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and the operator of a vessel used to harvest IFQ halibut, CDQ halibut, or IFQ sablefish must comply with this subpart. The owner of a vessel or a shoreside processor must ensure that the operator or manager complies with this subpart.

(2) *Exceptions.* A catcher vessel is not subject to the requirements of this subpart when delivering unsorted codends to a mothership.

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

(b) [Reserved]

[77 FR 70091, Nov. 21, 2012, as amended at 83 FR 30532, June 29, 2018]

§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.

(a) *Observer requirements for vessels—*
(1) *Groundfish and halibut fishery partial coverage category—*(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial 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) A catcher vessel designated on an FFP under § 679.4(b)(1);

(B) A catcher vessel when fishing for halibut while carrying a person named on a permit issued under § 679.4(d)(1)(i), (d)(2)(i), or (e)(2), or for IFQ sablefish, as defined at § 679.2, while carrying a person named on a permit issued under § 679.4(d)(1)(i) or (d)(2)(i); or

(C) A catcher/processor placed in the partial coverage category under paragraph (a)(3) of this section; or

(D) A catcher vessel less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii).

(ii) *Registration and notification of observer deployment.* The Observer Declare and Deploy System (ODDS) is the communication platform for the partial coverage category by which NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through ODDS for coordinating with an observer pro-

vider for any required observer coverage. Access to ODDS is available through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(A) *Registration.* NMFS will enter information into ODDS about all partial coverage category vessels that are designated on an FFP and all catcher vessels that are not designated on an FFP but that landed sablefish IFQ or halibut IFQ or CDQ in the previous or current year. Owners or operators are not responsible for initial registration of their vessel in ODDS.

(B) *Notification.* Upon entry into ODDS, NMFS will notify the owner or operator of his or her vessel's selection pool. Owners and operators must comply with all further instructions set forth by ODDS.

(C) *Trip selection pool.* (1) A minimum of 72 hours prior to embarking on each fishing trip, the operator of a vessel in the trip selection pool must register the anticipated trip with ODDS.

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

(3) An operator may embark on a fishing trip registered with ODDS:

(i) *Not selected trip.* At any time if ODDS indicates that the fishing trip is not selected for observer coverage.

(ii) *Selected trip.* When an observer is aboard the vessel if ODDS indicates that the fishing trip is selected for observer coverage.

(4) *Delayed trip.* A selected fishing trip not embarked upon within 48 hours of the time specified in the registration with ODDS is invalidated. The operator must register any new trip in accordance with 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 and an observer is aboard the vessel.

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(ii) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.

(iii) A vessel must make a minimum of one delivery to a tender vessel to be subject to paragraph (3)(ii) of the fishing trip definition at § 679.2.

(D) *Vessel selection pool.* A vessel selected for observer coverage is required to have an observer on board for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by ODDS.

(iii) *Release from observer coverage.* The Observer Program 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 classes of vessels are in the full observer coverage category when harvesting halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) Catcher/processors, except a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section;

(B) Motherships; and

(C) Catcher vessels while:

(1) Directed fishing for pollock in the BS;

(2) Using trawl gear or hook-and-line gear when groundfish CDQ fishing (see § 679.2), except for catcher vessels less than or equal to 46 ft LOA using hook-and-line gear when groundfish CDQ fishing under § 679.32(c)(3)(iii);

(3) Participating in the Rockfish Program; or

(4) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section.

(ii) *Observer coverage requirements.* Unless subject to the partial observer coverage category per paragraph (a)(1)(i) of this section, a vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer

coverage in accordance with paragraph (a)(2)(vi) of this section.

(iii) *Observer workload.* The time required for an 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.

(iv) *Catcher/processor classification.* (A) For purposes of 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.

(B) [Reserved]

(v) [Reserved]

(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 catch, process, deliver, or receive CDQ groundfish.

(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 paragraph (a)(2)(vi)(B)(2) of this section.

