

Existing regulations are in blue text, added and amended regulations are in black text.

50 CFR Part 679

Subpart E—Groundfish and Halibut Observer Program

§ 679.50 Applicability

(a) General.

(1) With the exception of vessels described in paragraph (a)(2) of this section, the owners and operators of vessels designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b) or an Individual Fishing Quota (IFQ) permit under § 679.4(d)(1) and (d)(2), and owners and operators of processors that are designated or are required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3), must comply with this subpart.

(2) Exceptions. A catcher vessel that delivers only unsorted codends to a mothership is not subject to the requirements of this subpart.

(3) For purposes of this subpart, halibut means CDQ and IFQ halibut.

§ 679.51 Observer Requirements for Vessels and Plants

The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs.

Program	Catcher/Processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) Groundfish CDQ – Fixed Gear	(a)(2)(vi)(A)(3) through (4)	(a)(2)(i)(C) hook-and-line; (a)(1)(i) pot	(a)(2)(vi)(A)(5)	(b)(1)
(2) Groundfish CDQ – Trawl Gear	(a)(2)(vi)(A)(1)	(a)(2)(i)(C)	(a)(2)(vi)(A)(5)	(b)(1)
(3) Halibut – CDQ and IFQ	(a)(2)(i)(A)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
(4) Sablefish – CDQ and IFQ	(a)(2)(i)(A)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)
(5) BS pollock – AFA and CDQ	(a)(2)(vi)(B)(1) and (2)	(a)(2)(i)(C)	(a)(2)(vi)(B)(1) and (2)	(b)(2)
(6) Aleutian Islands pollock	(a)(2)(vi)(3) through (4)	(a)(1)(i)(A)	(a)(2)(vi)(4)	(b)(1)
(7) Rockfish Program	(a)(2)(vi)(D)	(a)(2)(i)(C)	N/A	(b)(1)
(8) Amendment 80 vessels and Non-AFA trawl C/Ps fishing in the BSAI	(a)(2)(vi)(C)	N/A	N/A	N/A
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries	(a)(2)(i) and (vi)	(a)(1)(i)(A) and (B)	(a)(2)(i)(B)	(b)(1)

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(a) Observer requirements for vessels—

(1) Groundfish and halibut fishery partial observer coverage category.

(i) Vessel classes in partial coverage category. Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels are in the partial observer coverage category when fishing for halibut or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) FFP Catcher Vessel. A catcher vessel designated on an FFP under § 679.4(b)(1); or

(B) IFQ Catcher Vessel. A catcher vessel when fishing for halibut or sablefish under a permit issued under § 679.4(d)(1)(i) or § 679.4(d)(2)(i).

(ii) Registration and notification of observer deployment.

(A) Owners and operators of vessels in the partial observer coverage category defined at paragraph (a)(1)(i) of this section, must register with the Observer Declaration and Deployment System (Deployment System) by December 1 of each year, or within thirty days of issuance of an FFP or IFQ permit. Access to the Deployment System is available through the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

(B) Upon registration per paragraph (a)(1)(ii)(A) of this section, the Deployment System will notify the operator as to whether their vessel is subject to either a “vessel” or “trip” selection pool. Owners and operators must comply with all further instructions set forth by the Deployment System.

(C) Trip Selection Pool.

(1) A minimum of 72 hours prior to embarking on each fishing trip, operators of vessels in the trip selection pool must hail-in and register the anticipated trip with the Deployment System.

(2) When an anticipated fishing trip is registered with the Deployment System per paragraph (a)(1)(ii)(C)(1) of this section, the operator will be notified whether the trip is selected for observer coverage and a receipt number corresponding to this notification will be provided by the Deployment System. Trip registration is complete when a receipt number is received by the operator.

(3) An operator may embark on a fishing trip registered with the Deployment System:

(i) Not selected trip. At any time after registering the trip with the Deployment System if the trip is not selected for observer coverage.

(ii) Selected trip. When an observer is onboard the vessel if the fishing trip registered with the Deployment System is selected for observer coverage.

(4) Delayed trip. A selected fishing trip not realized within 48 hours of the time registered with the Deployment System is invalidated and the operator must register a new trip per paragraph (a)(1)(ii)(C)(1) of this section.

(5) Observer Coverage Duration. If selected, a vessel is required to carry an observer for the entire fishing trip.

(i) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded.

(ii) An observer may not be transferred off of a catcher vessel until the end of a fishing trip.

(D) Vessel Selection Pool. If selected, then

(1) A vessel selected for observer coverage is required to have an observer or electronic monitoring system onboard, as directed by NMFS, for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) for the time period indicated by the Deployment System.

(2) Vessel owners and operators must coordinate with NMFS and make their vessel available for evaluation and installation of electronic monitoring equipment if NMFS determines that electronic monitoring is appropriate.

