

**§ 27.77 Recipients of Essential Air Service subsidies.**

Any air carrier receiving Federal financial assistance from the Department of Transportation under the Essential Air Service program shall, as a condition of receiving such assistance, comply with applicable requirements of this part and applicable section 504 and ACAA rules of the Department of Transportation.

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 960717195-6280-02; I.D. 070196E]

RIN 0648-A195

**Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** NMFS issues a final rule to implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP), and a technical amendment to clarify existing regulations that the observer coverage requirements for catcher vessels participating in the community development quota (CDQ) fisheries are in addition to the observer coverage requirements for the open access groundfish fisheries. This action also repeals regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish

mandatory groundfish observer coverage requirements through 1997.

Amendment 6 to the Crab FMP removes reference to the Research Plan. This action establishes an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions is recommended by the Council and implemented by NMFS.

**EFFECTIVE DATE:** January 1, 1997.

**ADDRESSES:** Copies of Amendments 47, 47, and 6 and the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the amendments may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

Copies of the information regarding observer qualifications, observer training/briefing requirements, and NMFS' selection criteria for observer contractors are available from the Observer Program Office, Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206-526-4197.

**FOR FURTHER INFORMATION CONTACT:** Kim S. Rivera, 907-586-7228.

**SUPPLEMENTARY INFORMATION:****Background**

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI) in the exclusive economic zone are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson Act) and are implemented by regulations for the U.S. fisheries off Alaska at 50 CFR part 679. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 600. The Crab FMP delegates management of the crab resources in the BSAI to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the Crab FMP appear at 50 CFR part 679.

This action implements regulations authorized under Amendments 47 and 47 to the Groundfish FMPs and

Amendment 6 to the Crab FMP. These amendments were approved by NMFS on October 3, 1996, and authorize the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program for 1997.

A full description of and background information on the repeal of the Research Plan and the establishment of an Interim Groundfish Observer Program and its specific elements may be found in the preamble to the proposed rule published in the Federal Register on August 2, 1996 (61 FR 40380), and in the EA/RIR prepared for this action.

Existing observer coverage requirements under Amendment 1 to the Research Plan are scheduled to expire on December 31, 1996. At its April 1996 meeting, the Council adopted an Interim Groundfish Observer Program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The Interim Groundfish Observer Program will extend 1996 groundfish observer coverage requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council. Under this action, observer coverage requirements for the BSAI king and Tanner crab fisheries will no longer be specified in Federal regulations. Observer coverage requirements for the crab fisheries will revert back to a Category 3 measure in the Crab FMP and will be specified by the Alaska Board of Fisheries.

Except for the minor changes noted below, the elements of the Interim Groundfish Observer Program as provided in the preamble of the proposed rule are unchanged in this rule. Three elements of the Interim Groundfish Observer Program will not be codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS' selection criteria for observer contractors. These elements were also provided in the preamble of the proposed rule and are unchanged in the final rule. They are available upon request (see **ADDRESSES**). Although they will not be codified, they are viewed as a part of the program. Prior to proposing future changes to these three elements, NMFS will publish a document in the Federal Register describing the proposed change(s) and providing an opportunity for public comment.

### Removal of Interim Final Rule To Authorize the Refund of Research Plan Fees

This action also serves as the final rule for the interim final rule that established a refund procedure for the Research Plan fee assessments collected in 1995 (61 FR 13782, March 28, 1996). Over \$5.8 million in collected Research Plan fees and earned interest were refunded to processors in May 1996. Because all funds in the North Pacific Fishery Observer Fund have been returned, the regulations implemented by the interim final rule are no longer necessary and are removed by this final rule.

### Technical Amendment

This action also implements a technical amendment to clarify existing regulations that the observer coverage requirements for catcher vessels participating in the CDQ pollock fisheries set forth at § 679.32(c) are in addition to the observer coverage requirements for vessels participating in the open access groundfish fisheries as set forth at § 679.50. It was never NMFS' intent to reduce the observer coverage in the open access groundfish fisheries because of required observer coverage obtained for the CDQ pollock fishery. The additional responsibilities and duties associated with monitoring the CDQ pollock harvest necessitated an additional observer to share in the increased work burden. The observer data collected in a CDQ fishery are specific to that management regime and are not meant to replace the observer data that are collected in the open access fishery. Observer coverage that a vessel operator obtains to participate in CDQ fisheries does not fulfill its observer coverage requirements for open access groundfish fisheries.

