Observer Program Supervisor
Southeast Fisheries Science Center
Miami, FL

Dr. Elizabeth Scott-Denton
Southeast Shrimp Trawl Observer and Gulf of Mexico Reef Fish Fishery Observer Manager
Southeast Fisheries Science Center
Galveston, TX

Appendix 7: NMFS investigation timeline, questions, and responses

Dec 1, 2011, PEER press release issued on the PEER/APO complaint filed with the OIG based on allegations raised by Jonathan Combs.

Dec 5, 2011, List of questions sent to the NMFS Southeast Observer Program requesting a written response to the allegations.

Dec 6, 2011, Conference call with SEFSC staff to discuss the list of questions sent to the SEFSC and a timeline for responding.

Dec 14, 2011, OIG Memorandum with Complaint Action Referral received by NMFS.

Feb 6, 2012, SEFSC written response to the allegations received by NMFS (see below).

March 5, 2012, DAA assigns Captain Ablondi to Administrative inquiry.

April 12, 2012, Interview with Mr Combs (Ablondi)

April 20, 2012, Interview with SEFSC staff (Ablondi/Rilling)

April 20, 2012, Interview with Mr. Combs (Ablondi/Rilling)

April 23, 2012, NMFS draft report on investigation of Southeast Observer Programs completed.

May 11 - July 10, 2012, Voluntary observer interviews (Ablondi)

January 25, 2013 Final NMFS Administrative Inquiry submitted to OIG

SEFSC Questions and Responses

The following are Southeast Fisheries Science Center (SEFSC) responses to complaints filed with the Office of the Inspector General (OIG) by the Association for Professional Observers (APO) and Public Employees for Environmental Responsibility (PEER) on behalf of Jonathan Combs.

It should be emphasized that observer safety is the number one priority of our SEFSC programs. Observers have the final say as to accept or reject a trip without reprisal. Moreover, they are required to assess any potential safety issues prior to deployment acknowledging that it is substantially more difficult to get them off a vessel once they are underway.

The letter to the OIG says that Jonathan Combs sent the same statement to the NMFS National Observer Program (NOP) on Nov 18, 2011 "with more details."

Response: The statement presented by PEER is not the same that was received by the NOP. The "details" referred to in the OIG letter are confidential data (vessel names). There is a concern that Mr. Combs conveyed this confidential information to persons not authorized to receive confidential data.

In the letter it says, "His statement reflects what other Fisheries Observers have also reported."

Response: The SEFSC is not aware of any similar written reports or complaints from SEFSC Observers to authorities outside the Center (e.g., NOP, APO, PEER). However, as explained in some of the texts below, other observers have reported violations, refusing vessels over safety concerns, etc., to SEFSC staff.

The letter says "The only reason Mr. Combs is able to go on record is because he was fired without cause by National Marine Fisheries Service (NMFS) for attempting to gain clarification on NMFS protocols that were contrary to the support of Fisheries Observers in the program and/or conflicting with what he knew to be federal law."

Response: Mr. Combs was not fired by NMFS. He is an employee of IAP and to our knowledge was not fired by IAP but rather reassigned to another fishery. The Pelagic Observer Program (POP) made the decision to no longer deploy Combs because of the difficulty in communicating with him (it often took him 12 hours or more to return the POP's inquiries regarding his availability to make a trip) and his requests for long periods of time off. POP staff reached a conclusion that meeting program target coverage required an observer who would be more available, and the decision was made to bring on another observer who had previously worked for the POP during the Gulf of Mexico Enhanced Coverage (GOMEC) project(s), and to use this observer in place of Mr. Combs. After leaving the Pelagic Longline Observer Program, he was offered another assignment with the Shark Gillnet Observer Program but to be the best of our knowledge he declined that offer.

1. Failure to Report Violations

According to the letter "In contrast with the SEFSC Pelagic Longline Observer Program (POP), the NMFS North Pacific Groundfish Observer Program (NPGOP) outlines for

observers in their field manual their role in regulatory compliance and instructs observers how to legally document violations. Observers in the NPGOP are asked during debriefing if they witnessed any violations. If so, they are instructed to write an affidavit for NMFS Enforcement and the case is then pursued. POP provides no similar guidance to Observers, should they witness a violation"

Response: Different protocols are followed in different SEFSC observer programs. For the Galveston-based observer programs, NMFS Office of Law Enforcement (OLE) attends observer trainings and explains what constitutes egregious violations. These are, in turn, immediately reported to OLE. OLE has attended Galveston observer trainings sporadically prior to 2008. In 2008, it became a standard for all training sessions. The OLE is given an hour time slot for presentations and discussions. OLE does not have a "standard" PowerPoint slide show and the presentation varies depending on the Special Agent conducting the training. OLE does hand out their cards -with a message to call anytime pertaining to safety, or as to what constitutes a violation. For the POP, enforcement matters are handled differently, largely as a result of the design and purpose of the program. There is a difference in the regulatory basis between the POP and the NPGOP. Compliance monitoring is a component in the expressed purpose of the NPGOP as set forth in Federal regulations[1]; however no such component is mentioned in the NMFS Highly Migratory Species (HMS) regulations which implement the POP[2],. In fact, in a regulatory compliance guide produced by HMS staff, the function of the observer program is described as to "collect biological information on all HMS species and other fish species caught in the commercial fishery. Observers note information recorded on logbooks such as the gear used, fishing location, and the number of fish caught and discarded, as well as information not reported on logbook forms, including the species, sex, and size of fish. This information is used in stock assessments and to help NMFS and SEFSC verify logbook information." Critical to the purpose of the POP is the minimization of the observer effect in order to support the assumption that the behavior of observed vessels is representative of the balance of the fleet. Therefore, POP staff do not proactively report fisheries violations to OLE, although observers and vessels are told that observer data must be made available to Law Enforcement upon request and that in certain cases could be used to investigate a violation[3].

The POP does (and did in the case of Mr. Combs) instruct observers that it is important to document any fisheries violation they witness; if the violation is able to be captured in a specific data form it should be noted there (for example, finning) and if there is no specific data form to capture the violation, document it in their field notes (further detail is given in a response below). These data forms have in the past been requested by OLE for use in investigation of fisheries violations. However, the only violations that are proactively communicated to OLE are violations in observer compliance; such as fishing without an observer when selected, obstruction of an observer, harassment or assault of an observer, etc.

[1] *50 CFR 679.50 (b): "The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Administrator to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment."*

[2] *50 CFR 635.7 (b): "Selection of vessels. NMFS will notify a vessel owner, in writing, when his or her vessel is selected for observer coverage. Vessels will be selected to provide information on catch, bycatch and other fishery data according to the need for representative samples."*

[3] *See attachment 1, POP letter of authorization.*

According to the letter "Observers reported that Mr. Larry Beerkircher, who was the NMFS trainer and de-briefer for the POP program until last year [June 2010], told observers during two separate trainings that they would witness fisheries violations, such as shark-finning (taking fins off live sharks and discarding the mutilated animal alive) and marine pollution ("MARPOL"), but that these violations were not of interest to the POP."

Response: This allegation is not factually correct. Observers were told that they might witness fisheries violations such as removal of fins from dead sharks caught incidental to swordfish/ tuna longlining, as observers had previously reported (via their data forms and field notes) very rarely witnessing ethnic Vietnamese fishermen taking fins for personal consumption on the vessel or at home. Observers were not told, as the PEER letter seems to imply, that they would inevitably and regularly witness fins being removed from live sharks and the living bodies subsequently discarded overboard. They were also never told that fisheries violations were of no interest to the POP. In fact, observers were specifically instructed that it was important to document any fisheries violation they saw (see above response). Observers were told that they would see various levels of refuse from the vessel discarded overboard, and that the POP had no data forms specifically designed to document this information. Observers were also told that neither upper level NMFS staff, OLE, nor United States Coast Guard (USCG) had ever requested information regarding MARPOL violations from the POP. Because of this and the fact that MARPOL is not mentioned in the HMS regulations, the POP interpreted that MARPOL violations were not fisheries violations. In the absence of any policy guidance or specific law enforcement requests for MARPOL information, the POP interpreted that only fishery violations needed to be documented. However, no observer was ever told to not document any violation they felt was important enough to be noted, including MARPOL. They were only told that they must document fisheries violations.

According to the letter "At least two observers have reported having witnessed shark finning and daily MARPOL violations"

Response: To handle Shark-finning and MARPOL violations, OLE attends Galveston observer trainings and explains what constitutes egregious violations. The Panama City Shark Observer program's data forms contain a field for an observer to record if a shark is finned and observers have recorded this in the past. These are, in turn, reported immediately to OLE. POP observers have two avenues for reporting and documenting fisheries violations. In some cases, certain violations such as shark finning, closed area incursions, excessive mainline length, illegal offsets on hooks, etc. can be captured on the actual data forms themselves and will reside not only on the paper copies of the forms but also in the electronic data. In cases where a fishery violation cannot be adequately described on a data form, a description of the violation is noted in the observer's field notes, which according to the Magnuson-Stevens Fishery Conservation and Management Act (MSA) are considered observer data. These field notes are not digitized or stored electronically, but reside as the original paper records in the trip files. OLE is not specifically contacted and informed of these violations unless the violations involve observer harassment, assault, intimidation, etc. However, according to a letter of introduction provided to all POP observers, "the data collected must be turned over to an authorized enforcement officer upon request, and is accessible to authorized enforcement personnel for the investigation of violations". POP observers were provided no training for documenting MARPOL but they had the ability to document these alleged violations in their field

notes if they wished. No observer's field notes were ever altered to remove mention of trash being thrown overboard, nor were any observers ever instructed that they should discontinue noting this practice in their field notes.

Specifically, in response to the allegation that other observers had reported witnessing finning, a data query of the POP database indicates that since 2007 (the year Mr. Combs started with the program) 18 different observers documented 30 individual cases (i.e., 30 individual animals) of sharks being finned, according to the definition of finning as returning a shark carcass to the water and retaining one or more fins from that individual. Since the total number of sharks observed during this same time period was 39,079 individuals, the percent of sharks observed finned was 0.08%. A number of POP observers reported MARPOL violations during debriefing or in their field notes; however this information is not digitized. We would have to go through hundreds of notes to obtain this number. The POP will yield the point that it is factual that more than two observers reported MARPOL violations.

According to the letter "Mr. Combs also witnessed crewmembers shooting seabirds two days in a row. When Observers reported these violations during their debriefing, Mr. Beerkircher told them, again, that writing the details in their field diary was sufficient but that the violations would not be pursued unless someone requested the information."

Response: Mr. Combs was deployed on a trip that he reported seagulls being shot, although the language of the PEER complaint makes it appear that Mr. Combs was forced to report the violation verbally during debriefing. In fact, the circumstances surrounding the violation were noted in Mr. Combs' field diary when the POP received the data, exactly as he had been instructed to do during training. The seabird shooting was also further noted and written in independently on the debriefing form by POP debriefing staff. No specific action to alert OLE was taken by the POP, according to the standard procedure detailed previously.

According to the letter "When Mr. Combs reported shark-fining on a vessel that was contracted by NMFS for a bycatch mitigation study on hook design, Mr. Beerkircher "chuckled at the fact that the boat did it while [the observer] was on board and while they were working under a government contract."

Response: Mr. Combs' data did indicate that two sharks, dead upon gear retrieval, had their fins removed and kept by the crew subsequent to discarding the carcasses. POP animal log data forms have a numeric code associated with fining; the observer documented this occurrence in his data as instructed. NMFS OLE was not notified as per procedure described previously. Mr. Combs' portrayal of his debriefing with Mr. Beerkircher is misleading. The context of the conversation was about how some practices are so embedded in certain cultures (in this case, retaining fins by ethnic Vietnamese crewmen, for personal consumption) that a fisherman would not consider it in violation to take the fins, even while an observer was on board.

2. Subjecting Fisheries Observers to Unsafe Conditions.

According to the letter "However, Mr. Combs' reports that NMFS POP staff and his contractor [employer], Mr. Chad Lefferson, IAP Services, Inc., pressured him to take assignments that had indicated a "no-go" status. In two instances he found expired stickers

for hydrostatic releases and one expired sticker for an Emergency Position-Indicating Radio Beacon (EPIRB). The POP program manager, Mr. Kenneth Keene, pressured him to take the assignment regardless."

Response: This is untrue. The SEFSC abides by its own policies and procedures to ensure observer safety and does not pressure observers to work on a vessel determined to be unsafe. The SEFSC safety check-off list is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain to remedy deficiencies). If in doubt, the program staff contacts USCG for clarification and guidance. While rare that the USCG Examiner does not detect it during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. According to Mr. Combs' historical vessel safety checklists, he has documented 1 expired life raft hydrostatic release, multiple unmarked EPIRB hydrostatic releases, and a few expired EPIRB registrations. The expired life raft hydro in question was a judgment call made by POP staff. The judgment call was made based on the fact that Mr. Combs was carrying our valise raft with him. Expired EPIRB NOAA registrations are not a "no go" issue for the POP. In any case, if Mr. Combs was concerned with these matters, he could have indicated his discomfort with the scenario, and like any observer he would have the ability to refuse the trip without repercussion.

According to the letter "Instead of the program coordinators contacting the vessels to enforce observer safety laws, other observers have reported that they were instructed by NMFS POP staff to either fix the problem themselves or talk the captain into fixing the problem. For example, Mr. Combs disclosed that some vessels' hydrostatic releases did not have any expiration date at all. A properly maintained hydrostatic release to a vessel's life raft could mean a matter of life or death in a vessel sinking and its proper maintenance shouldn't be dismissed. This is why it is considered by all US Observer Programs to trigger a "no-go" if it doesn't follow the Coast Guard's protocol. In those instances, he was instructed by POP staff to "tell the captain to scratch in a date" – in other words: to lie."

Response: This is untrue. SEFSC staff does not pressure observers to go on unsafe vessels. The safety check-off listed is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain/owner to remedy the deficiencies). If in doubt, we contact USCG for clarification and guidance. While rare that it is not detected by the MSO during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. As observers are carrying out a vessel's safety check with a representative of the vessel, they are trained to notify that person of any deficiencies. This courtesy invites a way to alleviate the deficiency before the vessel departs. However, the SEFSC staff will become involved if for any reason the observer has a problem relaying the proper information, or requests the office to explain to a vessel captain/owner why it is not in compliance. Regarding "fix the problems themselves," this is false. Observers are trained to not touch the equipment during a vessel safety check. Observers are trained to ask a representative of the vessel to handle any and all safety equipment during the vessel safety check. Most hydrostatic releases are sold by retail stores, and come unmarked. When the POP coordinator approached multiple USCG Examiners about the circumstances when they find releases unmarked, they state that they try to rebuild the time frame of when it was bought and/ or installed (month), which is the expiration (2 years from that month and year), then have the installer mark it.

According to the letter "During the Gulf of Mexico BP oil spill in 2010, observers felt pressured to take assignments right in the middle of the oil spill, exposing them to hazardous levels of toxic fumes and liquids. These assignments were made by NMFS POP staff even after one observer had reported becoming ill because of his exposure to the spill. IAP Services initially denied this Observer access to medical attention for an entire week upon his return. POP and IAP staff pressured other Observers into taking assignments in the same area as the spill, dismissing the Observer's illness and giving them false safety information to marginalize the actual risks."

Response: No SEFSC observer was ever pressured to take an assignment in the middle of the oil spill. However, PEER may be speaking in temporal terms rather than spatial terms in this context. Certainly, observers were assigned to vessels that would be fishing in the Gulf of Mexico during the time period that oil was flowing from the Deepwater Horizon site. However, all vessels actively engaged in commercial fishing were kept clear of the immediate spill site by a closed fishing area that was continuously enlarged by NMFS based on projected surface oil trajectories. The observers' concerns, particularly highlighted by a single observer's alleged respiratory condition on his return from a trip on 5/20/2010, led to a request by the POP addressed to the SEFSC Environmental, Safety & Health Compliance Officer regarding proper Personal Protection Equipment (PPE) and training. Subsequent refusals of a trip by multiple observers on 5/22 lead to the Observer Program contacting senior SEFSC leadership. The guidance provided back to the POP was that the supplied PPE and training was considered appropriate for the level of exposure, but that the SEFSC should continue to support the policy that the observers had the ability to refuse trips if they felt uncomfortable. Finally, guidance from the NMFS HQ Environmental Safety officer received on 6/1/2010, concluded that the 4 hour HAZWOPER course that all observers had been put through was considered adequate for observers deployed into the Gulf if there was no intention of conducting fishing operations within the closed area, and that the only protective gear needed were chemical safety goggles, nitrile gloves, and rubber boots, all items the observers were in fact equipped with. The safety information that was provided by the POP came directly from NMFS safety and environmental officers, upon direct and frequent inquiries by POP staff. Presumably the PEER/APO complaint is relying on Mr. Combs' statement that he later learned that NMFS had required 24 hour HAZWOPER training for employees and contractors deployed into the Gulf, rather than the 4 hour training IAP had put them through. However, this is incorrect. In reality, both HQ and SEFSC environmental safety staff determined that the NMFS Deputy Assistant Administrator's directive requiring 24 hour training did NOT apply to fisheries observers deployed on vessels that would be fishing outside the closed areas[4].

According to the letter "Because of the other observers' health reaction to the exposure, these observers requested that POP staff require that vessels must take the Observers back to port if they begin to feel ill. Mr. Beerkircher refused, saying that NMFS "can't tell fishermen where and when to fish", which is completely untrue. Instead, he instructed Observers that their only option would be to call the Coast Guard to rescue them if they felt that was necessary."

Response: This statement is incorrect. A certain number of observers, including Mr. Combs, required a guarantee that the vessels they were assigned to would fish well away from outer boundaries of the closed area during their trips. The vessels in question were fishing under contract to NMFS to conduct weak hook research. Under the contract, the vessel captains had the choice to fish in any location currently declared open to commercial fishing by NMFS. During DWH, large areas were closed to fishing and no contracted vessels from this study fished inside these closed areas. In matters

of medical emergency, the POP believes that only the USCG has the authority to terminate a vessel's voyage. In cases of extreme seasickness the POP has in fact asked USCG to take action; this usually results in a flyover by USCG aircraft, who radio the vessel, evaluate the observer's condition, and either suggest a heli-vac if the case is extreme enough, or instruct the vessel to make for the nearest port, but these actions are at the USCG's discretion. The situation described in the PEER/APO complaint would be no different; any observer who became ill and felt their continued presence on board the vessel would jeopardize their health could either contact the POP or the USCG directly via satellite phone or EPIRB if the sat phone was not functioning.

According to the letter "When observers still refused to take the assignments, IAP Services and NMFS increased the pressure, requiring them to sign a legal document describing their reason for refusing the assignments."

[4] *See attachment 2, email to Dr. Theo Brainerd, Deputy Director SEFSC*

Response: According to material on POP safety policies provided to all observers "It is also the POP's policy to allow observers to refuse to board a vessel for documented health and safety concerns, even if the vessel has a current USCG decal and passes the POP pre-trip safety checklist. However, in these cases the POP will require a written statement by the observer documenting the concerns." The statements referenced by the PEER complaint were not subject to any format requirements, other than that we asked observers to be as detailed as possible as to why they were refusing the trips. As to if these statements constitute "legal documents", we would defer to the opinion of General Council; of the four refusal documentations for trips due to DWH-related health concerns, most arrived via email, and did not have a signature.

It is important to note here that when the observers refused these trips, they were working on a project that provided 8 hours a day, 7 days a week pay (the 16 hours on the weekends were paid at an overtime rate), single occupancy hotel room, daily meal and incidental reimbursement, and access to a rental car for the duration of the project when not deployed on a vessel. The refusals happened on or about 5/22/2010 and the project was scheduled to last at least until 6/11/2010. On 5/24/2010, the POP coordinator was told the following by the NMFS COTR on the IAP contract: "if an observer does not believe it is safe to work around the oily water, there is no contractual reason to retain that individual. It is costly to keep an observer on standby in Houma and the oil situation is not likely to change before the expected end date of your BFT program. This is not a punishment for reporting what the observer feels is a safety issue, it is just prudent spending to only retain those individuals who can support your program and provide the data that is so badly needed.[5]" However, the POP decided to keep all observers on standby as described above, through the regularly scheduled end of the project, including the four who had refused the trips. If the POP wished to" pressure" observers into taking trips, there would have been no better method than to dismiss one or all of those who had refused trips, as suggested by the COTR. That the POP continued to retain these individuals on expensive standby for the remote possibility that the oil situation would resolve quickly and the bulk of the fleet would begin to fish again, does not seem to support the PEER/APO complaint of "pressure". Finally, of the four observers who refused trips in May 2010, only one was a current "full time" POP observer (Mr. Combs). Mr. Combs remained with the POP for another year, making 10 more trips including two on "distant water" vessels; of the other three observers, one left the POP for graduate school (although offered a full time slot as a POP observer), another was hired by IAP for

DWH work where she remains to this day, and the final was re-hired by the POP for next year's GOMEC project. This is strong evidence that the POP and IAP did not harbor any vindictive feelings towards observers who had refused trips; the picture painted of the POP and IAP by PEER/APO/Combs is simply not substantiated by these facts.

