



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Northeast Region
One Blackburn Drive
Gloucester, MA 01930

July 24, 2008

Atlantic Sea Scallop Fishery
Adjustments to the Industry-Funded Observer Program
SMALL ENTITY COMPLIANCE GUIDE

Dear Observer Provider:

This letter notifies you of additional regulations implementing Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP). The management measures implementing Framework 19, including scallop fishery allocations and observer set asides, were announced in a letter dated May 23, 2008. This letter summarizes the new observer requirements established by Framework 19 that affect observer providers (Please see enclosed letter to scallop permit holders to see how the new requirements affect them). All of the observer requirements in this letter were effective June 1, 2008, except for the observer provider reporting requirements that will be effective on **August 11, 2008**. This letter is not a substitute for the actual regulations. The full text of the regulations, including the observer requirements at 50 CFR part 648.11, is available on our website: <http://www.nero.noaa.gov/>, or you may request a copy of the regulations by calling (978) 281-9315.

More information on the Sea Scallop Observer Program is available on the National Marine Fisheries Service, Northeast Fisheries Observer Program (NMFS/NEFOP) website at <http://www.nefsc.noaa.gov/femad/fsb/>.

Providers are no longer required to maintain at least eight certified observers.

An observer service provider must provide observers certified by NMFS/NEFOP for deployment in the scallop fishery when contacted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 48 hours of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the following reasons:

- 1) the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at §600.746.
- 2) any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

Providers must respond to a fisherman's request for an observer, within 18 hours of the fisherman's call, to let him/her know if an observer is available.



An observer's first three deployments and the resulting data shall be immediately edited and approved after each trip, by NMFS/NEFOP, prior to any further deployments by that observer. If data quality is considered acceptable, the observer would be certified.

Observer Deployment Limitations

Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for more than two consecutive multi-day trips, and not more than twice in any given month for multi-day deployments.

Observer Training Requirements

The following information must be submitted to NMFS/NEFOP at least 7 days prior to the beginning of the proposed training class: A list of observer candidates; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the end of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS/NEFOP Minimum Eligibility Standards for observers as described on the NMFS/NEFOP website.

Observer Provider Reporting Requirements

- Observer deployment reports. Within 24 hours of the observer's departure, the observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed. Within 24 hours of landing, the observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 4 business days of the trip landing.
- Observer availability report. The observer service provider must report to NMFS any occurrence of an inability to respond to an industry request for observer coverage due to the lack of available observers by 5 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

Beginning **August 11, 2008**, the following observer provider reporting requirements will be required:

- Observer status report. Providers must provide NMFS/NEFOP with an updated list of contact information for all observers that includes the observer identification number, observer name, mailing address, e-mail address, phone numbers, homeports or fisheries/trip types assigned, and must include whether or not the observer is "in service," indicating when the observer has requested leave and/or is not currently working for the industry funded program.
- If requested, providers must submit to NMFS/NEFOP a copy of each type of signed, valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services.

- If requested, providers must submit to NMFS/NEFOP a copy of each type of signed, valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and specific observers.
- If requested, providers must submit to NMFS/NEFOP copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

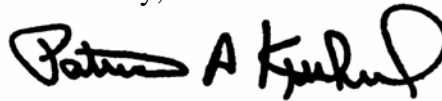
Costs/Daily Rates of the Scallop Observer Program

Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip.

- 1) Access Area trips. For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, a service provider shall charge a vessel owner from the time an observer boards a vessel until they disembark (dock to dock), where “day” is defined as a 24-hour period, or any portion of a 24-hour period, regardless of the calendar day. For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 “days.”
- 2) Open area scallop trips. For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where “day” is defined as a 24-hour period, and portions of the other days would be prorated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

If you have any questions regarding this letter, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,



Patricia A. Kurkul
Regional Administrator

This small entity compliance guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996.



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NOTE: This letter is being sent to all sea scallop permit holders as of June 1, 2008. Since then, new permit requirements went into effect for the general category fleet and your vessel may no longer qualify for a federal scallop permit.

