

§ 679.52 Observer Provider Permitting and Responsibilities (Effective January 1, 2013)

(a) Observer provider permit

(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 provider.

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 other employees. 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 email address for each office.

(C) Authorized agent. For **an observer provider** 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 **have no** conflict of interest as described in 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, comprised of NMFS **employees**, 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. **If the applicant is a corporation, the review board also will evaluate** the following criteria for each owner, or owners, board members, and officers:

(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 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 (a).

(7) Expiration of observer provider permit.

(i) An 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 or halibut industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to an observer provider if NMFS' deployment records indicate that the observer provider has not deployed an observer during a period of 12 continuous months. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. An observer provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) Sanctions.

Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers.*

An observer provider that supplies 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 a qualified candidate an individual 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-prepared pamphlets and other information 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 includes the following conditions 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 an Observer Program employee is 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)(11)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) Ensure an observer completes duties in a timely manner.

An observer provider must ensure that **an observer** employed by that observer provider **performs** the following in a complete and timely manner:

(i) When an observer is scheduled for a final deployment debriefing under paragraph **(b)(11)(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 **that** 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) Assign observer to vessels and processors.

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)(11)(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) Respond to industry requests for observers.

An observer provider must provide an observer for deployment as requested by vessels and processors to fulfill vessel and processor requirements for observer coverage under § 679.51(a) and (b). An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

(6) Provide 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.

(7) Provide observer deployment logistics.

(i) An observer provider must provide to each **observer it employs:**

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel and shoreside or stationary 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 necessary services necessary to observers assigned to fishing vessels or shoreside **processing** or stationary floating processing facilities.

(ii) Except as provided in paragraph **(b)(7)(iii)** of this section, **an observer provider must provide to** each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor, or shoreside assignments while still under contract with **an** observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary 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 the observer is assigned:

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

(B) For a period not to exceed **24 hours** following completion of an offload **for which** 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 **a shoreside processing facility must** 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.

(8) Limit observer deployment.

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 stationary 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 stationary floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(9) Verify vessel USCG Safety Decal.

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 **the vessel with an observer aboard may depart**. 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.

(10) Provide 24 hours a day communications with observers.

An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving **an observer** or problems concerning observer logistics, whenever **an observer is** at sea, stationed at a shoreside processor or stationary floating processor, in transit, or in port awaiting vessel or processor **(re)assignment**.

(11) Provide information to the Observer Program Office.

An observer provider must provide all the following information to the Observer Program Office by electronic transmission (email), fax, or other method specified by NMFS **within the specified timeframes**.

(i) **Registration materials.** Observer training and briefing registration materials 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 gender;

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

(4) A statement signed by the candidate under penalty of perjury **that** discloses any criminal convictions of the candidate.

(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) **Statement of 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 **includes** the observer's name; vessel, shoreside processor, or stationary floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) **Physician's statement.** 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 the physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize **their individual** safety or the safety of others while **the observer or observer candidate is** 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 **read** the NMFS-prepared pamphlet provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of this section **and was** made aware of the duties of the observer **as well as** the dangerous, remote, and rigorous nature of the work. 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 report.** A deployment/logistics report must be submitted by Wednesday, 4:30 p.m., 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 stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. **The report must include the location of any observer employed by the observer provider who is** not assigned to a vessel, shoreside processor, or stationary floating processor.

(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 **the debriefing is scheduled** and must include the observer's name, cruise number, vessel, or shoreside or stationary 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 state** that the insurance company will notify the certificate holder if insurance coverage is changed or canceled **and verify the following coverage provisions:**

(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; **and**

(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)**, 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 stationary floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

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

(A) A copy of the 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 catcher/processor, catcher vessel, mothership, stationary 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, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days must 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 expenses must be separated and identified.

(ix) Change in observer provider management and contact information. Except for changes in ownership

addressed under paragraph (a)(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 (a)(3)(i) through (iv) of this section. Within 30 days of the effective date of such change, the 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 paragraphs (a)(3)(iii) or (a)(3)(iv) of this section will be subject to NMFS review and determinations under paragraphs (a)(4) through (7) 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) of this chapter;

(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.

(12) Replace 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.

(13) 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.

nonperformance of the official duties of the observer provider.

(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