



NOAA
FISHERIES

Office of Law
Enforcement

Collection, Evaluation, and Preservation of Evidence

Port State Measure Inspector Training Workshop
Lima, Peru

21-30 January 2020

What is Evidence?

- Items that are collected in order to prove elements of a violation.
- May include the lack of required items or documents
 - e.g. No valid fishing permit, VMS off
- Evidence may or may not be the property of an individual or entity.



Was a National Law or RFMO CMM Violated?

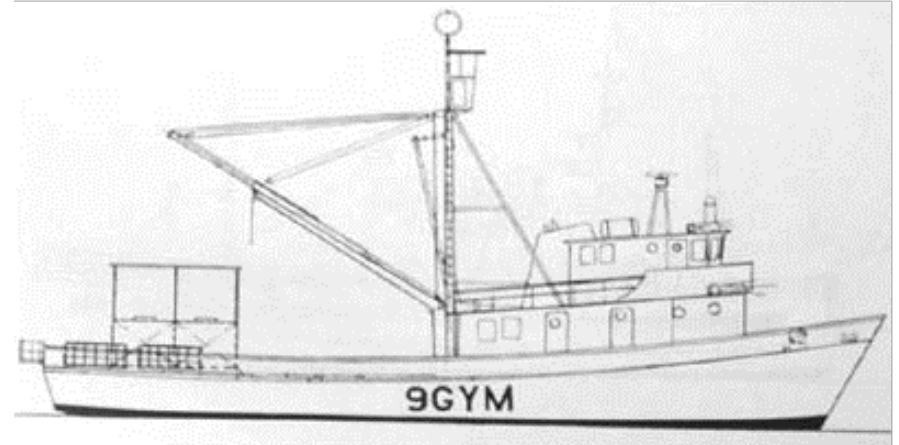
Potential evidence:

- Possession of fish
- Fishing gear onboard-stowed/not stowed
- Logbooks
- Tracking
- Movement associated with fishing
- Eyewitness (observers)



Who Committed the Violation?

- Vessel name & identification
- Declared flag state
- Vessel operator
- Vessel agent
- Vessel agent
- Vessel owner
- Beneficial owners
- Marked fishing gear



What Types of Evidence Might You Utilize for an IUU Investigation?

- Physical evidence
 - Documents?
 - Electronic?
 - Objects?
- Reports/Field Notes?
- Testimonial?
- Demonstrative?



Physical Evidence



- Includes any material object that plays some role in the matter, intended to prove a fact in issue based on the object's demonstrable physical characteristics.
- Establishes something about the violation, or links someone or something to the violation.



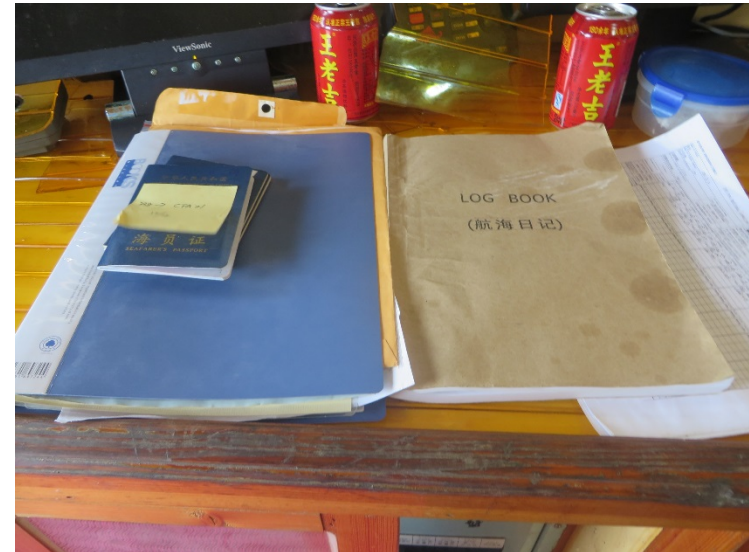
Examples of Physical Evidence

- Fish
- Meat
- Gear
- DNA
- Coral
- Any tangible object



Documentary Evidence

- A written story which speaks for itself
- Any evidence in the form of documents.
- Although this term is most widely understood to mean writings on paper (such as an invoice, a contract or fishing log sheets), the term actually includes any media by which information can be preserved.
(e.g. electronic files)



Examples of Documentary Evidence

- Fishing log sheets
- FAD logs
- Freezer logs and tallies
- Factory production reports
- Vessel offload tallies
- Mates receipts
- Fish master personal logs / notes
- Crew payment reports
- Bank statements
- Packing lists
- Bill of landing
- Freight invoices
- Stevedoring invoices (offloads)
- Cold storage tally/invoice
- Export declarations
- Fishery observer data & reports
- Electronic – navigation, email, photos, video, electronic documents, etc.



