



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE

Southwest Region  
501 West Ocean Boulevard, Suite 4200  
Long Beach, California 90802- 4213

AUG 18 2004

Via Certified Mail

Dear California/Oregon Large-mesh  $\geq 14$ " Drift Gillnet Fishery Participant:

This notice is for individuals listed as the vessel owner or operator on the Marine Mammal Authorization Certificate for the California/Oregon drift gillnet fishery targeting thresher shark/swordfish using large-mesh  $\geq 14$ ". This notice contains essential information for the fishing season, May 1, 2004 - January 31, 2005.

This letter is official notification of your obligation to comply with the regulations that require vessels to carry observers on any or all fishing trips as directed by the National Marine Fisheries Service (NOAA Fisheries) or the designated contractor [50 CFR § 229.7(c)]. For these requirements, the vessel operator is presumed to be acting as the agent of the owner unless the Regional Administrator, Southwest Region is advised otherwise. The vessel owner is responsible for all activities conducted under the Marine Mammal Authorization Certificate, including, but not limited to, the activities of an agent or employee resulting in violations of the certificate's terms and conditions or applicable regulations.

Frank Orth & Associates (FOA) is the designated contractor who will be responsible for placing observers aboard California/Oregon drift gillnet vessels targeting thresher shark/swordfish using large-mesh  $\geq 14$ ". All vessel departure and arrival information (vessel name, operator, date and time of scheduled departure or arrival, port of departure or arrival, and contact telephone number) shall be reported to FOA, Carolyn Parker at (800) 522-7622 or (562) 427-1822.

The vessel owner, directly or through an agent or employee, is responsible for complying with regulations that provide for exceptions for the serious injury and mortality of marine mammals incidental to commercial fishing operations from the Marine Mammal Protection Act's (MMPA) general moratorium and with the following conditions that NOAA Fisheries developed to ensure the effective deployment and safety of observers.

1. **Safety Requirements**

All vessels required to carry an observer must meet United States Coast Guard (USCG) safety requirements and display a current safety decal (issued within the previous two years). Vessels that do not meet these requirements are deemed unsafe for purposes of carrying an observer and must correct noted deficiencies prior to departing port [50 CFR § 600.746(d)(2)].



Observers may not depart on a fishing trip aboard a vessel which does not comply with USCG safety requirements or that does not display a current Commercial Fishing Vessel Safety Examination decal [50 CFR § 600.746(c)(1)].

The vessel owner or operator must allow an observer, NOAA Fisheries, or FOA to visually inspect any safety or accommodation requirement if requested [50 CFR § 600.746(c)(2)]. Observers are **required** to complete a pre-trip safety check of the emergency equipment and are encouraged to review emergency instructions with the operator prior to the vessel departing port.

If you need to schedule a dockside examination, call your nearest Marine Safety Office Dockside Examiner:

San Diego to Oceanside	(619) 683-6497
Dana Point to Morro Bay	(310) 732-2062
Monterey to Crescent City	(510) 437-5788

2. **Marine Mammal Authorization Certificate**

All participants in the California/Oregon drift gillnet fishery targeting thresher shark/swordfish using large-mesh  $\geq 14$ " must obtain a Marine Mammal Authorization Certificate in order to lawfully participate in the fishery. In addition, the Marine Mammal Authorization Certificate allows for the incidental take of marine mammals during commercial fishing operations. All vessels participating in fisheries that are classified as Category I or II under the MMPA List of fisheries must obtain a Marine Mammal Authorization Certificate. If your vessel is planning to fish in the California/Oregon drift gillnet fishery targeting thresher shark/swordfish, or any other Category I or II fishery, and you have not obtained a Marine Mammal Authorization Certificate, please contact Lyle Enriquez, NOAA Fisheries, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213, at (562) 980-4025 or E-mail at [Lyle.Enriquez@noaa.gov](mailto:Lyle.Enriquez@noaa.gov).

