

**SUPPORTING STATEMENT
NORTHEAST REGION OBSERVER PROVIDERS REQUIREMENTS
OMB CONTROL NO.: 0648-0546**

INTRODUCTION

This supporting statement provides information and background for renewal of collection of information requirements approved under Office of Management and Budget (OMB) Control Number: 0648-0546 under emergency clearance procedures.

The National Marine Fisheries Service (NMFS) implemented an emergency final rule to enact a program enabling the scallop industry to utilize the observer set-aside specified in the Atlantic Sea Scallop Fishery Management Plan (FMP) (71 FR 34842, June 16, 2006). The emergency action re-activated the industry-funded observer program included in the Scallop FMP. Scallop vessels are required to procure observer coverage from a NMFS-approved observer service provider and to pay for the observer coverage. The emergency rule: 1) specified observer service provider requirements for the scallop fishery and established criteria for approval by NMFS as an observer service provider and 2) specified requirements and responsibilities for candidate observers to become certified as observers for the scallop fishery.

Since 1999, NMFS has required scallop vessels operating in Sea Scallop Access Areas (Access Areas) under the Scallop FMP to pay for observer coverage. A contract arrangement between NMFS and an observer contractor had enabled vessel owners to pay the observer contractor directly for observer deployments, with details of the observer deployment requirements specified through the contract. The contractual arrangement was not renewed after June 2004 because of unresolved concerns about the contract and the simultaneous requirement that vessel owners pay for the observer coverage. The expiration of the contract arrangement eliminated the mechanism that allowed vessel owners to make these payments and, in the absence of this contractual program, NMFS has not required vessel owners to pay for the cost of observers since 2004.

Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific total allowable catch (TAC) of yellowtail flounder, which is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified mortality targets for the species. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles.

The current funding situation, which provides for only minimal observer coverage in the scallop fishery, was an unforeseen circumstance that presented potentially serious management problems to the fishery. NMFS therefore published the emergency rule to implement a solution to the observer coverage problem in the scallop fishery.

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The collection of information requirements for observer service providers and the additional requirement for scallop vessels are necessary to ensure that adequate observer coverage is applied to the scallop fishery.

The data provided by the Observer Program are a critical element in the conservation and management of scallops, NE multispecies, sea turtles, and other living marine resources. These data are used to support in season catch accounting, Scallop Access Area closures, stock assessments, and assessments of interactions between the scallop fishery and protected species.

Accurate catch accounting results in Scallop Access Area closures that allow for harvest levels that better approach actual allocations without exceeding them, thereby avoiding, to the extent practicable, losses of revenue from the potential misallocation or under-harvesting of total allowable catch of scallops and bycatch species. In addition, monitoring of the scallop fishery is necessary to obtain data concerning the fishery's interactions with threatened and endangered sea turtles.

Under Magnuson-Stevens Fishery Conservation and Management Act authority, NMFS can implement an emergency action for a maximum of 180 days, with an extension of 180 days only. Therefore, the collection of information requirements enacted by this rule will not be required after June 10, 2007, unless permanent measures are put in place by NMFS that supersede the emergency rule.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

An entity that seeks to provide observer services under 50 CFR part 648.11(h) must be listed as an approved observer service provider by the Northeast Fisheries Observer Program (NEFOP) within the Northeast Fisheries Science Center (NEFSC). Applicants are required to provide information in narrative style rather than completing a form. Approved observer service providers are required to submit information during the course of the year in order to comply with specified requirements and responsibilities. The NEFOP reviews and evaluates each application for completeness against evaluation criteria and uses the provided information to evaluate the abilities of the prospective provider to perform the required responsibilities and duties on a recurring basis. NMFS anticipates that applications would be submitted once under the emergency rule (i.e., annual renewals are not authorized). Reports will be required throughout the year under the authority of the emergency rule, depending on the frequency and duration of individual scallop fishing trips. The information submitted by observer service providers through required reports will be used to monitor the fishery and observer deployments, including evaluating catch and bycatch, monitoring observer activity, and resolving problems associated with observer deployments. None of the information provided by prospective and operating observer service providers would be disseminated to the public. Owners, operators, or managers of scallop vessels are required under the emergency rule to procure observers from an

approved observer service provider for each trip that the NEFOP identifies as a trip that requires observer coverage. An owner, operator, or manager of a vessel is therefore required to call observer service providers in order to have an observer placed on the vessel for the specific trip. If no observers are available, vessel owners, operators, or vessel managers must follow up with a phone call to the NEFOP for authorization of a waiver from the requirement to carry an observer.

Number of respondents

NMFS estimates that five observer service providers may apply for approval and operate under the observer program.