Digital Forensics



Photo Credit: Federal Bureau of Investigations

Collecting Digital Evidence – Best Practices

Computers

- Restrict access
- Isolate from phone lines
- If item is off, do not turn on
- If on, do not turn off
- Photograph screen
- Collect all passwords and manuals
- Keep away from magnets, radio transmitters...etc.
- Consult IT / computer specialist

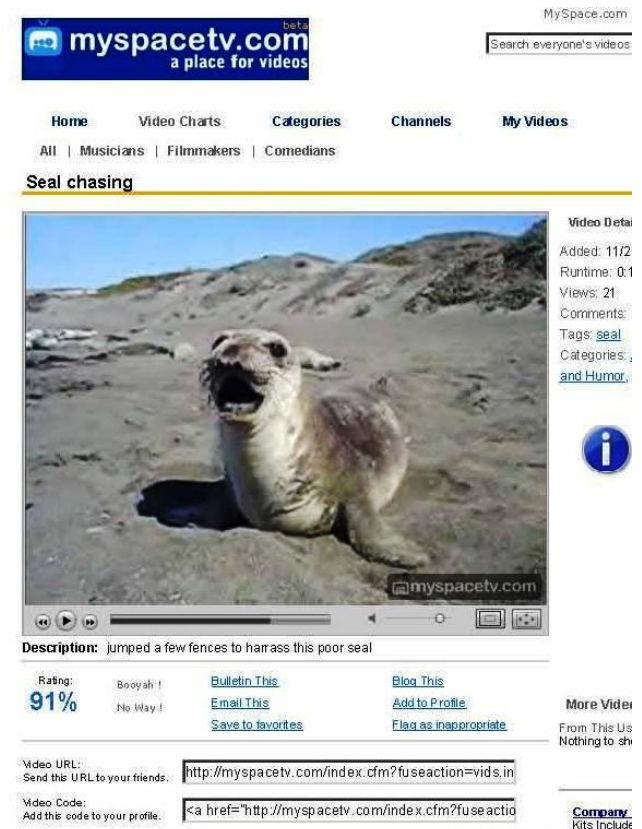
Wireless Telephones

- If device is on, do not turn off - could activate a lockout feature
- If device is off, do not turn on
- Write down all information on display
- Photograph
- Collect any instruction manuals, power cords