Additional information is provided in the enclosed document and on our website at <http://www.nmfs.noaa.gov/> (click HQ Offices, Office of Protected Resources, Marine Mammal Conservation, U.S. Commercial Fishery Interactions).

3. **Injury and Mortality Reporting Requirements**

Operators of all fishing vessels must report incidental injuries and mortalities of marine mammals that have occurred as a result of commercial fishing operations on a NOAA Fisheries Marine Mammal Injury/Mortality Report Form regardless of whether there was an observer aboard the vessel. The report must be sent by mail or fax within 48 hours of the end of the fishing trip in which the injury or mortality occurred [50 CFR § 229.6(a)]. Failure to report all injuries and mortalities within 48 hours may result in suspension, revocation, or denial of a Marine Mammal Authorization Certificate [50 CFR § 229.10(e)]. For copies of the Marine Mammal Injury/Mortality Report Form, contact Lyle Enriquez at (562) 980-4025 or by fax at (562) 980-4047 or E-mail at [Lyle.Enriquez@noaa.gov](mailto:Lyle.Enriquez@noaa.gov).

4. **48 Hour Notice**

All drift gillnet boats equipped with a drift gillnet (large-mesh  $\geq 14$ " ) shall notify FOA at least 48 hours before leaving from any port for a fishing trip. Notifications shall be provided to Carolyn Parker at (800) 522-7622 or (562) 427-1822 or by fax at (562) 427-2321, seven days a week, 0800 to 1630 hours West Coast local time. Departure information must include: vessel name, operator, scheduled departure date and time, port of departure and contact telephone number.

5. **Accommodations**

Vessels must provide assigned observers with accommodations that are comparable to those provided to full crew members, unless other arrangements have been approved in advance of the trip by FOA.

Accommodations include the same food, toilet, bathing, sleeping accommodations, and amenities that are equivalent to those provided to the crew. These accommodations must be provided at no cost to the observer, NOAA Fisheries, or FOA [50 CFR § 229.7(c)(4)(i)]. Any concerns about accommodations must be raised in advance of a trip directly with FOA's Project Manager, toll free, at (800) 522-7622 or (562) 427-1822, and not with the observer.

6. **Pacific Offshore Cetacean Take Reduction Plan**

Vessel owners and operators of California/Oregon drift gillnet vessels targeting thresher shark/swordfish using large-mesh  $\geq 14$ " are required to comply with the requirements of the Pacific Offshore Cetacean Take Reduction Plan (TRP). The TRP requires the use of acoustic deterrent devices (pingers) during every set. Pingers shall be attached to the net within 30 feet of the floatline and spaced no more than 300 ft apart. Pingers shall also be attached within 36 feet of the leadline and spaced no more than 300 ft apart. Pingers attached within 30 ft of the floatline and within 36 ft of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft [50 CFR § 229.31(c)(5)](Enclosure A). The pingers must be operational and functional at all times during deployment. The TRP also requires the use of extenders at least 36 ft in length [50 CFR § 229.31(b)] and, after notification by NOAA Fisheries, vessel operators must attend a skipper education workshop before commencing fishing each fishing season [50 CFR § 229.31(d)].

7. **Prohibitions**

Failure to take an observer on a fishing trip: it is unlawful to fail to take an assigned observer on a fishing trip [50 CFR § 229.7(c)(1)].

Harassment of an observer: it is unlawful for any person to assault, harm, harass, (including sexual harassment), oppose, impede, intimidate, impair, or in any way influence or interfere with an observer, or to attempt the same. This includes any action which has the purpose or effect of interfering with the observer's responsibilities, or which creates an intimidating, hostile, or offensive environment [50 CFR § 229.3(b)].

Violations of the MMPA may result in sanctions on Authorization Certificates, civil penalties of up to \$11,000 and criminal penalties of up to \$20,000 and one year in jail. A complete list of MMPA prohibitions can be found at 50 CFR § 229.3.

8. **Expectations At Sea**

Enclosed for reference are two summaries prepared by Observer Management, NOAA Fisheries, Southwest Region, describing an observer's and a captain's expectations when an observer is assigned aboard a drift gillnet boat (Enclosure B).

