

Alaska Marine Mammal Observer Program

2004

*National Marine Fisheries Service
Alaska Region Protected Resources
Juneau, Alaska*



Introduction...

The Marine Mammal Protection Act was enacted in 1972 to protect and conserve marine mammals. Congress intended that marine mammal populations should be “protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the ecosystem.”

Marine mammals may be taken incidentally in the course of commercial fishing operations, provided the appropriate exemptions are issued. However, the *intentional* lethal take of any marine mammal in the course of commercial fishing operations is prohibited. Congress gave the Departments of Commerce and Interior the responsibility and authority to manage marine mammals, and this is delegated to their respective agencies, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service. NMFS is authorized to conduct observer programs in commercial fisheries to assess levels of mortality and serious injury of marine mammals that occur during fishing operations. In Alaska, NMFS’ Alaska Marine Mammal Observer Program collects information on fishery interactions with marine mammals. This information is incorporated into assessments of the general status of marine mammal populations in Alaska. This pamphlet is intended to answer some of the more frequently asked questions about marine mammal management with respect to commercial fisheries and observer programs in Alaska.

Some Background on Marine Mammal Management...

What is a marine mammal?

Mammals are warm-blooded animals that breath oxygen, have hair at some stage of life, give birth to live young, and nurse their young. Marine mammals are adapted to or primarily inhabit the marine environment. They include porpoise, dolphins, whales, seals, sea lions, manatees, dugongs, walrus, sea otters, and polar bears.

What are “Stock Assessment Reports”?

NMFS publishes annual Stock Assessment Reports for all stocks of marine mammals which occur in U.S. waters. A stock is a group of marine mammals of the same species or subspecies in a common area that interbreed when mature. Included in the report for each stock is information on

geographic range, population estimate and trend, and productivity rates. Also included are estimates of total annual human-caused mortality and serious injury to the stock, mortality and serious injury rates by fishery, and a determination of whether that rate is insignificant and approaching a zero mortality rate goal. The status of each stock is noted as either strategic or not.

What is a “strategic” stock?

A strategic stock is one that is listed as threatened or endangered under the Endangered Species Act; is likely to be listed as threatened under the Act in the near future; or which has a level of direct human-caused mortality and serious injury that exceeds the stock’s potential biological removal level.

What is “Potential Biological Removal”?

The Potential Biological Removal (PBR) level is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock and still allow that stock to reach or maintain its optimum sustainable population. A PBR for each stock is published in the Stock Assessment Reports. Each stock’s PBR is calculated by multiplying:

$$\begin{array}{l} \text{minimum population estimate} \\ \times \\ \text{one-half the maximum net productivity rate} \\ \times \\ \text{recovery factor between 0.1 and 1.0} \end{array}$$

What is the “List of Fisheries”?

The List of Fisheries, published annually by NMFS, is a list of all commercial fisheries that legally operate in U.S. waters. The list contains information on each fishery including number of participants, marine mammal stocks affected by the fishery, and the classification of the fishery relative to its impact on those marine mammal stocks.

How are Fisheries Categorized?

NMFS classifies each U.S. commercial fishery (state and Federal) in one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in the fishery. Each fishery is classified through a two-tiered analysis which assesses the potential impact of fisheries on each marine mammal stock by comparing serious injury and mortality levels to stock PBRs.

Tier 1: For each stock, serious injuries and mortalities from all commercial U.S. fisheries are totaled. If the total is less than or equal to 10% of the PBR of that stock, then all fisheries interacting with this stock are placed in Category III. This process is repeated for

each stock. A fishery remains in Category III unless it interacts with a stock for which PBR is exceeded by more than 10%. All fisheries that interact with a stock for which PBR is exceeded by more than 10% are subject to a Tier 2 analysis. Fisheries with no serious injuries or mortalities to any marine mammal stock are placed in Category III.

Tier 2: For each fishery, the annual mortality and serious injury for each marine mammal stock is evaluated relative to the PBR of that stock. The fishery is categorized accordingly:

Category I: Mortality \geq 50% PBR

Category II: 50% PBR > Mortality > 1% PBR

Category III: Mortality \leq 1% PBR

NMFS relies on observer data in the analyses, but also evaluates other factors such as fishing techniques, gear, methods used to deter marine mammals, seasons and areas fished.

