NOAA FISHERIES
AND
UNITED STATES COAST GUARD

MEMORANDUM OF AGREEMENT ON OBSERVER SAFETY

Article I – General Information

The National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) and the United States Coast Guard (USCG) share mutual interest in fishing vessel safety and the enhancement of at-sea observer safety.

NOAA Fisheries places fisheries observers on fishing vessels under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act, the Marine Mammal Protection Act, and other fishery and wildlife statute of the United States, to collect scientific data required for the conservation and management of living marine resources. This Memorandum of Agreement (Agreement) establishes a protocol to ensure the safety and support of fisheries observers nationwide.

NOAA Fisheries recognizes the leadership position of the USCG in the area of fishing vessel safety, and as such, has adopted the provisions of the Commercial Fishing Vessel Safety Examination Program as a mandatory requirement for all observed fishing vessels, as part of the NOAA Fisheries Observer Health and Safety Regulations (50 CFR Part 600.725 and 600.746). These regulations were developed to identify specific requirements to enhance the adequacy and safety of fishing vessels that are required to carry fishery observers.

Article II – Parties

The parties to this Agreement are NOAA Fisheries and the USCG.

Article III – References and Authorities

NOAA Fisheries is authorized to enter into this Agreement pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 USC § 1801 *et seq.*, as amended; Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.* as amended; and Endangered Species Act, 16 U.S.C. 1531 *et seq.* The Coast Guard is authorized to enter into this agreement pursuant to 14 USC 93(a)(20), 141(a), and 147.

Article IV – Purpose

The parties have entered into this Agreement to enhance compliance with existing NOAA Fisheries and USCG requirements regarding safety aboard observed fishing vessels and to coordinate on other activities designed to promote safe working conditions for fisheries observers.

Article V – Responsibilities of Parties

a. **General**

NOAA Fisheries and the USCG will work in close cooperation and support each other's activities with regard to the safety of fishing vessels required to carry fisheries observers.

b. **NOAA Fisheries**

NOAA Fisheries will, to the extent practicable:

1. Promote the USCG Commercial Fishing Vessel Safety Examination Program by implementing the Observer Health and Safety Regulations.

2. Support the USCG's goal of increasing the effectiveness of its Commercial Fishing Vessels Safety Examination program as it relates to NOAA Fisheries observer programs.

3. Cooperate with the USCG to better enforce the Observer Health and Safety Regulations.

4. Work with NOAA Fisheries Regional Fishery Management Councils to develop regulations that link issuance of federal fishery permits to the requirements of the Observer Health and Safety Regulations for observed fisheries.

5. Facilitate the exchange of information with the USCG pertaining to compliance with the Observer Health and Safety regulations.

6. Establish regional notification procedures for providing timely information to the USCG on marine casualties and safety incidents on observed vessels. (See Appendix A)

7. Assist in the development of possible new Commercial Fishing Vessel Safety Examination requirements.

8. Implement regional or fishery-specific vessel safety checklists for observers to complete when they board vessels that participate in observer programs.

9. Promote USCG safety programs by distributing educational materials through observer programs.

10. Require all observer trainers who teach elements of the safety curriculum to complete a USCG approved Marine Safety Instructor Training course.

11. Require all NOAA Fisheries observers to participate in marine safety training and demonstrate competency in emergency response skills.

12. Work with the USCG to create a mutually acceptable method for keeping the USCG informed of observer deployments.

13. Keep the USCG informed as to any changes in the Observer Health and Safety regulations.

14. Identify a point of contact for each observer program to coordinate USCG requests regarding the exchange of information and other support.

c. **United States Coast Guard**

The USCG will, to the extent practicable:

1. Assist NOAA Fisheries in promoting the commercial fishing vessel safety decal examination program for commercial fishing vessels that participate in observed fisheries.

2. Assist NOAA Fisheries enforcement, as appropriate, in investigating and enforcing NOAA Fisheries' Observer Health and Safety Regulations.

3. Provide, within a reasonable time, qualified USCG commercial fishing vessel safety examiners or USCG Auxiliary commercial fishing vessel safety dockside examiners to carry out dockside examinations for each commercial fishing vessel that is expected to carry a fisheries observer.

4. Update the commercial fishing vessel safety decal data in the Marine Information for Safety and Law Enforcement (MISLE) database as frequently as possible, and will work with NOAA Fisheries to enhance the database to provide information critical to observer programs in compliance with the Privacy Act (5 USC 552a).

5. Participate in providing safety training for NOAA Fisheries personnel, observers, and observer trainees.

6. Identify a point of contact, within each USCG district, and establish a process for periodically reinforcing the exchange of information regarding observer issues and other requests.

7. Recognize the NOAA Fisheries observers have a different status than that of the crew during USCG boardings.

8. Provide official communications support for NOAA Fisheries observers when primary communications protocols are unsuccessful.

9. Assist NOAA Fisheries in developing regional protocols and procedures for life-threatening emergency communications to ensure around the clock response protocol for all observer programs.

10. Keep NOAA Fisheries informed as to any changes in USCG policy or regulations that impact observer program operations.

Article VI – Public Affairs

Each party will keep the other notified of all public affairs opportunities, including news releases and major speeches that involve the other agency concerning observer health and safety issues.