(iii) The Regional Administrator may release a selected trip per paragraph (a)(1)(ii)(C) of this section or a selected vessel per paragraph (a)(1)(ii)(D) of this section, from observer coverage on a case-by-case basis.

(2) Groundfish and halibut fishery full observer coverage category.

(i) Vessel classes in the full coverage category. The following vessels are in the full observer coverage category when harvesting or processing halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) Catcher/processors;

(B) Motherships; and

(C) Catcher vessels while directed fishing for pollock in the BS, while using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2), or while participating in the Rockfish Program.

(ii) Observer coverage requirements. Unless participating in a fishery listed in (a)(2)(vi) of this section or in the partial observer coverage category per paragraphs (a)(2)(iii)(B) or (a)(2)(iv) of this section, a vessel in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer onboard the vessel at all times.

(iii) Catcher/processor classification.

(A) For this subpart, a vessel is classified as a catcher/processor according to the operation designation on its FFP. A vessel designated as a catcher/processor at any time during the calendar year is classified as a catcher/processor for the remainder of the calendar year for purposes of this subpart. A vessel classified as a catcher/processor at the beginning of the calendar year is classified as a catcher/processor for the entire calendar year for the purposes of this subpart.

(B) A catcher/processor that processes up to 365 metric tons round weight of groundfish in a calendar year and no more than one metric ton round weight of groundfish on any day, may register with the Deployment System per paragraph (a)(1)(ii) of this section, to be included in the partial observer coverage category in lieu of the full coverage category for the following calendar year.

(iv) One-time election of observer coverage category. Owners or operators of vessels less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year, or any catcher/processor with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, will make a one-time election as to whether they will be in the partial observer coverage category at (a)(1) of this section, or the full observer coverage category at (a)(2) of this section.

(A) Notification of election. The person named on the FFP for a vessel eligible for the one-time election must notify the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, of their choice in writing by November 1, 2012.

(B) Default coverage category. If an operator foregoes the opportunity for a one-time election, the vessel will be assigned to the partial or full observer coverage category per (a)(1)(i) or (a)(2)(i) of this section.

(C) Effective Duration. The one-time election is effective for:

(1) The duration that both the catcher/processor and catcher vessel designations are listed on the FFP for vessels less than 60 ft. LOA; or

(2) The duration the FFP is issued to the person named on the FFP at the time of the election for catcher/processors with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, through January 1, 2010.

(v) Observer workload. The time required for the observer to complete sampling, data recording, and data communication duties per paragraph (a)(2) of this section, may not exceed 12 consecutive hours in each 24-hour period.

(vi) Additional observer requirements—

(A) CDQ fisheries. The owner or operator of a vessel must comply with the following requirements each day that the vessel is used to transport, catch, process, deliver, or receive CDQ.

(1) Catcher/processors using trawl gear and directed fishing for pollock CDQ in the BSAI and motherships taking deliveries from catcher vessels directed fishing for pollock CDQ in the BSAI. See § 679.51(a)(2)(vi)(B)(2).

(2) Catcher/processors using trawl gear and groundfish CDQ fishing. See § 679.51(a)(2)(vi)(C).

(3) Catcher/processors using hook-and-line gear. A catcher/processor using hook-and-line gear and groundfish CDQ fishing must have at least two level 2 observers, at least one of whom must be a lead level 2 observer, unless the vessel is participating in a voluntary cooperative and exempted from this regulation under § 679.32(e), or NMFS approves an alternative fishing plan under § 679.32(c)(ii)(G)¹ authorizing the vessel to carry only one lead level 2 observer. See § 679.53(a)(5)(v) for endorsement requirements for lead level 2 observers.

(4) Catcher/processors using pot gear for groundfish CDQ fishing. A catcher/processor using pot gear must have at least one lead level 2 observer aboard the vessel. More than one observer is required if the observer workload restriction would otherwise preclude sampling as required.

(5) Motherships. A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two level 2 observers aboard the mothership, at least one of whom must be certified as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(B) BSAI pollock fisheries—

(1) Listed AFA catcher/processors and AFA motherships. The owner or operator of a listed AFA catcher/processor or AFA mothership must carry at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or receive groundfish. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(2) Pollock CDQ catcher/processors and motherships. The owner or operator of a catcher/processor or mothership used to catch, process, or receive pollock CDQ must comply with the observer coverage requirements in paragraph (a)(2)(vi)(B)(1) of this section for each day that the vessel is used to catch, process, or receive pollock CDQ.

¹ Refers to regulations anticipated with implementation of monitoring requirements for the hook-and-line catcher/processor cooperative.