According to the letter "Mr. Combs states that POP staff knows of specific vessels that engage in heavy drug use, yet they show little concern for the observers' safety on those vessels. He reported POP staff joking about it when observers are assigned to those vessels and also joking about "punishment trips" – vessels with known hardships safety problems and disregard for fisheries laws that were assigned to some observers as "punishment".

Response: In the fishery monitored by the POP, captains and crews change, in some cases rather frequently, from vessel to vessel. Further, substance abuse by any individual aboard these vessels is not a predictable behavior. However, during pre-trip briefings the logistics/ deployment coordinator will read the recent debriefing notes for that vessel's conditions if the observer being assigned to the vessel is not familiar with it. At this point the observer has the option to decline even traveling to the vessel. If the observer arrives at a vessel and finds that the captain and crew are either engaged in substance abuse or the observer recognizes crew that he/she has known in the past to engage in substance abuse, the observer can still decline the trip. If during the trip, an observer fears for his/her physical safety for any reason (including heavy drug use) POP observers are issued a satellite phone and instructed to call the office to request an extraction, or if the office cannot be reached, calling the USCG directly. If the satellite phone does not function, as a last resort observers are provided a personal EPIRB and told to activate it. The actual decision to evacuate the observer, terminate the vessel's voyage, or do nothing, is ultimately up to the USCG.

"PUNISHMENT TRIPS": The POP deploys observers in the regular fishery according to a general rotational model; as vessels notify POP staff about an upcoming departure, observers at the top of the list are deployed, and the observers at the bottom of the list move up. Observers who return from trips are placed at the bottom of the list. However, since POP observers may live anywhere on the US Gulf or East Coasts, and vessels may depart to anywhere on those coasts and also to more remote locations like Canada, Puerto Rico, and Trinidad, the POP will deviate from the rotation if it is in the interest of wise use of funding. For example, if a vessel is leaving from NC and the second in line observer lives in NC, that observer may be deployed instead of the first in line who lives in the FL Panhandle, particularly if latest vessel intelligence indicates that a vessel may depart from the panhandle in the near future. For the 100% coverage projects in the Gulf of Mexico, a different system was used. Observers were assigned to vessels for the duration of the project based on the experience of the observer and the likelihood that the vessel would fish frequently during the project. The goal was to get as much accurate data as possible by attempting to insure that observers with the greatest amount of experience monitored the majority of fishing effort.

[5] *See attachment 3, email from Gayla Fornea.*

The POP staff does employ humor as a device during training sessions. However, no punishment trips as referred to by PEER/APO or in the statement by Mr. Combs ever occurred. The POP invites the NOP to interview or survey all observers ever deployed on the specific two vessels mentioned by Mr. Combs in his statement; we are confident that other than possibly Mr. Combs himself, no observer will report that they believe they were assigned to these vessels as a punishment for

something. Perhaps even more importantly, a review of the fate of observers who actually did refuse trips on these particular vessels will show that these observers were subsequently deployed on other vessels that met their standards. One would assume that if they had been deployed to a "poor" vessel as a punishment, and then refused that trip, that further punishment would not include being deployed subsequently on a "nicer" vessel, which is what a review of the facts will show.

According to the letter "Mr. Combs was told during a "safety refresher" course (safety training recertification every three years) regarding what to do if he should witness drug use on a vessel. He was told by Mike Harrelson of the NMFS Galveston lab to "request the captain and crew to go out on deck to do it and to not do such things during wheel watches".

Response: What was presented in training, as in all trainings, is that if the observer suspects possible drug/or abusive alcohol use, they inform the captain/crew that they do not want to see it; and if it in anyway effects observer's safety it will be reported immediately to the observer coordinator. This is emphasized in the pre-boarding interview as well.

3. Tolerance for Improper Accommodations for Observers

According to the letter "Mr. Combs reported that the rule regarding the equal accommodations for fisheries observers which states that the owner/operator of a vessel must "provide accommodations and food that are equivalent to those provided to the crew" is regularly violated. Observers are sometimes forced to sleep at the galley table or on the floor, while crewmembers all have bunks. This means the observer would lack any personal space and be forced to attempt to sleep where crew members were watching movies, smoking cigarettes and stepping over the observer. In another instance, he met resistance from crewmembers when he requested that they move equipment out of a bunk that was only being used as storage. Observers believe that these violations are region-wide."

Response: We require that the vessels provide a safe place to sleep. Due to the small nature of many commercial fishing vessels in the southeast US, bunk space may not always be available. Observers are allowed to refuse a trip, without reprisal, if no bunk space is available. Specific to the POP, staff verifies the availability of a bunk before contacting the observer. If the vessel does not have bunk space, the observer is notified and has the option of declining the trip. If an observer declines a trip for this reason and the vessel departs without an observer, that vessel may be submitted to enforcement. The POP has submitted vessels to OLE for enforcement actions when they have not provided adequate accommodations for an observer. Thus, the decision to make a trip on a vessel where a dedicated bunk will not be available is the choice of the observer.

According to the letter "Mr. Combs believes that NMFS has never informed the vessels of this regulation or suggested to the vessels that they are required to comply. Observers in at least two Southeast programs report that vessels are allowed by NMFS to refuse female observers, which is against federal law, and that NMFS just sends a male observer to accommodate them."

Response: For all SEFSC observer programs, vessels are notified of the requirement to carry a female observer and the accommodation regulations upon receipt of selection letter or during initial contact with program staff. The POP believes that a review of the deployment data would show that

in the POP, and the SEFSC programs in general, female observers got at least as much work, if not more, than their male counterparts, when the comparison is controlled for similarly qualified observers. Finally, the SEFSC has pursued compliance cases against vessels that refused to take female observers.

Other concerns raised in the Statement by Jonathan Combs

This section focuses only on those items not already covered above under the complaint filed with the OIG.

1. Fired without cause; NMFS ignored its own performance evaluation protocols

According to Mr. Comb's statement "They [NMFS] simply told Mr. Lefferson that they would no longer be using me for the POP and he stated it was because of my July 20, 2011 e-mail to Ms. Cushner. This is in direct conflict with the POP's recent performance evaluation protocols, which we were informed of in another e-mail from Mr. Lefferson on July 25, 2011. This e-mail stated that we would be "evaluated during debriefing on data quality, if you "work well with the program" and that the protocol includes a "3strikes, you're out" policy, where observers "might get a verbal, written warning and if it is something more serious, dismissal." I was neither informed of any wrongdoing on my part during any deployment as long as I've been working with the POP, nor was I given any warning.

Response: Project managers either verbally or by email notify IAP with any concerns on an as needed basis. Moreover, in 2011, SEFSC observer programs implemented an observer evaluation system based on quantitative spreadsheets/records/documentation from written and verbal debriefs, sampling percentage, quarterly tests grades, and events both excellent and below average. These evaluations are provided to IAP on a quarterly basis to enable them to better assess their employees. For the POP, the performance evaluation Mr. Combs speaks of is by request from IAP and was neither designed by nor requested by NMFS. Due to the process of discussing how the evaluation system would work, the POP had not implemented this performance evaluation system prior to 11/7/2011; therefore, Mr. Combs is inaccurate in his view that the specific protocols he cites were ignored. In fact they were not in place, whatever information IAP told him. Prior to the IAP system, POP observers were evaluated by debriefers on a subjective basis, and feedback was provided during debriefings and routine operational phone conversations with POP staff. Once again, the lack of an objective evaluation system by the POP should not be compared with other, larger, North American observer programs. The POP has a single debriefer and only about 10 observers normally on staff. Further, observers have frequent conversations with the POP coordinator and the other two POP staff members. Therefore, the POP coordinator and debriefer have the ability to subjectively evaluate any POP observer relative to the whole POP observer group that would be impossible in a larger program.

2. NMFS ignored safety regulations in place to protect Fisheries Observers.

According to Mr. Comb's statement "Since their life raft's hydrostatic release had expired and my life raft only had a 4-person capacity, I immediately called the office and informed Mr. Keene of the situation. He thought about it for a minute and then told me I should still be able to make the trip. I want to be clear that, at this point, I felt it would have been "me refusing the

trip", not "me not being allowed to make the trip due to safety concerns". This is in direct violation of national safety protocols for all observer programs in the United States and a Fisheries Observer should not feel bad for following these protocols."

Response: The expired life raft hydro and capacity in question was a judgment call made by POP staff. The judgment was made based on the fact that Mr. Combs was carrying the program's valise raft with him, as well as an USCG Authorization letter to use a program-supplied valise[6].

According to Mr. Comb's statement "I often noticed hydrostatic releases that were not marked with an expiration date at all and was "allowed" to make those trips. In these instances, and those with expired releases, Mr. Keene and Ms. Cushner put the onus upon Fisheries Observers to tell the captains to fix whatever we found wrong and told us just to tell them to scratch in a date if there was no expiration date."

Response: This is false. The SEFSC does not pressure anyone to go on an unsafe vessel. The SEFSC safety check-off list is required and completed prior to departure. Any questions regarding deficiencies are directed to the observer coordinators or program managers. These in turn are resolved (often requiring the captain to remedy the deficiencies). If in doubt, we contact USCG for clarification and guidance. While rare that the USCG does not detect it during the inspection for the safety decal, an unmarked hydrostatic release can be validated with the proper documentation. Since the observer is completing the safety check with a representative of the vessel, the onus is in fact on the observer to convey deficiencies to the vessel rep. By explaining the deficiency at the time of inspection, the vessel's crew has time to repair any safety issue. In this particular case, hydrostatic releases can be purchased at retail stores.

3. NMFS ignores 72-hour notice required by vessels prior to departure:

According to Mr. Comb's statement "This law is in place to give NMFS notice in order to line up the logistics necessary to place an observer on a vessel. It doesn't appear that the F/V Watersport, in the example given above, gave NMFS the required 72-hour notice prior to their trip because Mr. Keene told me that they had just called and were leaving that day, which is less than 24 hours. Yet nothing happened to this vessel for having broken the law. Instead, NMFS passed this pressure on to me to catch the vessel in time for departure."

[6] *See attachment 4, USCG Memorandum 16711*

Response: Mr. Combs is incorrect, the reef, shark and shrimp programs require 48 hours notification and the POP selection letter actually states the requirement for notification is for 5 business days; this is stated in the selection letter but is not in the regulations. For all SESFC observer programs, if a vessel gives less than required notification, and no observer can make it to the vessel in that time frame, and the vessel departs without an observer, that vessel will be reported to enforcement. However, if an observer can make a vessel's desired departure date and time, the POP sees no reason to make a vessel wait the entire notification period before they depart. In the case of many, small, weather dependent vessels, such as the one referred to in this allegation, a 5-business day notification is practically impossible for any specific departure date. The only way these vessels could comply with the stipulation in the

selection letter, is to tell NMFS that sometime in the next 5-15 days, they hope to go fishing if the weather, fishing catch reports, and market price are favorable. In that case, the POP would have to deploy an observer to that port, and pay the observer's wages, per diem and hotel costs for up to 10 days of standby, for what would normally turn out to be a 2-3 day fishing trip. While this would be an attractive deployment for an observer, it is not in the best interest of using taxpayer funds to monitor the fishery. The POP should continue to be good stewards of public funds even if it occasionally inconveniences observers. Mr. Combs, like all observers, had the option of declining the trip he cites; he mentions "pressure", but we do not see the evidence. POP observers frequently do decline trips that come up with very short notification, there are no negative repercussions associated with such refusals.

4. NMFS ignored its own Fisheries Observer accommodations regulations.

Response: Already discussed in the letter to OIG.

5. NMFS doesn't follow Safety Training protocols to prepare its Fisheries Observers

According to Mr. Comb's statement "My safety training had lapsed for some or all of that trip and this was acknowledged by Ms. Cushner before the trip. Instead of requiring that my Safety Training "refresher course" be completed, Ms. Cushner, again deployed me on January 18th 2010, on the F/V Whitewater II in 2010 (trip ID T03 021). Although my 2006 Safety Training certification expired, Ms. Cushner stated that I could just attend the next available training."

Response: While the observer is correct that the policy of the POP is to have an observer go through a safety refresher training every three years, the policy does not describe what would happen if an observer was beyond the three years. Mr. Combs' assumption that someone who was one day, or one month, etc. out of date with safety would not be allowed to deploy on further trips is not supported by any written policy document from the POP. The POP follows a policy of attempting to have observers go through a safety refresher training every three years, but the logistical dictates of scheduling safety trainings occasionally result in having observers take training long before the three years is up or a month or so after. In this fishery, one trip might make the difference between achieving target coverage or not; achieving coverage is a legal mandate but safety refresher training is not. While the POP has attempted to follow best practices (such as safety training every three years) and in fact has a good track record of doing so, when hard legal responsibilities conflict with those best practices the POP's obligation is clear.

6. POP managers joke about punishing observers with unsafe assignments.

Response: Addressed in the letter to OIG.

7. NMFS instructs Fisheries Observers to ignore violations.

Response: Addressed in the letter to OIG.

8. NMFS lacks permits and protocols for collection of protected species samples.

Response: For SEFSC programs, there are protocols and an extensive list of both state and federal

permits established for protected species. In the reef fish program the observer notify the observer coordinators via satellite phones within 24 hours of capture due to GMFMC recommendations. Data forms are completed, with specimens tagged, biopsied, and photographed whenever possible. The POP has to apply for permits for the collection of samples of various species. NMFS, and more specifically SEFSC and the POP do not apply for all permits for all species. Permits are acquired based on the probability of interacting with a species. For example, the POP carried a sawfish take permit for some time, until it became apparent that the chance of interacting with these animals on a longline vessel is improbable. The protocols for collecting and transporting specimens and samples are given orally during training, and are spelled out in the permits that each observer is required to carry on all deployments. In response to Mr. Combs' specific complaint that he was asked to collect samples for which he did not have a permit, there was in fact some initial confusion as to if a permit was needed to collect gut contents from species for which a sampling permit already existed. That confusion was resolved; no extra permit was necessary, therefore Mr. Combs was not asked to do something unlawful.

9. NMFS instructs Fisheries Observer to avoid declaring protected species sample with US Customs.

According to Mr. Comb's statement "Mr. Beerkircher instructed me to just pack the samples in my bags and to not declare them with U.S. Customs to avoid any hassles."

Response: The observer was instructed to retain his biological samples while returning from Canada rather than shipping them via FedEx. The observer had been provided with a CITIES permit that allowed for retention, transportation, and importation of samples from endangered species, and was expected to follow the lawful instructions provided by officials to travelers.

10. NMFS and Observer Provider contractor, IAP Services, Inc. ignores dangers of BP Oil spill to Fisheries Observers.

Response: Already addressed in the letter to OIG.

11. NMFS "blackballs" Fisheries Observers who ask questions.

According to Mr. Comb's statement "Myself and other (more than ten that I have spoken with) observers have expressed to each other the fear that if you do not accept the trips or even if you question any protocols, you can easily be "blackballed" (not be invited back for projects or be offered future trips, if you happen to work with them full time). The threat of not getting work or getting unpleasant assignments and NMFS actions such as my recent termination prevents others from speaking up when issues arise."

Response: Observers who refuse trips are placed back in the rotation, at the spot they were already at, and offered the next available trip. There are no procedures for observers that question protocols; these things are dealt with via email exchange, phone conversations, or in person, with POP staff as the situation dictates; however, the POP denies asking the contractor to fire or giving unpleasant assignments to observers who raise concerns. Factual data and examples on who was blackballed, and why, is absent from this allegation (other than Mr. Combs' belief that he himself was blackballed). We advance the exemplary retention rate of observers in the POP program (current

average length of service with the POP: 6.2 years), combined with the fact that every year observers express their desire to return to the Bluefin project, serves as evidence that the majority of observers who get employed by the POP find the experience rewarding. Also see the response to the DWH concerns previous; as detailed the four observers who both refused trips and questioned NMFS' safety policies during this time period were not "blackballed" in any way.

12. NMFS lacked standards for Fisheries Observers participating in the Bluefin Tuna Special Study research project.

Response: These observers receive the same standard two week POP course that regular observers do, which includes safety, data forms protocols, ID, protected species data collection, etc. In fact, due to the large logistical demands of training on short notice, the POP brought in certified AMSEA trainers from other regions (John LaFargue from the NWFSC and Eric Matzen from the NEFSC) to conduct the safety training during the training session Mr. Combs refers to. Neither was given instructions to pass everyone regardless of performance, and neither expressed concerns at the end of training that one or more of the observers they had trained were not capable of being safely deployed as an observer. It should be noted that Mr. LaFargue in particular has an outstanding reputation as an observer safety trainer and advocate of rigorous safety training; to dismiss this training as "a bit of a joke" as Mr. Combs did in his complaint is perplexing.

13. NMFS manipulated observer coverage to accommodate a TV reality show filming According to Mr. Comb's statement "I was deployed on the F/V Eagle Eye for a Grand Banks trip in 2008 even though I was told it had not been selected. Larry Beerkircher told me that the F/V Eagle Eye II had actually been selected. However, the F/V Eagle Eye II was going to carry a camera crew for a TV reality show, so a deal was made between POP and the vessel's owner to put an observer on a different vessel that he owned. I am unsure whether or not this is legal. I do know that the captain of the Eagle Eye was not involved in this decision and that he does not like to take observers, especially when his vessel was not selected. Thus my job was made more difficult by a deal made by POP bending the rules for fishermen."

Response: The POP standard procedure is to allow substitutions of vessels that have the same owner, if the substitute vessel fishes the same amount of gear, and will be fishing in the same statistical area and selection quarter as the vessel originally selected. This is what happened in this case. Vessel selection procedures and subsequent substitutions are not prescribed by regulation; they are left up to the discretion of the program. Moreover, the POP has occasionally substituted vessels in order to facilitate NMFS research. This was also the case in the situation described by Mr. Combs, the vessel was taking along a NMFS scientist from the NEFSC to tag sharks; had the POP insisted the vessel take the observer, the film crew still would have gone, it would have been the NMFS researcher who would not have been deployed for that trip. The POP strives to have some flexibility to facilitate both observer coverage and vessel operations. This is evident in previous sections of Mr. Combs' complaint where he suggested displacing a crewmember from a bunk, or suggests a captain delay a departure date in order to accommodate observers. This flexibility usually results in a better on board working relationship between the vessel personnel and the observers.

14. Fisheries Observers in the POP have no appeal process, nor any avenue to express their concerns.

According to Mr. Comb's statement "In general I felt that the POP managers bullied Fisheries Observers into making unsafe and uncomfortable decisions about deployments. I asked very simple questions in my e-mail of July 20, 2011 in a non-threatening manner. Instead of working with me or providing answers, I was simply fired.

Response: We have an open door policy; observers have personal phone numbers and email contact for the entire chain of command, as well as USCG, OLE, and others. As stated earlier in this response, his employer, IAP World Services, did not fire Mr. Combs as a result of his email of July 20th, 2011. In fact he was no longer deployed by the POP due to difficulties in getting in touch with him in a timely manner, which hampered effective logistical operations. Finally, when the decision to no longer use Mr. Combs was reached, POP staff were instructed by the NMFS COTR and IAP Project Manager to not have discussions with Mr. Combs regarding this matter. It is possible that this contractually mandated restriction created the ill feeling that led to Mr. Combs' subsequent actions. To our knowledge IAP did not fire Mr. Combs until he released a public statement without consulting his employer.

Attachment #1

Southeast Fisheries Science Center
Miami Laboratory
75 Virginia Beach Drive
Miami, FL 33149

April 13, 2007

Name: **Jon Combs**
Certification date: 04-13-07
To Whom It May Concern:

This letter serves as a formal document which recognizes the person above, Mr. Jon Combs as a certified observer. This observer is not a Miami Laboratory employee, but has been hired under an observer provider, **IAP World Services, Inc.,** as a representative of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA)-Fisheries Agency, Southeast Fisheries Science Center (SEFSC).

The scientific and biological data collected by this NOAA-Fisheries certified observer while aboard this U.S. flagged vessel is used for assessment purposes for both U.S. domestic monitoring and to meet reporting obligations as a member nation to the International Commission for the Conservation of Atlantic Tunas (ICCAT). This vessel has been selected by the Director of the SEFSC to carry an observer for the mandatory collection of data, the data collected must be turned over to an authorized enforcement officer upon request, and is accessible to authorized enforcement personnel for the investigation of violations. If the vessel is carrying an observer collecting data on a voluntary basis, the data collected must be turned over to an authorized enforcement officer upon request, but cannot be used for the investigation of any violation without the concurrence of the NMFS Southeast Regional Director. Captains or owners wishing to have copies of the observer's trip data sheets may request them from the observer or from the SEFSC Miami Laboratory.

If there are any questions concerning this policy you should contact the following:

Dr. Roy Crabtree, Regional Administrator
NMFS, Southeast Regional Office
9721 Executive Center Drive
St. Petersburge, FL 33702
(727) 570-5301

Please extend all formal courtesy to this contractual representative of the NOAA-Fisheries Agency.