What is the “Marine Mammal Authorization Program”?

The Marine Mammal Authorization Program provides an exemption for the accidental injury or mortality of marine mammals during commercial fishing operations. To lawfully incidentally take a marine mammal in a commercial fishery, the fishing permit holder in a Category I or II fishery must obtain a certificate from NMFS. NMFS has automated the registration process for Alaskan fisheries. When fishermen register with the Alaska Department of Fish and Game or NMFS for a Category I or II fishery permit, the permit holder receives a free exemption certificate, which must be available or displayed while fishing. All mortalities and injuries to marine mammals during commercial fishing activities must be reported to NMFS within 48 hours.

Category I and II Fisheries in Alaska - 2003

FISHERY	CATEGORY	YEAR OBSERVED	INCIDENTAL MARINE MAMMAL MORTALITY OR SERIOUS INJURY	
Salmon Drift Gillnet				
Bristol Bay	II	N/A	Steller sea lion, Western U.S.+ Northern fur seal, Eastern N Pacific + Gray whale, Eastern N Pacific Pacific white-sided dolphin, N Pacific	Harbor seal, Bering Sea Beluga whale, Bristol Bay Spotted seal, AK
Cook Inlet	II	1999-2000	Steller sea lion, Western U.S.+ Harbor porpoise, GOA Beluga whale, Cook Inlet +	Harbor seal, GOA Dall's porpoise, AK
Metlakatla/ Annette Is.	II	N/A	None documented	
Peninsula/ Aleutian Is.	II	1991	Northern fur seal, Eastern Pacific+ Harbor porpoise, GOA	Harbor seal, GOA Dall's porpoise, AK
Prince William Sound	II	1990-1991	Steller sea lion, Western U.S.+ Dall's porpoise, AK Northern fur seal, Eastern Pacific+ Pacific white-sided dolphin, N Pacific	Harbor seal, GOA Harbor porpoise, GOA Sea otter, AK
Southeast Alaska	II	N/A	Steller sea lion, Eastern U.S.+ Harbor porpoise, Southeast AK Pacific white-sided dolphin, N Pacific Humpback whale, central N Pacific +	Harbor seal, Southeast AK Dall's porpoise, AK
Salmon Set Gillnet				
Bristol Bay	II	N/A	Harbor seal, Bering Sea Gray whale, Eastern N Pacific Northern fur seal, Eastern Pacific+	Beluga whale, Bristol Bay Spotted seal, AK
Cook Inlet	II	1999-2000	Steller sea lion, Western U.S.+ Harbor porpoise, GOA Beluga whale, Cook Inlet +	Harbor seal, GOA Dall's porpoise, AK
Kodiak	II	2002	Harbor seal, GOA Sea otter, AK	Harbor porpoise, GOA
AK Peninsula/ Aleutian Is.	II	N/A	Steller sea lion, Western U.S.+	Harbor porpoise, Bering Sea
Yakutat	II	N/A	Harbor seal, Southeast AK	Gray whale, Eastern N Pacific
Salmon Purse Seine				
Southeast Alaska	II	N/A	Humpback whale, central N Pacific+	

(From the 2003 List of Fisheries and 2003 Alaska Marine Mammal Stock Assessments)

