

§ 600.746

applicant to which it was issued while the exempted educational activity is being conducted. The authorization must be presented for inspection upon request of any authorized officer. Activities that meet the definition of fishing, despite an educational purpose, are fishing. An authorization may allow covered fishing activities; however, fishing activities conducted outside the scope of an authorization for exempted educational activities are illegal.

[61 FR 32540, June 24, 1996, as amended at 63 FR 7075, Feb. 12, 1998]

§ 600.746 Observers.

(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

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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.

[63 FR 27217, May 18, 1998, as amended at 67 FR 64312, Oct. 18, 2002]