Sincerely,

Lawrence Beerkircher,
Pelagic Longline Observer Program Coordinator

Attachment #2

Subject: Re: [Fwd: Safety Training and Personal Protective Equipment while working in the Gulf region]
From: Theo Brainerd <Theo.Brainerd@noaa.gov>
Date: 6/9/2010 11:57 AM
To: Lawrence R Beerkircher <Lawrence.R.Beerkircher@noaa.gov>
CC: Peter Thompson <Peter.Thompson@noaa.gov>, Dan Poulos <dan.poulos@noaa.gov>, Richard Koster <Richard.Koster@noaa.gov>, James M Nance <James.M.Nance@noaa.gov>, "steve.turner" <Steve.Turner@noaa.gov>

Larry -- Thanks for the feedback. Your observers are good to go.
Theo

Lawrence R Beerkircher wrote:

Theo,
I just spoke to Dan and Rich. It seems the consensus opinion is that the policy below does not apply to observers as they are not considered mandated to work with oil, oiled gear, or oiled catch. Because there is a possibility that oiled gear or catch could be encountered during a Gulf trip, the opinion is that as long as the Observer is not being deployed specifically as part of a DWH project, and has had 4 hour HAZWOPER training, and is instructed to cease normal sampling and handling of catch and proximity to gear operations should the vessel encounter contaminated waters, that the deployment of an observer is not in conflict with the policy below. Accordingly, unless I hear differently, I intend to continue the deployment of observers in the Gulf for our routine operations, as long as they have the 4 hour HAZWOPER. A vessel intends to depart in a couple hours with one of our observers, so if you would like me to act differently, please let me know. Thanks,
Larry

Theo Brainerd wrote:

Supervisors --- Please take note of JO's directive and inform all staff as appropriate.
Thanks,
Theo

Subject:
Safety Training and Personal Protective Equipment while working in the Gulf region
From:
John Oliver <John.Oliver@noaa.gov>
Date:
Wed, 09 Jun 2010 10:37:49 -0400
To:
Gloria Thompson <Gloria.Thompson@noaa.gov>, John Oliver <John.Oliver@noaa.gov>, Brenda Jans <Brenda.Jans@noaa.gov>, Joyce Gibson <Joyce.Gibson@noaa.gov>, Jim

Balsiger <Jim.Balsiger@noaa.gov>, Carrie Selberg <carrie.selberg@noaa.gov>, Steve Murawski <Steve.Murawski@noaa.gov>, Eric Schwaab <Eric.Schwaab@noaa.gov>, Kristen C Koch <Kristen.C.Koch@noaa.gov>, Rebecca Lent <Rebecca.Lent@noaa.gov>, Jean-Pierre Ple <Jean-Pierre.Ple@noaa.gov>, Jim Lecky <Jim.Lecky@noaa.gov>, James Burgess <James.Burgess@noaa.gov>, Alan Risenhoover <Alan.Risenhoover@noaa.gov>, Bonnie Ponwith <Bonnie.Ponwith@noaa.gov>, Gary Reisner <Gary.Reisner@noaa.gov>, Brian Brown F/MB <Brian.Brown@noaa.gov>, Larry Tyminski <Larry.Tyminski@noaa.gov>, Doug Mecum <Doug.Mecum@noaa.gov>, Pat Kurkul <Pat.Kurkul@noaa.gov>, Chris Mantzaris <Chris.Mantzaris@noaa.gov>, Suzan Oliver <Suzan.Oliver@Noaa.Gov>, Roy Crabtree <Roy.Crabtree@noaa.gov>, Buck Sutter <Buck.Sutter@noaa.gov>, Michael Tosatto <Michael.Tosatto@noaa.gov>, Karen Niki <Karen.Niki@noaa.gov>, Douglas Demaster <Douglas.Demaster@noaa.gov>, Pam Moen <Pam.Moen@noaa.gov>, Usha Varanasi <Usha.Varanasi@noaa.gov>, John E Stein <John.E.Stein@noaa.gov>, Christine Holt <Christine.Holt@noaa.gov>, Frank Almeida <Frank.Almeida@noaa.gov>, Karen Heise-Gentile <Karen.Heise-Gentile@noaa.gov>, Nancy Thompson <Nancy.Thompson@noaa.gov>, Sophia Howard <Sophia.Howard@noaa.gov>, Samuel Pooley <Samuel.Pooley@noaa.gov>, Michael Seki <Michael.Seki@noaa.gov>, Connie Barclay <Connie.Barclay@noaa.gov>, Mark Holliday <Mark.Holliday@noaa.gov>, Emily Lindow <Emily.Lindow@noaa.gov>, Michael Rubino <Michael.Rubino@noaa.gov>, Susan Bunsick <Susan.Bunsick@noaa.gov>, Pat Montanio <Pat.Montanio@noaa.gov>, Steve Leathery <Steve.Leathery@noaa.gov>, Anne Barrett <Anne.Barrett@noaa.gov>, Carol Schirmer <Carol.Schirmer@noaa.gov>, Wanda Cain <Wanda.Cain@noaa.gov>, Timothy Hansen <Timothy.Hansen@noaa.gov>, Miki Hirano <Miki.Hirano@noaa.gov>, Samuel Rauch <Samuel.Rauch@noaa.gov>, Tony Morton <Tony.Morton@noaa.gov>, Rod Mcinnis <Rod.Mcinnis@noaa.gov>, barry thom <Barry.Thom@noaa.gov>, Peter Thompson <Peter.Thompson@noaa.gov>, Harrel Hay <Harrel.Hay@noaa.gov>, David Detlor <David.Detlor@noaa.gov>, Helen Golde <Helen.Golde@noaa.gov>, Emily Menashes <Emily.Menashes@noaa.gov>, Peyton Robertson <Peyton.Robertson@noaa.gov>, Bill Karp <Bill.Karp@noaa.gov>, Brian T Pawlak <Brian.T.Pawlak@noaa.gov>, Angela Proctor <Angela.Proctor@noaa.gov>, Jenni Wallace <Jenni.Wallace@noaa.gov>, Dawn Graham <Dawn.Graham@noaa.gov>, Lori Budbill <Lori.Budbill@noaa.gov>, Jon Kurland <Jon.Kurland@noaa.gov>, Michelle Dufay <Michelle.Dufay@noaa.gov>, Michael S Gallagher <Michael.S.Gallagher@noaa.gov>, Alvin Katekaru <Alvin.Katekaru@noaa.gov>, Gerry Davis <Gerry.Davis@noaa.gov>, Lisa Van Atta <Alecia.VanAtta@noaa.gov>, Meghan Donahue <Meghan.Donahue@noaa.gov>, Michael Payne <Michael.Payne@noaa.gov>, James Appel <James.Appel@noaa.gov>, Steven Wilson <Steven.Wilson@noaa.gov>, mara browne <mara.browne@noaa.gov>, Kelly Denit <Kelly.Denit@noaa.gov>, Tylise Conrad <Tylise.Conrad@noaa.gov>, Theo Brainerd <Theo.Brainerd@noaa.gov>, Patti Vandetta <Patti.Vandetta@noaa.gov>, Ned Cyr <Ned.Cyr@noaa.gov>, Heather Blough <Heather.Blough@noaa.gov>, Sujuan Situ <Sujuan.Situ@noaa.gov>, Russell Dunn <Russell.Dunn@noaa.gov>, Nancy Majower <Nancy.Majower@noaa.gov>, Beth Lumsden <Beth.Lumsden@noaa.gov>, Linda Atwell <Linda.Atwell@noaa.gov>, Lindsay Fullenkamp <Lindsay.Fullenkamp@noaa.gov>, Deb Lambert <Deb.Lambert@noaa.gov>, Heather Sagar <Heather.Sagar@Noaa.Gov>, Kristen R Laursen <Kristen.R.Laursen@noaa.gov>, Peter Fischel <Peter.Fischel@noaa.gov>, Dan Poulos <dan.poulos@noaa.gov>, Richard Koster <Richard.Koster@noaa.gov>

To:
Gloria Thompson <Gloria.Thompson@noaa.gov>, John Oliver <John.Oliver@noaa.gov>, Brenda Jans <Brenda.Jans@noaa.gov>, Joyce Gibson <Joyce.Gibson@noaa.gov>, Jim Balsiger <Jim.Balsiger@noaa.gov>, Carrie Selberg <carrie.selberg@noaa.gov>, Steve Murawski <Steve.Murawski@noaa.gov>, Eric Schwaab <Eric.Schwaab@noaa.gov>, Kristen C Koch <Kristen.C.Koch@noaa.gov>, Rebecca Lent <Rebecca.Lent@noaa.gov>, Jean-Pierre Ple <Jean-Pierre.Ple@noaa.gov>, Jim Lecky <Jim.Lecky@noaa.gov>, James

Burgess <James.Burgess@noaa.gov>, Alan Risenhoover <Alan.Risenhoover@noaa.gov>, Bonnie Ponwith <Bonnie.Ponwith@noaa.gov>, Gary Reisner <Gary.Reisner@noaa.gov>, Brian Brown F/MB <Brian.Brown@noaa.gov>, Larry Tyminski <Larry.Tyminski@noaa.gov>, Doug Mecum <Doug.Mecum@noaa.gov>, Pat Kurkul <Pat.Kurkul@noaa.gov>, Chris Mantzaris <Chris.Mantzaris@noaa.gov>, Suzan Oliver <Suzan.Oliver@Noaa.Gov>, Roy Crabtree <Roy.Crabtree@noaa.gov>, Buck Sutter <Buck.Sutter@noaa.gov>, Michael Tosatto <Michael.Tosatto@noaa.gov>, Karen Niki <Karen.Niki@noaa.gov>, Douglas Demaster <Douglas.Demaster@noaa.gov>, Pam Moen <Pam.Moen@noaa.gov>, Usha Varanasi <Usha.Varanasi@noaa.gov>, John E Stein <John.E.Stein@noaa.gov>, Christine Holt <Christine.Holt@noaa.gov>, Frank Almeida <Frank.Almeida@noaa.gov>, Karen Heise-Gentile <Karen.Heise-Gentile@noaa.gov>, Nancy Thompson <Nancy.Thompson@noaa.gov>, Sophia Howard <Sophia.Howard@noaa.gov>, Samuel Pooley <Samuel.Pooley@noaa.gov>, Michael Seki <Michael.Seki@noaa.gov>, Connie Barclay <Connie.Barclay@noaa.gov>, Mark Holliday <Mark.Holliday@noaa.gov>, Emily Lindow <Emily.Lindow@noaa.gov>, Michael Rubino <Michael.Rubino@noaa.gov>, Susan Bunsick <Susan.Bunsick@noaa.gov>, Pat Montanio <Pat.Montanio@noaa.gov>, Steve Leathery <Steve.Leathery@noaa.gov>, Anne Barrett <Anne.Barrett@noaa.gov>, Carol Schirmer <Carol.Schirmer@noaa.gov>, Wanda Cain <Wanda.Cain@noaa.gov>, Timothy Hansen <Timothy.Hansen@noaa.gov>, Miki Hirano <Miki.Hirano@noaa.gov>, Samuel Rauch <Samuel.Rauch@noaa.gov>, Tony Morton <Tony.Morton@noaa.gov>, Rod Mcinnis <Rod.Mcinnis@noaa.gov>, barry thom <Barry.Thom@noaa.gov>, Peter Thompson <Peter.Thompson@noaa.gov>, Harrel Hay <Harrel.Hay@noaa.gov>, David Detlor <David.Detlor@noaa.gov>, Helen Golde <Helen.Golde@noaa.gov>, Emily Menashes <Emily.Menashes@noaa.gov>, Peyton Robertson <Peyton.Robertson@noaa.gov>, Bill Karp <Bill.Karp@noaa.gov>, Brian T Pawlak <Brian.T.Pawlak@noaa.gov>, Angela Proctor <Angela.Proctor@noaa.gov>, Jenni Wallace <Jenni.Wallace@noaa.gov>, Dawn Graham <Dawn.Graham@noaa.gov>, Lori Budbill <Lori.Budbill@noaa.gov>, Jon Kurland <Jon.Kurland@noaa.gov>, Michelle Dufay <Michelle.Dufay@noaa.gov>, Michael S Gallagher <Michael.S.Gallagher@noaa.gov>, Alvin Katekaru <Alvin.Katekaru@noaa.gov>, Gerry Davis <Gerry.Davis@noaa.gov>, Lisa Van Atta <Alecia.VanAtta@noaa.gov>, Meghan Donahue <Meghan.Donahue@noaa.gov>, Michael Payne <Michael.Payne@noaa.gov>, James Appel <James.Appel@noaa.gov>, Steven Wilson <Steven.Wilson@noaa.gov>, mara browne <mara.browne@noaa.gov>, Kelly Denit <Kelly.Denit@noaa.gov>, Tylise Conrad <Tylise.Conrad@noaa.gov>, Theo Brainerd <Theo.Brainerd@noaa.gov>, Patti Vandetta <Patti.Vandetta@noaa.gov>, Ned Cyr <Ned.Cyr@noaa.gov>, Heather Blough <Heather.Blough@noaa.gov>, Sujuan Situ <Sujuan.Situ@noaa.gov>, Russell Dunn <Russell.Dunn@noaa.gov>, Nancy Majower <Nancy.Majower@noaa.gov>, Beth Lumsden <Beth.Lumsden@noaa.gov>, Linda Atwell <Linda.Atwell@noaa.gov>, Lindsay Fullenkamp <Lindsay.Fullenkamp@noaa.gov>, Deb Lambert <Deb.Lambert@noaa.gov>, Heather Sagar <Heather.Sagar@Noaa.Gov>, Kristen R Laursen <Kristen.R.Laursen@noaa.gov>, Peter Fischel <Peter.Fischel@noaa.gov>, Dan Poulos <dan.poulos@noaa.gov>, Richard Koster <Richard.Koster@noaa.gov>

All NMFS personnel involved in activities related to the Deepwater Horizon Event will be properly trained and equipped with personal protective equipment (PPE) prior to beginning their missions on water or the shore line. We must also ensure the safety of all other NMFS employees and contractors, including observers working in the Gulf region but not involved directly in the spill activities.

Specifically for the Deepwater Horizon event, the minimum training for any person who will be working on shore with no contact with the oil will be 4 hour Hazardous waste operations and emergency response (HAZWOPER) training from any source which meets the requirements of EPA/OSHA, including those offered online. This is the

course presently offered by BP.

The minimum training for any person working within a contaminated zone or participating in actual clean-up and/or oiled wildlife recovery efforts as part of their duties or as an ancillary portion of their duties must have the 24hour HAZWOPER training that includes lecture, hands on exercises with PPE and decontamination of personnel and equipment. Please contact Rich Koster, NMFS Environmental Compliance Officer for assistance identifying suitable HAZWOPER providers.

Any person who does not have the proper training and PPE will not go to sea or work in the field for NMFS on Deepwater Horizon projects.

You should remind all of your people in, or going to the field to be vigilant at all times of their personal safety and conditions in their immediate environment. There are literally dozens of federal and state agencies, NGO's and private contractors working together on the spill, and our personnel may find themselves teamed up with with others, or working from platforms with unknown safety pedigrees. This is not to say that they are not safe, but we cannot take our personal safety for granted.
All employees should be continuously aware of their susceptibility to heat stress, exposure to extreme weather including lightning, their ability to maintain hydration and their capability to communicate and call in help if needed. You and your employees need to ensure these basic requirements are met before they embark on their individual missions. NMFS leadership will back up any employee who declines to work under circumstances where these basic needs cannot be assured.

The national Point of Contact for questions and guidance on safety related matters pertaining to the DWH activities is Rich Koster, NMFS Environmental Compliance Officer. Dan Poulos of the Southeast Fishery Science Center in Panama City is also available to answer questions and relay guidance on safety related matters.
jo

Theo R. Brainerd, Ph.D.
Deputy Director
NOAA Fisheries Service
Southeast Fisheries Science Center

Attachment #3

Lawrence Beerkircher <lawrence.r.beerkircher@noaa.gov>

BFT observers

4 messages

Gayla D. Fornea <Gayla.D.Fornea@noaa.gov> **Mon, May 24, 2010 at 3:56 PM**
To: Larry Beerkircher <Lawrence.R.Beerkircher@noaa.gov>
Cc: Chad Lefferson <Chad.Lefferson@noaa.gov>, Charles Bergmann <charles.bergmann@noaa.gov>

Larry,
Chad and I had a conversation this morning about your busy weekend with the BFT observers and oil spill related issues. Chad told me that one of the observers was in the oil spill area and that at least one of their catches had oil on the lines. I don't remember what he said about the catch, but the observer reported that he had experienced a sore throat after exposure to the oil and other chemicals in the water. I was also told that one of the hook study boats went out without an observer although their contract requires they carry an observer with them. The reason they didn't have an observer is because the observer refused to go out citing safety fears related to the oil spill. I was also told that you wanted me to determine what hazardous training was required by the observers and what PPE was needed.

I am concerned about the information I received on several areas. First, I am not qualified to tell anyone what kind of hazardous training or PPE is required for any work so I wonder if this was a misunderstanding. But, I do question the wisdom of providing hazardous training to all of the observers when this program will end in less than 3 weeks and few boats are actually fishing. Second, I understand that the observer programs have always given the last word in Safety determinations to the observer in that if they felt a boat was unsafe or if the crew were threatening, they were to make the call and not go. But, I didn't know that they had been given the leeway to determine if the environment was safe. I don't believe this is the Safety determinations that have been encouraged by Government in the past, but if it is please advise me so that I can document the file that the observers have this power. Third, if an observer does not believe it is safe to work around the oily water, there is no contractual reason to retain that individual. It is costly to keep an observer on standby in Houma and the oil situation is not likely to change before the expected end date of your BFT program. This is not a punishment for reporting what the observer feels is a safety issue, it is just prudent spending to only retain those individuals who can support your program and provide the data that is so badly needed. In discussions with Charles Bergmann, he said you had told him that the observers were told how long the BFT program would last and that you thought you needed to keep them until the end of the program. But, I want you to know that there is no contractual reason to retain individuals that you will not need.

On the issue of PPE, Chad broached the subject as to who is responsible for providing PPE in response to the oil spill hazards. This is an area that is not spelled out in the contract since we had no way of knowing PPE would be an issue. Since there is no stipulation in the contract, then it is my opinion that this is an area that must be negotiated if the Government sees a need for the PPE.

I wish you the best in this stressful time and hope to be able to provide you assistance when you need it. I don't want you to think you must keep observers that are no longer needed to support your program. I also want to make sure I understand what power the observers have been given in making a determination to go out on a boat or not. Please let me know if I can help in any way.

Gayla

Gayla_D_Fornea.vcf
1K

Lawrence R Beerkircher <Lawrence.r.beerkircher@noaa.gov> **Mon, May 24, 2010 at 4:23 PM**

To: "Gayla D. Fornea" <Gayla.D.Fornea@noaa.gov>
Cc: Chad Lefferson <Chad.Lefferson@noaa.gov>, Charles Bergmann <charles.bergmann@noaa.gov>, James M Nance <James.M.Nance@noaa.gov>

Gayla,
I asked Chad to contact you in regard to the contractual issues (if any) that might surround IAP arranging any oil-spill related training. I am not qualified to determine if any of our reactions to this oil spill have contractual implications, which is why I asked him to contact you.
I have also attached for your documentation our program's safety policies which state our support of an observer's ability to refuse a vessel due to documented health or safety concerns.
Larry

Gayla D. Fornea wrote:

Larry,
Chad and I had a conversation this morning about your busy weekend with the BFT observers and oil spill related issues. Chad told me that one of the observers was in the oil spill area and that at least one of their catches had oil on the lines. I don't remember what he said about the catch, but the observer reported that he had experienced a sore throat after exposure to the oil and other chemicals in the water. I was also told that one of the hook study boats went out without an observer although their contract requires they carry an observer with them. The reason they didn't have an observer is because the observer refused to go out citing safety fears related to the oil spill. I was also told that you wanted me to determine what hazardous training was required by the observers and what PPE was needed.

I am concerned about the information I received on several areas. First, I am not qualified to tell anyone what kind of hazardous training or PPE is required for any work so I wonder if this was a misunderstanding. But, I do question the wisdom of providing hazardous training to all of the observers when this program will end in less than 3 weeks and few boats are actually fishing. Second, I understand that the observer programs have always given the last word in Safety determinations to the observer in that if they felt a _boat _was unsafe or if the crew were threatening, they were to make the call and not go. But, I didn't know that they had been given the leeway to determine if the environment was safe. I don't believe this is the _Safety _determinations that have been encouraged by Government in the past, but if it is please advise me so that I can document the file that the observers have this power. Third, if an observer does not believe it is safe to work around the oily water, there is no contractual reason to retain that individual. It is costly to keep an observer on standby in Houma and the oil situation is not likely to change before the expected end date of your BFT program. This is not a punishment for reporting what the observer feels is a safety issue, it is just prudent spending to only retain those individuals who can support your program and provide the data that is so badly needed. In discussions with Charles Bergmann, he said you had told him that the observers were told how long the BFT program would last and that you thought you needed to keep them until the end of the program. But, I want you to know that there is no contractual reason to retain individuals that you will not need.
On the issue of PPE, Chad broached the subject as to who is responsible for providing PPE in response to the oil spill hazards. This is an area that is not spelled out in the contract since we had no way of knowing PPE would be an issue. Since there is no stipulation in the contract, then it is my opinion that this is an area that must be negotiated if the Government sees a need for the PPE.
I wish you the best in this stressful time and hope to be able to provide you assistance when you need it. I don't want you to think you must keep observers that are no longer needed to support your program. I also want to make sure I understand what power the observers have been given in making a determination to go out on a boat or not. Please let me know if I can help in any way.

