



NOAA
FISHERIES

Office of Law
Enforcement

Collection, Evaluation, and Preservation of Evidence

Port State Measures Training Program
Annex E – Element 4

What is Evidence?

- Items that are collected in order to prove elements of a violation or crime.
- 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?

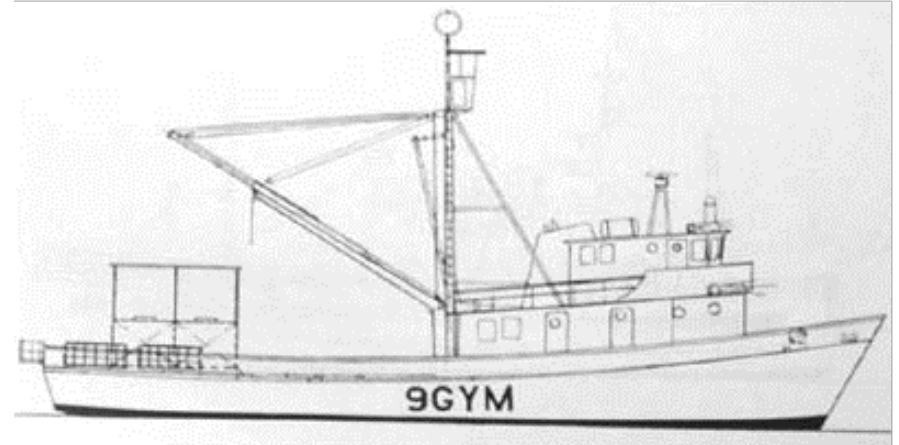
Potential evidence:

- 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?
- Documentary?
- Testimonial?
- Demonstrative?



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
- Bills of lading
- Freight invoices
- Stevedoring invoices (offloads)
- Cold storage tally/invoice
- Export declarations
- Fishery observer data & reports
- Electronic – navigation, email, photos, video, electronic documents, etc.