(3) Unlisted AFA catcher/processors. The owner or operator of an unlisted AFA catcher/processor must carry at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

(4) AI directed pollock fishery catcher/processors and motherships. A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must carry at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(C) Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI. All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have onboard at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(D) Catcher/processors participating in the Rockfish Program—

(i) Rockfish cooperative. A catcher/processor that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have at least two observers onboard, for each day that the vessel is used to catch or process in the Central GOA from May 1 through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration. More than two observers are required if the observer workload restriction at paragraph (a)(2)(v) of this section would otherwise preclude sampling as required.

(ii) Rockfish sideboard fishery for catcher/processors in a rockfish cooperative. A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two observers onboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(b) *Observer requirements for shoreside processors and stationary floating processors—*

(1) Shoreside processor and shoreside floating processor partial observer coverage category.

(i) Unless otherwise specified in paragraph (b)(2) of this section, shoreside processors and shoreside floating processors are in the partial observer coverage category when receiving or

processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at § 679.2, or halibut from:

(A) FFP Catcher Vessel. A catcher vessel designated on or required to be designated on an FFP under § 679.4(b)(1): or

(B) IFQ Catcher Vessel. A catcher vessel engaged in catching halibut under a permit issued under § 679.4(d)(1)(i).

(ii) Coverage. The manager of a shoreside processor or shoreside floating processor must provide observers access to unsorted and sorted catch any time an observer is present at the facility.

(2) Shoreside processor and shoreside floating processor full observer coverage category. AFA inshore processors are in the full observer coverage category.

(i) Coverage level. An AFA inshore processor is required to provide an observer for each 12 consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BSAI. An AFA inshore processor that takes delivery of or processes pollock harvested in the BSAI directed pollock fishery for more than 12 consecutive hours in a calendar day is required to provide two observers for each such day.

(ii) Multiple processors. An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BS directed pollock fishery.

(iii) Observers transferring between vessels and processors. An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

(c) *NMFS staff observers*.

(1) Any vessel, shoreside processor, or shoreside floating processor required to comply with observer coverage requirements under paragraphs (a) or (b) of this section or under § 679.7(f)(4) must use, upon written notification by the Regional Administrator, NMFS' staff to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes.

(2) Prior to deployment of NMFS staff, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or shoreside floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and shoreside floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in

improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE, Seattle, Washington 98115-0070 or transmitted by facsimile to 206-526-4066.

(d) Procurement of observer services.

(1) Full coverage category.

(i) Owners of vessels, shoreside processors, or shoreside floating processors required to have full observer coverage under paragraphs (a)(2) and (b)(2) of this section must arrange and pay for observer services from a permitted observer provider.

(ii) Owners of vessels, shoreside processors, or shoreside floating processors are required to procure observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that their vessel, shoreside processor, or stationary floating processor will use NMFS staff or individuals authorized by NMFS in lieu of, or in addition to, an observer provided through a permitted observer provider to satisfy requirements under paragraphs (a)(2) and (b)(2) of this section or for other conservation and management purposes.

(2) Partial coverage category. Owners of vessels, shoreside processors, or shoreside floating processors in the partial observer coverage category per paragraphs (a)(1) and (b)(1) of this section must comply with instructions provided by the Deployment System to procure observer coverage for the duration they are required to carry an observer.

(e) Responsibilities.

(1) Vessel responsibilities. An operator of a vessel required to carry one or more observers must:

(i) Accommodations and food. Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses, or other management level personnel of the vessel.

(ii) Safe conditions.

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have onboard:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I;

(2) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) Transmission of data. Facilitate transmission of observer data by:

(A) Observer use of equipment. Allow observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Communication equipment requirements. In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

(1) Observer access to a computer. Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(2) NMFS-supplied software. Ensuring that the catcher/processor, mothership, or catcher vessel specified in this paragraph (e)(1) has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(3) Functional and operational equipment. Ensuring that the communication equipment required in this paragraph (e)(1)(iii)(B) and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) Vessel position. Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) Access. Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) Prior notification. Notify observers at least 15 minutes before fish are brought onboard, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) Records. Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) Assistance. Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying samples of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

(ix) Transfer at sea.

(A) Ensure that transfers of observers at sea are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before a transfer of assignment, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) Shoreside processor and shoreside floating processor responsibilities. A manager of a shoreside processor or a shoreside floating processor that is required to maintain observer coverage as specified under paragraph (b) of this section must:

(i) Safe conditions. Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) Operations information. Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) Transmission of data. Facilitate transmission of observer data by:

(A) Observer use of equipment. Allowing observers to use the shoreside processor's or shoreside floating processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Communication equipment requirements—

(1) Observer access to a computer. Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(2) NMFS-supplied software. Ensuring that the shoreside or shoreside floating processor specified in paragraph (e)(2) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(3) Functional and operational equipment. Ensuring that the communication equipment required in paragraph (e)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) Document access. Allow observers to inspect and copy the shoreside processor's or shoreside floating processor's DCPL, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(v) Assistance. Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, shoreside floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or shoreside floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

§ 679.52 *Observer Provider Permitting and Responsibilities*

(a) *Observer provider permits.*

(1) Permit. The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per § 679.51

(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) New observer providers. An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at § 679.51(c)(3).

