

Application information for parties interested in becoming observer service providers for the Northeast Region's sea scallop fishery.

As described in the Emergency Rule for observer coverage in the sea scallop fishery published in the Federal Register, the Northeast Fisheries Science Center will accept applications to become an Approved Observer Service Provider for the Sea Scallop Fishery. The fishery will directly fund the cost of the observer to an approved vendor through a set-aside program and/or from their own revenues. The Northeast Fisheries Observer Program (NEFOP) will direct selected vessels to a list of approved vendors, found on the NEFOP website, for them to procure the services of a NEFOP Certified Observer.

Applications should be mailed to:

Northeast Fisheries Observer Program
Sea Scallop Observer Service Provider Application
25 Bernard St. Jean Drive
East Falmouth, MA 02536
Attn: David Potter, Chief NEFOP

An application to become an approved observer service provider shall contain the following:

- (i) 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.
- (ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.
- (iii) 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 the Emergency Rule.
- (iv) 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.
- (v) 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.
- (vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider, and the arrangements to be used.

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

(viii) Proof that its 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.

(ix) Vendors must supply the NMFS the names of their fully equipped, NEFOP certified observers on staff (with resumes), or a list of their training candidates (with resumes) along with a request for NMFS to schedule a NEFOP Sea Scallop Observer Training class (minimum class size of eight).

(x) Vendors must submit an Emergency Action Plan (EAP) which will describe their response to an 'at sea' emergency with an observer. Including, but not limited to, personal injury, death, harassment or intimidation.

Application evaluation.

(i) The NMFS shall review and evaluate each application submitted. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on the NEFOP website and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to its participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or the evaluation criteria are not met. The NMFS shall notify the applicant in writing of 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 NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process to be re-considered for being added to the list of approved observer service providers.

(iv) Approved observer service providers performance will be reviewed by NMFS on a quarterly basis. A vendor's ability to place observers on vessels, their ability to follow all of the their requirements and the requirements of their observers will be reviewed. Failure to meet or

exceed the standard conditions will be grounds for removal from the approved vendor list pending their action to rectify the deficiencies. Vendors will be notified in writing of their deficiencies along with the letter of removal from the approved vendor list. A vendor will have thirty days to rectify the situation and notify NMFS in writing of their response. NMFS also holds the right to revoke approval status at any time upon determination of unacceptable performance or egregious misconduct by a vendor or their observer(s).

Once you are approved as an observer service provider, scallop fishing vessels that have been selected by the NMFS to carry an observer may contact you to provide an observer. You will have 72 hours in order to locate an available observer and get them to the vessel (you can do it sooner, if possible). Payment (amount) and method of payment are at the discretion of the vendor/fisher.

Observers must perform their duties in accordance with the training received by the NEFOP including all aspects of data collection, recording and reporting. As the data are edited observers will be debriefed as necessary and may be required to travel to Woods Hole for in-person debriefing. Problems with an individual's data may be grounds for probationary action or decertification following the policies of the NEFOP.

Details of your responsibilities and those of your employees are included in the Emergency Rule and will be reproduced as an attachment with this memo.

Proposed Sea Days

A schedule for the sea day coverage in these fisheries has not yet been developed; the schedule will be posted on the NEFOP website when completed. However estimates of the number of sea days requested for coverage are listed in the table below for your information.

Proposed Sea Scallop Observer Coverage for 2006

| Fishery | Location | Type | Observer Coverage |
|----------------|---------------------|-------------|--------------------------|
| Scallop Dredge | mid-Atlantic | Open Access | 1600 Days |
| | Georges Bank | Open Access | 425 Days |
| | Nantucket Lightship | Closed Area | 60 trips* |
| | Closed Area II | Closed Area | 90 Trips* |
| Scallop Trawl | anywhere | Open Access | 200 Days |

* 10% coverage for closed areas, trip length may vary.

Attachment A.

Copied from the Emergency Rule published in the Federal Register on June 16, 2006

(5) Responsibilities of observer service providers. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery unless the observer service provider refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (viii) of this section.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS website specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer-s personal cell phone or pager for communications made in support of, or necessary for, the observer-s duties.

(iii) Observer deployment logistics. Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hours per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) Observer deployment limitations. Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer-s first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) Communications with observers. An observer service provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) Observer training requirements. The following information must be submitted to NMFS to request a certified observer 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 eight individuals; 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 beginning 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 Draft National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) Reports--(A) Observer deployment reports. The observer service provider must report to NMFS when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hours of their departure. 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, within 12 hours of landing. 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 72 hours of the trip landing.

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

(C) 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 NMFS within 7 days of landing.

(D) Observer debriefing. The observer service provider must ensure that the observer remains available to NMFS, including NMFS Office for Law Enforcement, for debriefing for at least two weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested by NMFS.

(E) Observer availability Report. The observer service provider must report to NMFS 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) of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) Other reports. The observer provider must report 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 and submitted to NMFS within 24 hours of the event or within 24 hours of learning of the event.

(viii) Refusal to deploy an observer. (A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hours of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at *600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for 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.

(6) Limitations on conflict of interest. An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal

regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) Removal of observer service provider from the list of approved observer service providers. An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the 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. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or if no rebuttal is submitted, shall be the final decision of NMFS and the Department of Commerce. Removal from the list of approved observer service providers does not necessarily prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer service provider may remain on the list of approved observer service providers:

(i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;

(ii) Evidence of conflict of interest as defined under paragraph (h)(3) of this section;

(iii) Evidence of criminal convictions related to:

(A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or

(B) The commission of any other crimes of dishonesty, as defined by state law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and

(v) Evidence of any history of decertification as either an observer or observer provider.

(i) Observer certification. (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the NEFOP website.

(2) Observer training. In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. Observer training shall include an observer training trip, paid for as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment shall be on a scallop closed area trip and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(3) Observer requirements. All observers must:

(i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;

(ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards are available from NMFS website specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider; and

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section.

(4) Probation and decertification. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the website at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) Issuance of decertification. Upon determination that decertification is warranted under paragraph (i)(3) of this section, NMFS shall issue a written decision to decertify the observer to the observer and approved observer service providers via certified mail at the observer's most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.