Collecting Digital Evidence – Best Practices

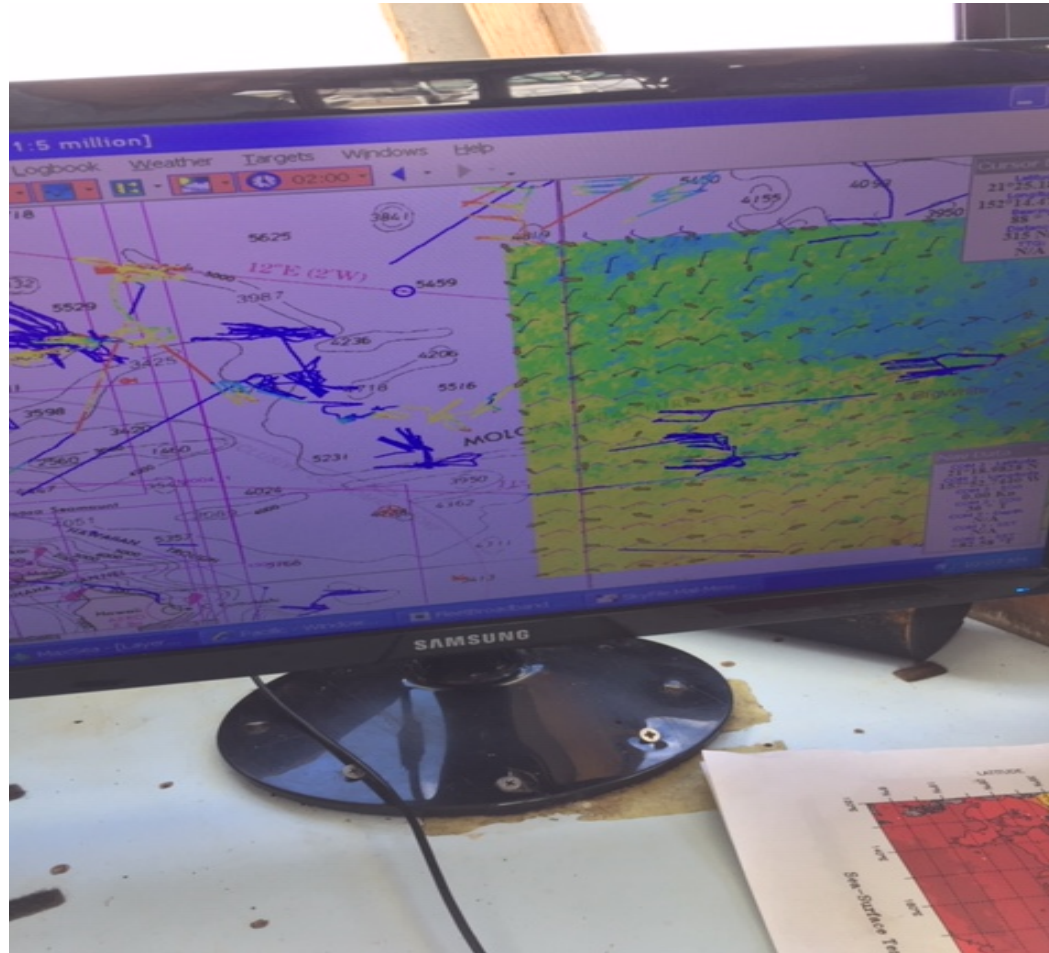
Computers

- 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

Photograph the Screen



Photograph the VMS Unit



Evidence of Cut Wire on VMS Unit



Electronic / Digital Evidence – Internet Sources

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



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

Testimonial Evidence

- **Admission** – statement or acknowledgement of facts that tending to incriminate the person but not sufficient of itself to establish guilt.
- **Confession** – statement or acknowledgment of the facts that establish the persons guilt of a crime (*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.

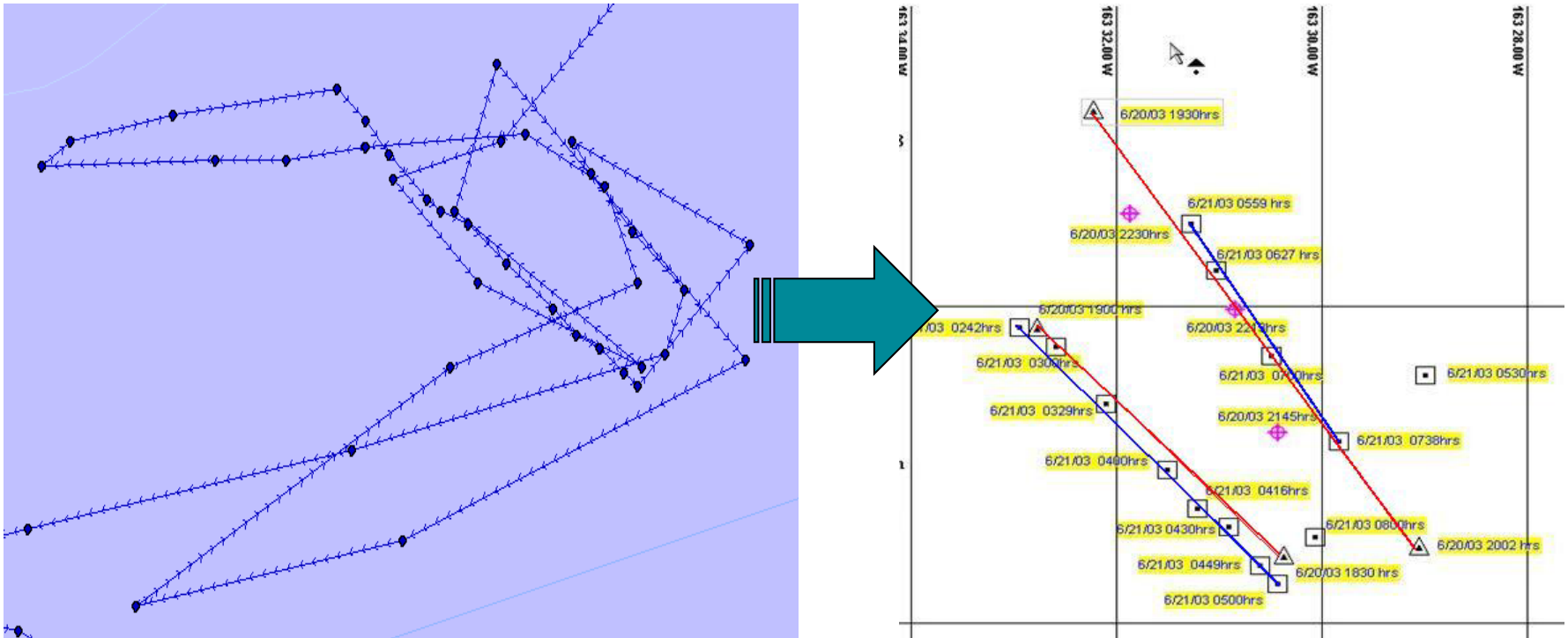


Sources of Testimonial Evidence

- 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

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.