All limited access scallop vessels (337) are required to comply with the new reporting requirements. In addition, a portion of the vessels issued a Vessel Monitoring System (VMS) general category scallop permit (approximately 850) may fish within scallop access areas and would be subject to the new reporting requirements. Conservatively, 50%, or approximately 425 of the VMS general category scallop vessels, may elect to fish within the access areas in the 2006 fishing year. In total, NMFS estimates that 800 vessels would be subject to the reporting requirements.

a. Application for approval as an observer service provider.

An application for an approved observer service provider shall consist of a narrative containing the following:

- (1) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.
- (2) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence. Current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.
- (3) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.
- (4) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.
- (5) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(6) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(2) of this section, and the arrangements to be used.

(7) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. Minimum coverage required is \$5 million. Observer Providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager when requested.

(8) Proof that their observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as a Fair Labor Standards Act (FLSA) non-exempt employee. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

Response time includes preparation of information, including gathering and compiling insurance and salary information.

| New Permit Application for Observer Provider, Respondent | |
|---|----------------|
| Estimated number of respondents | 5 |
| Number of responses per year | 1 |
| Total Annual Responses | 5 |
| Total Time Burden | 50 hr |
| Time requirement for each application | 10 hr |
| Total cost (hr x \$/hr) | \$1,250 |
| Cost per hour, in dollars | \$25 |
| Miscellaneous costs (5 x \$0.89) | \$4.45 |
| Cost to copy 5 pages | \$0.50 |
| Cost to mail application (5 pages) | \$0.39 |

| New Permit Application for Observer Provider, Government | |
|---|--------------|
| Total Annual Responses | 5 |
| Total Time Burden | 5hr |
| Time Burden per Response | 1hr |
| Total Cost | \$175 |
| Cost per response | \$35/hr |

b. Applicant response to denial of application

If the Science and Research Director determines that an application is incomplete or does not meet the requirements of an approved observer service provider, the Science and Research Director shall provide the applicant with a written denial following evaluation of a completed application. The denial shall identify any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information to rectify the deficiencies specified in the written denial, provided such information is submitted to the NEFOP within 30 days of the applicant's receipt of the

denial notification. Depending on the deficiencies, an applicant may have to provide some or all of the information requested as part of the initial application (see paragraph (2)(a) above).

| Response to denial of Application, Respondent | |
|--|---------------|
| Estimated number of respondents | 3 |
| Number of responses per year | 1 |
| Total Annual Responses | 3 |
| Total Time Burden | 30 hr |
| Time requirement for each application | 10 hr |
| Total cost | \$750 |
| Cost per hour | \$25 |
| Miscellaneous costs (5 x \$0.89) | \$2.67 |
| Cost to copy 5 pages | \$0.50 |
| Cost to mail application (5 pages) | \$0.39 |

| Response to denial of Application, Federal Government | |
|--|--------------|
| Total Annual Responses | 3 |
| Total Time Burden | 3 hr |
| Time Burden per Response | 1hr |
| Total Cost | \$105 |
| Cost per hour | \$35 |

c. Request for observer training.

The following information must be submitted to the NEFOP to request a certified training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of 8 individuals; observer candidate resumes; and a statement signed by the candidate under penalty of perjury, which discloses the candidate's criminal convictions, if any. This requirement ensures that the NEFOP is provided with the necessary time and information to prepare for the training of candidate observers.

| Request for observer training, Respondent | |
|--|----------------|
| Estimated number of respondents | 5 |
| Number of responses per year | 1 |
| Total Annual Responses | 5 |
| Total Time Burden | 3 hr |
| Time requirement for each application | 30 min |
| Total cost | \$62.50 |
| Cost per hour | \$25 |
| Miscellaneous costs (5 x \$1.80) | \$9.00 |
| Cost to copy 10 pages | \$1.00 |
| Cost to mail request (10 pages) | \$0.80 |

| Request for observer training, Government | |
|--|--------------|
| Total Annual Responses | 5 |
| Total Time Burden | 5 hr |
| Time requirement per response | 1hr |
| Total cost | \$175 |
| Cost per hour, in dollars | \$35 |

d. Observer service provider reports and samples.

(1) Observer deployment reports. The observer service provider must report to the NEFOP when, where, to whom, and to what scallop area an observer has been deployed within 24 hours of the observer's departure. The observer service provider must ensure that the observer reports back to the NEFOP its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hours of landing.

(2) Observer Availability Report. The observer services provider must report to the NEFOP any occurrence of their inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 pm, Eastern Standard Time, on any day with an industry request for observer coverage.