Article VII – Points of Contact

<u>USCG:</u>
Office of Compliance
Commandant (G-MOC-3)
2100 Second St, S.W.
Washington, D.C. 20593-0001
PH: 202-267-0490
FAX: 202-267-0506

<u>NOAA Fisheries:</u>
Office of Science and Technology (F/ST)
National Observer Program
1315 East-West Highway
Silver Spring, MD 20910-3282
PH: 301-713-2328
FAX: 301-713-1875

Article VIII – Subsidiary Agreements

Consistent with the purpose and provisions of this Agreement, NOAA Fisheries and USCG Districts may develop subsidiary agreements. No provision of any such subsidiary agreement will alter the spirit or letter of this Agreement. Copies of such subsidiary agreements will be forwarded to the Commandant, USCG, and the Assistant Administrator for Fisheries.

Article IX – Amendments and Review

This Agreement may be amended at any time by the mutual written consent of both parties.

Article X – Other Provisions

Nothing in this Agreement is intended to conflict with current law or regulation or the directives of the United States Coast Guard, the Department of Homeland Security, the National Oceanic and Atmospheric Administration, or the Department of Commerce. If the terms of this Agreement are inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this Agreement shall remain in full force.

Article XI – Effective Date

The terms of this Agreement will become effective upon the signature of both the approving officials of the respective agencies entering into this agreement on the later of the two signature dates.

Article XII – Termination

This Agreement may be revoked by either party, by providing written notification to that effect to the other party. Each party agrees to provide a written notification 90 days prior to termination whenever possible.

FOR THE UNITED STATES COAST GUARD	FOR THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
T. H. GILMOUR Rear Admiral, U.S. Coast Guard	DR. WILLIAM T. HOGARTH.
T. H. Gilmour Assistant Commandant for Marine Safety, Security and Environmental Protection	William T. Hogarth Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration

21 December 2004
Date

21 December 2004
Date

APPENDIX A

UNITED STATES COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

MARINE CASUALTIES AND INVESTIGATIONS

Definitions
(These definitions are consistent with those contained in 46 CFR Part 4)

Marine casualty or accident:

a. The term "marine casualty or accident" shall mean any casualty or accident involving any vessel other than public vessels if such casualty or accident occurs upon the navigable waters of the United States, its territories or possessions or any casualty or accident wherever such casualty or accident may occur involving any United States' vessel which is not a public vessel. (See Sec. 4.03-40 for definition of Public Vessel)

b. The term "marine casualty or accident" includes any accidental grounding, or any occurrence involving a vessel which results in damage by or to the vessel, its apparel, gear, or cargo, or injury or loss of life of any person; and includes among other things, collisions, strandings, groundings, founderings, heavy weather damage, fires, explosions, failure of gear and equipment and any other damage which might affect or impair the seaworthiness of the vessel.

c. The term "marine casualty or accident" also includes occurrences of loss of life or injury to any person while diving from a vessel and using underwater breathing apparatus.

Serious marine incident:

The term serious marine incident includes the following events involving a vessel in commercial service:

a. Any marine casualty or accident as defined in Sec. 4.03-1 which is required by Sec. 4.05-1 to be reported to the Coast Guard and which results in any of the following:

1. One or more deaths;

2. an injury to a crewmember, passenger, or other person that requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service that renders the individual unfit to perform routine vessel duties;

3. damage to property, as defined in Sec. 4.05-1(a)(7) of this part, in excess of 100,000;

4. actual or constructive total loss of any vessel subject to inspection under 46 U.S.C. 3301; or

5. actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 U.S.C. 3301, of 100 gross tons or more.

b. A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 U.S.C. 1321, whether or not resulting from a marine casualty.

c. A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.

Individual directly involved in a serious marine incident:

The term "individual directly involved in a serious marine incident" means an individual whose order, action or failure to act is determined to be, or cannot be ruled out as, a causative factor in the events leading to or causing a serious marine incident.

Notice of marine casualty:

a. Immediately after the addressing of resultant safety concerns, the owner, agent, master, operator, or person in charge, shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in--

1. An unintended grounding, or an unintended strike of (allison with) a bridge;

2. an intended grounding, or an intended strike of a bridge, that creates a hazard to navigation, the environment, or the safety of a vessel, or that meets any criterion of paragraphs (a) (3) through (7);

3. a loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel;

4. an occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, or failure of or damage to fixed fire-extinguishing systems, lifesaving equipment, auxiliary power-generating equipment, or bilge-pumping systems;

5. a loss of life;

6. an injury that requires professional medical treatment (treatment beyond first aid) and, if the person is engaged or employed on board a vessel in commercial service, that renders the individual unfit to perform his or her routine duties; or

7. an occurrence causing property-damage in excess of $25,000, this damage including the cost of labor and material to restore the property to its condition before the

occurrence, but not including the cost of salvage, cleaning, gas-freeing, drydocking, or demurrage.

b. Notice given as required by 33 CFR 160.215 satisfy the requirements of this section if the marine casualty involves a hazardous condition as defined by 33 CFR 160.203.

Substance of marine casualty notice:

The notice required in Sec. 4.05-1 must include the name and official number of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

Responsibilities of individuals directly involved in serious marine incidents:

a. Any individual engaged or employed on board a vessel who is determined to be directly involved in a serious marine incident shall provide blood, breath or urine specimens for chemical tests required by Sec. 4.06-10 when directed to do so by the marine employer or a law enforcement officer.

b. If the individual refuses to provide blood, breath or urine specimens, this refusal shall be noted on Form CG-2692B and in the vessel's official logbook, if one is required.

c. No individual may be forcibly compelled to provide specimens for chemical tests required by this part; however, refusal is considered a violation of regulation and could subject the individual to suspension and revocation proceedings under part 5 of this chapter and removal from any duties which directly affect the safety of the vessel's navigation or operations.