Gayla

Pelagic Observer Program safety policies 2010.doc
27K

James Nance <James.M.Nance@noaa.gov> **Mon, May 24, 2010 at 4:31 PM**
To: Lawrence R Beerkircher <Lawrence.R.Beerkircher@noaa.gov>

Larry: Thanks for letting me know about this issue.

[Quoted text hidden]

Gayla D. Fornea <Gayla.D.Fornea@noaa.gov> **Mon, May 24, 2010 at 6:47 PM**
To: Lawrence R Beerkircher <Lawrence.R.Beerkircher@noaa.gov>
Cc: Chad Lefferson <Chad.Lefferson@noaa.gov>, Charles Bergmann <charles.bergmann@noaa.gov>, James M Nance <James.M.Nance@noaa.gov>

Larry,
Thank you for sending the safety policy. It is very helpful in that it shows you give the observers complete discretion in determining if they will deploy or not due to safety issues. This is informative to me as I had always understood the observer only had the option to refuse deployment for safety reasons based on the conditions of the boat.
I did not understand that Chad was questioning if there were any contractual issues concerning his arranging hazardous training for his employees. We did discuss briefly who was responsible for paying if there was a charge and, based on contract language, it is ambiguous since this is not the type of training we have ever had to consider. Thankfully, Chad was able to find training provided by BP and cost is not an issue.

You are right that, if not careful, some of our actions may create contractual obligations and I appreciate you taking the time to try to consider those. That was my main concern and reason for sending the email to you. I wanted to reassure you that you do not have to retain the observers if your mission has changed or ends abruptly. Additionally, if it benefits the program, you can send the observers home to remain on stand by and fly them back if things clear up. In other words, we will work to support whatever need you have.
Additionally, I was a little upset that it seemed, from the conversations I had, that the observers were dictating what they would and would not do which is unacceptable. But, your safety policy clears that concern up.
Again, let me say I am here to help you in any way possible.
Gayla
[Quoted text hidden]

Gayla_D_Fornea.vcf
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Attachment #4

U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: CG-5433
Phone: (202) 372-1249
Fax: (202) 372-1917
Email: Jack.A.Kemerer@uscg.mil

16711

JUL 15 2008

MEMORANDUM

From: M. W. KOSECRANS
(COMDT) CG-5433

Reply to Attn of: CG-5433
Jack Kemerer
202-372-1249

To: CGD SEVEN (dp)

Thru: CG LANTAREA (Ap)

Subj: NMFS OBSERVERS AND VALISE PACKED LIFERAFTS

Ref: (a) CGD SEVEN (dp) Memorandum 16711 of 3 June 2008
(b) NOAA Fisheries and USCG Memorandum of Agreement on Observer Safety dtd 21 December 2004
(c) Requirements for Commercial Fishing Industry Vessels, 46 CFR Part 28
(d) Implementation of Lifesaving Equipment Requirements for Commercial Fishing Vessels, NVIC 1-92 and Change 1
(e) COMDT (G-MVI-4) Letter 16714.10 of 18 December 1993

1. Issue. The NMFS Observer Program Managers and USCG District Prevention and CFVS Program Managers have requested interpretation and guidance on the use of valise-packed inflatable liferafts by NMFS observers, such as in reference (a). This is particularly applicable when an observer embarks on a fishing vessel that has an installed inflatable liferaft with sufficient capacity to accommodate only the crew of the vessel. The question then is whether or not the carriage of a valise-packed liferaft in addition to the currently installed liferaft provides an acceptable safety equipment level and such carriage is consistent with the intent and letter of the requirements set forth in 46 CFR Part 28.

2. Discussion.

a. References (b) through (e) state and discuss safety and survival equipment requirements regarding commercial fishing vessels. On smaller vessels, the installed liferaft often only has the capacity to accommodate the crew and not the NMFS observer. These may be four-man, non-SOLAS, but Coast Guard-approved liferafts. In these instances, NMFS has provided the observer with a valise-packed liferaft to ensure there is survival craft capacity for the observer. This action has been accepted by the Coast Guard as meeting the equipment requirements. There has been no change to the Coast Guard's acceptance of a NMFS observer bringing aboard a valise-packed liferaft that is Coast Guard-approved to meet the aggregate survival craft capacity to accommodate the total number of individuals on board the vessel.

b. In order for the observer's valise-packed liferaft to be acceptable for use and meet the survival equipment requirements onboard a commercial fishing vessel, the valise liferaft must be Coast Guard approved, as must the vessel's installed liferaft. A valise-packed liferaft will carry a 160.051/...series Coast Guard approval number. A valise-packed liferaft is not a SOLAS-approved liferaft, but is Coast Guard-approved for domestic service. The liferaft must also be fitted with a service pack appropriate to the area in which the vessel will be operating.

c. Service pack types for non-SOLAS liferafts and valise-packed liferafts include:
- "Ocean Service" or "Ocean Service (A)" – for operating beyond 50 miles of the coastline;
- "Limited Service" or "Limited Service (B)" – for operating between 20-50 miles of the coastline, cold waters; or
- "Coastal Service" – for operating between 20-50 miles of the coastline in warm waters, or beyond the Boundary Line between 12-20 miles of the coastline in cold waters.

Note: the above service pack and liferaft requirements apply to documented vessels and undocumented vessels with more than 16 individuals on board.

d. The intent of the regulations and the guidance provide in NVIC 1-92 is that each vessel must have one or more inflatable liferafts of a combined capacity large enough to accommodate every person on board, and its service pack type based on the vessel's operating area. Liferafts placed on a vessel after September 15, 1991 must be of a type approved by the Commandant. Coast Guard-approved SOLAS liferafts are for six persons or greater and will carry approval numbers in the 160.151/...series. Survival equipment packs on SOLAS liferafts are marked "SOLAS A" for Ocean Service and "SOLAS B" for Limited Service. SOLAS liferafts must be stowed so as to float free and automatically inflate in the event the vessel sinks. Coast Guard-approved Non-SOLAS liferafts, including valise-packed liferafts, for domestic service are for four persons or greater and will carry approval numbers in the 160.051/...series. The survival equipment packs installed on Non-SOLAS liferafts are as listed in paragraph 2.c. Non-SOLAS liferafts must be kept readily accessible for launching or be stowed so as to float free in the event the vessel sinks. A valise-packed liferaft that is placed in the wheelhouse or ready room can be considered readily accessible for launching if it is kept where it can be reached immediately without constraint and its access is not blocked in any way.

3. Action. The interpretations discussed above regarding carriage of valise-packed inflatable liferafts by NMFS observers whenever they embark on a commercial fishing vessel should be distributed to all units and personnel who are involved with examining commercial fishing vessels and enforcing safety regulations applicable to such vessels. Specifically, examiners and boarding personnel must understand the following:

a. A valise-packed inflatable liferaft may be carried in addition to the vessel's installed liferaft to meet the aggregate capacity to accommodate the total number of individuals on board the vessel when the addition of a NMFS observer on board the vessel causes the number of persons to exceed the capacity of the vessel's liferaft.

b. A valise-packed inflatable liferaft, when carried aboard a vessel by a NMFS observer, must be Coast Guard-approved, have a 160.051/...series approval number, and be fitted with the appropriate survival equipment pack for the area in which the vessel will be operating.

c. A valise-packed inflatable liferaft, when carried aboard a vessel by a NMFS observer, must be placed or stowed where it is unobstructed and readily accessible for launching in an emergency.

#

Copy: All District (dpi)
NOAA NMFS Observer Program Manager

Appendix 8: Interview Questions for Mr. Combs

1) Can you please provide an example of when you were asked to deploy on board a vessel that had not passed the pre-deployment safety checklist.

   Answer: Mr. Combs cited several examples that were provided in his written statement.

2) In the two instances where you describe an expired hydrostatic release sticker - did you have a valise life raft?

   Answer: No, only on one vessel [vessel name provided]. On second trip Mr. Combs did not deploy [vessel name provided].

3) Did the valise life raft have sufficient capacity for you and the crew? If not, did you inform the POP staff and/or document this in any way? In other words, how many crew were there and what was the capacity of the liferaft?

   Answer: No, the liferaft did not have sufficient capacity. Mr. Combs had to drive out of his way to get a valise liferaft in order to go on the vessel because the vessel's liferaft had insufficient capacity. This was before he discovered the expired hydrostatic release date. Mr. Combs provided several examples.

4) In the instance where you describe an expired EPIRB sticker - did you deploy? If so, were you able to determine the expiration date of the EPIRB prior to deployment?

   Answer: An expired hydrostatic release date is a No-Go item (observers cannot deploy). An unscratched sticker is a gray area which was never fully addressed. The SEFSC observer program managers told the fishermen to scratch in the date.

5) Please provide a specific instance(s) in which you were not provided a bunk space when the crew had such accommodations - i.e. date, vessel name, trip ID etc.

   Answer: Mr. Combs provided several specific vessel names.

6) In the case you cited where you were forced to sleep on the galley table, was the galley table designed to serve as a spare bunk space? Were there cushions that could be place on it to make it into a bed?

   Answer: To some degree although it was much too small for him.

7) Did you inform the observer program staff that there was no bunk space available before deployment?

Answer: The programs did not make it clear that you could refuse a trip due to lack of bunk space. This requirement should be put on the vessel not the observer. There is no transparency on how observers are assigned to vessels.

Appendix 9: Interview Questions for SEFSC Observer Program staff.

1) Have there been any internal reviews, evaluations, or inquiries that NMFS has conducted since Jan. 1, 2008 to present of the Southeast Observer Program and/or Pelagic Observer Programs?

   Answer: No, there have been no reviews.

2) Please describe mechanisms in place to ensure that fisheries observers are encouraged to document marine resource violations (e.g. shark finning and marine pollution) and directly report such potential violations to OLE.

   Answer: The POP manual has a module on fisheries violations but there is no module for MARPOL violations. [NMFS investigators requested a copy of the manual]. The POP produces quarterly reports on all vessels that were selected for coverage but failed to carry an observer.

3) Please provide a copy of the form(s) used to collect data on marine resource violations.

   Answer: Will be provided.

4) Please provide a copy of the form(s) used to collect MARPOL violations.

   Answer: Will be provided.

5) Please describe any internal control processes by which NMFS ensures that fisheries observers are encouraged to directly report to NMFS any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, or improper accommodations), and how reported instances of mistreatment are addressed.

   Answer: Provided in Appendix 4. In addition, observers are asked to document anything inappropriate that occurs on the vessel in their field diaries. SEFSC staff noted that Mr. Combs did not report unsafe conditions in his field diaries.

6) In the example described by Mr. Combs of an expired EPIRB sticker, did he deploy? If so, were you able to determine the expiration date of the EPIRB prior to his deployment?

   Answer: If there is a missing EPIRB sticker the observer must contact the observer program. NMFS investigators asked for a copy of the safety checklist.

7) Why are expired EPIRB registrations not considered a No-Go issue? Is it because observers carry their own EPIRB?

   Answer: EPIRB expiration was changed to a No-Go in December 2011.

8) Did anyone from the POP instruct Mr. Combs to scratch in a date on the hydrostatic release?

   Answer: No. In training observers are told not to touch safety equipment. Only vessel owners can mark earliest date per guidance from the U.S. Coast Guard. NMFS investigators asked for a copy of the U.S. Coast Guard guidance.

9) If there is an expired or unmarked hydrostatic release date, is the valise life raft required to have sufficient capacity for the observer only, or for the observer and crew?

   Answer: Based on previous deployments on the vessel by other observers the hydrostatic release was supposed to be good for another 8 months. NMFS investigators asked for a copy of the previous observers' checklist with dates.

10) According to SE Observer Program staff, "[On] Mr. Combs' historical vessel safety checklists, he has documented 1 expired life raft hydrostatic release, multiple unmarked EPIRB hydrostatic releases, and a few expired EPIRB registrations." Please provide an explanation for actions taken during each of these incidents. Please describe the SE Observer Program policy towards situations where EPIRBs and/or liferafts do not have a valid expiration date.

    Answer: Checklists all come in after a trip. If there is an issue beforehand, then they are addressed. At the time, expired EPIRBs were not a No-Go.

11) Please describe how an unmarked hydrostatic release can be validated. Are these instructions given to observers during training?

    Answer: As of the last training in fall 2011 observers are provided with this information.

12) Is the requirement for 48 hour notice in the reef, shark, and shrimp programs a regulatory requirement? If so, please provide the regulation citation.

    Answer: There is a requirement but it is not in the regulations, it is provided in the notification letter sent to vessels selected for observer coverage.

13) Is there a regulatory requirement for advance notice of observer coverage in the POP?

    Answer: No.

14) What is the Southeast policy on advance notice for observers? Are they given 24 hrs, 48 hrs, or some other advance notice time? Is this documented in training materials provided to observers?

    Answer: Observers are asked if they are prepared to deploy. It is rare to ask an observer to get back on a boat if they just deployed. Observers are given the opportunity to take the trip and have the opportunity to decline.

15) Please provide documentation on how observer safety training is tracked. Was Mr. Combs allowed to deploy after expiration of and prior to receiving his three year safety refresher training?

Answer: Observer deployments are tracked in a spreadsheet. In Mr. Combs case he was deployed 8 days after his training expired.

16) Please provide the form(s) and protocols for collecting and transporting protected species specimens.

17) Please provide a copy of the CITES permit given to Mr. Combs when he was deployed to Canada.

Answer: A copy will be provided. Observers should follow instructions from Customs and it is up to observers to declare what is in their possession. Mr. Combs was not instructed to hide his samples.

Written statement from Larry Beerkircher: I did in fact instruct Jon to retain his biological samples when returning from Canada rather than shipping them via FedEx. This was due to the fact that the POP had limited experience with shipping items from foreign locations, and wanted to make sure the samples got back to the US in a timely manner, and were not held up in Customs or at a FedEx location after the observer had already departed for home and was not on site to deal with any issues. I do also remember telling Jon that it would be easier to place the samples (small vials of DMSO preservative with small biopsy plugs of tissue inside) inside his checked bags rather than in his carry-on as I was not familiar with the Canadian Authorities' policy on liquids in carry-ons. I probably even used the term "avoiding hassles". However, at no point did I instruct Jon to conceal any item that might or might not need to be declared, nor did I tell him not to declare these samples. Jon had been provided with a permit that allowed for retention and transportation of samples from endangered species, and would have been expected to follow the lawful instructions provided by officials to travelers at immigration checkpoints.

18) During the oil spill, was Mr. Combs paid for the time he was on standby?

Answer: Yes, he was paid regular and overtime pay while on standby.

19) What are the training standards for the Bluefin Tuna Special Study? If possible please provide a copy.

Answer: The training standards are the same for the Bluefin Tuna study as for other observers.

20) Is there a formal debriefing process for observers and how frequently does it occur? Is the process described in training materials or elsewhere?

Answer: Debriefings are covered in the first tab of the POP Observer Manual and in the Field Instructions Tab 1, p 3. There is no formalized feedback for observers and no ratings are provided. In Q3 of 2011 IAP Services requested input on observer performance including deficiencies and a

letter grade which the POP tracks in a spreadsheet. NMFS investigators requested a copy of the spreadsheet.

21) Can you please provide a list of observers for us to contact?

    Answer: A list of all observers since 2008 was provided.

22) Please provide any other comments or information that you believe are pertinent to this investigation.

    Comment: Mr. Combs is still an employee of IAP and has been offered other work.

Appendix 10: Protected Species Permit

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

Permit No. 15552
Expiration Date: July 25, 2016
Reports Due: October 23rd, annually

PERMIT TO TAKE PROTECTED SPECIES[1] FOR SCIENTIFIC PURPOSES

I. Authorization

This permit is issued to National Marine Fisheries Service Southeast Fisheries Science Center (SEFSC) [Bonnie Ponwith, Responsible Party] (hereinafter "Permit Holder"), 75 Virginia Beach Drive, Room 207, Miami, Florida, 33149, pursuant to the provisions of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222-226).

II. Abstract

The objectives of the permitted activity, as described in the application, are to monitor the take of ESA-listed sea turtle species by observed commercial fisheries and collect data which would estimate by-catch and its effects on sea turtle sub-populations. The permit authorizes SEFSC observers to collect data on juvenile, sub-adult, and adult sea turtles incidentally captured in commercial fisheries in the Gulf of Mexico and the East coast of the United States.

III. Terms and Conditions

The activities authorized herein must occur by the means, in the areas, and for the purposes set forth in the permit application, and as limited by the Terms and Conditions specified in this permit, including attachments and appendices. Permit noncompliance constitutes a violation and is grounds for permit modification, suspension, or revocation, and for enforcement action.

A. Duration of Permit

1. Personnel listed in Condition C.1 of this permit (hereinafter "Researchers") may conduct activities authorized by this permit through July 25, 2016. This permit expires on the date indicated and is non-renewable. This permit may be extended by the Director, NMFS Office of Protected Resources, pursuant to applicable regulations and the requirements of the ESA.

2. Researchers must suspend permitted activities in the event serious injury or mortality[2] of protected species occurs. The Permit Holder must contact the Chief,

[1] "Protected species" include species listed as threatened or endangered under the ESA, and marine mammals.
[2] This permit does not allow for unintentional serious injury and mortality caused by the presence or actions of researchers in the tables of Appendix 1. This includes, but is not limited to; deaths resulting from infections related

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NMFS Permits, Conservation and Education Division (hereinafter "Permits Division") by phone (**301-427-8401**) within two business days. The Permit Holder must also submit a written incident report as described in Condition E.2. The Permits Division may grant authorization to resume permitted activities based on review of the incident report and in consideration of the Terms and Conditions of this permit.

3. If authorized take[3] is exceeded, Researchers must cease permitted activities and notify the Chief, Permits Division, by phone (**301-427-8401**) as soon as possible, but no later than within two business days. The Permit Holder must also submit a written incident report as described in Condition E.2. The Permits Division may grant authorization to resume permitted activities based on review of the incident report and in consideration of the Terms and Conditions of this permit.

B. Number and Kind(s) of Protected Species, Location(s) and Manner of Taking

1. The tables in Appendix 1 outline the number of protected species authorized to be taken, and the locations, manner, and time period in which they may be taken.

2. Researchers working under this permit may collect visual images (*e.g.*, still photographs, motion pictures) as needed to document the permitted activities, provided the collection of such images does not result in takes of protected species.

3. The Permit Holder may use visual images and audio recordings collected under this permit, including those authorized in the tables of Appendix 1, in printed materials (including commercial or scientific publications) and presentations provided the images and recordings are accompanied by a statement indicating that the activity was conducted pursuant to Permit No. 15552. This statement must accompany the images and recordings in all subsequent uses or sales.

4. Upon written request from the Permit Holder, approval for photography, filming, or audio recording activities not essential to achieving the objectives of the permitted activities, including allowing personnel not essential to the research (*e.g.* a documentary film crew) to be present, may be granted by the Chief, Permits Division.

   a. Where such non-essential photography, filming, or recording activities are authorized they must not influence the conduct of permitted activities or result in takes of protected species.

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to sampling procedures; and deaths or injuries sustained by animals during capture and handling, or while attempting to avoid researchers or escape capture.

[3] Under the ESA, a take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to do any of the preceding.

b. Personnel authorized to accompany the Researchers during permitted activities for the purpose of non-essential photography, filming, or recording activities are not allowed to participate in the permitted activities.

c. The Permit Holder and Researchers cannot require compensation in return for allowing non-essential personnel to accompany Researchers to conduct non-essential photography, filming, or recording activities.

5. Researchers must comply with the following conditions related to the manner of taking:

a. Handling, Measuring, Weighing, PIT and Flipper Tagging

1. When handling, measuring, and/or tagging turtles, researchers must use the following procedures:

a. All equipment (tagging equipment, tape measures, etc.) that comes in contact with sea turtles must be cleaned and disinfected between the processing of each turtle; and

b. Maintain a separate set of sampling equipment for handling animals displaying fibropapillomas tumors/or lesions (all equipment that comes in contact with the turtle must be cleaned with a disinfectant between the processing of each turtle).

c. All turtles must be examined for existing tags, including PIT tags, before attaching or inserting new ones. If existing tags are found, the tag identification numbers must be recorded and included in the annual report. Researchers must have PIT tag readers capable of reading 125, 128, 134.2, and 400 kHz tags.

d. Flipper Tagging with Metal Tags- All tags must be cleaned (e.g., to remove oil residue) and disinfected before being used. Applicators must be cleaned (and disinfected when appropriate, e.g., contaminated with fluids) between animals. The application site must be cleaned and then scrubbed with a disinfectant (e.g. Betadine) before the tag pierces the animal's skin.

e. PIT Tagging- New, sterile tag applicators (needles) must be used. The application site must be cleaned and then scrubbed with a disinfectant (e.g. Betadine) before the applicator pierces the animal's skin. The injector handle must be disinfected if it has been exposed to fluids from other animals.

