

Myth versus Fact

This document was developed as a result of the 2015 Observer Anonymous Survey Results to provide some additional information on various related topics to the program. The “Myth” statements were comments made in the survey where the “Fact” is our response to provide additional information.

MYTH: The role of a COTR is to support observers. - False

FACT: A COTR’s role is to ensure the Contractor (Observer Provider) is performing the technical requirements of the contract.

Although support for observers is desired and of utmost importance, the role of the “COTR” is to ensure that the service provider are meeting the requirements of the contract. At this time, Nichole Rossi is the “COTR” for the NEFOP contract and Katherine McArdle is the Point of Contact for the ASM contract and groundfish. They have received advance training to obtain this responsibility.

COTR stands for Contracting Officer Technical Representative. A COTR is appointed for all contracts in which the federal government contracts services for. The Fisheries Sampling Branch has two types of observer programs the government contracts out services for:

- *The Northeast Fisheries Observer Program (NEFOP)*
 - *COTR: Nichole Rossi (Nichole. Rossi@noaa.gov or 508-495-2128)*
- *At-Sea Monitoring Program (ASM)*
 - *Point of Contact: Katherine McArdle (Katherine.McArdle@noaa.gov or 508-495-2377).*

Specifically, from the Federal Acquisitions Regulations, the role of the COTR is to:

- a) Maintain an arms-length relationship with the Contractor in the interest of procurement integrity as well as sound contract management.*
- b) Keep the Contracting Officer (CO) fully informed of any technical or contractual difficulties encountered during performance. The Contracting Officer (CO) has the overall and primary responsibility for the administration of the contract. Only the CO has the authority to enter into, administer, or terminate the contract on behalf of the Government. The CO works closely with the COTR to ensure all deliverables in the contract are met.*
- c) Assure the CO that the Contractor is performing the technical requirements of the contract in accordance with the contract terms, conditions, and specifications.*
- d) Inform the Contractor of failures to comply with the technical requirements of this contract, and inform the CO of any failures to do so, particularly if the Contractor does not make corrections.*
- e) Ensure that Government furnished property, if any, is available when required.*
- f) Ensure that all required items, documentation, data, and/or reports are submitted as required by the contract.*
- g) Evaluate proposals for and participate in negotiation of changes, modifications and claims at the request of the CO.*

- h) *Process all invoices and vouchers in a timely manner in accordance with the Prompt Payment Act.*
- i) *Retains the right to prohibit an observer from participating in the NEFOP or ASM programs if there are issues with observer performance, the standards of conducts have been violated, or there is unsatisfactory performance from the observer.*
- j) *Perform final inspection and acceptance of all work required under the contract, including the review and approval of reports and assist the CO with contract closeout activities as requested.*
- k) *Evaluate contractor performance in accordance with Federal Acquisition Regulations*

MYTH: FSB does not take observer concerns regarding salary seriously. - False

FACT: FSB is aware of observer's concerns of rate of pay, but due to legal contract restrictions, NMFS does not have the authority to dictate observer sea day rates.

Once the contract is awarded, the government and the Contractor are obligated to abide by all terms listed in the contract, including a Contractor's seaday rate for the contract period of performance. The government is required to maintain the original integrity, technical requirements, and Contractor seaday rate the contract was awarded on or be subject to contract re-compete. By re-competing the contract, a Request for Proposals (RFP) would be advertised publicly and all interested bidders would have the opportunity to submit proposals based on the new terms. This is a lengthy process and may result in an award to a different contractor, or the disruption of observer services to the industry. Additionally, the price breakdown of a Contractor's seaday rate is not provided in contract or price proposals, nor is it within the government's authority to mandate observer pay. The only authority the government has is to ensure the Contractor adheres to the Department of Labor Wage Determinations regulation.

Some operating costs are built into the rate that the provider charges the Government others are reimbursed as sea days are completed, or directly reimbursed as described in the contract.

Under both contracts (NEFOP and ASM), the Contractor can bill for the following line items (these are termed "billable items"):

1. *Seadays*
2. *Travel*
3. *Training*
4. *Hourly pay (travel time to and from trips greater than 50 miles from their primary port per federal travel requirements, time spent at debriefings, council meetings, etc)*
5. *Meal Reimbursement for vessels*

All other costs associated with observer duties and deployments would be rolled into the Contractor's seaday rate.