Dear Sea Scallop Permit Holder:

This letter notifies you of additional regulations implementing Framework Adjustment 19 (Framework 19) to the Atlantic Sea Scallop Fishery Management Plan (FMP). The management measures implementing Framework 19, including scallop fishery allocations and observer set asides, were announced in a letter dated May 23, 2008. This letter summarizes the new observer requirements established by Framework 19 that affect scallop fishermen. All of the observer requirements in this letter were effective June 1, 2008. This letter is not a substitute for the actual regulations. The full text of the regulations, including the observer requirements at 50 CFR part 648.11, is available on our website: <http://www.nero.noaa.gov/>, or you may request a copy of the regulations by calling (978) 281-9315.

More information on the Sea Scallop Observer Program is available on the National Marine Fisheries Service, Northeast Fisheries Observer Program (NMFS/NEFOP) website at <http://www.nefsc.noaa.gov/femad/fsb/>.

Vessel Notification Procedures

The owner, operator, or vessel manager of a vessel participating in a scallop fishery requiring industry-funded observer coverage must contact NMFS/NEFOP with at least 72-hours notice in advance of a fishing trip (referred to here as trip notification calls). See attached guide at the end of this letter for trip notification call-in instructions.

Limited access trip notification calls must be made no more than 10 days in advance of each fishing trip and must include the time, port of departure, open area or specific Sea Scallop Access Area to be fished, and whether fishing as a scallop dredge or scallop trawl vessel.

General category vessels making an access area trip(s) may make weekly calls rather than trip by trip calls. A general category vessel must notify the NMFS/NEFOP by telephone by 0001 hr of the Thursday before the week (Sunday through Saturday) that they intend to start a scallop trip in an access area. The vessel would either get a waiver for that week, or be selected for observer coverage. If selected, a vessel could be required to carry an observer on up to two Sea Scallop Access Area trips made that week. Vessel owners, operators, or managers are



required to notify NMFS/NEFOP of any trip plan changes at least 48 hours prior to vessel departure.

Scallop Trips Selected for Observer Coverage

For the specified trip, NMFS shall notify the vessel owner, operator, or vessel manager within 24 hours of the prospective scallop trip whether the vessel must carry an observer or whether a waiver has been granted. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver. A vessel may not fish in an area with an observer waiver confirmation number that does not match the scallop trip plan that was called in to NMFS. Confirmation numbers for trip notification calls are only valid for 48 hours from the intended sail date.

Procurement of Observer Services by Scallop Vessels

An owner of a scallop vessel required to carry an observer must arrange for carrying a NMFS/NEFOP certified observer from a NMFS approved observer service provider. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 48 hours notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip. The observer service provider will notify the vessel owner, operator, or manager within 18 hours whether they have an available observer. A list of approved observer service providers shall be posted on the NMFS/NEFOP website. The observer service provider may take up to 48 hours to arrange for observer deployment for the specified scallop trip.

An owner, operator, or vessel manager of a vessel who cannot procure a certified observer within 48 hours of the advance notification to the provider due to the unavailability of an observer may request a waiver from NMFS/NEFOP from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS/NEFOP shall issue such a waiver within 24 hours if no observers are available from any of the observer providers. A vessel may not begin the trip without being issued a waiver.

Costs/Daily Rates of the Scallop Observer Program

Owners of scallop vessels are responsible for paying the cost of the observer for all scallop trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set aside for an increased possession limit or reduced days-at-sea (DAS) accrual rate. The owners of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area scallop trips or additional scallop catch per day in Sea Scallop Access Areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60.

Observer service providers shall establish the daily rate for observer coverage on a scallop vessel on an Access Area trip or open area DAS scallop trip.

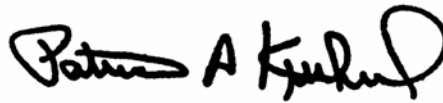
- 1) Access Area trips. For purposes of determining the daily rate for an observed scallop trip in a Sea Scallop Access Area, a service provider shall charge a vessel owner from when an observer boards a vessel until they disembark (dock to dock), where “day” is defined as a 24-hour period, or any portion of a 24-hour period, regardless of the calendar day.

For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, which would equate to 2 “days.”

