

NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 30-121-12
February 17, 2010

Administration and Operations
Agreements with the National Ocean Service

***MOU between the National Marine Fisheries Service, National Observer Program and
the National Ocean Service, National Marine Debris Program***

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SUMMARY OF REVISIONS:

Signed _____/s/ _____
D. Westerholm, Director, NOS Office of Response and Restoration 2/3/2010
Ned Cyr, Director, NMFS Office of Science and Technology 1/19/2010

Purpose

The National Marine Fisheries Service (NMFS), National Observer Program (NOP) enters into this agreement with the National Ocean Service (NOS), Marine Debris Program (MDP) to establish a general framework under which NMFS regional observer programs may collect and provide marine debris information to NOS/MDP. Through this agreement, NMFS regional observer programs may develop partnerships with NOS/MDP under which observer information is collected and provided to NOS/MDP (information exchange partnerships).

Background

The Marine Debris Research, Prevention, and Reduction Act of 2006 directs NOAA, through its MDP, to “undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources and navigation safety.” The MDP, which is housed within NOS, has been in place since 2005.

NOAA Fisheries coordinates observer program management through its Office of Science and Technology/National Observer Program (NOP), which was established in 1998. Fisheries observers are placed aboard commercial fishing vessels to collect data on fishing activities, including catch and bycatch, gear, and fishing operations. Federal fisheries observer programs are authorized under the Magnuson-Stevens Fisheries Conservation and Management Act, the Marine Mammal Protection Act, and the Endangered Species Act.

Derelict fishing gear (DFG) impacts U.S. fisheries through active gear entanglement, hazards to navigation, catch of target species, and damage to habitat. Collecting data on the impacts of marine debris to commercial fishermen is an important step in carrying out both the mandates of the 2006 Marine Debris Research, Prevention, and Reduction Act, and also of the Magnuson-Stevens Act, which directs NMFS to manage and conserve U.S. fisheries. A partnership between the two programs will provide a unique opportunity to collect critical information on the impacts (e.g. lost time from fishing, cost of repairs), of marine debris on U.S. commercial fishermen. This agreement responds to that need,

Signators:

Ned Cyr; Director, NMFS Office of Science and Technology

David Westerholm, Director, NOS Office of Response and Restoration

Attachments:

1. Memorandum of Understanding between the National Marine Fisheries Service, National Observer Program and the National Ocean Service, National Marine Debris Program.
2. Example of a region-specific agreement.

Appendix 1

Memorandum of Understanding
between the
National Marine Fisheries Service, National Observer Program
and the
National Ocean Service, National Marine Debris Program

I. Purpose

The National Marine Fisheries Service (NMFS), National Observer Program (NOP) enters into this agreement with the National Ocean Service (NOS), Marine Debris Program (MDP) to establish a general framework under which NMFS regional observer programs may collect and provide marine debris information to NOS/MDP. Through this agreement, NMFS regional observer programs may develop partnerships with NOS/MDP under which observer information is collected and provided to NOS/MDP (information exchange partnerships).

II. Background

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III. Terms and Conditions

A. National Observer Program:

1. The NOP agrees to facilitate the establishment of information exchange partnerships between the NOS/MDP and NMFS regional observer programs.

2. The NOP will provide support to regional observer programs interested in forming a partnership with NOS/MDP, including the development of region-specific information exchange partnerships.

3. **If** an information exchange partnership is established, data files containing confidential observer information may be provided to the NOS/MDP by the NOP or regional observer program, upon agreement between NOS and the regional observer program. Information provided to NOS/MDP must be limited to that which is necessary to perform analysis of the impact of derelict fishing gear upon commercial fishing activities and to aid in the conservation and management of a fishery.

B. NMFS Regional Observer Programs:

1. Establishment of information exchange partnerships with NOS/MDP is at the discretion of each regional observer program.