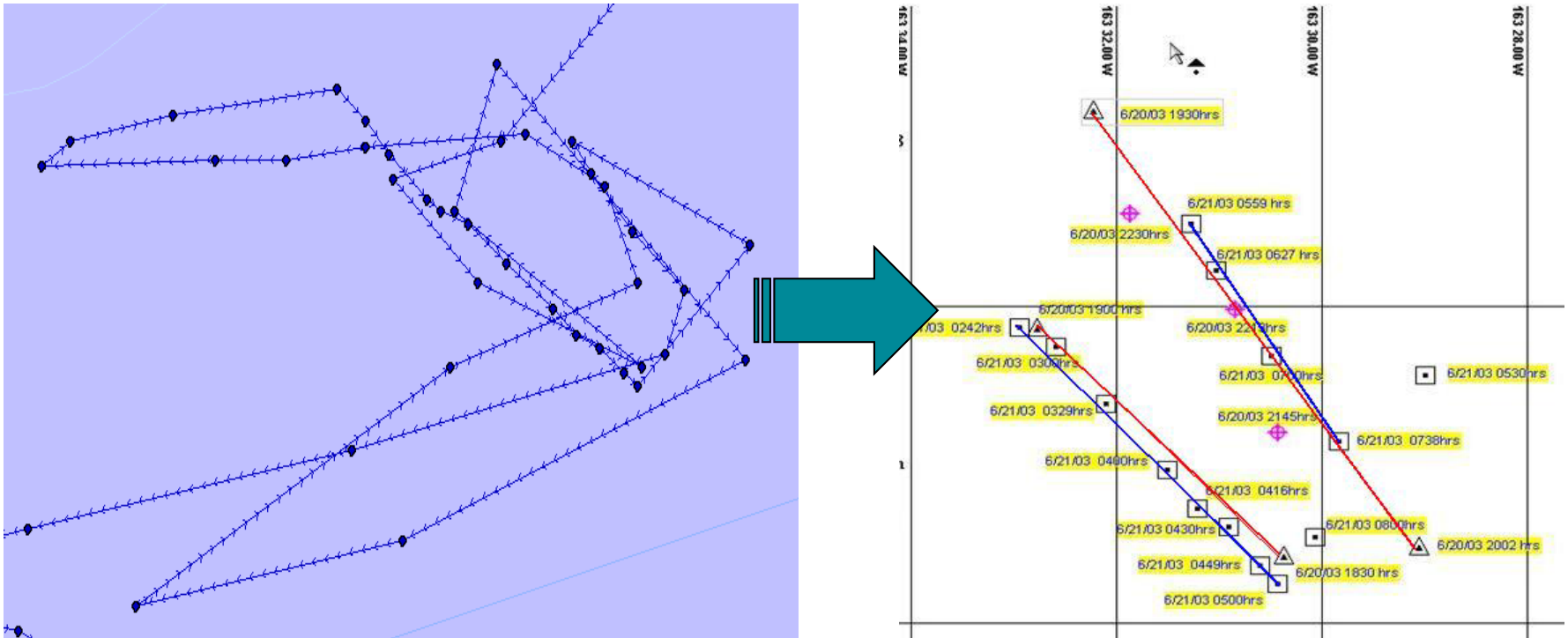
Electronic / Digital Evidence – Internet Sources

- YouTube, Facebook, Twitter, Instagram, other social media pages
- EBay, Craigslist, etc.



Demonstrative Evidence

- Does not prove a violation by itself.
- When shown with other facts and testimony of a qualified person, it can demonstrate a violation occurred by a individual.

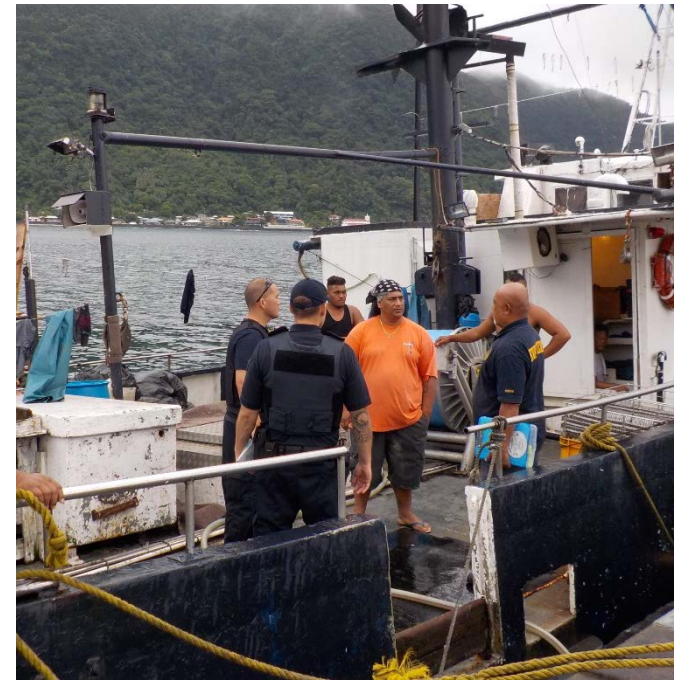


Electronic position data demonstrating activity consistent with the set, fishing and retrieval of long line gear

Evidence Collection

Secure the scene

- Safety / security sweep
(outside to inside, top to bottom)
- Identify and control all weapons onboard
- Identify all crewmembers / persons onboard, monitor / control their activities while you are onboard.