In the interest of full transparency, both the ASM and NEFOP contracts are posted on the Fisheries Sampling Branch website (<http://www.nefsc.noaa.gov/femad/fsb/>). In order to release publicly available information regarding these contracted services, NOAA has obtained releasable "redacted" copies of the contracts for public viewing. Company proprietary information protected by the Trade Secrets Act has been redacted from the contract documents. Web links to both contracts is included below;

- *At-Sea Monitoring (ASM) Contract (<http://www.nefsc.noaa.gov/fsb/asm/>)*
- *Northeast Fisheries Observer Program (NEFOP) Contract (<http://www.nefsc.noaa.gov/fsb/program.html>)*

MYTH (CONTINUED): FSB does not take our concerns regarding salary seriously.

*In addition to what a COTR is authorized to do, below are items a COTR is **not** authorized to do under federal regulations:*

- a) Make any commitments or otherwise obligate the Government, or to make any changes to the contract.*
- b) Grant deviations from or waive any of the terms and conditions of the contract.*
- c) Increase the dollar limit of the contract, or authorize work beyond the dollar limit of the contract, or authorize the expenditure of funds.*
- d) Give direction to the Contractor or to the employees of the Contractor except as provided for in the contract.*
- e) Authorize the use of overtime.*

MYTH: NMFS picks observer contracts based on lowest bidder. - False

FACT: The initial evaluation of a contract award does not factor in contract cost. Non-price factors are more heavily weighted than cost in determining the best value.

Putting an observer contract in place takes about a year, and the process is competitive, open, and fair. It starts with a Statement of Work which becomes the Request for Proposal. The Statement of Work specifies the requirements, nature, and scope of work involved and forms the basis of the work to be bid on. Many regulations and laws are followed, from Small Business Administration to Federal acquisitions, as we have a duty to spend tax payer dollars responsibly, but also ensure that safety and quality standards are met. A Request for Proposal is publically advertised and all interested bidders have the opportunity to submit proposals. After companies submit their proposals, a team of people evaluate them. The evaluation team includes program or line office personnel (such as FSB staff and other end-users of observer data), contracting specialists, attorneys and financial officers. The evaluation team reviews the technical proposals (with no cost information provided) and rates them independently with detailed justifications, then meets to review the results of the ratings, much like a jury in sequestration.

Items that are reviewed during the technical evaluation are key personnel, field support, communications, the ability to recruit qualified candidates, retention factors, bonus considerations, safety culture, observer benefits and support packages, efficiency with placement for trips and travel, and an overall grasp of the program requirements. Past performance, experience, and references are considered. The technical evaluation holds more weight than the cost information which is evaluated separately. The final process looks at the overall value of the services being offered.

*NOAA follows the Federal Acquisition Regulation (FAR), Commerce Acquisition Regulation (CAR), and Commerce and NOAA policies in competitively awarding contracts for fishery observers. NOAA issues a Request for Proposals (RFP), pursuant to the procedures at FAR Part 12 Acquisition of Commercial Items and Part 15 Contracting by Negotiation. This is posted to the Government-wide Point of Entry at www.fedbizopps.gov. It is posted for a minimum of 45 days in accordance with the requirements at FAR Part 5 - Publicizing Contract Actions. The selection criteria are stated in the RFP and include non-price and price factors with award based on a **best value** selection where the non-price factors are greater than price in determining the best value. NOAA reviews proposals in accordance with the RFP and its approved Source Selection Plan (SSP). NOAA may conduct discussions and negotiate or award off of initial proposals. NOAA documents the final award determination in accordance with the RFP, SSP, FAR, CAR, Commerce and NOAA policies. NOAA awards to the best value and notifies all unsuccessful offerors pursuant to FAR Part 15 - Contracting by Negotiation and conducts debriefings of with any offeror that requests a debriefing.*

FSB closely compares the requirements to the accomplishments of the observer contracts and attempts to resolve problems or shortcomings, within the bounds of the contracts. FSB uses feedback from observers on a regular basis to address identified or perceived problems with the providers. A happy, well-supported, and high-performing work force is in everyone's best interest.

MYTH: Observers should be getting a bonus from Fisheries Sampling Branch (FSB) like the past. - False

FACT: During contract revisions in 2011, the observer bonus component was found to be unethical for a federal government contract (The Department of Commerce Ethics Handbook). FSB was no longer able to provide monetary compensation to observers, besides for actual hours worked.