(3) Contents of application. An application for an observer provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) Contact information—

(A) Owner(s) information. The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) Business information. Current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(C) Authorized agent. For observer providers with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they are free from a conflict of interest as described under paragraph (c) of this section.

(iv) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) Application evaluation.

(i) The Regional Administrator will establish an observer provider permit application review board, composed of NMFS staff, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors, and the following criteria for each owner, or owners, board members, and officers if a corporation:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(1) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(2) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) Agency determination on an application. NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) Transferability. An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph.

(7) Expiration of Permit.

(i) The observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) to an observer provider if NMFS's deployment records indicate that the permit has

expired. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. A permit holder who appeals the IAD will be issued an extension of the expiration date of the permit until after the final resolution of that appeal.

(8) Sanctions. Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers*. Observer providers supplying observers for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) must:

(1) Provide qualified candidates to serve as observers.

(i) To be qualified, a candidate must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-provided pamphlets and other literature describing observer duties.

(iii) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that contains the following provisions for continued employment:

(A) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(B) That the observer completes in-person mid-deployment data reviews, unless:

(1) The observer is specifically exempted by the Observer Program, or

(2) The observer does not at any time during his or her deployment travel through a location where Observer Program staff are available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(C) The observer informs the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) Ensure that observers complete duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(i) Once an observer is scheduled for a final deployment debriefing under paragraph (b)(10)(v) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(ii) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties which are not part of NMFS groundfish observer requirements;

(iii) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(iv) Return all sampling and safety gear to the Observer Program Office.

(3) Observer conduct.

(i) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(ii) An observer provider shall provide a copy of its conduct and behavior policy:

(A) To observers, observer candidates; and

(B) By February 1 of each year to the Observer Program Office.

(4) Observer vessel and processor assignment. An observer provider must assign to vessels or shoreside or floating processors only observers:

(i) With valid North Pacific groundfish and halibut observer certifications and endorsements to provide observer services;

(ii) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Who have successfully completed all NMFS required training and briefing before deployment.

(5) Observer salaries and benefits. An observer provider must provide to its observer employees' salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(6) Observer deployment logistics.

(i) An observer provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel and shoreside or shoreside floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels or shoreside processing or shoreside floating processing facilities.

(ii) Except as provided in paragraphs (b)(6)(iii) and (b)(6)(iv) of this section, each observer deployed to a shoreside processing facility or shoreside floating processor, and each observer between vessel, shoreside floating processor, or shoreside assignments while still under contract with a permitted observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, shoreside floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(iii) An observer under contract may be housed on a vessel to which he or she is assigned:

(A) Prior to their vessel's initial departure from port;

(B) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(C) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(v) Each observer deployed to shoreside processing facilities shall be provided with individually assigned communication equipment in working order, such as a cell phone or pager for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties.

(7) Observer deployment limitations. Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(i) Deploy an observer on the same vessel or at the same shoreside or shoreside floating processor for more than 90 days in a 12-month period;

(ii) Deploy an observer for more than 90 days in a single deployment;

(iii) Include in a single deployment of an observer assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(iv) Move an observer from a vessel or shoreside floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(8) Vessel safety decal verification. An observer provider must verify that a vessel has a valid USCG safety decal as required under § 679.51(e)(1)(ii)(B)(1) before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

(i) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(ii) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(9) Communications with observers. An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed at shoreside or shoreside floating processors, in transit, or in port awaiting vessel or processor reassignment.

(10) Communications with the Observer Program Office. An observer provider must provide all of the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

(i) Observer training and briefing. Observer training and briefing registration materials. This information must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(A) Observer training registration, including:

(1) Date of requested training;

(2) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle and last names), date of birth, and sex;

(3) A copy of each candidate's academic transcripts and resume; and

(4) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions.

(B) Observer briefing registration, including:

(1) Date and type of requested briefing session and briefing location; and

(2) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(ii) Projected observer assignments. Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, shoreside processor, or shoreside floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) Physical examination. A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared pamphlet, provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of this section. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical

exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(iv) Observer deployment/logistics reports. A deployment/logistics report must be submitted by Wednesday, 4:30 pm, Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or shoreside floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. If the observer is currently not assigned to a vessel, shoreside processor, or shoreside floating processor, the observer's location must be included in the report.

(v) Observer debriefing registration. The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time, and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel, or shoreside or shoreside floating processor assignment name(s) and code(s), and requested debriefing date.