2. Any NMFS regional observer program interested in working with NOS/MDP should work in partnership with NOS/MDP to develop a regional partnership agreement outlining terms and commitments, including what data will be collected and maintained, how data will be collected, processed, stored, and shared between NMFS and NOS/MDP, and who will perform any data analysis, GIS mapping, and/or economic analyses. This is necessary as regional authorities for data collection differ. See Appendix 2 for example agreement.

3. Any information exchange partnerships developed in furtherance of this framework agreement must adhere to the following processes on methods and workflow.

a. Observer Training

(i) NMFS observers will receive training on marine debris data collection by NOS/MDP staff, or if NOS/MDP staff are not available, other NMFS marine debris-trained staff as agreed upon by the NMFS regional observer program interested in partnering with NOS to collect marine debris information.

b. Use of Encounter Report

(i) The Marine Debris Encounter Report (MDER) (Appendix 2; Figure 1) provides a template for collection of marine debris information. To date, this form has not been approved for information collection under the Paperwork Reduction Act. Accordingly, in completing this form, observers must not direct questions to a vessel's captain or crew. Information collection must be limited to information obtained through direct observations by the observer. Regional observer programs must consult with their NOAA Regional Counsel prior to collecting marine debris information from a vessel's captain or crew.

(ii) Prior to the implementation of a partnership agreement, NOS/MDP will work with the regional observer program of interest, as well as regional general counsel to determine whether an observer program has the authority to collect marine debris information. Authorizing regulations will be cited in the regional partnership agreement.

(iii) If a MDER form is utilized, a process for collecting and sharing encounter reports should be agreed upon between the NOS Marine Debris Program Director and the regional observer program director.

c. Data Analysis and Mapping

(i) Guidelines and workflow for data analysis of encounter reporting forms will be outlined in the regional partnership agreement developed by NOS/MDP and the NMFS regional observer program (see section B.2). A summary of the data results, including any lessons learned, will be shared with regional fisheries observer programs.

(ii) Methods for data analysis and mapping select data should be discussed between the NOS Marine Debris Program Director and the regional observer program director.

C. NOS Marine Debris Program

1. Magnuson-Stevens Fishery Conservation and Management Act (MSA) Section 402(b)(2), 16 U.S.C. § 1881a(b)(2), requires the confidentiality of any observer information. Accordingly, for any information exchange partnership created under this framework agreement, NOS/MDP must undertake the following safeguards to preserve the confidentiality of observer information.

a. All NOS/MDP staff engaged in analysis of observer information must sign and return a statement of nondisclosure provided by the NOP and/or any regional observer program prior to being provided access to confidential information.

b. NOS/MDP agrees to return observer information to the providing regional observer program manager or destroy the information if requested to do so by the regional observer program or the NOP.

c. NOS/MDP will identify staff engaged in analysis of observer information for fisheries conservation and management and limit access to observer information to such staff.

d. NOS/MDP further agrees to institute and maintain procedures and to use receptacles ensuring that documents or other source/formats with confidential information are secure, private, and publicly inaccessible.

e. NOS/MDP will, upon request, provide the NOP with a description of the procedures and receptacles specified in paragraph C.1.d of this section, so that their effectiveness may be evaluated, and to modify procedures when requested by the NOP or any regional observer program.

f. NOS/MDP will use any confidential observer data provided by the NOP or NMFS observer programs only as necessary to conduct analysis of fishery interactions with derelict fishing gear to aid in the conservation and management of fisheries. If NOS/MDP determines that a disclosure must occur to any other entity, the NOS/MDP must obtain the consent of the regional observer program supplying the information.

g. The NOS/MDP shall, upon request, demonstrate to the NOP or regional observer program the means by which this information is used and does not conflict with the confidentiality standards referenced in paragraph V of the Agreement.

h. Public release of confidential information must conform to NMFS aggregation guidance and policies. NOS/MDP will submit draft publications and presentations using observer information to the NOP and regional observer program supplying the observer information for review and approval to ensure relevant NMFS confidentiality requirements are met.

i. Any information exchange partnership developed under this framework agreement will remain effective until all confidential information in hard-copy or electronic form is returned to the originating NMFS observer program.