Under the former NEFOP contract, the Fisheries Sampling Branch (FSB) implemented an observer bonus component. The data quality bonus system was used by FSB as an incentive for the collection of accurate, reliable and complete data. During contract revisions in 2011, the observer bonus component was found to be unethical for a federal government contract.

The following information is according to the Department of Commerce Ethics handbook:

"General Rule concerning Bribes and Salary Supplementation. You may not receive anything of value from a non-Federal source for taking action or failing to take action in your Government position. You also may not accept payment for performing your official duties from a source other than the Government."

In summary, FSB is no longer able to provide monetary compensation to observers for performing their job duties through a third-party contractor. The government does not provide direct compensation to observers, but rather works through observer service contractors to provide compensation. Without a direct payment mechanism, FSB discontinued the observer bonus element. FSB has encouraged provider companies to include retention and performance incentives in their bonus structure and FSB continues to provide accomplishment summaries to the providers. The bonus oversight and administration shifted away from FSB, but we continue to inform the providers on their employee's accomplishments to be used at their discretion in a bonus system that is administered by them. However, a bonus system provided by the observer provider is not something the government can require.

MYTH: There is no incentive for high data quality. - False

FACT: FSB strives to recognize high performers through awards, and eligibility for higher certifications. We also encourage provider companies to include retention and performance incentives. FSB continues to provide accomplishment summaries to the providers.

FSB has several methods for recognizing high performers. For nearly 10 years, the data editing staff have been selecting an Observer of the Month, chosen from all active observers. That individual receives a formal letter with the reason for their nomination and a certificate, signed by the Branch Chief, recognizing their achievement. More recently, runner ups for Observer of the Month have also been notified of their nomination via email. In July 2015, FSB implemented a new recognition program called Silver Scales, as a supplement to Observer of the Month. Any staff member may fill out an award card to acknowledge an observer's hard work, positive attitude, or any other part of their performance that stands out. The Data Quality Lead calls all Silver Scales recipients to thank them personally for their dedication to the program. In addition to specific awards, data quality is one of the factors analyzed when determining if an observer should be considered for additional certifications, trip trainer status, or shortened recertification classes. Less tangibly, high performers tend to have shorter debriefings with their editors, fewer trip restrictions (i.e., being on priority or probation), and a lower rate of trip-related in-person debriefings. Finally, all observers should pride themselves on their own achievements, knowing that they are contributing to a 20-plus-year time series that provides critical data for analysts and fishermen, and which cannot be collected in any other way.

MYTH: My provider should be covering the same fisheries as other providers. - False

FACT: There are three programs run by the Fisheries Sampling Branch: the Northeast Fisheries Observer Program (NEFOP), the At-Sea Monitoring Program (ASM), and the Industry Funded Scallop Program (IFS). Each of these three programs is mandated to cover certain fisheries. Often it is a provider choice of interest in applying to be approved or compete for contract awards.

Below is a breakdown of each program and the providers that currently hold approved federal contracts under the associated programs:

Northeast Fisheries Observer Program

- MRAG Americas

At-Sea Monitoring Program

- Atlantic Catch Data
- A.I.S., Inc
- East West Technical Services, LLC
- Fathom Research, LLC
- MRAG Americas

Industry Funded Scallop Program

- A.I.S., Inc
- East West Technical Services, LLC
- Fathom Research, LLC

Each of these three programs is mandated to cover certain fisheries. The IFS program solely covers the scallop fishery which can be fished using scallop dredge or scallop trawl gear. The ASM program solely covers sectors in the groundfish fisheries which can be fished using gillnet, trawl or longline gear. The NEFOP program covers a variety of fisheries such as groundfish, up and down the east coast as far south as North Carolina. The gear types used to target those fisheries include purse seine, handline, longline, gillnet, bottom trawl, mid-water trawl, fish trap, conch trap, lobster pot, beam trawl, and clam dredge.

MYTH: Incident reports will affect my reputation within the industry.- False

FACT: Office of Law Enforcement and FSB staff understands the concern that observer may be “shunned” in a port if they report an incident, making their job more difficult. They recognize the sensitivity of incident reports and take measures to keep them confidential.