(vi) Certificates of Insurance. Copies of “certificates of insurance,” that name the NMFS Observer Program leader as the “certificate holder,” shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(A) Maritime Liability to cover “seamen's” claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(C) States Worker's Compensation as required.

(D) Commercial General Liability.

(vii) Observer provider contracts. Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2) of this part, by February 1 of each year. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at

the address or fax number listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

(A) Vessels required to have observer coverage as specified at § 679.51(a)(2);

(B) Shoreside processors or shoreside floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

(viii) Observer provider invoices. Certified observer providers must submit to the Observer Program Office copies of all invoices for observer coverage required or provided pursuant to § 679.51(a)(2) and § 679.51(b)(2).

(A) Copies of invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(B) Invoices must contain the following information:

(1) Name of each individual catcher/processor, catcher vessel, mothership, shoreside floating processor, or shoreside processing plant to which the invoice applies;

(2) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, shoreside floating processor, or shoreside processing plant. Dates billed that are not observer coverage days shall be identified on the invoice;

(3) Rate charged in dollars per day (daily rate) for observer services;

(4) Total charge for observer services (number of days multiplied by daily rate);

(5) Amount charged for air transportation; and

(6) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these costs must be separated and identified.

(ix) Change in observer provider management and contact information. Except for changes in ownership addressed under paragraph (b)(6) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (b)(2)(i) through (iv) of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in § 679.51(c)(3). Any information submitted under (b)(2)(iii) or (b)(2)(iv) of this section will be subject to NMFS review and determinations under (b)(3) through (8) of this section.

(x) Other reports. Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(A) Within 24 hours after the observer provider becomes aware of the following information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t), and (u);

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7), or processor safety;

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations, or reports regarding observer conflict of interest or failure to abide by the standards of behavior described in § 679.53(b)(1) through (b)(2), or;

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these reports shall include the underlying facts and circumstances of the violation.

(11) Replacement of lost or damaged gear. An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(12) Maintain confidentiality of information. An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(c) *Limitations on conflict of interest.* Observer providers:

(1) Are authorized to provide observer services under an FMP or the Halibut Act for the waters off Alaska as required in § 679.51(a)(2) or (b)(2), or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(2) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP or the Halibut Act for the waters off Alaska, including, but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska, or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska.

(3) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed.

(4) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

§ 679.53 Observer Certification and Responsibilities

(a) Observer Certification.

(1) Applicability. Observer certification authorizes an individual to fulfill duties for operations requiring full observer coverage per § 679.51 (a)(2) and (b)(2) as specified in writing by the NMFS Observer Program Office while under the employ of an observer provider permitted per § 679.52(a) and according to certification endorsements as designated under paragraph (a)(5) of this section.

(2) Observer certification official. The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(3) Certification requirements. NMFS may certify individuals who, in addition to any other relevant considerations:

(i) Are employed by a permitted observer provider company at the time of the issuance of the certification;

(ii) Have provided, through their observer provider:

(A) Information identified by NMFS at § 679.52(b)(10)(i)(A)(3) and (4) and in writing from the Observer Program; and

(B) Information identified by NMFS at § 679.52(b)(10)(iii) regarding the observer candidate's health and physical fitness for the job;

(iii) Meet all education and health standards as specified in § 679.52(b)(1)(i) and § 679.52(b)(10)(iii), respectively;

(iv) Have successfully completed a NMFS-approved training as prescribed by the Observer Program.

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(B) If a candidate fails training, he or she will be verbally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the verbal notification, the observer candidate will be notified in writing. The written notification will indicate why the candidate failed the training and whether the candidate can retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of a written determination denying certification, as specified under paragraph (a)(4)(i) of this section.

(v) Have not been decertified under paragraph (c) of this section.

(4) Agency determinations on observer certification—

(i) Denial of a certification. The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(ii) Issuance of an observer certification. An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (a)(3) of this section.

(5) Endorsements. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(i) Certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries or Halibut Act fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. Renewal can be obtained by the observer

successfully completing certification training once more. Observers will be notified of any changes to the endorsement expiration period prior to that change taking place.

(ii) Annual general endorsements. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) Deployment endorsements. Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) Level 2 endorsements. A certified observer may obtain a level 2 endorsement to their certification. A level 2 endorsement is required for purposes of performing observer duties aboard vessels or shoreside floating processors or at shoreside processors participating in fisheries as prescribed in § 679.51(a)(2)(vi)(A) through (D). A level 2 endorsement to an observer's certification may be obtained by meeting the following requirements:

(A) Be a prior observer in the groundfish or halibut fisheries off Alaska who has completed at least 60 days of observer data collection;

(B) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; and

(C) Comply with all of the other requirements of this section.

(v) An observer who has achieved a level 2 endorsement to his or her observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a level 2 "lead" observer endorsement by meeting the following requirements:

(A) A "lead" level 2 observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(B) A "lead" level 2 observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(C) A "lead" level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(b) Standards of observer conduct.

