

**MEMORANDUM OF
AGREEMENT BETWEEN THE
UNITED STATES COAST
GUARD AND THE
NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION**
Agreement No. GCF2020-001

1. **PURPOSE.** The United States Coast Guard (USCG) and the National Oceanic & Atmospheric Administration (NOAA), hereinafter the Parties, enter into this Agreement to ensure the requisite level of safety and survival equipment is in place on commercial fishing industry vessels that may be chartered by the National Oceanic & Atmospheric Administration National Marine Fisheries Service (NOAA NMFS). This Agreement terminates and replaces the "Revised Vessel Inspection Agreement National Marine Fisheries Service /U.S. Coast Guard May 1980."
2. **PARTIES.** The Parties to this Agreement are USCG, Department of Homeland Security (DHS) and NOAA, Department of Commerce (DOC).
3. **BACKGROUND.** NOAA is the federal agency responsible for the stewardship of the nation's living marine resources and their habitat, and for administering and implementing provisions of statutes pertaining to those resources, including the Magnuson-Stevens Fishery Conservation and Management Act (the MSA), the Endangered Species Act and the Marine Mammal Protection Act. These responsibilities often include activities related to at-sea stock assessment surveys and sampling of fish stocks to establish catch limits and quotas for commercial and recreational fishermen. In order to carry out these types of activities, commercial fishing industry vessels have been and continue to be chartered by NOAA NMFS to carry NOAA employees and contractors to conduct fisheries and fisheries-related research. NOAA's Office of Marine and Aviation Operations (OMAO) is responsible for safety oversight of NOAA chartered vessel operations.

In 1980, an inspection agreement for fishing vessels conducting this research was signed by the USCG and NOAA NMFS. The intent of the inspection agreement was to ensure that chartered vessels were fitted with the appropriate lifesaving and fire extinguishing equipment for the vessel's operation and the number of individuals that would be carried onboard the vessel. Subsequent to the 1980 inspection agreement, the Commercial Fishing Industry Vessel Safety Act of 1988 became law, codified at Title 46 U.S.C. Chapter 45. In 1991, the USCG promulgated regulations entitled "Requirements for Commercial Fishing Industry Vessels" with several amendments and revisions to date. These can be found in 46 C.F.R. Part 28. The provisions of the 1988 Act and the 1991 regulations, as amended, superseded some of the stipulations in the 1980 inspection agreement. General terms and requirements of the inspection agreement were incorporated into the USCG Marine Safety Manual, Volume II,

including inspection standards, standards of seaworthiness, and issuance of letters of inspection. Some of the processes and terms of the 1980 agreement have changed or become obsolete, necessitating revisions and new provisions for an agreement that will ensure the adequacy of chartered vessels and the safety of those individuals embarked on that vessel to conduct fishery research.

This agreement provides the basis for continued formal collaboration between NOAA and the USCG to ensure the safety of personnel embarked on vessels chartered by NOAA NMFS. It additionally establishes new procedures and processes for vessels intended to be chartered by NOAA NMFS within the scope of this Agreement, as described in Section 5, to first complete safety examinations and be issued a Letter of Examination by the USCG valid for the term of the charter.

4. AUTHORITY. This Agreement is authorized as follows:

USCG is authorized to enter into this Agreement under 14 U.S.C. § 504(a)(20), which authorizes the USCG to enter into cooperative agreements with other Government agencies and 46 U.S.C. § 4501 *et. seq.*, which authorizes the USCG to require and enforce safety standards for fishing vessels.

NOAA is authorized to enter into this Agreement under the MSA, 16 U.S.C. § 1801 *et seq.*, the general powers and duties of the DOC, 15 U.S.C. § 1512, and Enforcement of the Convention for the Safety of Life at Sea, Exec. Order No. 12,234, 45 Fed. Reg. 58,801 (Sept. 3, 1980).

5. SCOPE. This Agreement applies to U.S. flag (documented or State-registered) commercial fishing industry vessels, as defined in 46 C.F.R. § 28.50, of any tonnage, awarded a contract for a Time or Voyage Charter by NOAA NMFS, to operate in waters/territories subject to U.S. jurisdiction. The primary activity of the charter must be the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish. Charters to conduct fisheries research activities utilizing conventional fishing gear that do not result in the catching, taking or harvesting of fish or are not reasonably expected to result in the catching, taking, or harvesting of fish may gain approval, on a case-by-case basis through the USCG Office of Commercial Vessel Compliance, Fishing Vessel Safety Division (CG-CVC-3), as an acceptable activity under this Agreement. Chartered Commercial Fishing Vessel (CFVs) may engage in other research activities in conjunction with fishing activities if they are ancillary to the charter's primary activity.