(2) *Catcher/processors using trawl gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(C) of this section.

(3) *Catcher/processors using hook-and-line gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(E) of this section.

(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 must be aboard 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 observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(B) *BSAI pollock fisheries—(1) Listed AFA catcher/processors, catcher/processors designated on listed AFA catcher/processor permits, and AFA motherships.* The owner or operator of a listed AFA catcher/processor, a catcher/processor designated on a listed AFA catcher/processor permit, or an AFA mothership must have aboard at least two observers, at least one of whom must be endorsed as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard 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.

(3) *Unlisted AFA catcher/processors and catcher/processors designated on unlisted AFA catcher/processor permits.* The owner or operator of an unlisted AFA catcher/processor or a catcher/processor designated on an unlisted AFA catcher/processor permit must have aboard 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 endorsed as a lead level 2 observer. When a listed 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 have aboard at least two observers, at least one of which must be endorsed as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard 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 aboard 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. At least one observer must be endorsed as a lead level 2 observer. 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—(1) 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 aboard for each day that the vessel is used to catch or process fish 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. At least one observer must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(2) *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 aboard 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. At least one observer must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(E) *Longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(1) *Increased observer coverage option.* If the vessel owner selects the increased observer coverage option under

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§ 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(2) *Scales option.* If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(F) *Halibut deck sorting.* Vessels subject to § 679.120 must have at least two observers aboard at all times when halibut deck sorting may occur; one observer must be endorsed as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(3) *Catcher/processor placement in the partial observer coverage category for a year—(i) Definitions.* For purposes of this paragraph (a)(3), these terms are defined as follows:

(A) *Average weekly groundfish production* means the annual groundfish round weight production estimate for a catcher/processor, divided by the number of separate weeks during which production occurred, as determined by production reports, excluding any groundfish caught using trawl gear.

(B) *Fishing year* means the year during which a catcher/processor might be placed in partial observer coverage.

(C) *Standard basis year* means the fishing year minus two years.

(D) *Alternate basis year* means the most recent year before the standard basis year in which a catcher/processor had any groundfish production but not earlier than 2009.

(ii) *Deadline for requesting partial observer coverage.* For the 2017 fishing year and every fishing year after 2017, the deadline for requesting partial observer coverage is July 1 of the year prior to the fishing year.

(iii) *Requirements for placing a catcher/processor in the partial observer coverage category.* NMFS will place a catcher/processor in the partial observer coverage category for a fishing year if the owner of the catcher/processor requests placement in partial observer coverage by the deadline for requesting partial observer coverage for that fishing year and the catcher/processor meets the following requirements:

(A) An average weekly groundfish production of:

(1) 79,000 lb (35.8 mt) or less, but more than zero lb, in the standard basis year; or

(2) Zero lb in the standard basis year and 79,000 lb (35.8 mt) or less, but more than zero lb, in the alternate basis year; or

(3) Had no production from 2009 through the standard basis year; and

(B) Is not a catcher/processor using trawl gear; and

(C) Is not subject to additional observer coverage requirements in paragraph (a)(2)(vi) of this section.

(iv) *How to request placement of a catcher/processor in partial observer coverage.* A vessel owner must submit a request form to NMFS. The request form must be completed with all required fields accurately completed. The request form is provided by NMFS and is available on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>). The submittal methods are described on the form.

(v) *Notification of placement in the partial observer coverage category.* NMFS will notify the owner if the catcher/processor has been placed in the partial observer coverage category in writing. Until NMFS provides notification, the catcher/processor is in the full observer coverage category for that fishing year.

(vi) *Initial Administrative Determination (IAD).* If NMFS denies a request to place a catcher/processor in the partial observer coverage category, NMFS will provide an IAD, which will explain the basis for the denial.

(vii) *Appeal.* If the owner of a catcher/processor wishes to appeal NMFS' denial of a request to place a catcher/processor in the partial observer coverage category, the owner may appeal

the determination under the appeals procedure set out at 15 CFR part 906.