(1) Limitations on conflict of interest.

(i) Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to,

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery, or

(3) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery.

(B) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(D) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(ii) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(2) Standards of Behavior. Observers must:

(i) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(ii) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(iii) Not disclose collected data and observations made onboard the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(c) Suspension and Decertification.

(1) Suspension and decertification review official. The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(2) Causes for suspension or decertification. The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(B) Failed to abide by the standards of conduct for observers as prescribed under paragraph (b) of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph (c)(2) of this section, the suspension/decertification official will issue a written initial administrative determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or those cases in which public health, interest, or safety require such actions. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(4) Appeals. A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

§ 679.54 Release of Observer Data to the Public

(a) *Summary of weekly data.* The following information collected by observers for each catcher/processor and catcher vessel during any weekly reporting period may be made available to the public:

- (1) Vessel name and Federal permit number.
- (2) Number of Chinook salmon and “other salmon” observed.
- (3) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch.
- (4) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.
- (5) The number of observed trawl hauls or fixed gear sets.
- (6) The number of trawl hauls that were basket sampled.
- (7) The total weight of basket samples taken from sampled trawl hauls.

(b) *Haul-specific data.*

(1) The information listed in paragraphs (b)(1)(i) through (xiii) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

- (i) Date.
- (ii) Time of day gear is deployed.
- (iii) Latitude and longitude at beginning of haul.
- (iv) Bottom depth.
- (v) Fishing depth of trawl.
- (vi) The ratio of the number of Chinook salmon to the total round weight of groundfish.
- (vii) The ratio of the number of other salmon to the total round weight of groundfish.
- (viii) The ratio of total round weight of halibut to the total round weight of groundfish.
- (ix) The ratio of total round weight of herring to the total round weight of groundfish.

- (x) The ratio of the number of king crab to the total round weight of groundfish.
- (xi) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.
- (xii) Sea surface temperature (where available).
- (xiii) Sea temperature at fishing depth of trawl (where available).

(2) The identity of the vessels from which the data in paragraph (b)(1) of this section are collected will not be released.

(c) Competitive harm. In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (a) and (b) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

§ 679.55 Observer Fees

(a) Responsibility. Owners of a shoreside processor or a stationary floating processor named on an FPP or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at § 679.55(c) must comply with the requirements of this section. Non-renewal of an FPP or a Registered Buyer permit does not affect the permit holder’s liability for noncompliance with this section.

(b) Observer fee liability determination. After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, port or port-group, and gear category. The total fee liability for each permit holder will be determined by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) Landings subject to the observer fee. The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

Row #	Fishery/species	Will fee be assessed on the fish landed?	
		Vessel not designated on an	Vessel designated on

		FFP	an FFP
Landings in Federally Managed Fisheries			
(1)	FMP groundfish (those listed on Table 2a to part 679), harvested in the EEZ in a groundfish fishery managed by NMFS, including CDQ	N/a, an FFP is required to retain any FMP groundfish from the EEZ.	Yes
(2)	Sablefish IFQ	Yes	Yes
(3)	Halibut IFQ or CDQ in Convention Waters	Yes	Yes
(4)	FMP groundfish landed incidental to halibut IFQ/CDQ or sablefish IFQ	No	Yes
Landings in Fisheries Managed by the State of Alaska			
Demersal Shelf Rockfish in the Southeast Outside District of the GOA (managed by State, catch accrues against a Federal TAC, catch can occur in both State waters and EEZ)			
(5)	DSR and any other FMP groundfish species landed incidental to the SEO DSR fishery	No	Yes
State of Alaska Parallel Groundfish Fishery (managed by State, catch of all FMP groundfish species accrue against Federal TAC, harvest occurs only in State waters)			
(6)	FMP groundfish	No	Yes
State of Alaska GHL Fisheries (managed by State, catch of target species does not accrue against Federal TAC, harvest occurs only in State waters)			
(7)	Target species, currently includes pollock, Pacific cod, and sablefish	No	No
(8)	FMP groundfish species landed incidental to the GHL target species, if catch accrues against a Federal TAC	No	Yes
State of Alaska fisheries for species not managed under an FMP , (managed by State, catch of target species does not accrue against Federal TAC, harvest could occur in State waters or the EEZ)			