Observers are required to submit 'incident reports' for a variety of situations including harassment, interference, intimidation, gear tampering, unsafe vessel conditions and inadequate bunk space, for instance. Reports are submitted online and can be found at http://www.nefsc.noaa.gov/fsb/forms/FSB_Incident_Form.pdf and are required 12 hrs after landing, or after the incident has occurred. Incident reports are viewed by the Branch Chief (Amy Martins), Area Leads (Sara Weeks and Mike Tork), COTR (Nichole Rossi), Point of Contact for ASM and groundfish (Katherine McArdle), Industry Funded Scallop Lead (Charles Keith), and Office of Law Enforcement (OLE) personnel (Tom Gaffney). Depending upon the incident that is reported there could be a different response. Observers may receive a phone call from a Lead to gather further information on the situation. That situation may then be rectified (and closed) or passed on to OLE. Observers may receive a phone call from OLE. This typically occurs soon after the incident is reported in order to receive the most accurate information and documentation of an event. After an initial phone communication, the observer may not hear from anyone for some time as OLE works out the details of a potential case. In the interim an Area Lead, or Area Lead Assistant may reach out to an observer to continue to support them, unless instructed by OLE to no longer engage in discussions of a pending case. If an incident report turns into a 'case' it may take quite a long time to investigate and resolve - some on the order of years, as it works its way through the legal system. Over the course of those years, the observer would hear from OLE at various times in order to continue to communicate about the upcoming events (a deposition, hearing, or trial, for instance). For less egregious cases a data editor may be communicated with either to gain more information about the data collection process, or just to keep them in the loop. Incident reports are confidential in nature, so not all incidents are shared with data editors or even all FSB staff. A quarterly OLE report is provided to FSB and reviewed with the provider. An observer portal is currently being developed and includes more information on incident reports. If there is specific information that you are interested in or would like to have access to, please contact Amy Martins or Sara Weeks.

MYTH: My data is only used to hurt fishermen. - False

FACT: Observer data are critical in assessing and managing healthy and sustainable marine ecosystems. The goal is to achieve a more robust stock condition for increased fishing opportunities in the future.

Observer data are critical in assessing and managing healthy marine ecosystems. The NOAA Fisheries mission statement reminds us that we are responsible for the stewardship of the nation's ocean resources and their habitat. According to fisherman Chris Brown of the F/V Proud Mary, taking observers "is part of a sustainable fishery." Dr. Paul Rago, Branch Chief of the Northeast Fisheries Science Center's Population Dynamics Branch, asserts that "observers are providing... sentinel information about the condition of the resource [and the] environment as a whole." While regulations may temporarily restrict fishing opportunities if a stock is overfished, it is important to keep in mind the goal is to achieve a more robust stock condition for increased fishing opportunities in the future.

Observer programs are the primary source for discard data in the U.S. High levels of discards, particularly those species of commercial and ecological value, may indicate a need to alter fishing activities so as to reduce the impact on the marine environment. Conversely, observer data may indicate a need for lower rates of observer coverage in certain fisheries because a minimal amount of overfished species were encountered. Did You Know? - the New England Fishery Management Council has requested lower coverage rates for some NE sectors because of observer data ?

NOAA Fisheries scientists evaluate and assess fish stocks to monitor the size and health of the resource. The NEFSC recently assessed twenty (20) NE groundfish species through the operation assessment process (<http://www.nefsc.noaa.gov/groundfish/operational-assessments-2015/>). These assessments enable managers to set catch levels, maintain healthy fish populations, and rebuild overfished stocks as directed by the Magnuson Stevens Act. Stock assessment scientists use data provided by observer programs, research cruises, fishermen reported logbooks, and dealer reports to complete a stock assessment. Stock assessments require detailed information for each species, including size, age, gender, and number/biomass caught. Did You Know? - the stock assessment for Atlantic sea scallops uses a forward projecting size-structured model and the length frequency data collected by observers feeds the assessment model?

Data collected on "incidental takes" involving marine mammals, sea turtles, certain fish, or seabirds aids scientists in developing measures to reduce the risk of these interactions. Fisheries observer data allows scientists to monitor the health of marine mammal and protected species populations, fulfilling mandates under the Marine Mammal Protection Act (MMPA), and the Endangered Species Act (ESA). Biological data, including age, gender, and estimates of the total number of animals incidentally killed or injured during commercial fishing operations are used by NOAA Fisheries Take Reduction Teams when developing federally mandated Take Reduction Plans (TRPs). These plans are developed to assist in the recovery, or prevent the depletion of certain marine mammal stocks. Similarly, biological data on capture and discard rates of fish species are an important component of recovery plans developed for threatened and endangered species under the Endangered Species Act. Did You Know? NEFOP observers are collecting DNA samples from Atlantic sturgeon to help determine which distinct population segment they have originated from (<http://www.ncbi.nlm.nih.gov/pubmed/25727098>)?