2. General Handling and Releasing of Turtles:

a. The Permit Holder, Principal Investigator, Co-investigator(s), or Research Assistant(s) acting on the Permit Holder's behalf must use care when handling live animals to minimize any possible injury, and appropriate resuscitation techniques must be used on any comatose turtle prior to returning it to the water. Whenever possible, injured animals should be transferred to rehabilitation facilities and allowed an appropriate period of recovery before return to the wild. An experienced veterinarian, veterinary technician, or rehabilitation facility must be named for emergencies. If an animal becomes highly stressed, injured, or comatose during the course of the research activities the researchers must contact a veterinarian immediately. Based on the instructions of the veterinarian, if necessary, the animal must be immediately transferred to the veterinarian or to a rehabilitation facility to receive veterinary care. All turtles must be handled according to procedures specified in 50 CFR 223.206(d)(1)(i).

For research activities occurring aboard commercial fishing vessels or in conjunction with other NMFS research, if a veterinarian cannot be contacted and the animal cannot be taken to a rehabilitation center, NMFS researchers must cease any activities that will further significantly stress the animal, allow it to recuperate as conditions dictate, and return the animal to the sea.

b. Turtles are to be protected from temperature extremes of heat and cold, provided adequate air flow, and kept moist (if appropriate) during sampling. Turtles must be placed on pads for cushioning and this surface must be cleaned and disinfected between turtles. The area surrounding the turtle must not contain any materials that could be accidentally ingested.

c. During release, turtles must be lowered as close to the water's surface as possible to prevent potential injuries.

d. Researchers must carefully observe newly released turtles and record observations on the turtle's apparent ability to swim and dive in a normal manner. If a turtle is not behaving normally within one hour of release, the turtle must be recaptured and taken to a rehabilitation facility.

For research activities occurring aboard commercial fishing vessels or in conjunction with other NMFS research, NMFS researchers must carefully observe newly released turtles and record

observations on the turtle's apparent ability to swim and dive in a normal manner.

3. Leatherbacks must only be boarded if they can be safely brought on board the vessel. Leatherback turtles must be handled by at least two people, one on either side of the turtle, and precautions must be taken to ensure that animals are supported from underneath. Leatherback turtles must not be turned on their backs. Field and laboratory observations indicate that leatherbacks have more friable skin and softer bones than hardshell turtles which tend to be hardier and less susceptible to trauma. Extra care must be exercised when handling, sampling and releasing leatherbacks.

4. Biopsy (tissue-skin) sampling:

   a. A new biopsy punch must be used on each turtle.

   b. Turtles brought on-board the vessel for sampling:

      i. Sterile techniques must be used at all times. Samples must be collected from the trailing edge of a flipper if possible and practical (preference should be given to a rear flipper if practical). The tissue surface must be thoroughly swabbed once with both betadine and alcohol, sampled, and then thoroughly swabbed again with just betadine. The procedure area and hands must be clean.

   c. If it can be easily determined (through markings, tag number, etc.) that a sea turtle has been recaptured by the fisheries and has been already sampled under the activities authorized by this permit, no further biopsy samples must be collected from the animal.

5. Transfer of Biological Samples: The transfer of any biological samples from the Permit Holder to researchers other than those specifically identified here requires written approval from NMFS. The terms and conditions concerning any samples collected under this authorization remain in effect as long as the Permit Holder maintains authority and responsibility of the material taken.

   a. Samples may be sent to:
      NOAA-NMFS Southwest Fisheries Science Center, 3333 North Torrey Pines Court, La Jolla, CA 92037-1002

6. Painting of Carapace: The applicant would use non-toxic paints that do not contain xylene or toluene. For turtles ≤ approximately 4 years old, paint would be applied without crossing suture lines (margins) if the paint would remain on the shell for 3 months or more. For juvenile turtles >

than approximately 4 years old paint would be applied without crossing suture lines (margins) if the paint would remain on the shell for 1 year or more. For adult turtles, paint would be applied without crossing suture lines (margins) if the paint will remain on the shell for 2 years or more. Also, the applicant would not use paints with exothermic set-up reactions to avoid any effects from heat that could affect the turtle as the paint cures.

C. Qualifications, Responsibilities, and Designation of Personnel

1. At the discretion of the Permit Holder, the following Researchers may participate in the conduct of the permitted activities in accordance with their qualifications and the limitations specified herein:

   a. Principal Investigator – James Nance

   b. Co-Investigator(s) – Kenneth Keene, John Carlson, Gregg Gitschlag, and Elizabeth Scott-Denton.

   c. Research Assistants – personnel identified by the Permit Holder or Principal Investigator and qualified to act pursuant to Conditions C.2, C.3, and C.4 of this permit

2. Individuals conducting permitted activities must possess qualifications commensurate with their roles and responsibilities. The roles and responsibilities of personnel operating under this permit are as follows:

   a. The Permit Holder is ultimately responsible for activities of individuals operating under the authority of this permit. Where the Permit Holder is an institution/facility, the Responsible Party is the person at the institution/facility who is responsible for the supervision of the Principal Investigator.

   b. The Principal Investigator (PI) is the individual primarily responsible for the taking, import, export and related activities conducted under the permit. The PI must be on site during activities conducted under this permit unless a Co-Investigator named in Condition C.1 is present to act in place of the PI.

   c. Co-Investigators (CIs) are individuals who are qualified to conduct activities authorized by the permit without the on-site supervision of the PI. CIs assume the role and responsibility of the PI in the PI's absence.

   d. Research Assistants (RAs) are individuals who work under the direct and on-site supervision of the PI or a CI. RAs cannot conduct permitted activities in the absence of the PI or a CI.

3. Personnel involved in permitted activities must be reasonable in number and essential to conduct of the permitted activities. Essential personnel are limited to:

   a. Individuals who perform a function directly supportive of and necessary to the permitted activity (including operation of vessels or aircraft essential to conduct of the activity);

   b. Individuals included as backup for those personnel essential to the conduct of the permitted activity; and

   c. Individuals included for training purposes.

4. Persons who require state or Federal licenses to conduct activities authorized under the permit (*e.g.*, veterinarians, pilots) must be duly licensed when undertaking such activities.

5. Permitted activities may be conducted aboard vessels or aircraft, or in cooperation with individuals or organizations, engaged in commercial activities, provided the commercial activities are not conducted simultaneously with the permitted activities, except with written approval pursuant to Condition B.3 or as specifically provided for in an Incidental Take Statement or Incidental Take Permit for the specific commercial activity.

6. The Permit Holder may request authorization from the Chief, Permits Division to add personnel to this permit as indicated below. The Permit Holder cannot require or receive direct or indirect compensation in return for requesting authorization for such person to act as a PI, CI, or RA under the permit.

   The Permit Holder or PI may designate additional CIs provided a copy of the letter designating the individual, which specifies their duties under the permit, and a copy of the individual's qualifications to conduct and oversee the specified duties, is provided to the Permits Division by facsimile or email on the day of designation and confirmed by mail. The Responsible Party may request a change of PI by submitting a written request for personnel change to the Chief, Permits Division. The request must include a description of the individual's qualifications to conduct and oversee the activities authorized under this permit. Requests may be submitted:

   - through the online system at https://apps.nmfs.noaa.gov, or
   - by email attachment to the permit analyst for this permit, or
   - by hard copy mailed or faxed to the Chief, Permits Division.

D. Possession of Permit

1. This permit cannot be transferred or assigned to any other person.

2. The Permit Holder and persons operating under the authority of this permit must possess a copy of this permit: when engaged in a permitted activity; when a protected species is in transit incidental to a permitted activity; and when a protected species taken under such permit is in the possession of such persons.

3. A duplicate copy of this permit must be attached to the container, package, enclosure, or other means of containment in which a protected species or protected species part is placed for purposes of storage, transit, supervision or care.

E. Reports

1. The Permit Holder must submit annual, final, and incident reports, and papers or publications resulting from the research authorized herein to the Permits Division. Reports may be submitted
   - through the online system at https://apps.nmfs.noaa.gov,
   - by email attachment to the permit analyst for this permit, or
   - by hard copy mailed or faxed to the Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Rm 13705, Silver Spring, MD 20910; phone **(301)427-8401**; fax (301)713-0376.

2. Written incident reports related to serious injury and mortality events or to exceeding authorized takes, must be submitted to the Chief, Permits Division within two weeks of the incident. The incident report must include a complete description of the events and identification of steps that will be taken to reduce the potential for additional research-related mortality or exceedence of authorized take.

3. An annual report must be submitted to the Chief, Permits Division at the conclusion of each year for which the permit is valid. Annual reports are due by October 23rd each year. The annual report describing activities conducted during the previous permit year must follow the format in Appendix 2.

4. A final report must be submitted to the Chief, Permits Division within 180 days after expiration of the permit (January 21, 2017), or, if the research concludes prior to permit expiration, within 180 days of completion of the research. The final report must follow the format in Appendix 2.

5. Research results must be published or otherwise made available to the scientific community in a reasonable period of time.

F. Notification and Coordination

1. The Permit Holder must provide written notification of planned field work to the Southeast Regional Administrator for Protected Resources at the address listed below. Such notification must be made at least two weeks prior to initiation of a field trip/season and must include the locations of the intended field study and/or survey routes, estimated dates of research, and number and roles (for example: PI, CI, veterinarian, boat driver, safety diver, animal restrainer, Research Assistant "in training") of participants.

   Southeast Region (*Email notification preferred*)
   Email: nmfs.ser.research.notification@noaa.gov;
   NMFS, 263 13th Ave South, St. Petersburg, FL 33701;
   phone (727)824-5312; fax (727)824-5309

2. To the maximum extent practical, the Permit Holder must coordinate permitted activities with activities of other Permit Holders conducting the same or similar activities on the same species, in the same locations, or at the same times of year to avoid unnecessary disturbance of animals. The Southeast Regional Office may be contacted at the address listed above for information about coordinating with other Permit Holders.

G. Observers and Inspections

1. NMFS may review activities conducted pursuant to this permit. At the request of NMFS, the Permit Holder must cooperate with any such review by:

   a. Allowing an employee of NOAA or other person designated by the Director, NMFS Office of Protected Resources to observe permitted activities; and

   b. Providing all documents or other information relating to the permitted activities.

H. Modification, Suspension, and Revocation

1. Permits are subject to suspension, revocation, modification, and denial in accordance with the provisions of subpart D [Permit Sanctions and Denials] of 15 CFR part 904.

2. The Director, NMFS Office of Protected Resources may modify, suspend, or revoke this permit in whole or in part:

   a. In order to make the permit consistent with a change made after the date of permit issuance with respect to applicable regulation prescribed under section 4 of the ESA;

b. In a case in which a violation of the terms and conditions of the permit is found;

c. In response to a written request[4] from the Permit Holder;

d. If NMFS determines that the application or other information pertaining to the permitted activities (including, but not limited to, reports pursuant to Section E of this permit and information provided to NOAA personnel pursuant to Section G of this permit) includes false information; and

e. If NMFS determines that the authorized activities will operate to the disadvantage of threatened or endangered species or are otherwise no longer consistent with the purposes and policy in Section 2 of the ESA.

3. Issuance of this permit does not guarantee or imply that NMFS will issue or approve subsequent permits or amendments for the same or similar activities requested by the Permit Holder, including those of a continuing nature.

I. Penalties and Permit Sanctions

1. A person who violates a provision of this permit, the ESA, or the regulations at 50 CFR 222-226 is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the ESA, and 15 CFR part 904.

2. NMFS shall be the sole arbiter of whether a given activity is within the scope and bounds of the authorization granted in this permit. The Permit Holder must contact the Permits Division for verification before conducting the activity if they are unsure whether an activity is within the scope of the permit. Failure to verify, where NMFS subsequently determines that an activity was outside the scope of the permit, may be used as evidence of a violation of the permit, the ESA, and applicable regulations in any enforcement actions.

[4] The Permit Holder may request changes to the permit related to: the objectives or purposes of the permitted activities; the species or number of animals taken; and the location, time, or manner of taking or importing protected species. Such requests must be submitted in writing to the Permits Division in the format specified in the application instructions.

J. Acceptance of Permit

1. In signing this permit, the Permit Holder:

   a. Agrees to abide by all terms and conditions set forth in the permit, all restrictions and relevant regulations under 50 CFR Parts 222-226, and all restrictions and requirements under the ESA;

   b. Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director; and

   c. Acknowledges that this permit does not relieve the Permit Holder of the responsibility to obtain any other permits, or comply with any other Federal, State, local, or international laws or regulations.

James H. Lecky
for Director, Office of Protected Resources
National Marine Fisheries Service

July 22, 2011
Date Issued

Bonnie Ponwith
Director, Southeast Fisheries Science Center
Responsible Party

22 July, 2011
Date Effective

Appendix 1: Table for General Action Areas for Each Commercial Fishery or Program and Take Tables

Table 1: General Action Areas for Each Commercial Fishery or Program.	
Fishery or Program	Action Area
Directed Shark Gillnet Fishery	Georgia to West Palm Beach, Florida
Shark Bottom Longline Fishery	Mid-Atlantic Bight to south Florida and Gulf of Mexico
Pelagic Longline Fisheries (includes 4 fisheries listed below)	Western Atlantic Ocean, Gulf of Mexico, and Caribbean Sea
Yellowfin tuna fishery	Gulf of Mexico
Southern Atlantic swordfish fishery	Florida East Coast to Cape Hatteras, NC
U.S. Atlantic Distant Water swordfish fishery	Atlantic Ocean
Caribbean tuna and swordfish fishery	Caribbean Sea
Commercial Shrimp Trawl Fishery	Gulf of Mexico and southeastern Atlantic Ocean
Directed Reef fish Fishery	U.S. Gulf of Mexico and off the east coast of the U.S.
Oil and Gas Platform Removal Program	U.S. Gulf of Mexico, from Texas to Alabama
Other NMFS Authorized Fisheries and Activities	Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and their tributaries

Table 1: Maximum Total Takes (Course of Permit) of Sea Turtles under Permit No. 15552 in the Directed Shark Gillnet Fishery. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries

No. of Animals	Species	Age/Sex	Activity
16*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Kemp's ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
5*	Green	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
5*	Other sea turtle species (olive ridley, or unknown/hybrid)	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
29*	Any species above, combined total (mortality authorized by fishery ITS)	Post-hatchling, subadult & adult of both sexes	Salvage carcass, tissue samples/parts from incidental lethal take accrued to fishery

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 2: Maximum Total Takes (Course of Permit) of Sea Turtles under Permit No. 15552 in the Directed Shark Bottom Longline Fishery. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
27*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
10* (combined total, all species)	Green, Kemp's ridley, Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
5*	Olive ridley or unknown/ hybrid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
37*	Any species above, combined total (mortality authorized by fishery ITS)	Post-hatchling, subadult & adult of both sexes	Salvage carcass, tissue samples/parts from incidental lethal take accrued to fishery

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 3: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in the Pelagic Longline Fishery. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
159*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
147*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
10* (total, combined, all species)	Green, Kemp's ridley, Hawksbill, Olive ridley, or Unknown/ Hybrid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
52* (total combined, all species)	Any species above, combined total (mortality authorized by fishery ITS)	Post-hatchling, subadult & adult of both sexes	Salvage carcass, tissue samples/parts from incidental lethal take accrued to fishery

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 4: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in the Commercial Shrimp Trawl Fishery. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries

No. of Animals	Species	Age/Sex	Activity
50*	Green	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
150*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
100*	Kemp's ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
50*	Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
50*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
50*	Olive ridley or unknown/ hybrid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 5: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in the Directed Reef Fish Fishery (Bottom Longline and Bandit Reel Gear). Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
17*	Green	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
269*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
9*	Kemp's ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
2*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
33*	Olive ridley or Unknown/ Hybrid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
168* (total combined, all species)	Any species above, combined total (mortality authorized by fishery ITS)	Post-hatchling, subadult & adult of both sexes	Salvage carcass, tissue samples/parts from incidental lethal take accrued to fishery

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the

ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 6: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in the Oil/Gas Platform Removal Program. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
2*	Green	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
10*	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
2*	Kemp's ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
2*	Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
2*	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts
2*	Olive ridley, or Unknown/ Hybrid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release OR salvage carcass, tissue samples/parts

* = The number of takes authorized is contingent upon the ESA Section 7 biological opinion for the Incidental Take Statement (ITS) of fishery. If the ITS of the fishery increases, and only if a no jeopardy conclusion was made on the new consultation, researchers may take additional turtles up to the amount of the new ITS but not to exceed the upper totals of this permit. If the ITS decreases, researchers may take only the number authorized in the lower ITS.

Table 7: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in other Authorized NMFS Fisheries and Activities NMFS May Observe***. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
20	Green	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
100	Loggerhead	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
50	Kemp's ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
20	Hawksbill	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
50	Leatherback	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
20	Olive ridley	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release
5	Unidentified Cheloniid	Post-hatchling, subadult & adult of both sexes	Handle, measure, weigh, photograph, carapace mark (temporary), flipper tag, PIT tag, skin biopsy, release

Table 7: Maximum Total (Duration of Permit) Takes of Sea Turtles under Permit No. 15552 in other Authorized NMFS Fisheries and Activities NMFS May Observe***. Location: Atlantic Ocean, Gulf of Mexico, Caribbean Sea, and tributaries			
No. of Animals	Species	Age/Sex	Activity
50	Any species above, combined total (if mortality authorized by fishery ITS)	Post-hatchling, subadult & adult of both sexes	Salvage carcass, tissue samples/parts from incidental lethal take accrued to fishery

*** = The animals must have been legally taken (e.g., covered by the incidental take statement [ITS] of an ESA section 7 biological opinion or by an ESA incidental take permit [ITP] with "no jeopardy" conclusions). The number of animals used for research by the Permit Holder shall not exceed the number authorized by ITSs or ITPs).

Possible fisheries that would be observed and their gear types include the Migratory Coastal Pelagic Fisheries- Gulf of Mexico and South Atlantic (Trolling and Gill Nets); Southeastern and Gulf of Mexico Crab Fisheries (Crab Trap/Pot); South Atlantic Snapper-grouper (Trap); Lobster Trap Fishery (Pot); Butterfish, Squid Fish Trawl Fishery (Paired / Single Trawl); Recreational Private Boat Fishery (Hook and Line, Cast Net, Crab Pot, Gill Net, Rake, Tong, Seine); Jellyfish Surface Trawl Fishery (Trawl); Inshore Gillnet Fishery (Gillnet); North Carolina Coastal Gillnet Fishery in State and Federal Waters (Gillnet); North Carolina Pound-net Fishery (Pound Net); Southeastern Atlantic Croaker and Weakfish Fishery (Flynet); Atlantic Menhaden Purse-Seine Fishery (Purse Seine); Gulf Menhaden Purse-Seine Fishery (Purse Seine); Brown, White, Pink and Other Marine Shrimp Fishery (Cast net); Gulf of Mexico Pink Shrimp Fishery (Beam Trawl); Brown, White, Pink, Seabob and Other Marine Shrimp Fishery (Skimmer Trawl); Brown, White, Pink, Seabob and Other Marine Shrimp Fishery (Butterfly Net); North Carolina Haul/Beach Seine for Striped Bass, Weakfish, Spot, Striped Mullet (Multifilament Seine; Monofilament Gillnet/Seine); North Carolina Long-Haul Seines for Spot, Weakfish, and Atlantic Croaker (Seine); North Carolina Stop Nets for Striped Mullet (Multi-filament Anchored Net and Multifilament Beach Seine); Black Sea Bass Pot Fishery (Pot/Traps); Winter Fluke (Flounder) Trawl Fishery (Trawl).

Appendix 2: Format for submitting annual and final reports

Reports may be submitted

- through the online system at https://apps.nmfs.noaa.gov,
- by email attachment to the permit analyst for this permit, or
- by hard copy mailed or faxed to the Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376

The following is only an EXAMPLE of the report form. If you do not intend to submit your report online, please contact your permit analyst for an electronic report form to fill out and return.

Date: _____ **Reporting Period:** (check APPS or contact permit analyst)

Permit Number: _____ **Permit Holder's Name:** _____

Contact Name: _____ **Contact Email:** _____

Contact Phone #: _____
(Contact = person submitting report)

Part I: Take Tables. Enter the actual number of animals taken during this reporting period.

> You will be asked to complete a table that looks like the Project Location Tables in your permit, with an additional column for you to enter the "actual number of animals taken" in the last permit year. You must contact your permit analyst for an electronic version of this table or use the on-line report system.

NOTE: If you conducted activities or took protected species for which you were not authorized, you must enter them on separate lines of the table and explain exactly what happened (see Part II below).

Part II: Narrative. You will be asked to provide responses to the following:

1. Describe problems or unforeseen effects encountered during the permitted activities and any steps taken or proposed to resolve such problems.