+ stocks are considered "strategic" under the MMPA

Marine Mammal Interactions with Commercial Fisheries in Alaska Since 1990

MARINE MAMMAL SPECIES, STOCKS‡	PBR	FISHING MORTALITY & SERIOUS INJURY/YR	ALASKA COMMERCIAL FISHERIES - INTERACTIONS SINCE 1990
CETACEANS			
Beluga whale, Cook Inlet*	2.2	0	Cook Inlet salmon set and drift gillnet
Beluga whale, Bristol Bay	32	1	Bristol Bay salmon set and drift gillnet
Dall's porpoise, AK	1,537	37.5	BSAI and GOA groundfish trawl BSAI groundfish longline AK Peninsula/Aleutian Island salmon drift gillnet Prince William Sound salmon drift gillnet Southeast AK salmon drift gillnet Cook Inlet salmon set and drift gillnet
Fin whale, NE Pacific*	n/a	0.8	BSAI groundfish trawl
Gray whale, Eastern N Pacific	575	8.9	Bristol Bay salmon set and drift gillnet Yakutat salmon set gillnet
Harbor porpoise, SE AK	90	3	Southeast AK salmon drift gillnet
Harbor porpoise, GOA	255	25	Prince William Sound salmon drift gillnet Cook Inlet salmon set and drift gillnet AK Peninsula/Aleutian Island salmon drift gillnet Kodiak salmon set gillnet
Harbor porpoise, Bering Sea	393	2	BSAI groundfish trawl AK Peninsula/Aleutian Island salmon set gillnet Kuskokwim/Yukon/Norton Sound/Kotzebue salmon gillnet
Humpback whale, Western N Pacific*	0.7	0.8	BSAI groundfish trawl Bering Sea unknown fishery
Humpback whale, central N Pacific* (entire stock)	7.4	4.2	BSAI groundfish trawl Southeast AK salmon drift gillnet Southeast AK salmon purse seine
Humpback whale, central N Pacific (SEAK feedingarea)	3.5	2.2	Southeast AK salmon drift gillnet Southeast AK salmon purse seine
Killer whale, Eastern N Pacific (Northern resident)	7.2	1.4	BSAI groundfish trawl BSAI groundfish longline
Killer whale, Eastern N Pacific (Northern transient)	2.8	0.6	BSAI groundfish trawl BSAI groundfish longline
Pacific white-sided dolphin, N Pacific	269	4	BSAI groundfish trawl BSAI groundfish longline Prince William Sound salmon drift gillnet Southeast AK salmon drift gillnet Bristol Bay salmon drift gillnet
Sperm whale, N Pacific*	n/a	0.4	GOA groundfish longline

Marine Mammal Interactions with Commercial Fisheries in Alaska Since 1990

MARINE MAMMAL SPECIES, STOCKS‡	PBR	FISHING MORTALITY & SERIOUS INJURY/YR	ALASKA COMMERCIAL FISHERIES - INTERACTIONS SINCE 1990
PINNIPEDS			
Steller sea lion, Western U.S.*	209	25.9	BSAI and GOA groundfish trawl GOA groundfish longline AK Peninsula/Aleutian Island salmon set gillnet Prince William Sound salmon set and drift gillnet Cook Inlet salmon drift gillnet Bristol Bay salmon drift gillnet AK miscellaneous finfish set gillnet AK halibut longline, AK sport salmon troll
Steller sea lion, Eastern U.S.*	1,396	2.9	Southeast AK salmon drift gillnet AK salmon troll
Northern fur seal, Eastern Pacific*	16,162	17	BSAI groundfish trawl AK Peninsula/Aleutian Island salmon drift gillnet Prince William Sound salmon drift gillnet Bristol Bay salmon drift gillnet
Harbor seal, Southeast AK	2,114	36	GOA groundfish longline Southeast AK salmon drift gillnet Yakutat salmon set gillnet
Harbor seal, GOA	868	36	GOA groundfish trawl GOA finfish pot Prince William Sound salmon set and drift gillnet AK Peninsula/Aleutian Island salmon drift gillnet Cook Inlet salmon set gillnet Prince William Sound set and drift gillnet Kodiak salmon set gillnet AK salmon purse seine
Harbor seal, Bering Sea	379	31	BSAI and GOA groundfish trawl BSAI groundfish longline BSAI finfish pot Bristol Bay salmon set and drift gillnet
Bearded seal, AK	n/a	1	BSAI groundfish trawl
Ribbon seal, AK	n/a	1	BSAI groundfish trawl
Spotted seal, AK	n/a	3	BSAI groundfish trawl Bristol Bay salmon drift gillnet
Sea otter, AK	10,000	n/a	Copper River salmon drift gillnet Bering River salmon drift gillnet Prince William Sound salmon drift gillnet Kodiak salmon set gillnet

Abbreviations: n/a - data not available, BSAI - Bering Sea and Aleutian Islands, AK - Alaska, GOA - Gulf of Alaska,

‡From the 2003 Alaska Marine Mammal Stock Assessments

*Stocks are considered “strategic” under the MMPA

Specifics on the Alaska Marine Mammal Observer Program...