The CFV safety dockside exam sticker issued by the USCG conveys that a subject CFV meets the applicable standards of 46 C.F.R. Part 28. For the purpose of this Agreement, the standards of 46 C.F.R. Part 28, as applicable, shall be maintained on a CFV throughout the NOAA charter agreement.

Subject to the exception provided above in the first paragraph of this Section 5, vessels chartered for the purpose of oceanographic or other non-fisheries related research where the charter's intended primary activity is not the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking or harvesting of fish are not covered under the Letter of Examination process and standards of this Agreement, and may require separate approval through the local USCG Officer in Charge, Marine Inspection (OCMI).

6. RESPONSIBILITIES. To ensure compliance with equipment and safety requirements on commercial fishing industry vessels chartered by NOAA NMFS, and to provide for USCG oversight regarding the safety of NOAA employees or contractors embarked on the chartered vessel to conduct activities primarily under the MSA, the parties to this Agreement will endeavor to work cooperatively to further those efforts. In support of these efforts, the parties specifically agree to the items, determinations, and activities listed below.

a. NOAA will:

1. Establish a process by which the USCG will be provided an appropriate (at least 14 calendar days) notification window of a pending charter in order for the subject vessel owner/operator to schedule a dockside safety examination for the purpose of issuing a Letter of Examination.

2. Establish criteria for the solicitation and selection of vessels to be chartered to ensure regulatory safety standards for the NOAA employees and/or contractors who will be placed onboard the vessel, and that the terms of this Agreement can be met prior to and during the charter. Such criteria may include: size of vessel; installation of safety equipment required by NOAA NMFS; operator qualifications and experience; participation in a safety orientation and emergency drill(s) on the vessel embarked prior to getting underway; and carriage of the appropriate level/type of insurance. Such criteria will reflect applicable regulatory safety requirements and safety standards issued by NOAA's Office of Marine and Aviation Operations (OMAO). OMAO will establish such criteria as implementing guidance to this Agreement. Vessels covered by this Agreement will be examined by the Coast Guard in accordance with the Agreement utilizing 46 C.F.R. Parts 24, 25, 26, and 28 (as applicable), and may include additional requirements imposed by the USCG to ensure the safety of the vessel, its crew and the NOAA employees or contractors to be embarked. The safety orientation requirements of a fishing vessel (46 C.F.R. § 28.270(e),(f)) must include NOAA employees or contractors placed on the chartered fishing vessel.

3. Agree that Letters of Examination, under this Agreement, may only be issued for U.S. vessels federally-documented as commercial fishing vessels and holding a Fishery endorsement, or a State-registered vessel with commercial (Fishery) Registration.

4. Ensure that any vessel to be chartered will be operated by an individual(s) with the appropriate U.S. Coast Guard credentials as may be applicable for that vessel based on the charter operation for which the vessel is employed.
5. Provide the Coast Guard (the cognizant OCMI) a copy of the charter documents in advance of the safety examination to be performed, or ensure a copy of all such documentation is onboard the vessel and available to the Coast Guard examiner/inspector for uploading into the USCG Marine Information Safety Law Enforcement (MISLE) database. The Charter agreement will include a statement outlining the specifics of the fishery research/studies authorized to be performed under the charter agreement.
6. In conjunction with the owner/operator of the chartered vessel, facilitate a request for examination of the vessel at a time and location acceptable to the local Coast Guard examiner at least 14 calendar days in advance of the preferred exam date.
7. Provide transportation for a Coast Guard examiner if the location is not in an area routinely visited by Coast Guard examiners in the course of their duties.
8. Provide the Coast Guard's Office of Commercial Vessel Compliance (CG-CVC) an annual report of vessels chartered under this Agreement. The report should be submitted by April 1 of each succeeding calendar year and include vessel name, Official Number (O.N.) or state registration number, the Alaska identification number (as applicable), purpose and duration of the charter, area of the charter service, the number of NOAA employees or contractors placed on the chartered vessel during the chartered period, NOAA after-action report results (accidents) and whether or not the vessel was subject to the preapproval process discussed in Section 5 of this Agreement.
9. When information received by OMAO indicates an accident, incident or casualty occurred involving a NOAA charter vessel within the Scope of this Agreement, the Director, Safety and Environmental Compliance Division (SECD) will provide notification to the USCG (CG-CVC-3) at the earliest opportunity for conveyance to the cognizant OCMI. For NOAA Charter after-action Reports received 30 calendar days post charter, which identify an incident, near miss, or safety risk, occurred during the charter period, the Director, SECD will provide notification to CG-CVC-3 and forward a copy of the NOAA Charter Vessel Service Request and After-action Report.
10. In fulfillment of the NOAA policy to maintain a work environment free from sexual assault and sexual harassment, NOAA has established criteria and requirements for members of the chartered vessel crew, NOAA authorized personnel, affiliates, and all persons with whom NOAA employees come into contact by virtue of their work for NOAA to fully comply while aboard the vessel for the duration of the charter with all applicable laws and NOAA policies

regarding sexual harassment and sexual assault, including but not limited to NOAA Administrative Order (NAO) 202-1106 (NOAA Sexual Assault and Sexual Harassment Prevention and Response Policy). NOAA will ensure that each contract it enters into for use of a vessel has a provision that subjects that vessel's crew to NAO 202-1106, and NOAA will ensure appropriate action is taken under applicable laws and NOAA policy for reported instances of sexual assault or sexual harassment.