(3) Safety Refusals. The observer service provider must report to the NEFOP any trip that has been refused due to safety issues, e.g., failure to hold a valid United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination Decal or meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hours of the refusal.

(4) Raw observer data. The observer service provider shall provide the raw (unedited) data (via courier service eg. FedEx, DHL, etc.) collected by the observer to the NEFOP within 72 hours of trip landing.

(5) Observer debriefing. The observer service provider must ensure that the observer remains available to the NEFOP and/or NMFS Office for Law Enforcement for debriefing for two weeks following any observed trip. An observer that is at sea during the two-week period must contact the NEFOP upon his or her return if requested.

(6) Other reports. Reports of possible observer harassment, discrimination, concerns about vessel safety or marine casualty, observer illness or injury, and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior must be submitted to the NEFOP in a timely manner.

(7) Biological samples. The observer service provider must ensure that biological samples, including whole marine mammals, turtles and sea birds, are stored/handled properly and transported to the NEFOP within 7 days of landing.

Observer service provider reports and samples, Respondent

| Requirement | Number of Respondents | Number of Responses per Year | Time for Each Response | Total Time Burden | Cost per Hour | Total Cost | Miscellaneous Costs (phone call (\$0.10/min) unless noted) |
|------------------------------|-----------------------|------------------------------|------------------------|-------------------|---------------|---------------|--|
| Observer deployment report | 5 | 250* | 10 min | 42 hr | \$25 | \$1,050 | \$250 (\$1.00 x 250) |
| Observer availability report | 5 | 150 | 10 min | 25 hr | \$25 | \$625 | \$150 (\$1.00 x 150) |
| Safety refusals | 5 | 100 | 30 min | 50 hr | \$25 | \$1,250 | \$300 (\$3.00 x 100) |
| Raw observer data | 5 | 250 | 5 min | 21 hr | \$25 | \$525 | \$3,250 (\$13.00 Express mail x 250) |
| Observer debriefing | 5 | 125 | 2 hr | 250 hr | \$25 | \$6,250 | \$1,500 (\$12.00 x 125) |
| Other reports | 5 | 10 | 30 min | 5 hr | \$25 | \$125 | \$30 (\$3.00 x 10) |
| Biological samples | 5 | 250 | 5 min** | 21 hr | \$25 | \$525 | \$125 (\$0.50 x 250) |
| TOTALS | | 1,135 | | 414 | | 10,350 | \$5,605 |

* NMFS estimates that 250 trips will be observed in the scallop fishery, which will be distributed among all observer providers. This estimate is likely high since a provider could submit a report for multiple observed trips.

** Observer service providers will be responsible for calling the NEFOP to arrange for the transport of biological samples.

Observer service provider reports and samples, Government

| Requirement | Total Annual Responses | Time for Each Response | Total Time Burden | Cost per Hour | Total Cost |
|------------------------------|------------------------|------------------------|-------------------|---------------|-----------------|
| Observer deployment report | 250 | 10 min | 42 hr | \$35 | \$1,470 |
| Observer availability report | 150 | 10 min | 25 hr | \$35 | \$875 |
| Safety refusals | 100 | 30 min | 50 hr | \$35 | \$1,750 |
| Raw observer data | 250 | 30 min | 125 hr | \$35 | \$4,375 |
| Observer debriefing | 125 | 2 hr | 250 hr | \$35 | \$8,750 |
| Other reports | 10 | 30 min | 5 hr | \$35 | \$175 |
| Biological samples | 250 | 30 min | 125 hr | \$35 | \$4,375 |
| TOTALS | 1,035 | | 622 | | \$21,770 |

e. Submission of information to rebut a pending removal from the list of approved observer providers.

An observer provider that fails to meet the requirements, conditions, and responsibilities of an approved observer service provider will be notified by the Science and Research Director in writing that it is subject to removal from the list of approved observer service providers. Such notification will specify the reasons for pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence that clearly disproves the reasons for removal.

| Rebuttal of pending removal from list of approved observer service providers, Respondent | |
|---|---------------|
| Estimated number of respondents | 1 |
| Number of responses per year | 1 |
| Total Annual Responses | 1 |
| Total Time Burden | 8 hr |
| Time requirement for each application | 8 hr |
| Total cost | \$200 |
| Cost per hour, in dollars | \$25 |
| Miscellaneous costs (1 x \$0.89) | \$0.89 |
| Cost to copy 5 pages | \$0.50 |
| Cost to mail rebuttal (5 pages) | \$0.39 |

| Rebuttal of pending removal from list of approved observer service providers, Government | |
|---|--------------|
| Total Annual Responses | 1 |
| Total Time Burden | 3 hr |
| Time requirement per response | 3 |
| Total cost | \$105 |
| Cost per hour | \$35 hr |

f. Vessel trip notification requirements

Based on predetermined coverage levels for various sectors of the scallop fishery, the NEFOP will notify a vessel owner, operator, or vessel manager whether a vessel must carry an observer, or if a waiver has been granted, within 24 hours of the vessel owner's, operator's, or vessel manager's notification of the prospective trip.