(4) *BSAI trawl catcher vessel placement in the full observer coverage category for one year*—(i) *Applicability*. The owner of a catcher vessel in the partial observer coverage category under paragraph (a)(1)(i) of this section may request to be placed in the full observer coverage category for all directed fishing for groundfish using trawl gear in the BSAI for a calendar year.

(ii) *How to request full observer coverage for one year*. A trawl catcher vessel owner must complete a full observer coverage request and submit it to NMFS using ODDS. ODDS is described in paragraph (a)(1)(ii) of this section.

(iii) *Deadline to request full observer coverage*. A full observer coverage request must be submitted by October 15 of the year prior to the calendar year in which the catcher vessel would be placed in the full observer coverage category.

(iv) *Notification*. NMFS will notify the vessel owner through ODDS of approval or denial to place a trawl catcher vessel in the full observer coverage category. Unless otherwise specified in paragraph (a)(2) of this section, a trawl catcher vessel remains in the partial observer coverage category under paragraph (a)(1)(i) of this section until a request to place a trawl catcher vessel in the full observer coverage category has been approved by NMFS. Once placement in the full observer coverage category is approved by NMFS, a trawl catcher vessel cannot be placed in the partial observer coverage category until the following year.

(v) *Initial Administrative Determination (IAD)*. If NMFS denies a request to place a trawl catcher vessel in the full observer coverage category, NMFS will provide an IAD, which will explain the basis for the denial.

(vi) *Appeal*. If the owner of a trawl catcher vessel wishes to appeal NMFS' denial of a request to place a trawl catcher vessel in the full observer coverage category, the owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

(b) *Observer requirements for shoreside processors and stationary floating processors*—(1) *Shoreside processor and sta-*

tionary floating processor partial observer coverage category. (i) Unless otherwise specified in paragraph (b)(2) of this section, a shoreside processor or a stationary floating processor designated or required to be designated on an FPP under §679.4(f)(1) is in the partial observer coverage category when receiving or processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at §679.2.

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

(2) *Shoreside processor and stationary floating processor full observer coverage category*. An AFA inshore processor is in the full observer coverage category.

(i) *Coverage level*. An AFA inshore processor must 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 BS. An AFA inshore processor that, for more than 12 consecutive hours in a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must 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 employee observers*. (1) Any vessel, shoreside processor, or stationary 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

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Regional Administrator, a NMFS employee to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes as specified by the Regional Administrator.

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

(3) Vessel, shoreside processor, and stationary 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, 7600 Sand Point Way NE., Seattle, WA 98115-0070 or transmitted by facsimile to 206-526-4066.

(d) *Procurement of observer services*—(1) *Full coverage category.* (i) The owner of a vessel, shoreside processor, or stationary floating processor 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) The owner of a vessel, shoreside processor, or stationary floating processor is required to arrange and pay for observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that the vessel, shoreside processor, or stationary floating processor shall use a NMFS employee or individual 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.* The owner of a vessel in the partial observer coverage category per paragraph (a)(1) of this section must comply with instructions provided by ODDS to procure observer coverage for the required duration.

(e) *Responsibilities*—(1) *Vessel responsibilities.* An operator of a vessel re-

quired 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, deckbosses, 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 on board:

(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) *Communications and observer data entry*—(A) *Observer use of equipment.* Allow an observer 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 observer or the United States.

(B) The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, or catcher vessel 125 ft LOA or longer (except for a catcher vessel fishing for groundfish with pot gear) must provide the following equipment, software and data transmission capabilities:

(1) *Observer access to computer.* Make a computer available for use by the observer.

(2) *NMFS-supplied software.* Ensure that the most recent release of NMFS data entry software provided by the Regional Administrator or other approved software is installed on the computer described in paragraph (e)(1)(iii)(B)(1) of this section.