When was the program started?

The Alaska Marine Mammal Observer Program began coverage in 1990 and has since observed six Category II fisheries.



What fisheries are required to have Observer Programs?

NMFS may require any Category I or II fishery to be monitored for interactions with marine mammals. The AMMOP currently observes one or two fisheries at a time for a period of two or three years in a row. Depending on the results from an observed fishery, the fishery may remain in same category or may be re-categorized. Category III fisheries are not required to be observed, since the level of marine mammal take is considered to be rare or zero. A Category I or II fishery that has been observed for two to three years may not be observed again for several years, or it may continue to be observed if the level of marine mammal take is determined to need close monitoring.

How is the level of coverage determined?

When an observer program commences in a previously unobserved fishery, the first step is to collect some baseline data on fishing operations and any marine mammal interactions. Coverage levels at that point are largely influenced by available funding, the number of participants in the fishery, and program goals. The AMMOP generally wants to determine at the outset that PBR is not exceeded for any marine mammal stock. Once some baseline data are collected and an annual expected mortality level can be estimated, minimum observer coverage levels that will ensure statistical confidence in the mortality estimates can be determined. This also helps to ensure that observer resources are not wasted by collecting too much data.

How is the program sampling design determined?

Program sampling design depends on the fishery, location, and available resources (i.e. housing, transportation, communications). Sampling design is based on random selection of permit/vessel numbers, with spatial and temporal stratification within a logistically manageable area. Alternate permit/vessel selections are made when factors such as tides, bears, or severe weather prevent the observer from work at that particular site/port. Permit selections are made a week in advance of sampling



a given permit. The AMMOP consults the Alaska Department of Fish and Game throughout the season to monitor fishing effort and management changes, and adjusts observer coverage accordingly to maintain coverage goals. On average, observers work 12 hours/day. In fisheries that fish and tend nets around the clock, sampling may occur during four 6-hour blocks. For each fishery, AMMOP must design sampling methods to reduce statistical biases and make the assignment of observers fair and equitable among vessels/permit holders.

How are observers hired and deployed?

The AMMOP is a Federally-funded program managed through contracts with the Protected Resources Division at the Alaska Regional Office in Juneau, Alaska. A contractor hires, pays, and deploys observers in the field, handling all logistics related to travel and data collection. NMFS awards contracts through standard governmental procurement procedures as follows. A Request For Proposals to provide observer services is advertised in the Federal Business Opportunities (<http://fedbizopps.gov/>). The statement of work included in the Request for Proposals is the description of contractual requirements for supplies or services. It establishes observer and contractor performance standards, work requirements, and level of effort required. A Selection and Evaluation Board reviews and scores proposals, with technical aspects of the proposals and costs each scored separately. The final score is based on a pre-determined ratio of technical proficiency, cost, and prior experience. The bid with the highest total score is awarded the contract. AMMOP adheres to an equal opportunity and competitive acquisition process.

Who are the AMMOP observers?

All AMMOP observers are certified by NMFS to meet professional standards and work in the program. Certified observers must pass the AMMOP training course, have prior observer experience, and meet program standards for academic qualifications or fishing experience and physical fitness. The AMMOP selects observers based on their capability to work independently under stressful conditions with limited conveniences. They are motivated, possess good judgment, and are able to work and live in close quarters with fishermen in a professional and respectful manner. AMMOP observers are trained in wilderness preparedness and survival, skiff handling, CPR, and first aid. All observers must pass a physical examination by a licensed physician within six months prior to deployment, ensuring that the observer does not have any health conditions that would jeopardize the safety of the observer or others while deployed, or prevent the observer from performing his or her duties satisfactorily. AMMOP observers also must pass a fitness test demonstrating that they can meet most foreseeable physical challenges in the course of their official duties, including swimming, climbing, general endurance, and strength. AMMOP observers must comply with U.S. Coast Guard regulations or requests regarding drug testing, must uphold AMMOP Observer Standards of Conduct, and may not have any conflict of interest with his or her professional duties. The AMMOP requires that the contractor providing observer services does not discriminate in compliance with the provisions of the Federal Civil Rights Act of 1964, as amended.