(9)	Landings of the target species, including lingcod, black rockfish, and blue rockfish in the GOA and dark rockfish in the BSAI and GOA	No	No
(10)	FMP groundfish species landed incidental to the target species, if catch accrues against a Federal TAC	No	Yes
Salmon Troll Fishery (managed by the State, harvest occurs in both State waters and EEZ)			
(11)	Target species (salmon)	No	No
(12)	FMP groundfish species landed incidental to the target species, if catch accrues against a Federal TAC	No	Yes
Landings of FMP groundfish that are used as bait			
(13)	If sold for bait (disposition code = 61 as defined in table 1b to part 679)	No	Yes
(14)	If retained for bait and not sold (disposition code = 92 as defined in table 1b to part 679)	No	No
Landings of fish that are not managed under an FMP and do not accrue against a Federal TAC			
(15)	Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ, if harvested in a Federal groundfish fishery, a parallel groundfish fishery, or a State GHF fishery.	No	No

(d) *Standard ex-vessel prices—*

(1) *General.* NMFS will publish the standard ex-vessel prices used to determine the observer fee in the Federal Register during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and equivalent headed-and-gutted weight for IFQ halibut and CDQ halibut.

(2) *Effective duration.* The standard ex-vessel prices will remain in effect until revised by subsequent notification in the Federal Register.

(3) *Standard ex-vessel price determination and use—*

(i) *Groundfish standard ex-vessel prices.* Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the ADF&G COAR described at § 679.5(p), the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), and methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: pelagic trawl gear; non-pelagic trawl gear; and non-trawl gear.

(ii) *Halibut and fixed gear sablefish standard ex-vessel prices.* Data submitted to NMFS on the IFQ registered buyer report under § 679.5(l)(7) will be used to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) halibut;

(B) IFQ sablefish, and;

(C) sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) *Confidentiality.* Standard ex-vessel prices will be aggregated among ports if fewer than three entities participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.* The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in the Federal Register in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) *Observer fee percentage.* The observer fee percentage is 1.25%.

(g) *Fee collection.* A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) *Payment—*

(1) Payment due date. A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) Payment recipient. Make electronic payment payable to NMFS.

(3) Payment address. Payments must be made electronically through the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be provided on the payment website and on the observer fee liability invoice to be mailed to each permit holder.

(4) Payment method. Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) Underpayment of fee liability.

(i) Under § 679.4, an applicant will not receive a new FPP or Registered Buyer permit until he or she submits a complete permit application. A complete application shall include full payment of an applicant’s observer fee liability as determined by NMFS.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FPP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(i) *Overpayment of fee.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) *Appeals.* A permit holder who receives an IAD may either pay the fee liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder specified in paragraph (a) of this section has the burden of proving his or her claim.

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Proposed changes to other sections of 50 CFR Part 679

679.1 General

Revise

In § 679.1 Purpose and Scope

Revise

(f) *Groundfish and Halibut Observer Program.*

Regulations in this part govern elements of the Groundfish and Halibut Observer Program.

679.2 Definitions

Remove

Fishing Day – Becomes obsolete under new regulations.

Legal Proceeding – Specific to but not used in Subpart E

Revise

Decertification – as used in § 679.53(c) means action taken by a decertifying official under § 679.53(c)(3) to indefinitely revoke certification of observers or observer providers. An observer or observer provider whose certification is so revoked is decertified.

Fishing Trip –

(3) Groundfish and Halibut Observer Program. With respect to subpart E of this part, one of the following periods:

(i) Catcher vessels. An operator of a catcher vessel is engaged in a fishing trip from the time the harvesting of groundfish is begun until the offload or transfer of all fish or fish product from that vessel.

(ii) IFQ program. With respect to the IFQ program, the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species.

Observer means any

(1) Individual who is ~~awarded NMFS observer certification to carry out observer responsibilities under this part, and who is~~ employed by an observer provider for the purposes of providing observer services to vessels, shoreside processors or stationary floating processors under this part; or

(2) NMFS staff ~~or other individual authorized by NMFS~~ deployed, at the direction of the Regional Administrator, aboard vessels or at shoreside processors or stationary floating processors for purposes of providing observer services as required for vessels, shoreside processors or stationary floating processors under § 679.51(a) or (b), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

Add

Parallel groundfish fishery – With respect to Subpart E of this part, parallel groundfish fishery means a fishery that occurs in State waters (from 0 to 3 nm) adjacent to the BSAI or GOA management areas and

open concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal TAC.

679.4 Permits

Revise

(d)(3) *Registered Buyer Permit.* (i) A Registered Buyer permit authorizes the person identified on the permit to receive and make an IFQ landing by an IFQ permit holder or IFQ hired master permit holder or to receive and make a CDQ halibut landing by a CDQ permit holder or CDQ hired master permit holder at any time during the fishing year for which it is issued until the Registered Buyer permit expires, or is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under 15 CFR part 904.

(ii) A Registered Buyer permit is required of:

(A) Any person who receives IFQ halibut, CDQ halibut or IFQ sablefish from the person(s) who harvested the fish;

(B) Any person who harvests IFQ halibut, CDQ halibut or IFQ sablefish and transfers such fish in a dockside sale, outside of an IFQ regulatory area, or outside the State of Alaska.