(3) *Data transmission.* The computer and software described in paragraphs (e)(1)(iii)(B)(1) and (2) of this section must be connected to a communication

device that provides a point-to-point connection to the NMFS host computer.

(4) *Functional and operational equipment.* Ensure that the required equipment described in paragraph (e)(1)(iii)(B) of this section and that is used by an observer to enter or transmit data is fully functional and operational. “Functional” means that all the tasks and components of the NMFS-supplied, or other approved, software described in paragraph (e)(1)(iii)(B)(2) of this section and any required data transmissions to NMFS can be executed effectively aboard the vessel by the equipment.

(C) The operator of a catcher vessel participating in the Rockfish Program or a catcher vessel less than 125 ft LOA directed fishing for pollock in the BS must comply with the computer and software requirements described in paragraphs (e)(1)(iii)(B)(1), (2), and (4) of this section.

(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 on board, 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 baskets 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.

(G) During halibut deck sorting, providing halibut to the observer on deck.

(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 observers are transferred, 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 stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary 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 stationary 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 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 stationary 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 communications equipment required under paragraph (e)(2)(iii)(B) of this section that is used by observers to enter and transmit data is 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 any data transmissions to NMFS can be executed effectively by the communications equipment.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's or stationary floating processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's or stationary floating processor's landing report, 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.

(vi) *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, stationary floating processor, buying station, or tender vessel is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary 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.

(f) *Electronic monitoring system requirements for vessels that use nontrawl gear.* Vessels that use nontrawl gear in the partial coverage category in paragraph (a)(1)(i) of this section may be eligible for EM coverage instead of observer coverage.

(1) *Vessel placement in the EM selection pool—(i) Applicability.* The owner or operator of a vessel that uses nontrawl gear in the partial coverage category under paragraph (a)(1)(i) of this section may request to be placed in the EM selection pool.

(ii) *How to request placement in the EM selection pool.* A vessel owner or operator must complete an EM request and submit it to NMFS using ODDS. Access to ODDS is available through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. ODDS is described in paragraph (a)(1)(ii) of this section.

(iii) *Deadline to submit an EM request.* A vessel owner or operator must submit an EM request in ODDS by November 1 of the year prior to the calendar year in which the catcher vessel would be placed in the EM selection pool.

(iv) *Approval for placement in the EM selection pool.* NMFS will approve a nontrawl gear vessel for placement in the EM selection pool based on criteria specified in NMFS' Annual Deployment Plan, available through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Criteria may include, but are not limited to, availability of EM systems, vessel gear type, vessel length, area fished, number of trips or total catch, sector, target fishery, and home or landing port.

(v) *Notification of approval for placement in the EM selection pool.* (A) NMFS will notify the vessel owner or operator

through ODDS of approval for the EM selection pool for the next calendar year. The vessel remains subject to observer coverage under paragraph (a)(1)(i) of this section unless NMFS approves the request for placement of the vessel in the EM selection pool.

(B) Once the vessel owner or operator receives notification of approval from NMFS, the vessel owner or operator must comply with the vessel owner or operator responsibilities in paragraphs (f)(4) and (5) of this section and all further instructions set forth by ODDS.

(vi) *Initial Administrative Determination (IAD)*. If NMFS denies a request to place a vessel in the EM selection pool, NMFS will provide an IAD to the vessel owner, which will explain the basis for the denial.

(vii) *Appeal*. If the vessel owner wishes to appeal NMFS' denial of a request to place the vessel in the EM selection pool, the owner may appeal the determination under the appeals procedure set out at 15 CFR part 906.

(viii) *Duration*. Once NMFS approves a vessel for the EM selection pool, that vessel will remain in the EM selection pool until—

(A) NMFS disapproves the VMP under paragraph (f)(4) of this section;

(B) The vessel owner or operator notifies NMFS that the vessel intends to leave the EM selection pool in the following fishing year under paragraph (f)(1)(ix) of this section; or

(C) The vessel no longer meets the EM selection pool criteria specified by NMFS.