What kind of information are observers recording?

Observers record information on fishing techniques, gear characteristics, weather, target catch and bycatch (including fish, invertebrates, mammals, and birds). Examples of gear information collected include length of net, twine material, mesh sizes, and deterrent devices used. Weather data include sea state, visibility, and tide conditions. Fishing data include the position of the net, set and soak times, time since the last pick or haul, time spent picking or hauling, and if appropriate, time the net is left fishing but unattended. Catch data includes numbers of animals caught by species and condition. The condition and behavior of mammal or bird is taken in the gear, is recorded. Observers collect biological samples and take photographs for species confirmation, individual and/or stock identification, sex determination, and to support other scientific studies of life history and diets. Observers also record species, number, and behavior of marine mammals in the immediate fishing area, and make detailed notes of all

entanglements. Observers may use a variety of platforms from which to observe, such as fishing vessels, research vessels, skiffs, or shore stations planes. Observers may conduct “mammal watches” before and after hauls as well as a “haul/retrieval watch” as the gear is being hauled or retrieved. Emphasis is put on observing retrievals and recording what is caught in the gear. Marine mammal abundance, distribution, and behavior around fishing gear is also considered important information.

What is all this information used for?

Researchers use the data to produce reliable estimate levels of marine mammal serious injury and mortality in the fishery. The marine mammal mortality and serious injury estimates from fisheries are used in broader evaluations of the health of marine mammal populations. Managers may use information to evaluate ways to reduce injuries and mortalities in a fishery. The estimates are also used to categorize the fisheries in the annual List of Fisheries. Observer programs also provide a unique opportunity to collect scientific data on all bycatch, including seabirds and finfish, and other scientific information not obtainable from other sources.

Who is required to accommodate an observer?

Observers may board vessels to conduct monitoring, or they may observe from independent vessels or from shore, depending on the feasibility of any of those options. Participants in a Category I or II fishery are required to accommodate an observer upon request (50 CFR 229.7). In small-boat fisheries in particular, weather conditions and forecasts, safety conditions aboard the vessel, fishing techniques, and available alternatives will be taken into consideration. When a vessel is selected to have an observer aboard, if either the observer or program staff determines with good reason that having an observer onboard is a hazardous situation, the reasons will be reported to and evaluated by NMFS. The AMMOP program coordinator will not require an observer to board a vessel if the safety of those onboard is clearly a concern. If the reasons for not accommodating an observer are to impede, impair, or interfere with observer efforts, the program coordinator will notify enforcement who will investigate. Under certain circumstances, a fine may be imposed for refusing to allow an observer aboard to perform official duties.



Photo: Art Sutch

What kind of provisions are there for the confidentiality of data and our privacy?

Certain information supplied by AMMOP may be considered proprietary and therefore subject to data confidentiality restrictions (50 CFR 229.11). There are several provisions that can be consulted regarding observer data confidentiality and how it is released. NOAA Administrative Order 216-100 prescribes policies and procedures for protecting the confidentiality of data submitted to and collected by NMFS (<http://www.rdc.noaa.gov/~nao/216-100.html>). NMFS also operates under the guidelines of the Freedom of Information Act (<http://www.rdc.noaa.gov/~foia/>). Contractors, sub-contractors, and observers must sign a *Statement of Non-Disclosure* after reading and understanding the *NOA 216-100 on Confidentiality of Fisheries Statistics*. NMFS personnel handling the database and files must also read and sign a *Data Access Agreement* describing the procedures for protecting data confidentiality. AMMOP will release copies of the observer forms to the permit holders, using a *Data Release Form*. Other data requests may be submitted to the program coordinator at NMFS in writing. For such requests, data would only be released in aggregate or summary form, to avoid identifying individual permit holders or vessels. All AMMOP observers receive training regarding privacy and confidentiality.



Do fishermen have any chance to comment?