(C) A vessel operator who submits a Departure Report (see § 679.5(l)(4)).

(iii) A registered buyer permit is issued on an annual cycle from March 1 through February 28 by the Regional Administrator to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) For the Registered Buyer application to be considered complete, all fees due to NMFS per § 679.55 must be paid.

(iv) A Registered Buyer permit is in effect from the first day of March in the year it is issued or from the date of issuance, whichever is later, through the end of the current annual cycle, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

(vi) A Registered Buyer permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. A Registered Buyer permit may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM for more information by telephone, locally at 907-586-7202 (Option #2) or toll-free at 800-304-4846 (Option #2).

* * * * *

(f) *Federal processor permit (FPP) —(1) Requirement.* No shoreside processor of the United States or stationary floating processor may receive or process groundfish harvested in the GOA or BSAI, unless the owner first obtains a Federal processor permit issued under this part. A Federal processor permit is issued without charge.

(2) *Contents of an FPP application.* To obtain an FPP, the owner must complete an FPP application and provide the following information (see paragraphs (f)(2)(i) through (v) of this section for each shoreside floating processor and shoreside processor plant to be permitted):

(i) *New or amended permit.* Indicate whether application is for a new or amended FPP; and if an amended permit, provide the current FPP number. Indicate whether application is for a shoreside processor or a shoreside floating processor.

(ii) *Owner information.* Indicate the name(s), permanent business mailing address, business telephone number, business fax number, and business email address of all owners, and if applicable, the name of any person or company (other than the owner) who manages the operations of the shoreside processor or shoreside floating processor.

(iii) *Shoreside floating processor information.* Indicate the vessel name; whether this is a vessel of the United States; USCG documentation number; ADF&G vessel registration number; ADF&G processor code; the vessel's LOA (ft); registered length (ft); gross tonnage; net tonnage; shaft horsepower; homeport (city and state); and whether choosing to receive a GOA inshore processing endorsement. A GOA inshore processing endorsement is required in order to process GOA inshore pollock and GOA inshore Pacific cod.

(iv) *Shoreside processor information.* Indicate the shoreside processor's name; permanent business mailing address; physical location of plant at which the shoreside processor is operating (street, city, state, zip code); whether the shoreside processor is replacing a previous processor at this facility (YES or NO, and if YES, name of previous processor); whether multiple processing businesses are using this plant; whether the owner named in paragraph (f)(2)(ii) of this section owns this plant; ADF&G processor code; business telephone number; business fax number; and business e-mail address.

(v) For the application to be considered complete, all fees required by NMFS per § 679.55 must be paid.

(vi) *Signature.* The owner or agent of the owner of the shoreside processor or shoreside floating processor must sign and date the application. If the owner is a company, the agent of the owner must sign and date the application.

679.7 Prohibitions

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

(a) *Groundfish of the GOA and BSAI —(1) Federal Fisheries Permit.* (i) Fish for groundfish in the BSAI or GOA with a vessel of the United States that does not have on board a valid Federal Fisheries Permit issued under § 679.4.

(ii) Conduct directed fishing for Atka mackerel, Pacific cod, or pollock with pot, hook-and-line, or trawl gear from a vessel of the United States that does not have on board a valid Federal

Fisheries Permit issued under § 679.4 and endorsed for Atka mackerel, Pacific cod, or pollock under § 679.4(b)(5)(vi).

(iii) Conduct fishing operations from a vessel using other than the operation type(s) specified on the FFP (see § 679.4(b)) issued for that vessel.

(2) Conduct any fishing contrary to notification of inseason action, closure, or adjustment issued under § 679.20, § 679.21, § 679.22, § 679.25.

(3) *Groundfish and Halibut Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish and Halibut Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by NMFS staff or other individuals authorized by NMFS under § 679.51(c) or § 679.51 (d)(1)(ii), provide observer services to participants in the full observer coverage category at § 679.51(a)(2) and (b)(2) without an observer provider permit issued under §679.52(a).

(iii) Procure observers from a permitted observer provider under § 679.52(a) unless required by § 679.51(a)(2) or (b)(2).

* * * * *

(g) *Groundfish and Halibut Observer Program.* (1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

(1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer.

(4) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties.

(5) Harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(6) Fish for or process fish without observer coverage required under subpart E of this part.

(7) Embark on a fishing trip to fish for halibut or directed fish for groundfish without hailing-in to the Alaska Observer Deployment System per requirements at § 679.51(a)(1)(ii).

(8) Embark on a fishing trip to fish for halibut or directed fish for groundfish without carrying an observer if the fishing trip is selected for observer coverage per § 679.51(a)(1)(ii)(C)(2), or the vessel is selected for observer coverage per § 679.51(a)(1)(ii)(D).

(9) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.