b. The USCG will:

1. Consider NOAA employees and contractor personnel to be non-passengers on a chartered commercial fishing vessel while engaged in the business and purpose of the NOAA charter, in accordance with 46 U.S.C. § 2101(29)(C)(iv).
2. Provide dockside safety examinations to prospective chartering vessels at a location and timeframe convenient to the USCG upon timely request by NOAA and/or the chartering vessel owner/operator.
3. Issue a Letter of Examination as well as a Fishing Vessel Dockside Safety Decal or Certification of Compliance, as may be applicable, to the prospective chartered vessel upon successful completion of the dockside safety examination and demonstrated compliance with the terms and conditions of this Agreement, based on the number of individuals that will be on board and the area of operation during the charter contract. The Letter of Examination will be issued for the same time frame as the NOAA NMFS charter agreement/contract, and must be placed onboard the vessel prior to commencing the charter. If a Letter of Examination is not issued for any reason, the vessel owner operator will provide notification to the Director, Safety and Environmental Compliance Division, OMAO. A template Letter of Examination is attached as Appendix A.
4. Consider, on a case-by-case basis, technology used in place of or in conjunction with conventional fishing gear for performing fisheries research under the MSA as an acceptable activity under this Agreement. The technology should meet the primary purpose of the charter, as described in Section 5, thus permitting the chartered vessel to retain its commercial fishing vessel status for the purpose of this Agreement.
5. Consider chartered vessels meeting the requirements of Section 5 of this Agreement and issued Letters of Examination under Section 6.b.3 of this Agreement to retain commercial fishing vessel status for the duration of the applicable charter.

6. Consider vessels chartered by NOAA NMFS to engage in research programs outside the scope of the terms and conditions of this Agreement:

- a. To be subject to the examination or inspection and certification requirements indicated in 46 C.F.R. § 2.01-7(a) (Table); and
- b. For any vessels designated as Oceanographic Research Vessels (ORVs) by the USCG, to be subject to 46 C.F.R. Part 3.

7. When information received by the USCG indicates an accident, incident or casualty occurred involving a NOAA charter vessel, USCG (CG-CVC-3) will provide notification to OMAO at the earliest opportunity.

7. **POINTS OF CONTACT.** The following shall be the primary points of contact in coordinating the responsibilities established under this Agreement:

a. For NOAA:

NMFS: For commercial fishing vessel chartering or MOA information, contact: NMFS Executive Officer, NMFS Office of the Assistant Administrator, at (206) 790-6654 or by email: mike.hopkins@noaa.gov

OMAO: For Agreement or for charter vessel examination and/or compliance information contact: Director, Safety and Environmental Division at (301) 713-7601, or by email at: omao.secd.charters@noaa.gov.

b. For USCG:

CG-CVC: For Agreement or vessel examination and compliance information contact: U.S. Coast Guard, Office of Commercial Vessel Compliance, Chief, Fishing Vessel Safety Division, (CG-CVC-3), U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Ave. S.E., Washington, D.C. 20593-7501, (202) 372-1249 or by email at: joseph.d.myers@uscg.mil.

OCMI: For vessel examinations contact, Officer in Charge, Marine Inspections (OCMI) by zone as listed in: 33 C.F.R. Part 3.

8. OTHER PROVISIONS.

- a. Nothing in this Agreement is intended to conflict with current federal law or regulation (including, but not limited to the Freedom of Information Act, the Privacy Act, and the Trade Secret Act), or the directives of the USCG, DHS, NOAA, or DOC. If a term of this Agreement is inconsistent with such authority, then that term shall

be invalid, but the remaining terms and conditions of this Agreement shall remain in full force and effect. Nothing in this Agreement will be construed to abrogate any pre-existing authority, duty, or responsibility of either NOAA or the USCG.