Evidence Collection

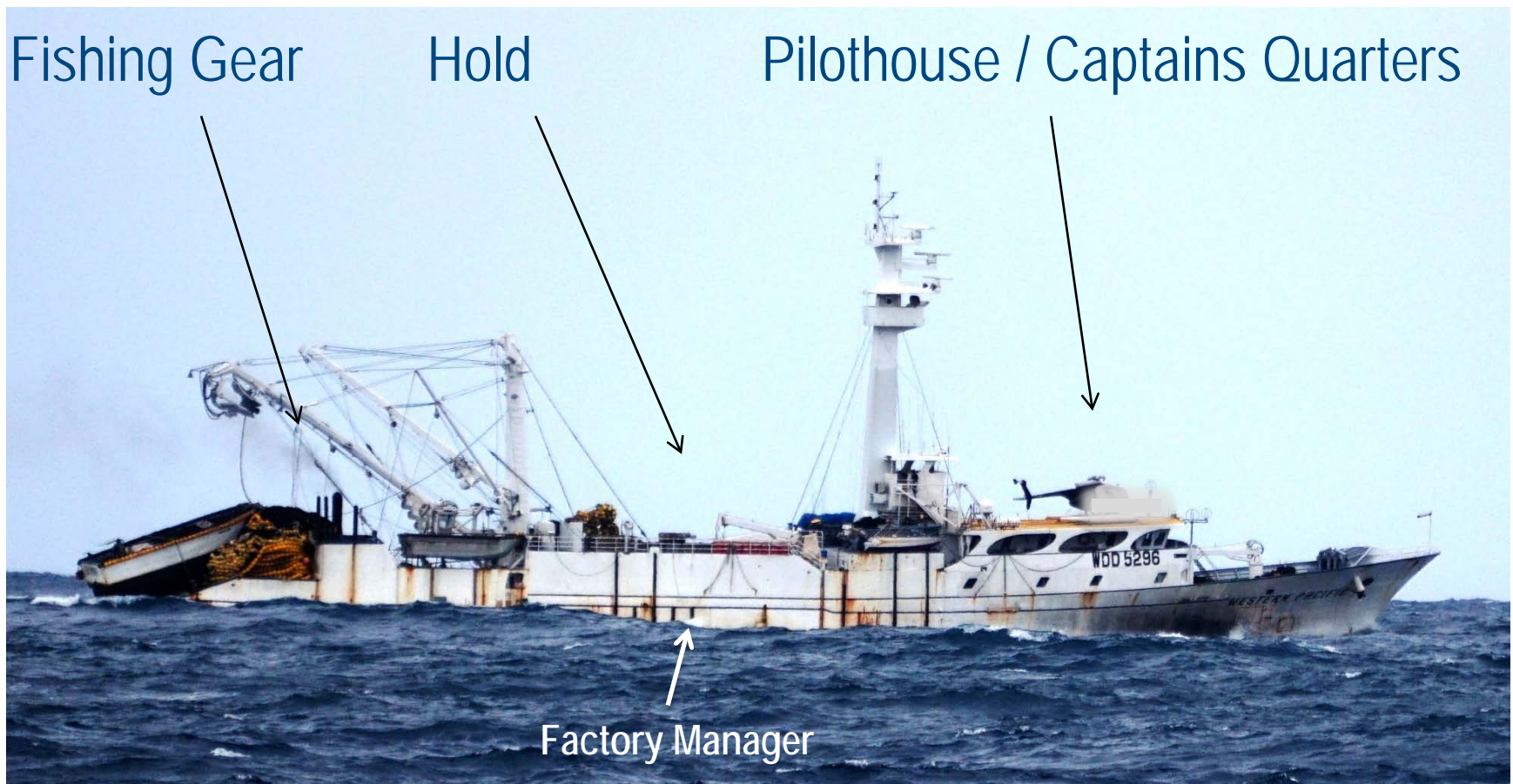
Assign Roles to Boarding Team

- Lead Officer – In Charge, communicates with vessel master
- Security – Sweep, control of individuals, safety of team
- Searchers – Locate and identify evidence, reviews electronics and documents.
- Photographer – Records evidence where found and upon collection
- Collectors – Seizes, authenticates, collects and secures evidence.



May serve in more than one role.

Evidence Collection



Evidence could be anywhere on the vessel
Do not limit yourself to the common areas. However, ensure legal authority.

Evidence Collection

- Inspections allow full review and access to documents onboard a fishing vessel – captain logs, navigation logs, fishing charts, captain's personal logs, fuel receipts, transshipment logs, FAD logs.
- Electronics – laptop, GPS, plotters, fish finder, VMS.