IV. Review and Amendment

Upon mutual agreement, this agreement may be amended at any time.

V. References and Authorities

Information-exchange partnerships developed and implemented under this framework agreement are authorized under MSA Section 402(b)(3), 16 U.S.C. § 1881a(b)(3), which provides that the Secretary of Commerce may use confidential observer information for fisheries conservation and management purposes. NOAA General Counsel for Fisheries has interpreted this authority to allow NOS/MDP to use confidential observer information in support of fisheries conservation and management. Any confidential observer information used by NOS/MDP must remain confidential. Should NOS/MDP receive any request for confidential observer information in its possession and control, NOS/MDP must consult with the NMFS/NOP, the regional observer program that provided the information, and NOAA General Counsel for Fisheries prior to releasing any data.

V(Other Provisions

If a term of this agreement is inconsistent with controlling NOAA, NMFS, or NOS directives or legal guidance, then those portions of this agreement which are determined to be inconsistent are invalid. The unaffected terms and conditions shall remain effective. Modifications may be made through an amendment to the original MOU or by entering into a new agreement.

If, at the operating level, the NOP, NMFS regional observer programs, and NOS/MDP cannot resolve disagreements on how the agreement is interpreted, or whether it should be amended, the issue(s) shall be reduced in writing by each party and presented to the Assistant Administrator for Fisheries for resolution. Partnerships between NMFS observer programs and the NOS/MDP are at-will and may be terminated at anytime.

VII. Effective Dates

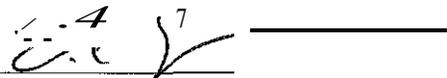
This agreement will become effective when signed by the NMFS Office of Science and Technology Director and the NOS Office of Research and Restoration Director. This agreement will be reviewed on an annual basis.

VIII. Termination

Either party may terminate this agreement at any time, without cause. The party that initiates termination should provide 60-days advance notice. Termination of this umbrella agreement will result in termination of any region-specific information exchange partnerships formed pursuant to it.


Signature for NOS Office of Response and Restoration Director 2/3/2010
Date

David Westerholm, Director, NOS Office of Response and Restoration
Printed Name and Title


Signature for NMFS Office of Science and Technology Director 1/19/10
Date

Ned Cyr, Director, NMFS Office of Science and Technology
Printed Name and Title

Appendix 2. Example of a region-specific agreement.

OVERVIEW

Project Start Date: December 2007

Location: North Pacific Ocean

Observer Information:

Fishing Industry: Hawaii swordfish (shallow set) and tuna (deep set) longline

Fleet Size: Approximately 125 vessels

Coverage: Swordfish= 100%; Tuna= 20%

Main Partners (Main contacts bolded)

NOAA Pacific Islands Regional Office (PIRO) Observer Program

Phone:

John Kelly- (808) 944-2200; John.Kelly@noaa.gov

Stuart ("Joe") Arceneaux- (808) 944-2200; Stuart.Arceneaux@noaa.gov

Kevin Busscher- Operations Coordinator; Kevin.Busscher@noaa.gov

NOAA Marine Debris Program

Carey Morishige - (808) 397-2651 x256; Carey.Morishige@noaa.gov

Kris McElwee- (808) 532-3207; Kris.McElwee@noaa.gov

Others Partners

NOAA Pacific Islands Regional Office (GIS/mapping)

Rob O'Conner- (808) 944-2263; Robert.OConner@noaa.gov

NOAA Pacific Islands Fisheries Science Center (data analysis)

Justin Hospital- (808) 983-5742; Justin.Hospital@noaa.gov

BACKGROUND

In the North Pacific Ocean, derelict fishing gear (mainly lost or discarded nets) is often found drifting within heavily fished areas due to concentration within the North Pacific Subtropical Convergence Zone, an area of known marine debris accumulation as well as high productivity. Derelict fishing gear (DFG) impacts the longline fishery through active gear entanglement, vessel interactions, and catch interaction. In order to better understand the extent of these impacts, a partnership project was begun to observe and record DFG interactions with active longline fishing operations.