Observers will collect data on the interactions between drift gillnet fishing gear and protected species, particularly marine mammals, sea turtles, and sea birds as well as target and non-target fish species. In addition, observer data may be used to enforce the required measures under the TRP.

Questions involving the above conditions or the management of the observer program should be directed to Observer Management, NOAA Fisheries, Southwest Region, 501 West Ocean Boulevard, Suite 4200, Long Beach, California 90802-4213, or call Don Petersen at (562) 980-4024. Neither the designated Contractor, Frank Orth & Associates, nor the contract observer assigned aboard drift gillnet vessels have the authority to modify these instructions or provisions. Any modification will be made in writing by the Regional Administrator, Southwest Region.

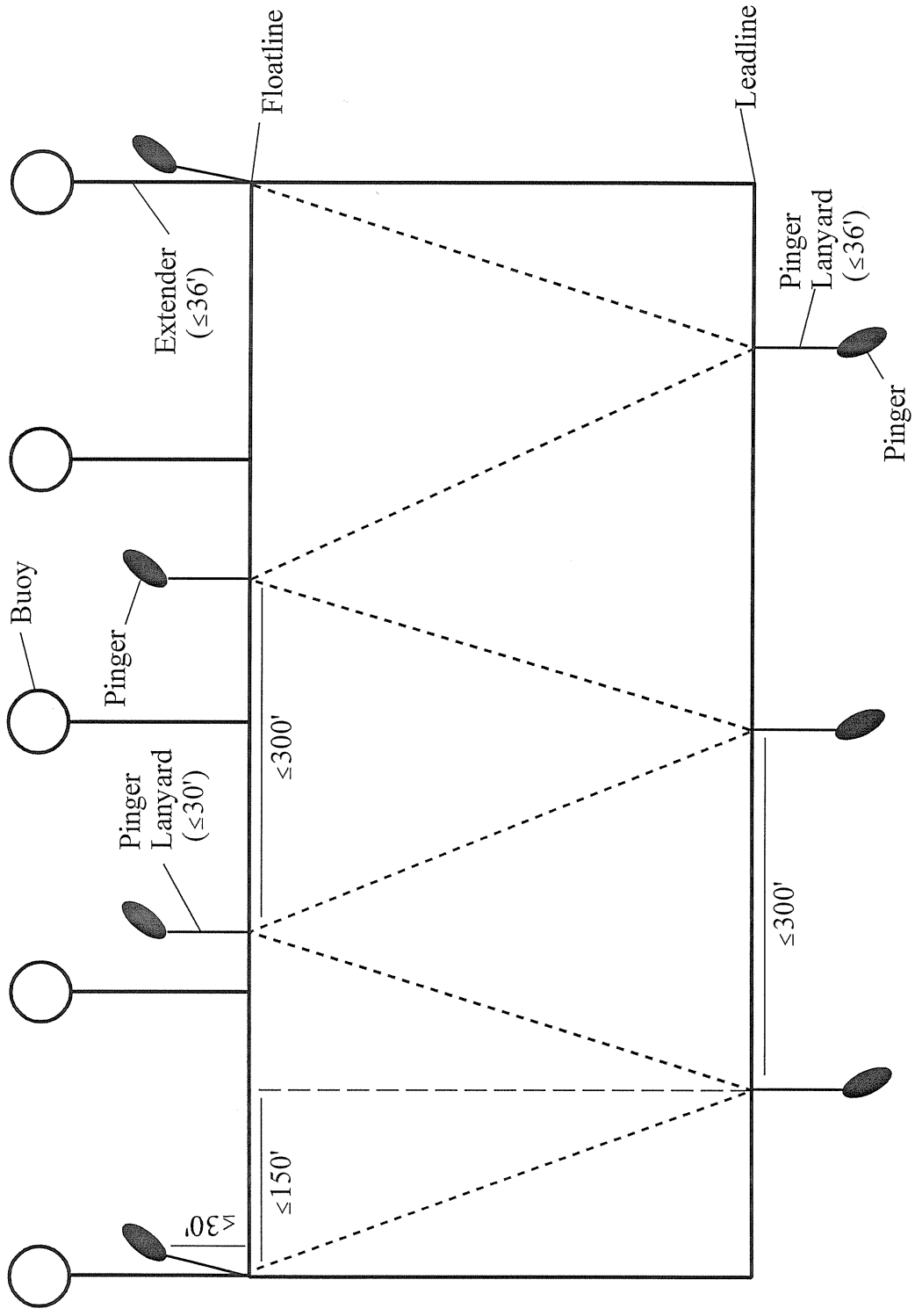
Sincerely,



Rodney R. McInnis  
Regional Administrator

Enclosures

# Enclosure A. Drift Gillnet Pinger Configuration and Extender Requirements



## **THE OBSERVER'S ROLE - WHAT TO EXPECT**

Observer Management, Southwest Region  
NOAA Fisheries

### **Observers are expected to:**

- ▶ collect objective data on fishing activity, the take of target and non-target species and selected specimen samples;
- ▶ perform their duties in such a manner as to minimize interference with fishing operations;
- ▶ keep open communication with vessel personnel by informing them about observer duties and collected data;
- ▶ use work cameras for photographing specimens;
- ▶ obtain permission from the vessel captain before using any boat equipment;
- ▶ collect data on the use of pingers;
- ▶ collect whole specimens as instructed by NOAA Fisheries and clean up thoroughly afterward;
- ▶ bring issued rain gear, boots, life vests (PFD), survival suit, and Emergency Position Indicating Radio Beacon (EPIRB);
- ▶ ask the captain about emergency procedures and familiarize themselves with the locations of life rafts, EPIRB, fire extinguishers, and first aid kits;
- ▶ remain on their assigned vessel until it returns to port to unload; and
- ▶ share housekeeping routines such as dish washing and head clean-up with the crew.

### **Observers are not expected to:**

- ▶ dictate procedures or direct fishing operations;