All tell a story of where the vessel has been operating.



Evidence Collection

Ask yourself:

- What are you looking for?
- Does the item support the potential violation?
- Do I have the authority to collect it under the law?
- What are the conditions of the search warrant?
- Was it briefed by the lead investigator?
- Is it perishable? (storage/freezer concerns)
- Can it be documented and sold and proceeds retained for prosecution?



Evidence Collection

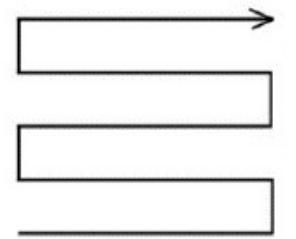
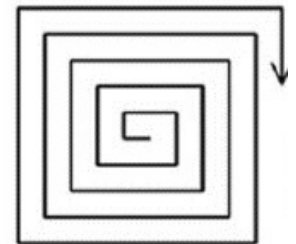
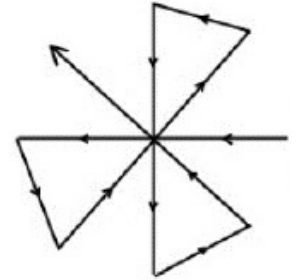
Steps to Follow:

- Preliminary survey
- Photograph
- Collection, recording, marking and preservation of evidence
- Final survey (walk through)
- Release of scene or conduct seizure



Evidence Collection

- Select and move in a methodical fashion of your choice.
 - Coordinate and check each others work
 - **Zone method** – one small area (zone) at a time
 - **Clockwise/counterclockwise** – opposite directions through the area
 - **Grid method** – move in a straight line
- Look high and low (ceilings, under floorboards)



Investigative Photos and Video

- Represent the scene as you find it.
- Video / Photo Log
 - Date and time
 - Camera and film type
 - Photographer
 - Each individual photo by number and description
- Take MANY photos from multiple distances and angles.
- Do not add anything to the scene (evidence identifiers) until after you take photos.



Orientation of Photos and Video

- Overall
 - Relationship of scene to overall environment
 - Relationship between physical evidence and scene
- Medium range
 - Relationship between items
 - Specific areas
- Close up range with scale
 - Clearly establish size of evidence



Evidence Collection



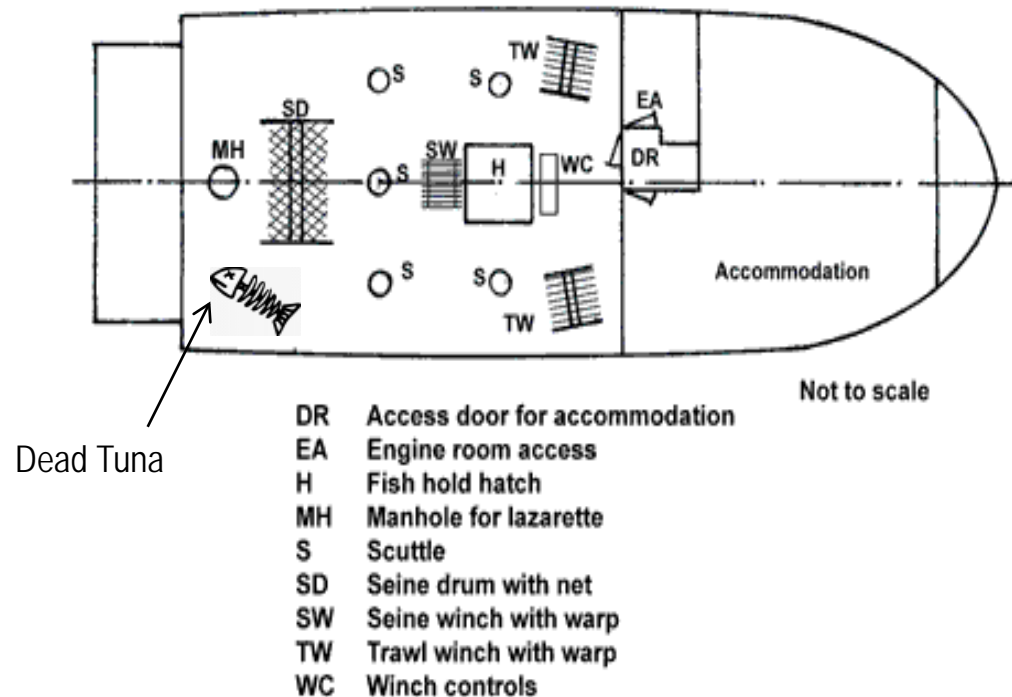
- Photograph evidence in its original state prior to seizure.
- Take inventory of the product.
- Perishable evidence –
Decide to sell or store evidence.
- Avoid cross contamination if forensic testing is required.