INTRODUCTION

A partnership project is underway between the NOAA Marine Debris Program (Pacific Islands region) and the NOAA Pacific Islands Regional Office (PIRO) Observer Program to gather information on interactions between marine debris and the longline fishing industry. This document outlines the partnership agreement, including the purpose of the project and the workflow.

The Marine Debris Research, Prevention, and Reduction Act of 2006 directs NOAA to "undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources and navigation safety." Collecting data on the impacts to Hawaii's longline fleet would be an important step in carrying out this mandate.

The NOAA PIRO Observer Program is responsible for training longline observers to collect incidental sea turtle take and fishing effort data. Mandatory observers are required aboard the Hawaii-based pelagic longline vessels targeting swordfish (shallow set, 100% coverage) and tuna (deep set, 20% coverage). A preliminary review (conducted in 2007) of existing observer records indicated that longline vessels encounter and interact with DFG—often gear or propeller entanglement – which results in down time and repair costs. This poses both a safety hazard for crew in disentangling the vessel or gear, and an economic loss because fishing operations are immobilized. Prior to this partnership project, the only marine debris information collected by observers was in the comment field on the data forms.

This project fosters a positive relationship between the PIRO Observer Program and the Marine Debris Program and can serve as a partnership for collaborations between observer programs and marine debris research in other regions. As the project has grown, partnerships with NOAA PIRO and Pacific Islands Fisheries Science Center (PIFSC) have also been created. Information gained from this study will guide the development of new solutions to minimize the impacts of marine debris to the longline fishing fleets.

OBJECTIVE

This partnership project creates a new standard reporting form, the "Marine Debris Encounter Report," (Figure 1) to record vessel, gear, and species marine debris interactions. This will provide a more accurate and consistent data assessment of the economic and environmental impacts of marine debris mainly to Hawaii's longline fishing industry, but also to marine species in the North Pacific Ocean. To date there is a paucity of data and little published on the economic impacts of marine debris, including to the fishing industry.

One of the main objectives of this partnership project is to gain a better understanding of the overall impacts of derelict fishing gear (DFG) on Hawaii-based longline fisheries through more comprehensive marine debris encounter data collection. This will be achieved through data collected on DFG interactions with active gear, vessels, and hauled species via a new standardized Marine Debris Encounter Report. The ultimate goal of this project is to quantify the economic impact of marine debris to the Hawaii-based longline fishing industry.

AUTHORITY FOR COLLECTION OF DATA

The authority for the collection of the marine debris data by fisheries observers described herein falls under 50 CFR § 665.28.

METHODS AND WORKFLOW

1. Observer Training

New NOAA observers with the PIRO Observer Program undergo training prior to their work in the field. Information on the purpose of and how to fill out the Marine Debris Encounter Report (Figure 1) is included in the training observers receive. This training is done by Carey Morishige, NOAA Marine Debris Program.

2. Use of Encounter Report

The Marine Debris Encounter Report (Figure 1) is not an official NOAA Observer Program data form. This form is used by the Observer only when the longline vessel, its gear, or hauled species are noted as having interacted with or encountered marine debris. The sections of the form are filled out and photos are typically taken and noted.

3. Collecting Encounter Reports

Once the longline vessel pulls into port (Piers 36-38, Honolulu Harbor, Island of O'ahu, Hawai'i) the completed Marine Debris Encounter Reports (MDER) are given to the PIRO Observer Program (typically Stuart Arceneaux) along with other Observer data forms and photos.

The PIRO Observer Program notifies the NOAA Marine Debris Program (MOP) when MDER's were submitted and they are put in a folder for pick up. The PIRO Observer Program then emails or mails any corresponding photo files to the MDP.

