

§ 679.53 Observer certification and responsibilities
(Effective January 1, 2013)

(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 under § 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 on whether to issue or deny observer certification.

(3) Certification requirements.

NMFS may certify **an individual** who, in addition to any other relevant considerations:

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

(ii) **Has** provided, through their observer provider:

(A) Information identified by NMFS at **§ 679.52(b)(11)(i)(A)(3) and (4)** and in writing from the Observer Program; and

(B) Information identified by NMFS at **§ 679.52(b)(11)(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)(11)(iii)**, respectively;

(iv) **Has** 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 **orally** notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the **oral notification, the Observer Program will notify the observer candidate in writing.** The written notification will **specify** why the candidate failed the training and whether the candidate may 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 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 **NMFS** 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 for a period of time specified by the Observer Program after his or her most recent debriefing. **In order to renew the endorsement, the observer must successfully retake the certification training.** Observers will be notified of any changes to the endorsement expiration period prior to the effective date of the change.

(ii) **Annual general endorsement.** Each observer must obtain an annual general endorsement to their certification prior to his or her initial deployment within any calendar year subsequent to a **calendar** 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 stationary floating processors or at shoreside processors participating in fisheries **as prescribed in § 679.51(a)(2)(vi)(A) through (E)**. A level 2 endorsement to an observer's certification may be obtained if the observer meets the following requirements:

(A) **Previously served as an** observer in the groundfish **or halibut** fisheries off Alaska **and** has completed at least 60 days of observer data collection;

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

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

(v) An observer who has obtained a level 2 endorsement to **his or her** observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a "lead" level 2 observer endorsement **if the observer meets** 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 30 sets on a vessel using nontrawl gear.

(b) Standards of observer conduct

(1) Limitations on conflict of interest.

(i) An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2):

(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 observer's official duties.

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

(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.

An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2) must:

(i) Perform 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 **aboard** 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 **issued under paragraph (a) of this section** 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 **an observer** as specified in writing by the Observer Program; or

(B) Failed to abide by the standards of conduct for **an observer** 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 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 in cases in which public health, interest, or safety require such action. 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.