2. Describe what measures were taken to minimize effects of permitted activities on animals and the effectiveness of these measures.

3. If animals were unintentionally injured or killed, describe the circumstances. Describe how dead animals were disposed of if not in the way described in the permit.

4. Describe the physical condition of animals taken and used in the permitted activities.

5. Describe the effects permitted activities had on animals, including any unforeseen responses or effects.

6. Describe steps taken to coordinate the permitted activities with other permit holders.

7. Summarize preliminary findings. Did you accomplish the goals of your permitted activities?

8. List titles of reports, publications, etc. resulting from this reporting period. Attach copies of any final documents as available. If these documents are not yet available, indicate when you anticipate that they will be completed and submitted. When reports and publications become available, send to the Permits Division and include the permit number in correspondence.

9. Note the number and type of non-permitted species caught, harassed, or otherwise taken, and the observed effects of such taking.

10. Note any incidental (non-research related) use of photographs, film, or other images (e.g., on websites, in commercial publications or documentaries).

11. Additional findings, results, or information on which you would like to report or comment.

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 1539(a)
16 USC 1533(d)

REGULATIONS
50 CFR 17.22
50 CFR 17.32

50 CFR 13

1. PERMITTEE

NOAA NATIONAL MARINE FISHERIES SERVICE
dba SOUTHEAST FISHERIES SCIENCE CENTER
75 VIRGINIA BEACH DRIVE
MIAMI, MIAMI-DADE, FL 33149
U.S.A.

3. NUMBER: TE676379-5 — AMENDMENT

4. RENEWABLE: ☒ YES ☐ NO

5. MAY COPY: ☒ YES ☐ NO

6. EFFECTIVE: 08/26/2010

7. EXPIRES: 08/30/2016

8. NAME AND TITLE OF PRINCIPAL OFFICER *(If it is a business)*
BONNIE J. PONWITH
SCIENCE DIRECTOR

9. TYPE OF PERMIT
NATIVE ENDANGERED & THREATENED SP. RECOVERY - E & T WILDLIFE

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
THROUGHOUT THE SPECIES' RANGES IN VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, FLORIDA, ALABAMA, MISSISSIPPI, LOUISIANA, TEXAS, PUERTO RICO, U.S. VIRGIN ISLANDS, THE GULF OF MEXICO, AND THE NORTHWESTERN ATLANTIC OCEAN.

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

THROUGHOUT THE SPECIES' RANGES IN VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, FLORIDA, ALABAMA, MISSISSIPPI, LOUISIANA, TEXAS, PUERTO RICO, U.S. VIRGIN ISLANDS, THE GULF OF MEXICO, AND THE NORTHWESTERN ATLANTIC OCEAN.

VALID FOR USE BY THE PERMITTEE NAMED ABOVE, AND ANY PERSON DESIGNATED IN WRITING BY THE PERMITTEE TO ACT AS AN AGENT OF THE NATIONAL MARINE FISHERIES SERVICE. DESIGNATED AGENTS MUST CARRY COPIES OF THIS AUTHORIZATION AND THEIR DESIGNATION DOCUMENT WHILE CONDUCTING AUTHORIZED ACTIVITIES.

D. PERMITEE IS AUTHORIZED TO TAKE (RETAIN FOR GREATER THAN 45 DAYS, HARASS, CAPTURE, TAG, TRACK, SALVAGE, COLLECT BIOLOGICAL SAMPLES, AND EUTHANIZE) KEMP'S RIDLEY *(LEPIDOCHELYS KEMPII)*, HAWKSBILL *(ERETMOCHELYS IMBRICATA)*, LEATHERBACK *(DERMOCHELYS CORIACEA)*, GREEN *(CHELONIA MYDAS)*, LOGGERHEAD *(CARETTA CARETTA)*, AND OLIVE RIDLEY *(LEPIDOCHELYS OLIVACEA)*, SEA TURTLES FOR SCIENTIFIC PURPOSES, THE ENHANCEMENT OF PROPAGATION OR SURVIVAL, RECOVERY ACTIVITIES, AND VETERINARY TREATMENT, AS CONDITIONED BELOW:

1. THIS PERMIT AUTHORIZES ACTIVITIES THAT OCCUR: SOLELY WITHIN U.S. FISH AND WILDLIFE SERVICE JURISDICTION; WITHIN THE JURISDICTION OF BOTH THE U.S. FISH AND WILDLIFE SERVICE AND NATIONAL MARINE FISHERIES SERVICE. JURISDICTION IS DEFINED AT 50 CFR 222.23(A).

☒ ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS
REPORTS WILL BE PROVIDED TO THE U.S. FISH AND WILDLIFE SERVICE OFFICES APPEARING IN CONDITIONS V. OF THIS PERMIT. REPORTING CONTENT, FORMAT, SUFFICIENCY, AND FREQUENCY IS OUTLINED IN CONDITION U. OF THIS PERMIT.

ISSUED BY	TITLE	DATE
Richard Warner	CHIEF, PLANNING & PERMITTING, ECOLOGICAL SERVICES	08/26/2010

SCIENCE DIRECTOR
NOAA FISHERIES' SOUTHEAST FISHERIES SCIENCE CENTER
75 VIRGINIA BEACH DRIVE
MIAMI, FLORIDA 33149-1003
TELEPHONE: 305/361-4285
FACSIMILE: 305/361-4219
TE676379-5

E. THE U.S. FISH AND WILDLIFE SERVICE'S "CARE AND MAINTENANCE REQUIREMENTS FOR SEA TURTLES HELD IN CAPTIVITY" SHALL BE FOLLOWED. THESE INCLUDE THE FOLLOWING:

1. **Tank Condition:**

   i. The inside surfaces of holding tanks must be free of toxic substances such as lead or copper paints.

   ii. Holding tanks shall not contain any non-food items that could be ingested by a turtle. Turtles will attempt to eat just about anything. Be sure that nothing except for intended food is put into or falls into a turtle tank that could be either ingested immediately or broken apart and ingested.

   iii. **Holding tanks shall not contain entangling materials. If there are rocks, ledges, or other** structures in the tank, position them such that a turtle cannot become tightly wedged or trapped underwater.

   iv. The drains and intake pipes of holding tanks shall be constructed or securely shielded such that a turtle cannot become trapped and be held underwater by them.

   v. All the tanks in which sea turtles are housed shall have enough lighting (sunlight and/or artificial lighting) to allow for easy viewing by caretakers of the animals in all areas of the tank. The photoperiod of captive sea turtles shall be similar to a natural photoperiod. Tanks may not be artificially illuminated for more than sixteen hours per twenty-four hour period.

2. **Water Quality/Quantity:**

   i. The salinity shall be maintained between 20 ppt and 35 ppt. If necessary, sea turtles may be maintained in less saline water for up to 24 hours per week. Turtles undergoing medical treatment may be kept at salinity's above or below this range as prescribed by the attending veterinarian.

   ii. Water pH shall be maintained between 7.5 and 8.5.

   iii. Water temperatures shall be maintained between 20°C and 30°C (68°F - 86°F). The use of shades on outdoor tanks or chillers will help prevent tank water temperatures from becoming too warm. At facilities where tank water temperatures drop below 20°C (68°F), heating units shall be utilized to maintain acceptable temperatures.

   iv. If chlorine (or bromine) is used to treat the water, free chlorine levels should be maintained no higher than 1.0 PPM and no lower than 0.5 PPM (depending on the species and its sensitivity to chlorine).

   v. Coliform bacteria (MPN) must not exceed 1000/100ml of water, according to APHIS regulation 9 CFR 3.106(b). The Service may, at any time, request a coliform count from a facility holding sea turtles. If steps are taken to prevent the conditions in which coliform bacteria proliferate, and there are no chronic health problems as determined by the Service, then a facility may be exempted from routine coliform tests. The aforementioned steps include adequate filtration (removing suspended material and larger pieces of feces and leftover food) and the use of an appropriate sanitizing chemical such as chlorine, or a high turnover rate with fresh, uncontaminated seawater. If acceptable coliform levels [as identified above] are exceeded steps must be taken to reduce levels per the APHIS recommendations for sterilization of marine mammal pool waters.

   vi. Unless a turtle is being treated with a substance that inadvertently reduces clarity (e.g., the use of mineral oil as part of medical treatment) the water shall be clear enough to allow viewing of sea turtles in any part of the tank.

   vii. No chemical may be used to treat water in a tank housing sea turtles if the chemical is not safely ingestible by the animals at the dilution required for effective treatment.

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viii. Any facility housing sea turtles shall have the ability to provide adequate water quantity under normal and emergency conditions. In an emergency, sea turtles may be kept out of water for a maximum of four hours per week (longer periods are acceptable when directed by the veterinarian for health reasons). During this time, the animal shall be kept in a temperature controlled environment to ensure that its' core temperature is not chilled or heated. It should also be protected from drying out and physical damage. Dry-docking turtles should occur only very rarely, if ever. If sea turtle tanks are regularly drained and cleaned, adequate back up holding tanks must be available to house the turtles during this time.

ix. Water disposal shall be in accordance with all applicable local, state, and federal regulations.

3. Feeding:

i. Food shall be provided in an unspoiled and uncontaminated condition. Food should either be fresh, flash frozen and glazed, or frozen in some other manner that ensures the quality of the food. Any frozen food is to be completely thawed in cool water or in air in refrigerated coolers prior to feeding and used entirely or discarded. Frozen food that has been thawed shall be used within 24 hours after thawing. Under no circumstances may food be refrozen. If the quality of the food is questionable, it shall not be used for sea turtle feeding. Reference the APHIS marine mammal food handling guidelines for further information.

ii. Food shall be of a type and quantity that meets the nutritional requirements for the particular species. Reasonable efforts shall be made by the holding facility to develop proper diets for sea turtles. It is the responsibility of the holding facility to ensure and justify the adequacy of its feeding regimen.

iii. Hand feeding of turtles that will eventually be released is prohibited except when absolutely necessary for rehabilitation. In the latter case, the turtle should be allowed to feed on its own as soon as possible.

iv. Whenever possible, release candidates should be fed live food prior to release to observe foraging behavior.

F. WHEN TRANSPORTING A SEA TURTLE, IT WILL BE SHADED AND OTHERWISE PROTECTED FROM EXTREMES OF HEAT AND COLD (NOT ABOVE 90 DEGREES FAHRENHEIT AND NOT BELOW 50 DEGREES FAHRENHEIT. IF A TURTLE IS TRANSPORTED AT TEMPERATURES GREATER THAN OR EQUAL TO 75 DEGREES FAHRENHEIT, IT WILL BE COOLED BY KEEPING WET TOWELS ON THE CARAPACE AND BY PERIODICALLY POURING WATER OVER THE HEAD. WATER AND WET TOWELS WILL NOT BE USED WHEN TRANSPORTING TURTLES AT TEMPERATURES LESS THAN 75 DEGREES FAHRENHEIT OR AT ANY TIME THEY ARE EXPOSED TO AN AIR-CONDITIONED ENVIRONMENT. AT TEMPERATURES LESS THAN 75 DEGREES FAHRENHEIT, TURTLES MAY BE KEPT FROM DRYING DURING TRANSPORT BY APPLYING A THIN LAYER OF PETROLEUM JELLY TO THE CARAPACE AND ALL EXPOSED SOFT TISSUES EXCEPT EYES AND OPEN WOUNDS.

G. EUTHANASIA IS AUTHORIZED ONLY IF, IN THE JUDGEMENT OF A VETERINARIAN, A SPECIMEN'S RECUPERATION IS UNLIKELY, IF AN ILLNESS OR INJURY IS TERMINAL OR UNTREATABLE, IF AN ILLNESS IS COMMUNICABLE AND LIKELY TO POSE A THREAT TO WILD OR CAPTIVE POPULATIONS, OR IF SPECIMEN'S WOUNDS WOULD PRECLUDE SURVIVAL IN THE WILD OR A SELF-MAINTAINING LIFE IN CAPTIVITY.

H. CAPTIVE AND EUTHANIZED SPECIMENS SHALL BE USED TO INVESTIGATE THE CAUSES AND POTENTIAL TREATMENT FOR COMMUNICABLE DISEASES AS APPROPRIATE, AND TO THE MAXIMUM EXTENT PRACTICABLE.

I. THE PERMITTEE AND ITS AUTHORIZED AGENTS MAY ASSIST AUTHORIZED U.S. FISH AND WILDLIFE SERVICE PERSONNEL AND U.S. FISH AND WILDLIFE SERVICE PERMITTEES IN NEST REMOVAL FOR CONSERVATION AND RECOVERY EFFORTS.

J. PROCEDURES MUST BE INSTITUTED TO ENSURE THAT DISEASE TRANSMISSION DOES NOT OCCUR DURING TISSUE SAMPLING OR OTHER INVASIVE PROCEDURES AND THAT SUCH ACTIVITIES ARE ONLY PERFORMED BY PERSONS SKILLED IN THE TECHNIQUES OF HANDLING THE AFFECTED SPECIES.

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K. THE DISPOSITION OF SEA TURTLES SHOULD BE AS FOLLOWS:

A. A PROPERLY PERMITTED FACILITY MAY RECEIVE FOR TREATMENT OR REHABILITATION ANY MARINE TURTLE THAT IS SICK OR INJURED. UPON RECEIVING A SICK OR INJURED MARINE TURTLE, THE ATTENDING VETERINARIAN IS TO EXAMINE THE TURTLE WITHIN 24 HOURS. IF THIS IS NOT POSSIBLE, IMMEDIATE ARRANGEMENTS ARE TO BE MADE WITH THE FWC WITHIN FOUR DAYS OF RECEIVING A TURTLE FOR REHABILITATION (EVEN IF THE TURTLE DIES). ALSO, A SHORT ASSESSMENT OF THE PROGRESS OF A REHABILITATING TURTLE IS TO ACCOMPANY THE HOLDING FACILITY MONTHLY REPORTS FOR EVERY MONTH THE TURTLE IS KEPT. ALL REHABILITATION FACILITIES ARE TO FOLLOW THE FWC GUIDELINES REGARDING THE RELEASE OF REHABILITATED TURTLES.

B. TURTLES HELD FOR REHABILITATION SHOULD BE ISOLATED FROM OTHER TURTLES WHENEVER POSSIBLE. TURTLES WITH FIBROPAPILLOMATOSIS ARE TO BE ISOLATED FROM TURTLES THAT ARE NOT KNOWN TO HAVE THE DISEASE. THE WATER FROM TANKS USED FOR REHABILITATION SHOULD NOT FLOW INTO TANKS HOLDING OTHER MARINE TURTLES UNLESS IT IS APPROPRIATELY TREATED. ISOLATION OF REHABILITATING TURTLES IS VITAL TO HELP PREVENT THE SPREAD OF DISEASES.

C. THE HIGH INCIDENCE OF FIBROPAPILLOMATOSIS IN GREEN TURTLES IN FLORIDA WATERS IS OF SPECIAL CONCERN. RESEARCH IS IN PROGRESS BUT THE CAUSE OF THIS DISEASE REMAINS UNDETERMINED. THESE GROWTHS ARE HIGHLY VASCULAR WHEN LARGE AND APPEAR TO BE EXTREMELY SENSITIVE DUE TO THE PRESENCE OF NERVE BUNDLES, ESPECIALLY AROUND THE EYES. ONLY THE MOST EXPERIENCED VETERINARY PERSONNEL SHOULD BE TREATING THESE INDIVIDUALS.

L. THE PERMITTEE SHALL CONDUCT ALL NECESSARY SECTION 7 CONSULTATIONS PRIOR TO INITIATING ANY PERMITTED ACTIVITIES AND SHALL ENSURE THAT NO ACTION TAKEN UNDER THIS PERMIT WILL VIOLATE SUBSECTION 7(A)(2) OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED.

M. THE PERMITTEE SHALL ENSURE THAT ALL NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS HAVE BEEN SATISFIED PRIOR TO INITIATING ANY PERMITTED ACTIVITIES.

N. NO NEW, UNTESTED RESEARCH TECHNIQUES THAT HAVE THE POTENTIAL OF ADVERSELY AFFECTING SEA TURTLE SPECIMENS MAY BE INITIATED WITHOUT PRIOR CONSULTATION WITH, AND APPROVAL BY, THE NATIONAL SEA TURTLE COORDINATOR AT THE ADDRESS AND TELEPHONE GIVEN AT M., BELOW, AND NATIONAL MARINE FISHERIES SERVICE SEA TURTLE EXPERTS.

O. THE SERVICE ANTICIPATES THAT MINIMUM INJURY OR MORTALITY WILL OCCUR FROM ACTIONS AUTHORIZED WITHIN THIS PERMIT. MORTALITY IS ONLY EXPECTED DUE TO EUTHANISA. IF ANY INJURY OR MORTALITY DOES OCCUR, THE PERMITTEE SHALL IMMEDIATELY NOTIFY THE SERVICE OFFICES NOTED IN CONDITION M., BELOW. NOTIFICATION SHALL ALSO BE MADE WITHIN 24 HOURS TO THE REGIONAL PERMITS BIOLOGIST, AT THE ADDRESS AND TELEPHONE NUMBER NOTED IN CONDITION L., BELOW. BASED ON CONSULTATION WITH THESE OFFICES, A DECISION WILL BE MADE AS TO WHETHER ANY OF THE AUTHORIZED ACTIVITIES CAN CONTINUE. DECISIONS WILL ALSO BE MADE CONCERNING THE DISPOSITION OF ANY DEAD OR INJURED SPECIMENS WITHIN 5 WORKING DAYS OF AN INJURY OR MORTALITY. THE PERMITTEE SHALL PROVIDE A WRITTEN STATEMENT TO THE SERVICE OFFICES NOTED IN CONDITIONS L., AND M., BELOW, WHICH DOCUMENTS THE CAUSE OF THE INJURY OR MORTALITY, AND IDENTIFIES THE REMEDIAL MEASURES EMPLOYED BY THE PERMITTEE TO ELIMINATE FUTURE MORTALITY OR INJURY EVENTS. THE FINAL DECISION ON REMEDIAL MEASURES RESTS WITH THE SERVICE.

P. THIS PERMIT IS NON-TRANSFERABLE, BUT OTHER QUALIFIED PERSONNEL MAY ASSIST IN THE AUTHORIZED ACTIVITIES, SUBJECT TO THE REQUIREMENTS OF §13.25. WHEN ANY SUCH ASSISTANCE IS TO BE PROVIDED, THOSE DESIGNATIONS ARE TO BE MADE BY LETTER FROM THE PERMITTEE TO EACH AGENT. THE LETTER(S) MUST IDENTIFY THE SCOPE AND DURATION OF THE ASSISTANCE TO THE PERMITTEE. COPIES OF SUCH LETTERS WILL BE PROVIDED IMMEDIATELY TO THE SERVICE AT THE ADDRESSES LISTED IN CONDITIONS L., AND M., BELOW. THE PERMITTEE MUST BE PRESENT ON SITE AT ALL TIMES WHILE ACTIVITIES AUTHORIZED UNDER THIS PERMIT ARE BEING CARRIED OUT.

Q. THE PERMITTEE MUST CARRY A COPY OF THIS PERMIT AT ALL TIMES WHEN CONDUCTING THE AUTHORIZED ACTIVITIES. SHIPMENTS OF COLLECTED BIOLOGICAL MATERIALS SHOULD ALSO BE ACCOMPANIED BY A COPY OF THIS PERMIT. NOTE THAT THIS PERMIT IS LIMITED TO THE ABOVE ACTIVITIES AND IDENTIFIED SPECIES.

R. ISSUANCE OF THIS PERMIT DOES NOT CONSTITUTE PERMISSION TO CONDUCT THESE ACTIVITIES ON NATIONAL WILDLIFE REFUGES OR ANY OTHER PUBLIC OR PRIVATE LANDS; SUCH PERMISSION MUST BE OBTAINED SEPARATELY FROM THE APPROPRIATE LANDOWNER OR LAND MANAGER BEFORE BEGINNING THESE AUTHORIZED ACTIVITIES. THIS PERMIT, NEITHER DIRECTLY NOR BY IMPLICATION, GRANTS THE RIGHT OF TRESPASS.