Investigative Sketch

Include:

- Approximate distances
- Views not captured by camera
- Legend of symbols
- Name of sketcher
- Case title or number
- Date and time of sketch
- Location of scene
- "Not to scale"

Officer Name
FV Name
Date



Preserving Evidence Integrity

- Evidence must be safeguarded from tampering, loss, misuse, theft, damage or destruction.
- It must be handled and maintained to preserve its evidentiary value and maintain its chain of custody.



Evidence Handling – Authentication

- In order for evidence to be used and credible - must show that evidence is original and hasn't been tampered with.
- Ways to authenticate evidence
 - A unique mark on the item that allows person who made mark to identify
 - Expert witness – examining to determine if the evidence is in fact authentic
 - Chain of custody



Evidence Handling – Best Practices

- Collect and handle evidence according to your laws and policies.
- Best Practice: each individual piece of evidence should be...
 - Tagged
 - Bagged
 - Sealed
 - Labeled
 - Securely Stored



Evidence Handling – Best Practices

Large quantity of items such as entire catch and high volumes of business records may be documented as one item – however sub-sample numbers should be established if the items are separated from one another.



Properly Handled and Stored Evidence

Evidence Tag

EVIDENCE CASE # _____
 FOUND I.D. # _____
 SAFEKEEPING ITEM # _____
 SEARCH WARRANT

Offense: _____

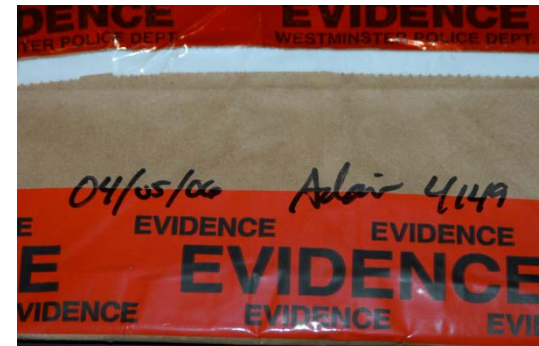
Person/Location Property Taken From: _____

Description of Item(s): _____

OFFICER: _____ DATE: _____

Watsonville Police Department

Evidence Seal



Evidence Bags and labels



Evidence Storage



Evidence Handling - Tagging and Labeling

- Easily identify items
- Important for the chain of custody
 - Description
 - Location
 - Serial number
 - Date
 - Officer/inspector name
- Adds credibility to identify and authenticate



EVIDENCE IDENTIFICATION

EVIDENCE

Case No. _____ Item No. _____

Description of Evidence _____

Type of Offense _____

Date _____ Time _____

Remarks/Details _____

Agency _____ Signed _____

The image shows a white evidence tag with a hole on the left side. The word 'EVIDENCE' is printed vertically in red on the left. The title 'EVIDENCE IDENTIFICATION' is at the top right. Below the title are several red lines for text entry, labeled: Case No., Item No., Description of Evidence, Type of Offense, Date, Time, Remarks/Details, Agency, and Signed.

Evidence Handling - Chain of Custody

Need clear and indisputable documentation of:

- What is the evidence?
- How was it obtained?
- Date and time evidence was collected?
- Who has handled it?
- Why did the individual handle it?
- Where has it traveled?