The fishing industry constantly improves as new technology is developed and new markets open. Observer programs offer a means to collect reliable scientific data on the impacts of changes in fishing activity and gear types. Observers are often included as a condition of federal Exempted Fishing Permits (EFPs). Did You Know? - in the past, observer data collected under EFPs has led to the development of bycatch reduction devices such as the Turtle Excluder Devices (TED) in the Southeastern U.S. shrimp trawl fishery, and the implementation of acoustic deterrents ("pingers") to reduce harbor porpoise bycatch in the Northeast and Southwest.

MYTH (CONTINUED): My data is only used to hurt fishermen. - False

Most observer programs are authorized through federal fisheries management plans (FMPs), which are administered by regional councils. Each FMP outlines the measures used to regulate the fishery (ex. quotas, caps, and discard allocations) and observer data are critical to the success of these regulations. For example, the amount of a specific species that can be caught is specified by a “total allowable catch” (or TAC) level, and observer data are used during the fishing season to project when the TAC will be reached. Did You Know? - NEFOP observer data is used for in season monitoring of several species, including yellowtail flounder, haddock, butterfish and river herring?

MYTH: NMFS chose to stop paying for At-Sea Monitoring. - False

FACT: ASM was designed with input from sector managers and industry groups, and was always intended to be industry funded. Due to a new Amendment under the SBRM, NMFS can no longer cover the ASM sea day costs.

The At-Sea Monitoring (ASM) Program was developed under Amendment 16 to the Multispecies Groundfish Fishery Management Plan by the New England Fishery Management Council (<http://www.nefmc.org/>). This Amendment established Annual Catch Entitlements, Accountability Measures, and initially set the monitoring requirements for this new “Catch Share” approach, commonly known as “sectors”. ASM was designed with input from sector managers and industry groups, and was understood to be industry funded. The increase need of monitoring came along with entitlements to quota, exemptions under the traditional methods of controlling Days-At-Sea and catch limits, and the need to ensure that Catch Entitlements were not exceeded. ASM began in the 2010 groundfish year, and was fully covered by Federal funds from 2010-2012. In 2012, the industry was going to take on the seaday costs of the program, but that was deferred and Federal subsidies covered these costs in 2013 and 2014. No Federal funds were allotted to ASM seadays in Fiscal Year 2015 and 2016.

On June 23rd, 2016, NMFS published the final 2016 seaday schedule for our Standardized Bycatch Reporting Methodology (SBRM). This year NMFS was able to fully fund the SBRM monitoring program (i.e., NEFOP seaday schedule), and, therefore, the remaining funds will be used to offset some of the industry’s costs of the groundfish at-sea monitoring program. Any sector trip beginning on or after July 1 may be eligible for reimbursement of some portion of its at-sea monitoring costs. NMFS is working with the Atlantic States Marine Fisheries Commission (ASMFC) to implement a reimbursement program as quickly as possible.

NMFS anticipates that the available federal funding for offsetting industry’s at-sea monitoring costs will not be enough to cover all of industry’s costs in fishing year 2016. Sectors and providers must still maintain the private at-sea monitoring contracts to meet the monitoring requirements in 2016, and future years. NMFS will work with sectors and the providers to ensure an equitable reimbursement program administered by the ASMFC. Reimbursing each sector for a portion of its costs for at-sea monitoring will maintain the infrastructure necessary for industry funding of at-sea monitoring.

NMFS considered using the available funding to increase coverage in other high interest fisheries, specifically the herring and mackerel fisheries. The New England and Mid-Atlantic Management Councils, as well as environmental groups, have been interested in increased observer coverage for the gears used in these fisheries (midwater trawl and small-mesh bottom trawl.) However, because SBRM is fully funded in 2016, these gears will already have substantial increases in observer coverage through SBRM compared to 2015.

NMFS also considered using the remaining funding to help to fully fund the SBRM program next fishing year. However, it is likely that there will be some carryover of unused observer sea days next year regardless of additional funding being available, so the potential benefit of saving this year’s funding is unknown. Therefore, it has been determined that the concrete benefits to assisting industry in funding their ASM costs this year outweighed the unknown benefit of using the funds to support SBRM next year.