The MDP (Carey Morishige) saves the photos, scans the MOERs, and inputs MDER data into a Microsoft Excel spreadsheet. Files are shared only with relevant MDP staff (who have signed NOAA Fisheries' Observer Program release form) via a shared MDP network drive. File location and naming protocol are listed below.

4. Maintenance of Confidentiality Information

Per section C ("NOS Marine Debris Program") of the Memorandum of Understanding, MDP staff involved in this project will follow all confidentiality requirements of the region including assigning staff, as appropriate, to this project, and limiting access to data and observer information to only those staff. Additionally, those staff will have signed a statement of non-disclosure, which will be given to the PIRO Observer Program to be kept on file. Assigned MDP staff will ensure the return of observer information to the PIRO Observer Program manager, or ensure its maintenance if requested to do so by the PIRO or National Observer Program. MDP staff will also institute and maintain procedures and use proper receptacles ensuring that documents and any confidential information are secure, private, and publicly inaccessible.

5. Processing and Storing Encounter Report Data

The MDP (Carey Morishige) inputs all information from each MDER into a Microsoft Excel spreadsheet called "Observer_Data.xls" located on the JY[DP shared network drive. Data from MOERs are noted in the blue columns of the data sheet. Additional informational columns are included in orange (e.g., Encounter ID#, Abbreviated Incident Type, Debris Type, Biota on/entangled in debris?).

The MDP assigns each MDER an encounter identification number that is used instead of the Trip #. This ensures further protection of fisheries data. Each encounter ID #consists of "MD" followed by a random 4-digit number (calculated by subtracting 1222 from the trip number)- Example: Trip #3109 = MD1887. If there are several MDERs submitted from a single trip then a dash and sequential number are added-Example: MD1887-1, MD1887-2, etc.

Location of Reports and Photos

- Location of Encounter Reports and Photos in NOAA Office of Response and Restoration Shared Server: *S:\Shared\Marine Debris\Full Access\Program\Topics\DFCNacific Long Liners\Encounter Reports*
- Scanned pdf MDERs, along with corresponding photos, are kept together in a folder (named "MDtrip number") within the *Encounter Reports* folder.

Naming Reports and Photos

- *MDER Scanned PDFs*: These PDF MDERs are named according to the Encounter ID#.
- *Photos*: Photos are renamed according to the Encounter ID# followed by "_" and a subsequent number (e.g., MD1423_1.jpg, MD1423_2.jpg).

6. Sharing Encounter Report Data

Encounter report data are (Excel spreadsheet) shared with the PIRO Observer Program and data analysis partners (see Overview section, Other Partners) as specified under section 4, "Maintenance of Confidentiality Information" above. This provides an update on the status of data input and allows for data analysis and map creation.

DATA ANALYSIS AND MAPPING

MDER data will be analyzed on a bi-annual basis for progress on encounter reporting and impacts of those incidents. A summary of the data results, including any lessons learned, are shared with NOAA PIRO Observer Program staff as well as new observers during their training to prepare for the following field season.

Select data, including GPS location of debris encounters, are mapped by NOAA PIRO (Rob O'Conner). Maps for both internal and external distribution are created. Internal maps show specific encounter locations. External maps are generalized (e.g. use of color-blocks) with no specific locations noted. Additionally, whenever encounter reports are referenced, the encounter ID# will be used instead of h-ip number.

Through a partnership with the NOAA Pacific Islands Fisheries Science Center (Justin Hospital) economic analysis of the data will be conducted to help in answering the following main research questions:

- Are there statistical differences between longline trips with marine debris interactions and those without marine debris interactions?
- What, if any, are the economic implications of marine debris for the longline industry?

Marine Debris Encounter Report

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DISPOSAL OF NET: Net recycling bin located at Pier 36, Honolulu Harbor

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Figure 1. Marine Debris Encounter Report (version 4; updated 23 April 2009).