NOAA Fisheries Office for Law Enforcement
Evidence Chain of Custody Form

CASE NUMBER ITEM NUMBER

DATE ACQUIRED SEIZED COLLECTED

SEIZURE TAG # EVIDENCE BAG # (if used) COLLECTED BY

EVIDENCE TYPE QUANTITY DESCRIPTION OF ITEM

EVIDENCE TYPES: (if handwriting)
1. Fishing Gear 2. Fish/Seafood
3. Blood/Tissue 4. Photographs
5. Video 6. Audio
7. Firearm 8. Documents
9. Other
SELECT ONLY ONE

Select either YES OR NO from each section

CAFRA YES NO

GRAND JURY YES NO

ABANDONED YES NO

OWNERSHIP INFORMATION (If applicable)

ACQUIRED FROM OWNER'S NAME

DESCRIPTION OF LOCATION FOUND

RESPONSIBLE SA/EO DIVISION FIELD OFFICE

Chain of Custody Tracking Information
(Use Continuation Sheet if needed)

TRANSFERRED FROM RELEASE SIGNATURE RELEASE DATE

TRANSFERRED TO RECEIPT SIGNATURE RECEIPT DATE

DELIVERY METHOD
 US MAIL FEDEX
 IN PERSON OTHER

COMMENTS

Version 1.0 PAGE ___ of ___ PAGES Version date 01/25/2006

Best Practices for Evidence Control

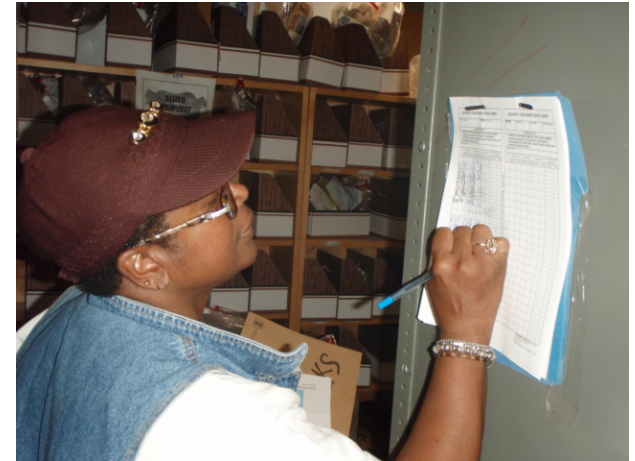
Responsible (case) Officer:

- Provide receipt to owner
- Maintain written Chain of Custody
- Manage evidence for trial, lab testing, disposal

Chain of Custody Tracking Information CONTINUATION SHEET					
CASE NUMBER		ITEM NUMBER			
RESPONSIBLE SA/EO		DIVISION		FIELD OFFICE	
TRANSFERRED FROM	RELEASE SIGNATURE	RELEASE DATE	DELIVERY METHOD		
			<input type="radio"/> US MAIL <input type="radio"/> FEDEX <input type="radio"/> IN PERSON <input type="radio"/> OTHER		
TRANSFERRED TO	RECEIPT SIGNATURE	RECEIPT DATE	DELIVERY METHOD		
			<input type="radio"/> US MAIL <input type="radio"/> FEDEX <input type="radio"/> IN PERSON <input type="radio"/> OTHER		
COMMENTS					
TRANSFERRED FROM	RELEASE SIGNATURE	RELEASE DATE	DELIVERY METHOD		
			<input type="radio"/> US MAIL <input type="radio"/> FEDEX <input type="radio"/> IN PERSON <input type="radio"/> OTHER		
TRANSFERRED TO	RECEIPT SIGNATURE	RECEIPT DATE	DELIVERY METHOD		
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COMMENTS					
TRANSFERRED FROM	RELEASE SIGNATURE	RELEASE DATE	DELIVERY METHOD		
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TRANSFERRED TO	RECEIPT SIGNATURE	RECEIPT DATE	DELIVERY METHOD		
			<input type="radio"/> US MAIL <input type="radio"/> FEDEX <input type="radio"/> IN PERSON <input type="radio"/> OTHER		
COMMENTS					

Best Practices for Evidence Control

- Designated Evidence Custodian
 - Controls storage and removal
 - Entry log to evidence facility
 - Minimized handling
- Secured Evidence Facility (controlled access)
 - Room
 - Freezer
 - Building



Evidence Custodian Responsibility

- Evidence must be safeguarded from tampering, loss, misuse, theft, damage or destruction.
- Evidence rooms and other storage facilities must be physically secure and access must be limited and controlled.
 - The storage facility should contain only seized, abandoned or otherwise acquired evidence.
 - Storage facility should be able to accommodate both dry and wet products.

Forensic Analysis

How to collect evidence for analysis?