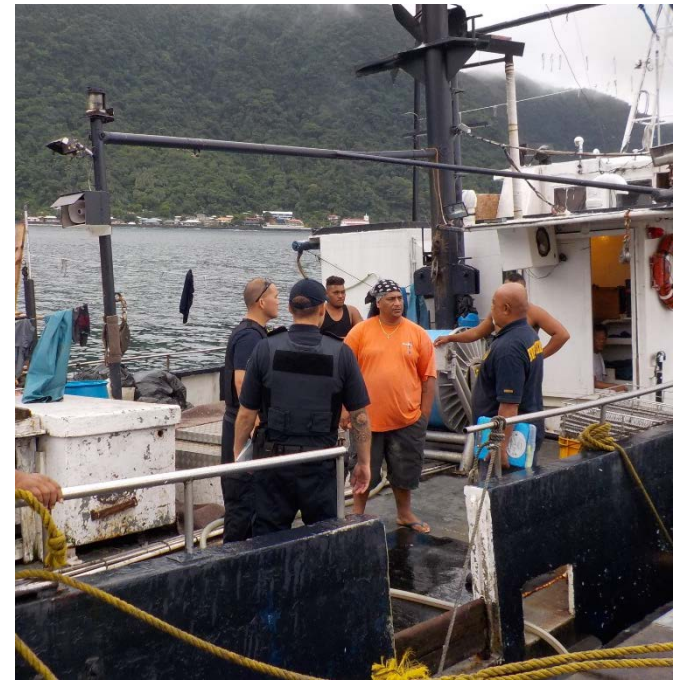


Electronic position data demonstrating activity consistent with the set, fishing and retrieval of long line gear

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

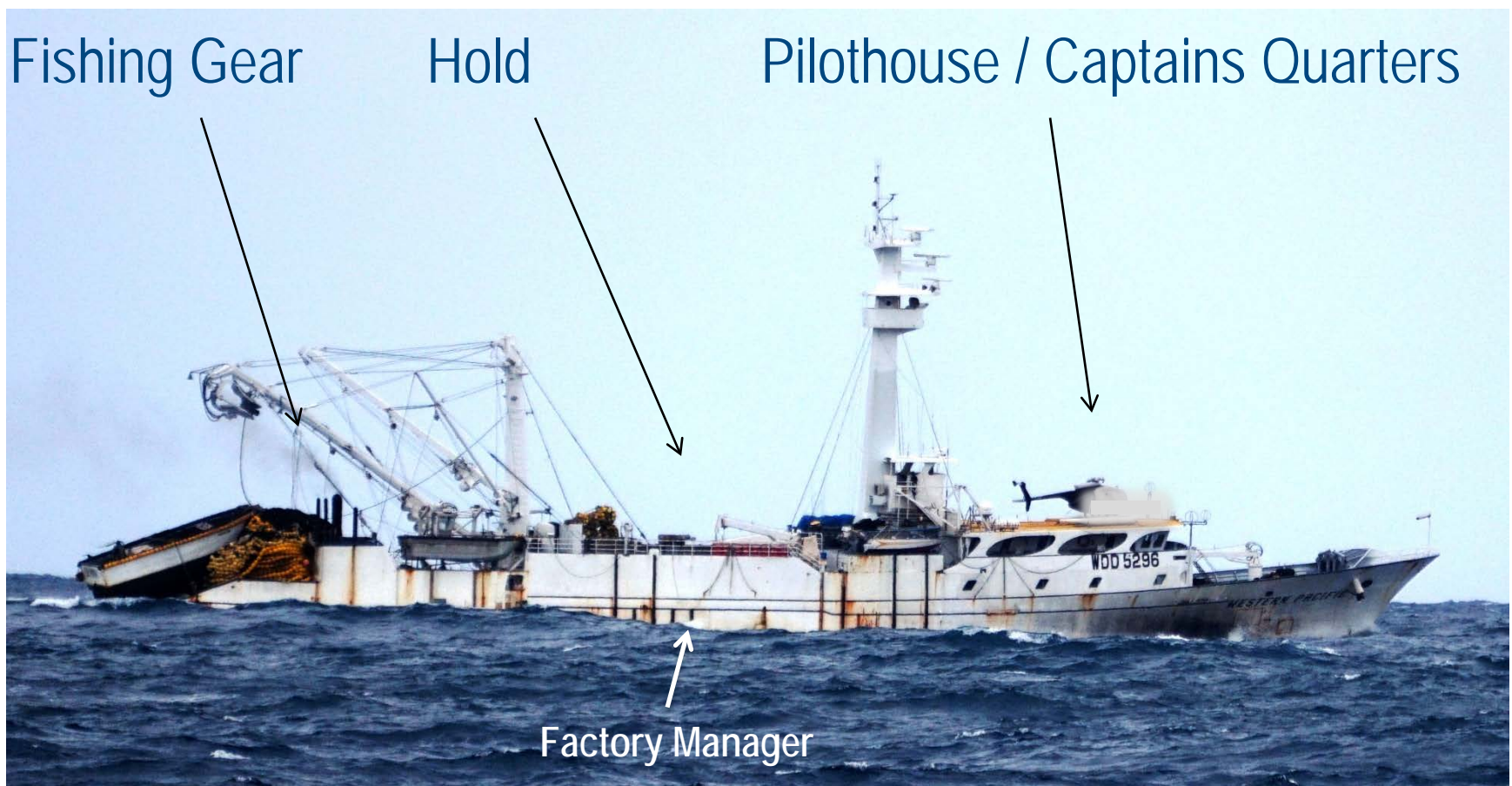
Assign Roles to Boarding Team

- 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

Ask yourself:

- What are you looking for?
- Does the item support the potential crime?
- 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



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



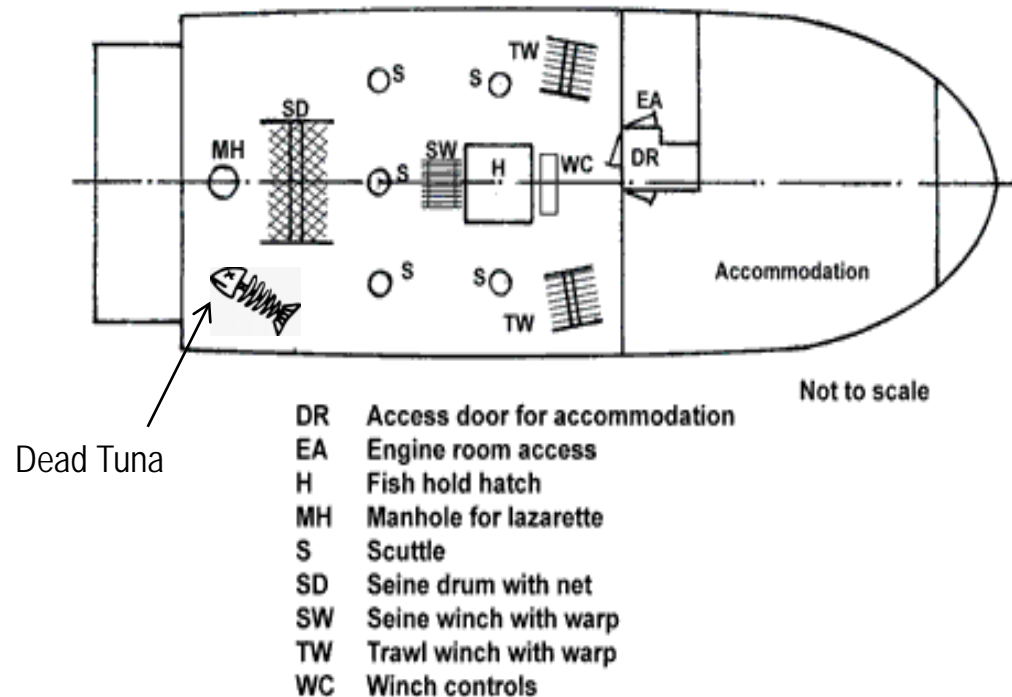
- Photograph evidence in its original state prior to seizure.
- Take inventory of the product.
- Perishable evidence –
Decide to sell or store evidence.
- Avoid cross contamination if forensic testing is required.

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



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.



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



The image shows a white evidence identification 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. The form contains several fields for recording information:

EVIDENCE IDENTIFICATION	
Case No. _____	Item No. _____
Description of Evidence _____	
Type of Offense _____	
Date _____	Time _____
Remarks/Details _____	
Agency _____	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

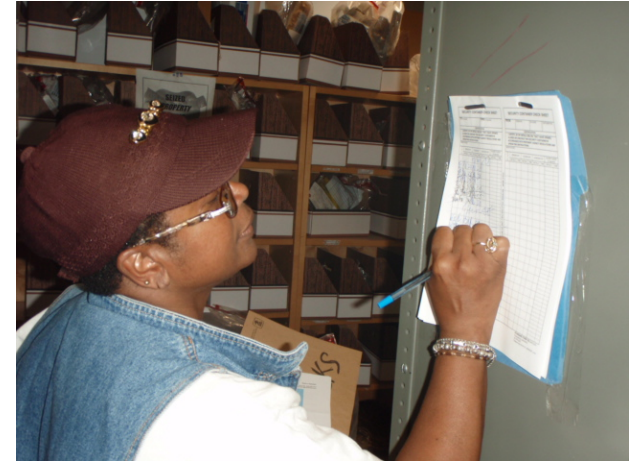
Responsible (case) Officer:

- 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	
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TRANSFERRED FROM	RELEASE SIGNATURE	RELEASE DATE	DELIVERY METHOD		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="radio"/> US MAIL <input type="radio"/> FEDEX <input type="radio"/> IN PERSON <input type="radio"/> OTHER		
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COMMENTS					
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COMMENTS					
<input type="text"/>					

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.

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 criminal and civil 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

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?