- 2) Open area scallop trips. For purposes of determining the daily rate for an observed scallop trip for open area DAS trips, a service provider shall charge dock to dock where “day” is defined as a 24-hour period, and portions of the other days would be prorated at an hourly charge (taking the daily rate divided by 24). For example, if a vessel with an observer departs on the July 1st at 10 pm and lands on July 3rd at 1 am, the time at sea equals 27 hours, so the provider would charge 1 day and 3 hours.

If you have any questions regarding this letter, please contact the Sustainable Fisheries Division at (978) 281-9315.

Sincerely,

A handwritten signature in black ink, appearing to read "Patricia A. Kurkul". The signature is fluid and cursive, with a large, stylized initial "P" and "K".

Patricia A. Kurkul
Regional Administrator

This small entity compliance guide complies with section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996.

Industry-Funded Scallop Observer Program Call-In Guide

For Limited Access (Open Area and Access Area trips) and General Category (Access Area trips)

Northeast Fisheries Observer Program, July 7, 2008

STEP I - TRIP NOTIFICATION 72-HOURS PRIOR TO TRIP

Call the automated NE Fisheries Scallop Observer Program Number at **(508) 495-2100, press 1 to report a trip**, and follow the telephone message prompts:

Gear type – 1=scallop dredge, 2=scallop trawl

Limited Access/General Category – 1=limited access, 2=general category

Area Fishing – 1=NLSA, 2=CAII, 3=HCA, 4=MA Open, 5=GB Open, 6=ET, 7=CAI

Phone number – enter your 10 digit phone number (DO NOT use '1' before the area code)

Permit number – enter your 6 digit permit number

Name - speak clearly, first and last name, then press # key

Port sailing from - speak clearly, port name including city and state, then press # key

Date of sailing - speak clearly, month, day, and year, then press # key

You will receive a **trip confirmation number** for each call (trip calls for limited access trips, and weekly calls for general category trips). For the weekly general category calls, call by Thursday if you expect to make any trips in an access area from Sunday through Saturday of the next week. An email transmission from the National Marine Fisheries Service (NMFS) will be sent to your email address(s) within 24 hours and will either issue a 'waiver' or notify you that an observer must be hired for the trip. If you are issued a waiver, you may begin your trip(s). If you receive an observer notice, please follow the instructions in Step II. Once you make the initial call, the NMFS/NEFOP may take up to 24 hours to inform you if you have been selected for observer coverage or not. **If selected, you MUST provide 48 hours notice to the observer provider.** The observer provider may take up to 18 hours to get back to you on observer availability.

STEP II - OBSERVER PROVIDER 48-HOURS PRIOR TO TRIP

If you receive an email from NMFS that you must hire an observer for the trip, please call the provider(s) below. For the most current list of approved observer service providers, go to the 'Sea Scallop Observer Program Information' webpage at <http://www.nefsc.noaa.gov/femad/fsb/> or call the NE Fisheries Scallop Observer Program Number listed above, and press 2. There are currently two providers:

A.I.S. Inc. (508) 990-9057, and East West Technical Services Inc. (860) 223-5165.

If there are no observers available from any of the providers, request a waiver by calling the:

NMFS Vessel Call-in Coordinator at (508) 495-2188 or (508) 560-3550.

IF THE TRIP IS DELAYED OR CANCELED

If the trip is delayed for more than 72 hours beyond the intended sail date, please begin the process again with the 72 hour notice before sailing, or call the NMFS Vessel Call-in Coordinator to explain. If you had an observer assigned and you canceled the trip, you must take an observer on your next trip to the same area, unless no observers are available.

TO CHANGE INTENDED FISHING AREA

If you change the area you plan to fish, please call the NE Fisheries Scallop Observer Program Number for a new confirmation number.

FOR TRIPS THAT LAYOVER IN PORT

If you must interrupt an open area trip and return to port, for example due to weather, **do not offload your catch**, and go back out within 48 hours, you may use the same confirmation number and maintain the same observer status. If any catch is offloaded or the layover time is greater than 48 hours, call the NE Fisheries Scallop Observer Program Number for a new confirmation number.

This summary is not a substitute for the actual regulations. The full text of the regulations is available at <http://www.nero.noaa.gov> or call the Northeast Regional Office at (978) 281-9315.