Yes. Many meetings, interviews, surveys, conversations, and other correspondence with fishermen have helped to develop this program. NOAA Fisheries plans to hold public meetings in Kodiak in the spring of 2004 to review the 2002 program and data, prior to the 2004 season. Fishermen can call the AMMOP coordinator to discuss the program and any concerns or questions any time of year (see page 13). The permit holder/operator can also review and request copies of their completed forms. Fishermen can complete comment forms and hand them to the observer on site or mail it to the program coordinator at NMFS. Before the AMMOP begins coverage in any new fishery, public meetings are held to discuss the goals of the program and to work with fishermen to determine the best means for achieving the program goals while minimizing the impact on the industry.

What is happening in 2004?

The AMMOP plans to return to Kodiak to complete the second year of the two-year study begun in 2002. The program will be organized and conducted in much the same way the first year was conducted with a few improvements to observer logistics. The same level of coverage, between 5% and 7% of the total fishing effort, can be expected for all areas open to setnet fishing.

What is the specific regulatory language regarding monitoring marine mammals?

Regulations at 50 CFR 229.7 - Authorization for commercial fisheries under the Marine Mammal Protection Act of 1972; Monitoring of incidental mortalities and serious injuries -

a) *Purpose.* The Assistant Administrator will establish a program to monitor incidental mortality and serious injury of marine mammals during the course of commercial fishing operations in order to:

- (1) Obtain statistically reliable estimates of incidental mortality and serious injury;
- (2) Determine the reliability of reports of incidental mortality and injury under Sec. 229.6; and
- (3) Identify changes in fishing methods or technology that may increase or decrease incidental mortality and serious injury.

(b) *Observer program.* Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

- (1) Record incidental mortality and injury, and bycatch of other nontarget species;
- (2) Record numbers of marine mammals sighted; and
- (3) Perform other scientific investigations, which may include, but are not limited to, sampling and photographing incidental mortalities and serious injuries.

(c) *Observer requirements for participants in Category I and II fisheries.*

- (1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.
- (2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.
- (3) NMFS, or a designated contractor providing observer services to NMFS, may waive the observer requirement based on a finding that the facilities for housing the observer or for carrying out observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized.
- (4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:
 - (i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;
 - (ii) Allowing for the embarking and debarking of the observer as specified by NMFS personnel or designated contractors. The operator of a vessel must ensure that transfers of observers at sea are accomplished in a safe manner, via small boat or raft, during daylight hours if feasible, as weather and sea conditions allow, and with the agreement of the observer involved;
 - (iii) Allowing the observer access to all areas of the vessel necessary to conduct observer duties;
 - (iv) Allowing the observer access to communications equipment and navigation equipment, when available on the vessel, as necessary to perform observer duties;
 - (v) Providing true vessel locations by latitude and longitude, accurate to the minute, or by loran coordinates, upon request by the observer;
 - (vi) Sampling, retaining, and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;
 - (vii) Notifying the observer in a timely fashion of when all commercial fishing operations are to begin and end;

- (viii) Not impairing or in any way interfering with the research or observations being carried out; and
- (ix) Complying with other guidelines or regulations that NMFS may develop to ensure the effective deployment and use of observers.

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) of this section, which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) *Observer requirements for participants in Category III fisheries.*

(1) The Assistant Administrator may place observers on Category III vessels if the Assistant Administrator:

- (i) Believes that the incidental mortality and serious injury of marine mammals from such fishery may be contributing to the immediate and significant adverse impact on a species or stock listed as a threatened species or endangered species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
- (ii) Has complied with Sec. 229.9(a)(3)(i) and (ii); or
- (iii) Has the consent of the vessel owner.

(2) If an observer is placed on a Category III vessel, the vessel owner and/or operator must comply with the requirements of Sec. 229.7(c).

(e) *Alternative observer program.* The Assistant Administrator may establish an alternative observer program to provide statistically reliable information on the species and number of marine mammals incidentally taken in the course of commercial fishing operations. The alternative observer program may include direct observation of fishing activities from vessels, airplanes, or points on shore. [60 FR 45100, Aug. 30, 1995, as amended at 64 FR 9087, Feb. 24, 1999]



What are the vessel safety regulations in relation to observers?