S. ACCEPTANCE OF THIS PERMIT SERVES AS EVIDENCE THAT THE PERMITTEE AND ITS AUTHORIZED AGENTS UNDERSTAND AND AGREE TO ABIDE BY THE TERMS OF THIS PERMIT AND ALL SECTIONS OF TITLE 50 CODE OF FEDERAL REGULATIONS, PARTS 13 AND 17, PERTINENT TO ISSUED PERMITS. SECTION 11 OF THE ENDANGERED SPECIES ACT OF 1973, AS AMENDED, **PROVIDES FOR CIVIL AND CRIMINAL PENALTIES FOR FAILURE TO COMPLY WITH PERMIT CONDITIONS.**

T. UPON LOCATING A DEAD, INJURED, OR SICK SEA TURTLE OR ANY OTHER THREATENED OR ENDANGERED SPECIES, UNDER CIRCUMSTANCES NOT ADDRESSED IN THIS AUTHORIZATION, INITIAL NOTIFICATION MUST BE MADE IMMEDIATELY TO THE SERVICE FIELD OFFICE INDENTIFIED IN CONDITION M., BELOW. NOTIFICATION SHOULD ALSO BE MADE BY THE NEXT WORK DAY TO THE SERVICE OFFICE IDENTIFIED IN CONDITION L., BELOW. CARE SHOULD BE TAKEN IN HANDLING SICK, INJURED, OR DEAD SPECIMENS TO ENSURE EFFECTIVE TREATMENT OR TO PRESERVE BIOLOGICAL MATERIALS FOR LATER ANALYSIS. IN CONJUNCTION WITH THE CARE OF SICK OR INJURED ENDANGERED OR THREATENED SPECIES, AND THE PRESERVATION OF BIOLOGICAL MATERIALS FROM A DEAD ANIMAL, THE FINDER SHOULD TAKE RESPONSIBLE STEPS TO ENSURE THAT THE SITE IS NOT UNNECESSARILY DISTURBED.

U. AN ANNUAL REPORT SUMMARIZING AUTHORIZED ACTIVITIES MUST BE SUBMITTED BY DECEMBER 31 OF EACH YEAR THIS PERMIT IS VALID. EACH REPORT SHOULD INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

1. A COUNT OF THE NUMBERS AND SPECIES OF SEA TURTLES RETAINED FOR TREATMENT, THEIR DIAGNOSIS, PROGNOSIS, AND DISPOSITION, AND A SIMILAR ACCOUNTING OF EUTHANIZED SPECIMENS ALONG WITH A DESCRIPTION OF THE CIRCUMSTANCES OF THEIR CAPTURE AND REASONS FOR EUTHANASIA.

2. A LIST OF VETERINARIANS THAT WORKED UNDER THIS PERMIT.

3. COPIES OF AGENT DESIGNATION DOCUMENTS.

4. DATA AND ANALYSIS FROM RESEARCH PROJECTS, INCLUDING TOTAL NUMBERS OF SEA TURTLES TAKEN FOR EACH PROJECT.

5. COPIES OF ALL PUBLISHED REPORTS, PAPERS, AND BIOLOGICAL OPINIONS CONDUCTED FOR ACTIVITIES AUTHORIZED IN THE PERMIT.

V. FOR THE PURPOSES OF MONITORING COMPLIANCE AND ADMINISTRATION OF THE TERMS AND CONDITIONS OF THIS PERMIT, THE CONTACT OFFICE(S) OF THE U.S. FISH AND WILDLIFE SERVICE ARE:

ATTN: PERMIT COORDINATOR
1875 CENTURY BOULEVARD, SUITE 200
ATLANTA, GEORGIA 30345-3301
TELEPHONE: 404/679-7313

ATTN: PERMIT COORDINATOR
P.O. BOX 1306
ALBUQUERQUE, NEW MEXICO 87103
TELEPHONE: 505/248-6649

ATTN: PERMIT COORDINATOR
300 WESTGATE CENTER DRIVE
HADLEY, MASSACHUSETTS 01035-9589
TELEPHONE: 413/253-8628

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	Observers #	1	2	3	4	5	6
	Were you employed by any of the Southeast (SE) observer programs?	Y	Y	Y	Y	Y	Y
	- Southeast Shrimp Trawl	Y	Y	Y	Y	N	N
	- Southeast Shark Driftnet and Bottom Longline	N	N	N	Y	Y	Y
	- Gulf of Mexico Reef Fish Fishery Observer Programs	Y	N	Y	N	N	N
	- Pelagic Observer Program	N	Y	Y	Y	N	N
	- Have you worked for any other Observer programs outside of the SE? Who?	N	Y		Y		
	- Worked commercial F/V?		Y				
1	Were you ever asked to deploy on board a vessel that had not passed the pre-deployment safety checklist? Can you please provide an example?	N	Y	N	N	N	N
	- Expired hydrostatic release for liferaft?	N	N	N	N	N	N
	- Expired EPIRP registration?	N	N	N	N	N	N
2	Did you ever sail with an Observer Program provided valise life raft? Why?	N	N	N	Y	N	Y
3	Did the valise life raft have sufficient capacity for you and the crew?	n/a	n/a	n/a	Y	n/a	Y
	- Were you given instructions on how to stow the valise liferaft?	n/a	n/a	n/a	Y	n/a	
4	**Were you ever NOT provided a bunk space when crew had such accommodations?**	Y	Y	Y	Y	N	Y
	- Date, vessel name, trip ID (if you wish to provide)?	n/a	DR	DR	DR	n/a	
	- Did you know about the "no-bunk" before arriving at the Fishing Vessel (F/V)? Did you sail? Why?	Y	DR	Y	Y	N	N
5	Were you ever forced to sleep on the galley table, if so was the galley table designed to serve as a spare bunk? Drop down table/cushions that could be placed on it to make it into a bunk?	Y	N	Y	N	N	N
6	If no bunk, did you inform the observer program staff that there was no bunk space available before deployment?	n/a	DR	N	N	n/a	
7	Did you ever feel pressured to sail or feel black balled for not taking a particular F/V trip? Examples?	N	Y	N	N	N	Y
	- Did it impact future observer trips or your relationship w/ Observer Program personnel? Example?	N	Y	N	N	N	Y
8	**As a fisheries observers were you encouraged to document marine resource violations (e.g. shark fining and marine pollution) and report such potential violations to the Observer Program supervisors?**	N	Y	N	Y	Y	Y
9	Were you ever told during training that marine resource violations were of no interest to the observer program or NMFS?	N	N	N	N	N	N
10	Do you recall form(s) used to collect data on marine resource violations? or to collect data on MARPOL violations?	N	N	N	N	N	N
11	Did you feel pressured by NMFS to NOT report any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, drug use or improper accommodations?)	N	N	N	N	N	Y
12	If you did report mistreatment, were they addressed?	n/a	N	N	n/a	N	DK

	Observers #	1	2	3	4	5	6
13	Did you ever sail with an expired EPIRB?	N	N	N	N	N	N
14	Did you ever knowingly sail with an expired hydrostatic release? Did your SEFSC or IAP managers know the same?	N	N	N	N	N	N
15	**Did you carry an Observer Program issued personal EPIRB?**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
16	Did the Observer Program ever instruct you to scratch in an expiration date on the hydrostatic release or EPIRP or falsify any safety certification data?	N	N	N	N	N	N
17	**Did you feel that the Observer Program provided safety training was sufficient -whether in orientation or refresher training?**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
18	During the Deep Water Horizon (DWH) oil spill were you pressured to sail on a F/V in the Gulf of Mexico? Details?	N	N	N	N	N	N
19	**Do you feel that the Observer Program debrief post cruise was sufficient? If insufficient, in what way, please expand.**	**Y**	**Y**	**Y**	**Y**	**Y**	N
20	Were you ever asked NOT to declare protected species samples to Customs when you were re-entering the country?	N	N	N	N	N	N
21	**Anything other issues with the SE Observer Program that you would like to bring up?**	**Y**	**Y**	**Y**	**Y**	**Y**	N

DR = Do not Recall
DK = Do not Know
n/a = Not Applicable

Observer #	1. Were you ever asked to deploy on board a vessel that had not passed the pre-deployment safety checklist? Can you please provide an example? -expired hydrostatic release for liferaft? - expired EPIRB registration?	2. Did you ever sail with an Observer Program provided valise life raft? Why?
1	During training we were reminded to call if we had any questions, concerns.	NO
2	Yes. Reviewed a journal Bluefin Tuna - all fire extinguishers were expired (out of date). Back then I felt I had a choice. Now it's non-negotiable, you do not go. No never on Expired Hydro release and no never on expired EPIRB.	NO
3	NO. Any issues that I brought up were resolved b/w me the Observer and the F/V Captain. There is a general malaise on F/V's, not necessrily directed at me. I was on a F/V once a few yrs back and I did sail w/ an expired release unknowingly. At the post Debrief it was brought to my attention by the Observer Program. I don't think it was reviewed before I sailed.	NO.
4	NO. Definitely no. Have been diplomatically scolded by Observer Program for sailing on a LA F/V w/ expired battery. Sailed once with an expired EPIRB, battery expired by 2 months, called Sascha in Miami, did a flash test.. Passed. Don't have to go but I can and did.	YES, 5-6 times because I (the observer) put the boat complement over their F/V liferaft complement limit (or max personnel).
5	NO. My first trip I had to wait a week for F/V to get EPIRB.	NO.
6	NO.	Yes on three different occasions the vessel had a crew of four and a four-person liferaft so a four-person valise raft was provided by IAP.

Observer #	3. Did the valise life raft have sufficient capacity for you and the crew? Were you given instructions on how to stow the valise liferaft?	4. Were you ever NOT provided a bunk space when crew had such accommodations? - Date, vessel name, trip ID (if you wish to provide)? - Did you know about the "no-bunk" before arriving at the Fishing Vessel (F/V)? Did you sail? Why?
1	n/a	YES. Slept on decks and galley tables that converted to bunks. Yes was aware before arriving on F/V. Knew about no bunks on certain FV up to two weeks in advance.
2	n/a	YES. Slept on deck, next to head. Open area. Crew were sleeping on galley table too and some in bunks. On advance notice: Don't recall. In training they told us to plan ahead and be prepared to sleep on deck on smaller vessels.
3	n/a	YES. Slept on deck, on galley benches. Happens frequently. Often know ahead of time, Crew have offered me their bunk and they have slept on deck.
4	YES sufficient capacity. YES given training and direction on valise.	Not forced but slept on deck all the time. Every situation (F/V) different, sometimes you know ahead of time/ sometimes you don't know ahead of time. Bring my own mattress. Have refused bunks to sleep on deck. I'm a large man.
5	NO.	NO.
6	YES. The provided valise liferaft was used in addition to the fixed raft of the vessel and did not by itself have sufficient capacity for the crew and I.	On one occasion I was not provided with a bunk and had to sleep on the galley floor. All the crew members had bunks. This was my first Observer trip, but since the trip number is a specific identifier to each observer and I was guaranteed anonymity I decline to provide date, vessel and trip ID. I didn't know about the no-bunk rule until this investigation began, it was never mentioned in Observer training. I was told by the observer coordinator that we sometimes have to "make sacrifices to accomplish the mission".

Observer #	5. Were you ever forced to sleep on the galley table, if so was the galley table designed to serve as a spare bunk? Drop down table/cushions that could be placed on it to make it into a bunk?	6. If no bunk, did you inform the observer program staff that there was no bunk space available before deployment?
1	YES	n/a
2	Assumed it was part of the deal.	Don't recall.
3	YES. Galley bench.	NO. Have the right to decline. Was told that it would not look very good on you if you didn't sail (didn't recall who told him). I wanted to work & made that decision. NO pressure to sail.
4	NO.	Never considered turning down a boat because of no bunk. It was always made clear that you could turn down a boat if you didn't feel right about it, about anything.
5	NO.	Simon said if I turned down a F/V then I would be next in line (for the next boat).
6	NO.	I was not informed before the deployment.

Observer #	7. Did you ever feel pressured to sail or feel black balled for not taking a particular F/V trip? Examples?	- Did it impact future observer trips or your relationship w/ Observer Program personnel? Example?
1	No. If Observer feels it should be documented then she documented it.	No. I've turned down a vessel(s) due to timing or trip length.
2	YES. Terminated (see #11), F/V ran aground. Captain drank, but Observer program needed coverage in this fisheries so Observer program continued to use this F/V.	YES. If you didn't take a trip, you were put down the list. I took job with AK Observer program. Much more professional then SE. AK & Pacific Island Observer programs.
3	Have declined F/V's - did not feel pressure.	No effect on future trips. Observer program was good in working with me.
4	NO, definitely not.	NO. Never not taken a trip.
5	NO. Did not turn down any boats. Unclear what would happen if I turned down. Next in line (Simon) or go to the back (Laurie & Michele).	NO.
6	I was hired in 2009 as a “shark fisheries observer”. When I attended the orientation and training class in April 2009 we were told that we (the newly hired observers) were needed to take a couple of reef fishery trips before an early emergency closure of the fishery went into affect. After the fishery closed I was without deployment for 6 months during which I called the coordinator monthly about trips. I was informed that the shark trips were for “senior observers” and we (new hires) had not been trained in the shark sampling protocols and therefore not qualified for the shark trips. In January 2010 a sampling training class was held and even though I was now qualified, I was still only being offered reef fishery trips. After complaining repeatedly to the coordinator and finally to the IAP project director I began getting offered shark trips but only a very limited number. I soon began receiving face book messages from one of the senior observers urging me to “be a team player” and take the reef fish trips and leave the shark trips to him and the other senior observers. I later learned from him that the coordinator had shared my email complaints with him and had ask him to attempt to apply peer pressure to convince me to forget about the shark trips. Since that time I have averaged less than 6 trips /year.	YES.

Observer #	8. As a fisheries observers were you encouraged to document marine resource violations (e.g. shark fining and marine pollution) and report such potential violations to the Observer Program supervisors?	9. Were you ever told during training that marine resource violations were of no interest to the observer program or NMFS?
1	I was not encouraged to document, but I have done so (document marine resource violations.	No. If observer feels it should be documented then she documented
2	YES. Told to put em down in logbooks.	No. Given basic overview on violations.
3	No, not encouraged. Something we don't talk about. No where in manual is it mentioned. POP has the "not my job" mentality. You could do it (document) but not necessary.	NO. Separate form that we should fill out for violations. Option of writing it in your logbook. Not encouraged to write drug use or MARPOL violations down.
4	Instructed on occasion to write down violations. Never do. POP has counseled me to do so.	NO. During a refresher training three years ago, someone asked about MARPOL violations - "not on our plate" (Miami).
5	NO official forms. Instructed to write it down & mention it during Debrief. If possible get a discreet picture. Observer program made a point that observers are not enforcement but to record it if possible.	NO.
6	YES.	NO.

Observer #	10. Do you recall form(s) used to collect data on marine resource violations? or to collect data on MARPOL violations?	11. Did you feel pressured by NMFS to NOT report any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, drug use or improper accommodations?)
1	NO. We added it tostation sheets and logbooks. Also added somments on the Observer feedback form.	NO
2	NO	I did report mistreatment and Observer program said there is nothing we can do about it. POP informed me about a drinking Captain on F/V I was going to and to watch my back. This F/V lines got caught up in an oil rig (a less then perfect boat) so I called 911. The 911 operator told me to set off my EPIRB, so I did and was terminated.
3	NO. Just encouraged to note endangered species interactions.	NO. I did not feel pressured to NOT report any mistreatment. Never pressured. Have code words to use during the M, W, F calls.
4	NO.	NO. Definitely not. I wouldn't report anything anyway. We are out there on F/V for the biological data, I don't worry anout the other things.
5	NO. John Carlson (Panama City) made sure that we document evrything in FLA waters. Document everything you see & report it.	Lots of drug use out there. Conflict w/ Observer coordinators. At Safety training in Galveston.. "All these boats use drugs, tell em to be safe with it."

Observer #	10. Do you recall form(s) used to collect data on marine resource violations? or to collect data on MARPOL violations?	11. Did you feel pressured by NMFS to NOT report any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, drug use or improper accommodations?)
6	NO.	During both the observer orientation class on 2009 and refresher class in December 2011 the issue of drug use aboard vessels was discussed. Officially we were told to report any drug use witnessed but it was also pointed out the fishing community is very tight knit and turning in fishermen could have unpleasant consequences. On both of the reef fishery trips that I was deployed on the fishermen were openly hostile toward me ranging from rude comments to verbal abuse, which was reported along with drug use. I discovered that fishermen's attitudes toward observers are totally different between the reef fishery and shark fishery. The shark fishermen own their own boats, have a stake in the fishery and vessel operation and are at least welcoming of observers, whereas the reef fishery boats are owned by the fish houses and captain and crew are all hired labor and resentful of observers onboard. This is the reason for my preference for shark fishery trips. I have never felt pressured by NMFS in anyway since we as observers have no direct contact with NMFS personnel, everything goes through the IAP coordinators (post deployment debriefs, paperwork, samples, complaints) and we have no way of knowing if anyone at NMFS is even made aware of problems or complaints.

Observer #	12. If you did report mistreatment, were they addressed?	13. Did you ever sail with an expired EPIRB?
1	n/a	NO, if we did we would be fired. Same w/ hydrostatic release & liferafts.
2	NO.	NO.
3	NO.	NO.
4	NO.	NO.
5	NO. Did not experience any mistreatment.	NO.
6	Not that I was ever made aware of.	NO.

Observer #	14. Did you ever knowingly sail with an expired hydrostatic release? Did your SEFSC or IAP managers know the same?	15. Did you carry an Observer Program issued personal EPIRB? A P-EPIRB?
1	NO.	Yes, a P-EPRIB. Observer Program would overnight to you if you forgot it. Lab was very good about this.
2	NO.	YES.
3	NO.	YES. Everytime. Required to do so. Observer program does a good job of training and safety.
4	NO. Once by accident.	YES.
5	NO.	YES. Everytime.
6	NO.	YES. I always carry a program issued EPIRB

Observer #	16. Did the Observer Program ever instruct you to scratch in an expiration date on the hydrostatic release or EPIRP or falsify any safety certification data?	17. Did you feel that the Observer Program provided safety training was sufficient -whether in orientation or refresher training?
1	NO.	Yes. Bosses (Observer program) do safety training. USCG did demonstrations. Trainers were well prepared and it prepared us well, good training. Had Damage Control and firefighting training.Showed me the value of drilling. Training was a week long. Last one I attended was Sep 2011.
2	NO.	YES. The Observer Program did well in their training. Consistent.
3	NO.	YES. Adequate. Pratical all hands training. Pool training, visit F/V before 2 yr refresher. 1.5yr training threshold w/ leeway to 2 yrs.
4	NO.	YES. Been through it 4-5 times. Pool/gumby suit, etc. Physically capable of flipping liferaft. All the training is about the same.
5	NO.	YES was sufficient.
6	NO.	YES.

Observer #	18. During the Deep Water Horizon (DWH) oil spill were you pressured to sail on a F/V in the Gulf of Mexico? Details?	19. Do you feel that the Observer Program debrief post cruise was sufficient? If insufficient, in what way, please expand.
1	Yes, was in GoM during DWH. No pressure to sail.	Yes, debriefs were sufficient. Jeff Pulver did an excellent job. Thorough. Goes through logbook with you. Good prep before cruises.
2	NO	YES. Over the phone.
3	NO. I was on a F/V insight of the DWH wellhead explosion.	YES. Bring up any unusual events. Jeff Pulver on top of his game, knows what's going on. He's my primary contact w/ NOAA.
4	NO, not pressured. I was the only Observer with oil all around the F/V. Not pressured to sail. Bluefin project out of Houma, Vietnamese tied up their F/V's. Hook experiment was coming up. Some Observers turned it down, while collecting 8hrs pay (IAP), per diem/hotel, and then filed BP claims and collected $ through BP also.	YES, very thorough. The Observer Program goes way beyond anal in their detail.
5	NO.	YES. Observer program coordinators understoood what was going on out there.
6	NO.	No, the only “debriefs” I have received were with the IAP coordinator and consisted of being told of errors in my paperwork.

Observer #	20. Were you ever asked NOT to declare protected species samples to Customs when you were re-entering the country?	21. Any other issues with the SE Observer Program that you would like to bring up?
1	No.	In general the observer rogram was very strict about safety. They were more then willing to help at any hour, 24/7.
2	No.	Observer Program managers were often drinking afterhours with observers (dinner, etc), getting drunk. Chad Lefferson was upset when I injured knee on F/V. Sent out a letter to all observers after that, everyone knew it was me. pressured to not report. He requested me to go to Doctor twice. No workman's comp. IAP covered Dr visits. No accident report, dont' recall. Uncomfortable to work a/ SE. They were the highest paid Observer program in country. AK very different, very professional, safety taken serious, Training much better in AK.
3	NO. Never been to/through Customs w/ endangered species samples.	Overall pretty good program. Manged well by NOAA. Biggest issue to me is the lack of MARPOL documentation.
4	NO. Have carried samples through customs 2-3 times per year over the last 3 years. Grand banks, Canada. POP instructed, made sure you had correct forms w/ correct expiration dates (i.e., current forms).	Safety checklist - nothingto do with the material condition of the F/V & crew competencies. In April 2011 was asked if I could go to St Augustine ASAP to meet a F/V. Another Observer who drove down from VA declined the trip. I arrived, F/V passed the safety checklist and I sailed on it. Ken Keen, Sascha Cushner & Larry Beerkircher have an incrediably difficult job.
5	NO.	Work wasn't steady enough for me. Drove me to other employment. Overlook safety to make money. All F/V use pot. All observers/coordinators overlook it.
6	NO.	