(ix) *How to leave the EM selection pool*. A vessel owner must complete a request to leave the EM selection pool and submit it to NMFS using ODDS. ODDS is described in paragraph (a)(1)(ii) of this section.

(x) *Deadline to submit a request to leave the EM selection pool*. A vessel owner or operator must submit a request to leave the EM selection pool by November 1 of the year prior to the calendar year in which the vessel would be placed in observer coverage.

(2) *Notification of EM selection*—(i) Prior to embarking on each fishing trip, the operator of a vessel in the EM selection pool with a NMFS-approved VMP must register the anticipated trip with ODDS.

(ii) ODDS will notify the vessel operator whether the trip is selected for EM coverage and provide a receipt number corresponding to this notification. Trip registration is complete when the vessel operator receives the receipt number.

(iii) An operator may embark on a fishing trip registered with ODDS:

(A) *Not selected trip*. At any time if ODDS indicates that the fishing trip is not selected for EM coverage.

(B) *Selected trip*. After the vessel operator follows the instructions in ODDS and complies with the responsibilities under paragraphs (f)(4) and (5) of this section, if ODDS indicates that the fishing trip is selected for EM coverage.

(3) *EM coverage duration*. If selected, a vessel is required to use the EM system for the entire fishing trip.

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

(ii) At the end of the fishing trip selected for EM coverage, the vessel operator must use ODDS to close the fishing trip following the instructions in the VMP and submit the video data storage devices and associated documentation as outlined in paragraph (f)(5)(vii) of this section.

(4) *Vessel Monitoring Plan (VMP)*. Once approved for the EM selection pool and prior to registering a fishing trip in ODDS under paragraph (f)(2) of this section, the vessel owner or operator must develop a VMP with the EM service provider following the VMP template available through the NMFS Alaska Region Web site at <https://alaskafisheries.noaa.gov/>.

(i) The vessel owner or operator must sign and submit the VMP to NMFS each calendar year.

(ii) NMFS will approve the VMP for the calendar year if it meets all the requirements specified in the VMP template available through the NMFS Alaska Region Web site <https://alaskafisheries.noaa.gov/>.

(iii) If the VMP does not meet all the requirements specified in the VMP template, NMFS will provide the vessel owner or operator the opportunity to submit a revised VMP that meets all

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the requirements specified in the VMP template.

(iv) If NMFS does not approve the revised VMP, NMFS will issue an IAD to the vessel owner or operator that will explain the basis for the disapproval. The vessel owner or operator may file an administrative appeal under the administrative appeals procedures set out at 15 CFR part 906.

(v) If changes are required to the VMP to improve the data collection of the EM system or address fishing operation changes, the vessel owner or operator must work with NMFS and the EM service provider to alter the VMP. The vessel owner or operator must sign the updated VMP and submit these changes to the VMP to NMFS prior to departing on the next fishing trip selected for EM coverage.

(5) *Vessel owner or operator responsibilities.* To use an EM system under this section, the vessel owner or operator must:

(i) Make the vessel available for the installation of EM equipment by an EM service provider.

(ii) Provide access to the vessel's systems and reasonable assistance to the EM service provider.

(iii) Maintain a copy of a NMFS-approved VMP aboard the vessel at all times when the vessel is directed fishing in a fishery subject to EM coverage.

(iv) Comply with all elements of the VMP when selected for EM coverage in ODDS.

(v) Maintain the EM system, including the following:

(A) Ensure power is maintained to the EM system at all times when the vessel is underway.

(B) Ensure the system is functioning for the entire fishing trip, camera views are unobstructed and clear in quality, and catch and discards may be completely viewed, identified, and quantified.

(C) Ensure EM system components are not tampered with, disabled, destroyed, or operated or maintained improperly.

(vi) Complete pre-departure function test and daily verification of EM system.