Regulations at 50 CFR 600.746 implement regulations to ensure the safety of fishing vessels that carry observers. Owners and operators of fishing vessels that carry observers are required to comply with guidelines and regulations to ensure that their vessels are safe for the purposes of allowing normal observer functions.

(a) *Applicability.* This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 *et seq.*), the ATCA (16 U.S.C. 971 *et seq.*), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), or any other U.S. law.

(b) *Observer requirement.* An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c) of this section.

(c) *Inadequate or unsafe vessels.* (1) A vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I and 46 CFR, chapter I;

(ii) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(iii) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(3) *Pre-trip safety check.* Prior to each observed trip, the observer is encouraged to briefly walk through the vessel's major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to spot check the following major items for compliance with applicable USCG regulations:

(i) Personal flotation devices/immersion suits;

(ii) Ring buoys;

(iii) Distress signals;

(iv) Fire extinguishing equipment;

(v) Emergency position indicating radio beacon (EPIRB), when required; and

(vi) Survival craft, when required.

(d) *Corrective measures.* If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety examination or inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g., if the vessel is missing one personal flotation device, the owner or operator could be required to obtain an additional one), before the vessel is boarded by the observer.

(e) *Timing.* The requirements of this section apply both at the time of the observer's boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) *Effect of inadequate or unsafe status.* A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage. *[As amended 67 FR 64312, Oct. 18, 2002]*

Contact us for more information...

For more information on the Alaska Marine Mammal Observer Program:

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P.O. Box 21668
Juneau, AK 99802-1668
(907) 586-7642 or Fax (907) 586-7012
Bridget.Mansfield@noaa.gov
<http://www.fakr.noaa.gov/protectedresources/observer/s/mmop.htm>

For questions relating to the Marine Mammal Authorization Certificate:

Judy Roberts
see AMMOP address above
(907) 586-7236 or Fax (907) 586-7012

For questions or to report an injury or death of a marine mammal during commercial fishing or for additional Mortality/Injury Reporting Forms:

Patricia Lawson
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Hwy.
Silver Spring, MD 20910-3226
(301) 713-2322 or Fax (301) 713-4060
<http://www.fakr.noaa.gov/protectedresources/>

To obtain a copy of the most recent NOAA Technical Memorandum on Alaska Marine Mammal Stock Assessments:

National Technical Information Service
U.S. Department of Commerce
5285 Port Royal Road
Springfield, VA 22161
www.ntis.gov or
http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/

To obtain a copy of the List of Fisheries:

Kristy Long
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Hwy.
Silver Spring, MD 20910-3226
(301) 713-2322
http://www.nmfs.noaa.gov/prot_res/PR2/Fisheries_Interactions/

For questions relating to sea bird interactions with commercial fisheries:

Kim Rivera
National Marine Fisheries Service
Protected Resources Division
P.O. Box 21668
Juneau, AK 99802-1668
(907) 586-7424 or Fax (907) 586-7012

OR

Kathy Kuletz
U.S. Fish and Wildlife Service
Migratory Bird Management
1011 E. Tudor Road
Anchorage, AK 99503
(907) 786-3453

For questions relating to sea otters:

Douglas Burns
U.S. Fish and Wildlife Service
Marine Mammals Management
1011 E. Tudor Road
Anchorage, AK 99503
(907) 786-3807

For questions relating to NMFS enforcement, observer program issues in particular:

Kevin Heck
National Marine Fisheries Service
222 W. 7th Ave., Box 10
Anchorage, AK 99513-7577
(907) 271-3031

For information on safety decals:

Fishing Vessel Safety Coordinator
17th Coast Guard District
P.O. Box 25517
Juneau, AK 99802-5517
Sue A. Jorgensen
(907) 463-2810 or Toll Free 1-800-478-7369

Or call the Supervisor of the Marine Safety Detachment with your local Coast Guard.

For questions relating to the National Observer Program:

Victoria Cornish
National Marine Fisheries Service
Office of Science and Technology
1315 East-West Highway
Silver Spring, MD 20910
(301) 713-2328, x160 or Fax (301) 713-4137
<http://www.st.nmfs.gov/st1/nop/index.html>

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