- Any biological material
- Hard to identify items

Collection issues

- Package individually
- Avoid cross-contamination
- Evidence seals
- Consult with forensic scientists



Properly Handled and Stored Evidence

Type of Evidence	Frozen	Refrigerated	Room temperature
Wet bloody/stained item	<u>Best</u>		
Dry bloody/stained item (knife, paper)			<u>Best</u>
Bones	Acceptable		Acceptable
Fillet or tissue (fresh or frozen)	<u>Best</u>		
Tissue in desiccant (from kit)			<u>Best</u>
Whole animal from fish kill	Never	<u>Best</u>	

Forensic Analysis

- Ensure Chain of Custody is maintained
- Communicate prior to sending evidence for testing
- Specify what should happen to the sample / evidence after testing or examination



FORENSIC LABORATORY
Seattle, WA | Charleston, SC

EVIDENCE SUBMISSION FORM

Always contact the lab to coordinate proper transfers **BEFORE** submitting evidence: evidence.custodian@noaa.gov.

AGENCY CASE #:		SUBMISSION DATE:	
LAB CASE #:	(TO BE ASSIGNED BY LAB)		

RESPONSIBLE AGENT OR OFFICER:

Name:			
Field office:			
Address:			
Office #:	Mobile #:	Fax #:	

OLE APPROVING OFFICIAL

Name:	
Email:	

ANALYSIS REQUESTED

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SPECIAL INSTRUCTIONS

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AGENCY CASE #: SUBMISSION DATE:
LAB CASE #:

CAFRA?: Yes No

EVIDENCE SUBMITTED

Item #:	Seizure Tag #:	Description of item:

LABORATORY RECEIPT

Evidence Condition:			
Storage Location:			
Documented By:		Date:	

Testimonial Evidence

- **Admission** – statement or acknowledgement of facts that tending to implicate the person but not sufficient of itself to establish guilt.
- **Confession** – statement or acknowledgment of the facts that establish the persons guilt of a violation (*mens rea*).



Testimonial Evidence

- Identify the individual and area of expertise.
- Document their experience.
- Collect independent assessment / opinion.
- Do not lead witness or attempt to influence their decision.



Sources of Testimonial Evidence

- Crewmen
- Plant workers
- Ex- girlfriend / boyfriend
- Disgruntled or former worker
- Competitors
- NGOs
- Other law enforcement officers
- Confidential informants
- Witness
 - Eye witness
 - Expert witness
 - Individual with specific knowledge
 - Fishery observers
- Subject – explanation, defense witnesses

Testimonial Evidence

- Consists of statements that are made and that are offered as proof of the matter asserted, or of what is being discussed.
- Under oath
- Spoken or performed as a story or answers to questions



Photo Credit: United States Courts

Use of Evidence in Court

- For admissibility in U.S. courts, evidence must meet the following criteria :
 - Legal, factual
 - Relevant to charges
 - Materiality
 - Original or best evidence
 - Lawfully obtained
 - Chain of Custody
 - Competency of witnesses

- Evidence must be collected and preserved in a manner to ensure its admissibility in legal proceedings



Photo Credit: United States Courts

What are your legal requirements and responsibilities?

Evidence Disposition

- Disposal of evidence
 - Actions taken to properly manage physical evidence collected in a law enforcement investigation.
- Once the Investigation is closed (either following adjudication and appeals or otherwise), Identify the legal status: Has it been
 - Forfeited to the government by a court?
 - Abandoned by the owner(s)?
 - Otherwise legally transferred to the State.

Evidence Disposition

Perishable evidence (at time of seizure)

- Sell and deposit value in dedicated account, pending trial?
- Return to wild (if alive)?
- Document with photo, video and detailed description prior to release.
- Maintain custody and integrity?

Disposition options:

- Returning to owner,
- Return to habitat,
- Official government use,
 - Loan (educational or research use)
- Donation,
- Sale, and
- Destruction (contraband, public health)

Know and follow your Agencies policies and National Law!



Evidence Disposition

What is “illegal to possess?” (i.e., contraband)

- Contraband *per se*: “that which is illegal to possess by law.” ex: illegal weapons or gear, protected species, etc.
- Derivative (conditional) contraband: “that which is unlawful to possess only because of a condition present at the time of possession.” i.e. possession of fish without a license or with a zero-bag limit.
- If not contraband *per se*, **must seek abandonment or forfeiture per your laws and policies.**

Questions?