(A) Prior to departing port, the vessel operator must conduct a system

function test following the instructions from the EM service provider. The vessel operator must verify that the EM system has adequate memory to record the entire fishing trip.

(1) If the EM system function test detects a malfunction identified as a high priority in the vessel's VMP or does not allow the data collection objectives to be achieved, the vessel must remain in port for up to 72 hours to allow an EM service provider time to conduct repairs. If the repairs cannot be completed within the 72-hour time frame, the vessel is released from EM coverage for that fishing trip and may depart on the scheduled fishing trip. A malfunction must be repaired prior to departing on a subsequent fishing trip. The vessel will automatically be selected for EM coverage for the subsequent fishing trip after the malfunction has been repaired.

(2) If the EM system function test detects a malfunction identified as a low priority in the vessel's VMP, the vessel operator may depart on the scheduled fishing trip following the procedures for low priority malfunctions described in the vessel's VMP. At the end of the trip the vessel operator must work with the EM service provider to repair the malfunction. The vessel operator may not depart on another fishing trip selected for EM coverage with this system malfunction unless the vessel operator has contacted the EM service provider.

(B) During a fishing trip selected for EM coverage, before each set is retrieved the vessel operator must verify all cameras are recording and all sensors and other required EM system components are functioning as instructed in the vessel's VMP.

(1) If a malfunction is detected, prior to retrieving the set the vessel operator must attempt to correct the problem using the instructions in the vessel's VMP.

(2) If the malfunction cannot be repaired at sea, the vessel operator must notify the EM service provider of the malfunction at the end of the fishing trip. The malfunction must be repaired prior to departing on a subsequent fishing trip selected for EM coverage.

(vii) At the end of a fishing trip selected for EM coverage, the vessel operator must submit the video data storage device and associated documentation identified in the vessel's VMP to NMFS using a method that requires a signature for delivery and provides a return receipt or delivery notification to the sender. The vessel operator must postmark the video data storage device and associated documentation no later than 2 business days after the end of the fishing trip. If the fishing trip ends in a remote port with limited postal service or at a tender vessel, the vessel operator must ensure the video data storage device and associated documentation is postmarked as soon as possible but no later than two weeks after the end of the fishing trip.

(viii) Make the EM system and associated equipment available for inspection upon request by OLE, a NMFS-authorized officer, or other NMFS-authorized personnel.

(6) *EM for fishing in multiple regulatory areas.* If a vessel owner or operator intends to fish in multiple regulatory areas using an EM system under the exception provided at §679.7(f)(4), the vessel owner or operator must:

(i) Meet the requirements described in paragraph (f) of this section.

(ii) Register in ODDS that he or she intends to fish in multiple regulatory areas using the exception in §679.7(f)(4).

(iii) Ensure the EM system is powered continuously during the fishing trip. If the EM system is powered down during periods of non-fishing, the VMP must describe alternate methods to ensure location information about the vessel is available for the entire fishing trip, as specified in the VMP template available through the NMFS Alaska Region Web site <https://alaskafisheries.noaa.gov/>.

(iv) If an EM system malfunction occurs during a fishing trip that does not allow the recording of retrieval location information and imagery of catch as described in the vessel's VMP, the

vessel operator must cease fishing and contact OLE immediately.

[77 FR 70091, Nov. 21, 2012, as amended at 79 FR 54601, Sept. 12, 2014; 81 FR 26745, May 4, 2016; 81 FR 37556, June 10, 2016; 81 FR 67117, Sept. 30, 2016; 81 FR 70607, Oct. 13, 2016; 81 FR 95457, Dec. 28, 2016; 82 FR 37002, Aug. 8, 2017; 83 FR 30532, 30533, June 29, 2018; 84 FR 55053, Oct. 15, 2019; 85 FR 850, Jan. 8, 2020]

§ 679.52 Observer provider permitting and responsibilities.

(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 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