	Observers #	7	8	9	10	11	12
	Were you employed by any of the Southeast (SE) observer programs?	Y	Y	Y	Y	Y	Y
	- Southeast Shrimp Trawl	N	N	Y	Y	N	N
	- Southeast Shark Driftnet and Bottom Longline	N	N	N	N	N	N
	- Gulf of Mexico Reef Fish Fishery Observer Programs	N	Y	Y	N	N	N
	- Pelagic Observer Program	Y	Y	N	Y	Y	Y
	- Have you worked for any other Observer programs outside of the SE? Who?	Y	Y	Y	Y	Y	Y
	- Commercial F/V?		Y				
1	Were you ever asked to deploy on board a vessel that had not passed the pre-deployment safety checklist? Can you please provide an example?	N	N	N	N	N	N
	- Expired hydrostatic release for liferaft?	N	N	N	N	N	N
	- Expired EPIRP registration?	N	N	N	N	N	N
2	Did you ever sail with an Observer Program provided valise life raft? Why?	N	N	N	N	N	Y
3	Did the valise life raft have sufficient capacity for you and the crew?	n/a	n/a	n/a	n/a	n/a	Y
4	Were you given instructions on how to stow the valise liferaft?	n/a	Y	n/a	n/a	n/a	Y
5	Were you ever NOT provided a bunk space when crew had such accommodations?	N	Y	Y	N	N	Y
	- Date, vessel name, trip ID (if you wish to provide)?	n/a			n/a	n/a	
6	**Did you know about the "no-bunk" before arriving at the Fishing Vessel (F/V)? Did you sail? Why?**	N	Y	Y	n/a	Y	Y
7	Were you ever forced to sleep on the galley table, if so was the galley table designed to serve as a spare bunk? Drop down table/cushions that could be placed on it to make it into a bunk?	N	N	Y	N		N
8	If no bunk, did you inform the observer program staff that there was no bunk space available before deployment?	n/a		Y	n/a	Y	Y
9	**Did you ever feel pressured to sail or feel black balled for not taking a particular F/V trip? Examples?**	N	Y	N	Y	Y	Y
	- Did it impact future observer trips or your relationship w/ Observer Program personnel? Example?	n/a	Y	N	N	Y	Y
10	**As a fisheries observers were you encouraged to document marine resource violations (e.g. shark fining and marine pollution) and report such potential violations to the Observer Program supervisors?**	Y	Y	N	N	N	Y
11	Were you ever told during training that marine resource violations were of no interest to the observer program or NMFS?	N	N	N	N	N	Y
12	Do you recall form(s) used to collect data on marine resource violations? or to collect data on MARPOL violations?	N	Y	N	N	n/a	N
13	Did you feel pressured by NMFS to NOT report any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, drug use or improper accommodations?)	N	N	N	N	Y	N

	Observers #	7	8	9	10	11	12
14	If you did report mistreatment, were they addressed?	n/a	Y	n/a	N	N	n/a
15	Did you ever sail with an expired EPIRB?	N	N	N	N	N	N
16	Did you ever knowingly sail with an expired hydrostatic release? Did your SEFSC or IAP managers know the same?	N	N	N	N	N	N
17	**Did you carry an Observer Program issued personal EPIRB? A P-EPIRB?**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
18	Did the Observer Program ever instruct you to scratch in an expiration date on the hydrostatic release or EPIRP or falsify any safety certification data?	N	N	N	N	N	N
19	**Did you feel that the Observer Program provided safety training was sufficient -whether in orientation or refresher training?**	**Y**	**Y**	**Y**	N	**Y**	**n/a**
20	During the Deep Water Horizon (DWH) oil spill were you pressured to sail on a F/V in the Gulf of Mexico? Details?	N	n/a	N	n/a	n/a	n/a
21	**Do you feel that the Observer Program debrief post cruise was sufficient? If insufficient, in what way, please expand.**	**Y**	**Y**	**Y**	**Y**	**Y**	**Y**
22	Were you ever asked NOT to declare protected species samples to Customs when you were re-entering the country?	n/a	n/a	n/a	n/a	n/a	N
23	**Anything other issues with the SE Observer Program that you would like to bring up?**	**Y**	**Y**	**Y**	**Y**	N	**Y**

DR = Do not Recall
DK = Do not Know
n/a = Not Applicable

Observer #	1. Were you ever asked to deploy on board a vessel that had not passed the pre-deployment safety checklist? Can you please provide an example?	2. Did you ever sail with an Observer Program provided valise life raft? Why?
7	NO.	NO.
8	NO.	NO.
9	NO. Coordinators were adamant that I would not sail if any safety issues	NO.
10	No, I made sure everything was up to date and present.	NO.
11	NO. I wouldn't be surprised to hear.	NO, not with SE. Used a valise w/ other region Program.
12	NO. Program is more stringent now then past. More flexibility before, more decisions left at the Observers descretion.	YES. Because I put the F/V over complement for their liferaft.

Observer #	3. Did the valise life raft have sufficient capacity for you and the crew?	4. Were you given instructions on how to stow the valise liferaft?
7	n/a	
8	n/a	YES.
9	n/a	n/a
10	n/a	n/a
11	n/a	n/a
12	By itself no, but combined with F/V liferaft we had full complement covered.	YES. Vague instructions, stow indoors out of weather. No recommendations beyond indoors.

Observer #	5. Were you ever NOT provided a bunk space when crew had such accommodations? - Date, vessel name, trip ID (if you wish to provide)?	6. Did you know about the “no-bunk” before arriving at the Fishing Vessel (F/V)? Did you sail? Why?
7	NO.	NO.
8	YES. And/or hot bunked with crew members.	YES. Fine (ok) with arrangements
9	YES. A couple of boats. Slept on wheelhouse deck. Crewmembers offered to sleep on deck but I tuurned them down as there was more privacy on deck then in crew quarters.	YES. At least 2-3 times I was told ahead of time. Vietnamese boats had language barrior but not an issue.
10	NO.	n/a
11	NO. Assigned to a F/V that didn't usually have a bunk but Captain gave me his bunk.	YES. IAP provided an inflatable sleep pad. Didn't need to use it.
12	YES. About 10% of the time no bunk.	YES usually know if there's abunk or not. Lots of repeat boats. Some incidents showed up without knowing.

Observer #	7. Were you ever forced to sleep on the galley table, if so was the galley table designed to serve as a spare bunk? Drop down table/cushions that could be placed on it to make it into a bunk?	8. If no bunk, did you inform the observer program staff that there was no bunk space available before deployment?
7	No. I did in NE fisheries but not in SE.	n/a
8	No not forced but did sleep on deck.	
9	NO.	YES.
10	NO.	n/a.
11	NO.	YES.
12	NO, never on table. Occastionally a galley bench but usually on deck. Used Thermarest/rollout pads.	YES.

Observer #	9. Did you ever feel pressured to sail or feel black balled for not taking a particular F/V trip? Examples?	- Did it impact future observer trips or your relationship w/ Observer Program personnel? Example?
7	NO.	n/a
8	YES. Pressure was due to time constraints. Short notice, often tough to get to F/V, conduct safety check and if I turned down the trip then know that I'd go to the bottom of the list. I made accomodations by flying to ports with all my gear.	
9	No pressure. Bosses (coordinators) were very good, "...if you feel at all uncomfortable don't go." Even after 10 hour travel to Key West.	NO.
10	Yes, during the training for POP in 2009, we were told that if any scheduled engagements during the study where we would need time off, there would be no consequences. I let the Miami trainers know I had a week long trip planned. Then I was not used during the 3 months of 100% coverage on the tuna boats, even with my prior tuna boat experience. Other newly trained people were sent out on boats while I stayed in the hotel in Houma LA waiting.	After working for the POP in 2009, the Galveston lab would not rehire me. It seemed like they were not happy that I worked for the POP study and were then punishing me for it.

Observer #	9. Did you ever feel pressured to sail or feel black balled for not taking a particular F/V trip? Examples?	- Did it impact future observer trips or your relationship w/ Observer Program personnel? Example?
11	YES. Not briefed before traveling. I flew to Miami then was suppose to drive to Key West. Arrived in Miami on Monday at 1500. Miami to KW is a 3 hr drive. Ken said it was ok to rest. Sascha wanted me to drive direct (the next day). IAP pressured to get me down there ASAP. I failed my urinylsis test (from Seattle) and had to re-do it the next day (Tues) at Lab Corp at 10am. I had trouble finding Lab Corp but finally did, resubmitted my sample. Then had to drive to Key Biscayne (NMFS office), I had problems with my smart phone, not able to access voicemail so I didn't get the coordinators' messages. Got to NMFS @ noon Tues and they wanted me to depart @ 1300 for KW. I pulled a stop-work card. IAP scheduled a return flight for me to Seattle (but I didn't want to go to Seattle, wanted to go to Boston). IAP told me your services would not be needed for this trip. Told me to sit tight, I ended up in Worcester, MA (family). Three days later email from Brenda that I failed my urinylsis again. I did not prep for the test (drank coffee beforehand) allegies, sweating, did not feel well, etc. IAP treated Negative Dilute as positive on second test. IAP policy?	Dismissed.
12	YES. Recently it's occurring more with staffing changes.	Nothing that I can prove but I received several 'skanky' boats in a row (above the law of averages) after complaining.

Observer #	10. As a fisheries observers were you encouraged to document marine resource violations (e.g. shark fining and marine pollution) and report such potential violations to the Observer Program supervisors?	11. Were you ever told during training that marine resource violations were of no interest to the observer program or NMFS?
7	YES. Instructed to add in field notes and bring up during Debriefs.	NO.
8	YES. Log it with as much info, details of incident. Weekly call-ins (3 times per week) could relay info. Depended on severoty of violation, how much attention & time of reporting. Brought up at Debrief too.	NO.
9	NO. Not encouraged. Not aware that I could report.	NO, never brought up.
10	No, I did not receive any encouragement to report violations, and training on the subject was extremely minimal.	NO. Not to my recollection.
11	NO. Larry beerkircher, Sascha Cushner & Ken Keene discouraged us from documenting MARPOL. Encouraged us to report biological management species.	Not a high priority.
12	YES. Recent push to document Mako landings, and other sharks with or without fins (category on form). No push on MARPOL.	YES. "You're going to see MARPOL violations but don't get upset. Roll with it. Plastics in particular. Feel free to put in your field notes but not of particular interest to Observer program."

Observer #	12. Do you recall form(s) used to collect data on marine resource violations? or to collect data on MARPOL violations?	13. Did you feel pressured by NMFS to NOT report any mistreatment aboard fishery vessels (i.e. unsafe conditions, harassment or other abusive treatment, drug use or improper accommodations?)
7	No specific form.	NO.
8	YES. Data form for Endangered Species. Fish gear violation document in logbook. Gearsheet measurements.	NO. Never.
9	NO.	NO. Cordinators really support us a lot. Code for verbal comms if we're feeling uncomfortable with anything that we're reporting on call-ins. Very supportive.
10	No, I did not receive or use any violation forms.	NO. I didn’t feel pressure to not record violations, but when violations were reported, they were laughed off.
11	n/a	YES on accomodations. Bunks. CFR regulation that we have bunks.
12	NO on MARPOL. Individual animal logs has shark finning.	NO. On drug use: you're going to see it. If it bothers you then look for another job.

Observer #	14. If you did report mistreatment, were they addressed?	15. Did you ever sail with an expired EPIRB?
7	NO.	NO.
8	YES sometimes dependent on Observer Program Coordinator. Attempt to downplay and make the best of situation. Also dependent on severity. More severe = greater response. Dependent on boat owners - quicker response. With larger owners - Coordinators less likely to create waves.	NO.
9	n/a. I did not report any. I do feel that I as a female was treated better then male observers.	NO.
10	I did report mistreatment and they were not addressed. I reported to the Galveston lab that one of the captains on the shrimp boat was making me uncomfortable and suggesting that we meet in the future. My worries were laughed off and ignored then.	NO.
11	NO.	NO.
12	n/a. Never felt any mistreatment.	NO.

Observer #	16. Did you ever knowingly sail with an expired hydrostatic release? Did your SEFSC or IAP managers know the same?	17. Did you carry an Observer Program issued personal EPIRB? A P-EPIRB?
7	NO.	YES. All trips.
8	NO.	YES. All.
9	NO.	YES.
10	NO.	YES.
11	NO.	YES. P-EPIRB, always.
12	NO. In the past if set to expire on cruise - OK.	YES. All times.

Observer #	18. Did the Observer Program ever instruct you to scratch in an expiration date on the hydrostatic release or EPIRP or falsify any safety certification data?	19. Did you feel that the Observer Program provided safety training was sufficient -whether in orientation or refresher training?
7	NO.	YES. Well done.
8	NO. Nothing like that ever.	YES. Did one refresher training every ~ yr. Orientation was Galveston. Refreshers also Galv.
9	NO.	YES. Had safety training in AK immediately before arriving in Galv. So I did not do the orientation training. I did do refresher training in Galv. Less organized then AK but covered everything. Really emphasized safety.
10	NO.	NO. It was minimal training, and when a situation did come up, everything learned in training was useless.
11	NO.	n/a. Orientation training was waived because I was active in other Observer training programs within the year. SE safety training was insufficient, should have had a tailor-made training for SE region though she never took the SE training (?). She requested to take the training but IAP denied. Had previously taken Hawaii Observer training at PIRO.
12	NO. But have been instructed to ask the Captain to do it (scratch in a date).	YES. Fairly comprehensive. They could devote a little more time to Valise liferafts. Training has been consistent. They no longer do Damage Control or Fire fighting practical training which is too bad as it was useful.

Observer #	20. During the Deep Water Horizon (DWH) oil spill were you pressured to sail on a F/V in the Gulf of Mexico? Details?	21. Do you feel that the Observer Program debrief post cruise was sufficient? If insufficient, in what way, please expand.
7	I sailed during DWH but not pressured to do so. AIS NRDA evaluation.	YES. Sufficient.
8	n/a.	YES. Conducted over the phone. Cover data entry, personnel review logbook. Usually no incidents. On phone coordinator not always aware of material that was covered during weekly call-ins but re-reviewed during debriefs.
9	No pressure. I was in FLA.	YES. Questions answered always. All coordinators are past Observers so they know what's going on. Debriefs with Jeff.
10	n/a. I was not working with the SE observer program then.	It was fast but seemed to hit the necessary points. Except (for) discussing the violations, it was sufficient. Had violations been brought up, issues such as throwing plastic trash overboard, throwing monofilament segments overboard, and the constant drug use would have been addressed.
11	n/a.	YES. By phone with NMFS
12	n/a. Not deployed in GoM during DWH.	YES. Given opportunity to address any topic.

Observer #	22. Were you ever asked NOT to declare protected species samples to Customs when you were re-entering the country?	23.Anything other issues with the SE Observer Program that you would like to bring up?
7	n/a	Experience: 2yrs NE & 1.5yrs Gulf South Atlantic Fisheries. Miami orientation training. Three outerbank trips POP.
8	NO, n/a.	Dealing with coordination, sometimes unrealistic timeframes & expectations on short notice. Excellent during safety issues. Made 100% effort that any safety violations were corrected. One of the better Observer programs, mostly due to experience level of coordinators. Experience: 3yrs GOA, 3yrs SE, 1yr comm crabfishing. also AK Fish & Game
9	n/a.	AK was good prep for Galv. AK F/V better (material condition) then GoM F/V. Better prepared and longer trips/tours. Galv was always very suppportive: "..if it doesn't look safe then don't go." Experience: 3.5yrs SE, AK 3 months contracts.
10	n/a.	I got sick on a shrimp boat. The satellite phone didn't work well. The boat eventually brought me to shore and went back fishing. Then I spent a considerable amount of time in the hospital fighting for my life. When I got back home, I had to fight the workmen's compensation people to get paid for my time off. Then I restarted on shrimp boats, and then moved back to tuna boats. After not being used for the tuna project, I was not rehired on the shrimp project. When I inquired why, I was lied to about the reasons, so I called the lab. The people that reviewed the data couldn't answer why I wasn't rehired, so I was told to talk to a higher positioned person. She said she would look into the matter and call me back. I have tried to get in touch with her since, but she will not take my phone calls. I was in MS after my illness was better and I had an encounter with the man who we were told to contact with availability as well as paychecks. He was there with three other people I did not know, and he started talking about my private medical experience. Soon after I was terminated, and I believe that my getting sick on the boat was a major cause of that. Experience: NMFS Seattle

Observer #	22. Were you ever asked NOT to declare protected species samples to Customs when you were re-entering the country?	23.Anything other issues with the SE Observer Program that you would like to bring up?
11	n/a.	Experience: PSO Training Arctic w/ Shell. PIRO, IATPC, Scallop in AK (Mar/Apr-Jun)
12	NO. Entered from Canada. No protected species samples.	Behavior of POP Program when you refused a trip on safety issues. Process is that they send another observer without checking into safety issues. E.g. F/V Rebel Queen had berthing area obstructed passageway. Ken Keene's proper response was to Observer "write it up". I've refused two trips in 10 years (147 trips). When I brought up a safety issue with Sascha, her response was: " ...you should have told me earlier so that I could find another Observer" versus investigating the safety concern. In the past with Dennis Lee at the helm, POP checked into safety issues and did not immediately send another Observer to that F/V. Side note: The only other trip I refused was F/V Capt Robinson which sank on it's next trip. POP needs to take a step back when a trip is refused and have a review process of why versus just sending another Observer. Sketchy F/V that often rquire Valsie liferafts are questionable. Isn't room functionally for another body (i.e., observer). Space is extremely tight. POP changed in 2006 when IAP took over. More conflict between NMFS & F/V. Everyone is angry before you (the Observer) even shows up. Less colloboration with the industry, it was a good program until recently. My first nine years w/ POP were fabulous. Stop work cards are not practical. Internal reviews on field notes will show STCW not being met (max work hrs per day at sea) though IAP caps time at 98 hrs per week (14hrs/day). Steaming days and weather days constitute 8 hr days when in reality they are much more. Experience: POP 1997-present (15yrs).

Appendix 12: POP Accomodation Incidents Reported to OLE (2007-2011)

#	Vessel	Date	Submitted to (OLE):
1	BOBALOU	QTR 2, 2007	Gregg Houghaboom
2	CHARLESTON STAR	QTR 2, 2007	Gregg Houghaboom
3	SEA FARMER	QTR 3, 2007	Gregg Houghaboom
4	CHARLESTON STAR	QTR 4, 2007	Gregg Houghaboom
5	LINNEA C	QTR 4, 2007	Gregg Houghaboom
6	DELPHINUS	QTR 2, 2008	Richard Cook
7	DEFIANCE	QTR 3, 2008	Matt Clark
8	JANICE ANN	QTR 3, 2008	Matt Clark
9	LINNEA C	QTR 3, 2008	Matt Clark
10	SEAHAWK	QTR 3, 2008	Matt Clark
11	WESTPORT SWORD	QTR 3, 2008	Matt Clark
12	DELPHINUS	QTR 2, 2009	Matt Clark
13	LINNEA C	QTR 3, 2009	Matt Clark
14	DELPHINUS	QTR 2, 2010	Matt Clark/Tom Gaffney
15	LINNEA C	QTR 2, 2010	Matt Clark
16	PROVIDER 665962	QTR 2, 2010	Matt Clark
17	ALBI	QTR 4, 2010	Matt Clark
18	SOUTHERN LADY	QTR 4, 2010	Tom Gaffney
19	LINNEA C	QTR 1. 2011	Matt Clark
20	REBEL QUEEN	QTR 4, 2011	Matt Clark
21	MORNING STARS	QTR 4, 2011	Matt Clark

DECLARATION OF INDEPENDENCE

Assignment Title: **NMFS Southeast Observer Program Management**

Assignment Number: **OIG Complaint Action Referral No. PPC-CI-12-0221-H**

I hereby certify that in all matters related to this administrative inquiry, I must be free, both in fact and appearance, for the duration of this administrative inquiry, from all personal and external impairments arising from my interaction with any organization, programs, and individuals involved in this inquiry.

I understand that if any such impairment exist, or arise, they can affect my impartiality in performing the administrative inquiry and reporting the results, and I must therefore withdraw from performing the inquiry.

I hereby certify that to the best of my knowledge and belief, I am free from any such impairments to independence and that if any impairment should arise during this inquiry, I will cease performing the inquiry and immediately bring the matter to the attention of my supervisor.

Printed Name: **Mark P. Ablondi**

Title: **Executive Officer, National Marine Fisheries Officer**

Grade: **Captain, NOAA (O-6)**

Signature: Mark P. Ablondi

Date: **11-April-2012**

Witness: Gloria Thompson

DECLARATION OF INDEPENDENCE

Assignment Title: **NMFS Southeast Observer Program Management**

Assignment Number: **OIG Complaint Action Referral No. PPC-CI-12-0221-H**

I hereby certify that in all matters related to this administrative inquiry, I must be free, both in fact and appearance, for the duration of this administrative inquiry, from all personal and external impairments arising from my interaction with any organization, programs, and individuals involved in this inquiry.

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I hereby certify that to the best of my knowledge and belief, I am free from any such impairments to independence and that if any impairment should arise during this inquiry, I will cease performing the inquiry and immediately bring the matter to the attention of my supervisor.

Printed Name: **Gene Christopher Rilling**

Title: **National Observer Program Manager**

Grade:

Signature: Chris Rilling ZP-4

Date: **20-April-2012**

Witness: Stephen K. Brown