- ▶ be involved with crew responsibilities such as standing watch or helping with fishing;
- ▶ keep personal diaries in any form, bring aboard recording devices, personal computers, or personal cameras of any type;
- ▶ attach or detach pingers from the fishing gear;
- ▶ compromise data or record extemporaneous or personal comments;
- ▶ conduct personal research of any kind, or keep specimens or edible fish of any kind; or
- ▶ talk about any boat's business while aboard another boat or to any fishermen dockside.

## **THE CAPTAIN'S ROLE - WHAT TO EXPECT**

Observer Management, Southwest Region  
NOAA Fisheries

### **Captains are expected to:**

- ▶ cooperate with the observer in the performance of the observer's duties;
- ▶ provide observers living quarters comparable to a full crew member;
- ▶ provide the same meals, snacks, and amenities provided to crew members;
- ▶ allow the observer access to areas of the vessel necessary to conduct observer duties;
- ▶ allow the observer access to communication and navigation equipment, as necessary to perform observer duties;
- ▶ notify the observer when commercial fishing operations are to begin and end;
- ▶ provide true vessel locations by latitude and longitude upon request by the observer;
- ▶ bring aboard marine mammals, sea turtles and sea birds that were killed during fishing operations for biological processing that are readily accessible to crew members, if requested by the observer;
- ▶ provide refrigerated storage space for observer collected specimens;
- ▶ record comments on the back of the observer's original forms, if there is a disagreement with the observer's collected data; or need to provide additional information and
- ▶ comply with other guidelines, regulations or conditions that NOAA Fisheries may provide in writing to ensure the effective use of observers;

### **Captains are not expected to:**

- ▶ assault, harass or sexually harass, intimidate or attempt to influence observers, interfere with or impede observer duties;
- ▶ ask observers to stand watch or help with fishing operations; or
- ▶ fish without an observer on board the vessel after the owner or agent of the owner has been directed by NOAA Fisheries or the designated contractor to make accommodations available for an observer.