- b. This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity, against the United States, any party, their officers or employees, or any other person. This Agreement does not direct, or apply to, any person outside the parties to this Agreement.
- c. All provisions referring to responsibilities between the Parties made in this Agreement shall be conducted in accordance with federal law, and NOAA, and USCG policies. The Parties will each endeavor to promptly inform the other of any relevant and significant changes in the laws, regulations, and/or policies of each party.
- d. NOAA solicitations shall include a detailed list of the types and weights of provided equipment for the related activities used to conduct fisheries research. The intent of this information is to ensure that vessel masters and individuals in charge of vessels are provided with relevant stability information to allow them to maintain and operate their vessel in a safe stable condition.
- e. Access to and use of chartering information may have restrictions. Dissemination of charter information may be subject to the provisions of the Freedom of Information Act and other applicable law.
- f. This Agreement is not an agreement by the United States, NOAA, or the USCG to indemnify any party nor is it an agreement by the United States, NOAA, or the USCG to assume financial, legal, or any other liabilities. This Agreement is not an agreement by the United States, NOAA, or the USCG to obligate or expend any funds.
- g. All commitments made by the Parties in this Agreement are subject to the availability of appropriated funds and budget priorities. Nothing in this Agreement, in and of itself, obligates the Parties to expend appropriations or to enter into any contract, assistance agreement, transfer funds, or incur other financial obligations. Any transaction involving transfers of funds between the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures under separate written agreements.

9. EFFECTIVE DATE. The terms of this Agreement shall become effective when signed by authorized representatives of the Parties.

- 10. MODIFICATION.** The terms of the Agreement may be modified at any time by mutual agreement of the Parties by a written, signed amendment hereto.
- 11. RESOLUTION OF DISAGREEMENTS.** Should disagreements arise on the interpretation of the provisions of this Agreement or amendments that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.
- 12. PERIODIC REVIEW.** This Agreement and any amendments will be reviewed at least every three years, for the purpose of ascertaining whether modification or replacement of the Agreement is necessary. The completion of the review, and any mutually agreed modifications to this Agreement resulting from such review shall be reflected in writing, signed by an authorized representative of each Party, and appended to each Party's copy of the Agreement.
- 13. TERMINATION.** This Agreement will terminate ten years from the effective date. This Agreement may also be terminated by either Party upon 30 days written notice to the other Party.
- 14. EFFECT.** This Agreement supersedes and replaces the "Revised Vessel Examination Agreement National Marine Fisheries Service /U.S. Coast Guard May 1980."

APPROVED BY:



Benjamin Freidman
Deputy Under Secretary for Operations,
National Oceanic & Atmospheric Administration

Date: 6/04/2021



Richard V. TIMME
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy

Date: MAR 10 2021

Appendix A

Sample - Letter of Examination

NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION NATIONAL MARINE FISHERIES SERVICE

Chartered Commercial Fishing Vessel

(On Official USCG Letterhead)

The (VESSEL NAME), (O.N.), was examined by the Coast Guard on (DATE), at (PLACE) and was found to be in compliance with the applicable regulations and examination criteria approved jointly by the U.S. Coast Guard and National Oceanic & Atmospheric Administration on a (river/lake/bay/coastwise/ocean) route.

Commercial Fishing Vessel Safety Decal issued:

Decal No. _____

The validity of this letter and the exemption from inspection as codified in 46 U.S.C. § 3302(b) is contingent upon:

- 1) A copy of a valid charter agreement maintained onboard the vessel; and
- 2) The vessel being maintained in a seaworthy condition, and in compliance with all applicable requirements.

It is understood that a maximum of ____ crew and ____ persons in addition to the crew will be carried, which combined total shall not exceed ____ individuals.

The National Oceanic and Atmospheric Administration (NOAA) employees/contractors are embarked on this vessel as persons in addition to the crew and shall not be considered passengers as permitted under 46 U.S.C. § 2101(29)(C)(iv) and the USCG/NOAA MOA dated ~~xxxxxx~~, when the vessel is engaged in fisheries related research and a valid charterer agreement issued by NOAA NMFS within the applicable dates of this letter is placed onboard.

Primary lifesaving and safety equipment shall be provided and maintained for total persons allowed when operating under the provisions of this letter.

Primary Lifesaving:

Total Individuals accommodated: _____

Personal Flotation Device (PFD) approved under approval number 160.055, 160.155, or 160.176 (a suitable size for each person on board).

Number PFDs: _____

Number Immersion Suits: _____ or N/A

Primary Lifesaving (cont):

Lifesaving appliances: Lifeboat / Life Raft/ Life Float / other:

Number Port side: _____

Number Stbd side: _____

Number Amidships: _____

Equipment Data:

Fire Extinguishers: Portable: _____ Fixed: _____

(Check Box) if special provisions are granted by The Coast Guard Office of Commercial Vessel Compliance, Fishing Vessel Safety Division (CG-CVC-3).

Attached CG-CVC-3 letter: # _____ Dated: _____

E-mail related questions to: CGCVC3@uscg.mil

Comments:

[Signature]
Officer in Charge, Marine Inspection