An owner of a scallop vessel required to carry an observer must arrange for carrying a NEFOP-certified observer from an approved observer service provider. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider by phone and must provide at least 72 hours for the provider to arrange for observer deployment for a specified trip.

An owner, operator, or vessel manager of a vessel who cannot procure a certified observer within 72 hours of the notification to the provider, due to the unavailability of an observer, may request

a waiver 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. To request a waiver based on the unavailability of observers, an owner, operator, or vessel manager of the vessel must call the NEFOP. If the NEFOP confirms that no observers are available, it will issue a waiver within 24 hours.

Vessel owners may not be able to procure an observer if observer service providers do not have observers available. Experience to date suggests that this may not be a common occurrence. If vessel owners are unable to procure an observer on 10% of the 250 trips (which is a high estimate), vessel owners, operators, or vessel managers would need to request a waiver due to observer unavailability on approximately 25 trips.

These notifications are necessary under the observer service provider program established in the emergency rule to improve the efficiency of the observer program.

Vessel notification requirements, Respondent

| Requirement | Number of Respondents | Number of Responses per Year | Time for Each Response | Total Time Burden | Cost per Hour | Total Cost | Misc. Costs (Phone call @ \$0.10/min) |
|---|-----------------------|------------------------------|------------------------|-------------------|---------------|----------------|---------------------------------------|
| Request to observer service provider to procure an observer | 800 * | 250 | 25 min ** | 104 hr | \$15 | \$1,560 | \$625 (\$2.50 x 250) |
| Notification of unavailability of observers | 800 | 25 | 5 | 2 hr | \$15 | \$30 | \$12.50 (\$0.50 x 25) |
| TOTALS | | 275 | | 106 | | \$1,590 | \$637.50 |

* 800 vessels are expected to participate in scallop fisheries requiring observer coverage and the reporting requirement. Only 250 trips require a response to procure an observer from an approved observer service provider.

** A vessel owner, operator, or vessel manager may need to call each observer service provider (estimated to be 5 in this supporting statement), with a duration of 5 minutes per call.

| Vessel notification requirements, Government | |
|---|-------------|
| Total Annual Responses | 25 |
| Total Time Burden | 2 hr |
| Time for Each Response | 5 min |
| Total Cost | \$50 |
| Cost per Hour | \$25 |

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Currently, applications, appeals, and rebuttals must be sent via U.S. mail, as signed statements are required. A request for an observer, or a waiver of the observer requirement, as well as reports, debriefs, and other notification will be made by telephone.

4. Describe efforts to identify duplication.

The application processes and information submissions for the observer provider are unique to this program, and direct duplication with other collections does not exist.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

This collection of information does not impose a significant impact on small entities.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

All information is required for the efficient operation of the Observer Program and must be submitted in the time frames requested. Collecting this information less frequently would jeopardize the goals and objectives of the Observer Program and the effective management of the scallop fishery.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

No special circumstances exist that would require information collection to be conducted in a manner inconsistent with OMB Guidelines except for the weekly reports.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

There were no comments submitted in response to the attached Federal Register notice published on July 6, 2006 (71 FR 38383). No consultation with persons outside the agency was necessary. NMFS used information on cost and labor available through similar programs currently in operation under NMFS authority.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gift to respondents is provided under this program for observer service providers who choose to apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

The information collected is confidential under section 402(b) of the Magnuson-Stevens Act (16 U.S.C. 1801, et seq.).

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This collection of information does not request any information that are of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Total estimated unique respondents: 805. Total estimated responses: 1,424. Total estimated burden hours: 611. Total estimated cost: \$14,203.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

Total estimated miscellaneous costs: \$6,259.51.

14. Provide estimates of annualized cost to the Federal government.

Estimated total burden hours: 654. Estimated total cost: \$22,380. No miscellaneous costs.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

There are no changes or adjustments reported.

16. For collections whose results will be published, outline the plans for tabulation and publication.

NMFS has no plans to tabulate the results of this information collection

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

No forms are available in this collection. The information is collected through a written narrative, reports without forms, and by phone. NMFS will display the OMB number and

expiration date on information outlining the requirements provided to prospective observer service providers.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-1.

No exceptions to the certification statement are requested.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection does not employ statistical methods.