### Response to Comments

No written comments were received on the interim final rule that invited comments through April 29, 1996. Public comment on the proposed rule was invited through September 16, 1996. A public hearing teleconference on the repeal of the Research Plan was held August 19, 1996, and no oral comments were received. One letter of no comment from the U.S. Fish and Wildlife Service and one letter containing comments were received within the comment period for the proposed rule. A summary of the written comments and NMFS' response follow:

*Comment 1.* The requirement that qualified observers must have a statistics course is not necessary. A

familiarity with random sampling is pertinent to an observer applicant's suitability to the job, but this experience can be gained in field biology or even laboratory biology work as well as in statistics course work. This requirement could force observer contractors to refrain from hiring persons well prepared for work as an observer.

*Response.* NMFS disagrees. NMFS believes that statistical course work will provide an observer with the conceptual statistical skills/background necessary to achieve program goals relating to sampling and estimation. To maintain the integrity of observer data used for quota-monitoring and other fishery management purposes, observers must employ appropriate sampling techniques and understand the consequences of failure to do so. Formal training in statistics is necessary to provide this understanding.

NMFS requires prospective observers to have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences. It is unlikely that an individual could fulfill this degree requirement without taking a statistics course.

*Comment 2.* While the other insurance provisions that contractors would be required to carry (at § 679.50(i)(2)(xiv)(E)) protect observers, Contractual General Liability (CGL) insurance protects vessels, making its presence in this rulemaking peculiar. An observer injured on a vessel that hasn't elected to pay for CGL coverage has no fewer rights and no less protection than an observer injured on a vessel that has elected to pay for it. Should an observer bring a suit against a vessel that pays for CGL protection, then the contractor's insurance company steps in to defend the vessel. If an observer brings a suit against a vessel that doesn't pay for CGL protection, then the vessel's insurance company defends the vessel. Either way, the observer can bring suit. As an option to the proposed CGL coverage, NMFS should consider the alternative of requiring a contractor to have the ability to carry this coverage if a vessel requests it.

If NMFS' intent is to force contractors to carry this coverage for all vessels, the industry should be made aware that they will be forced to pay for this coverage. Costs presently range from \$12–20 per day, depending on vessel size and gear type, though these rates might change if all vessels were forced to participate.

*Response.* CGL insurance was recommended by the Council-appointed Insurance Technical Committee (ITC),

which represents industry, observer, and observer contractor interests. The ITC's objective was to address the insurance coverage needs of vessels required to carry observers as well as the insurance needs of observers and to formulate a standardized insurance coverage package. CGL coverage is a necessary part of a comprehensive standard package because it addresses insurance needs of an affected group, the vessel operators required to carry observers. NMFS concurs with the ITC recommendation, therefore, the inclusion of CGL coverage is appropriate. The associated costs of the insurance coverage package were understood to be borne by the affected industry.

*Comment 3.* Proposed regulations at § 679.7(g)(2) prohibit interference with the sampling procedure employed by an observer. These regulations would require modifications to incline belts, bin openings, and other physical characteristics of factories that hamper effective sampling and would have a positive impact on observers if NMFS really intends to require such modifications. Vessel owners are likely to see any attempt to force the redesign of their processing areas as a sort of outrageous and expensive interference with the way they do business. If the regulations prove so unpopular with industry that NMFS declines to follow through, there will be a corresponding negative impact on observer morale.

*Response.* NMFS agrees that observer sampling of species and size composition would be improved if a prohibition against physical, mechanical, or other sorting that interferes with or biases the sampling procedure employed by an observer is enforced. NMFS intends to enforce this prohibition. Enforcement of this prohibition requires adequate evidence and proof that the observer's sampling procedure was interfered with or biased by physical, mechanical, or other sorting or discarding of catch before sampling. If inclined belts, constrained bin openings, or other physical structures result in sorting of catch *after* an observer has had an opportunity to sample, then no violation has occurred. If some physical or mechanical aspect of the processing operation results in interference or biasing of the observer's sampling procedure, then NMFS would take action.

*Comment 4.* The proposed rule does not change a regulation that requires vessel operators to provide observers with accommodations "that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the

vessel.” The commenter believes that NMFS has not enforced this regulation and suggests that NMFS revise the regulation to a standard it is willing to enforce. Observers who expect improved accommodations based on their common sense reading of this regulation have been disappointed. Observer morale would be better served if NMFS would say what the agency really means; the regulation could also then apply to all vessels, regardless of their size or gear type.

*Response.* NMFS believes the current regulation has contributed to the improvement of observer accommodations on vessels. Prior to regulations implementing the Research Plan (59 FR 46126; September 6, 1994) and requiring these “management level” accommodations for the first time, observers were subject to accommodations that crew members would not be subjected to. To reiterate a response to a comment provided on the Research Plan final rule, the intent of this regulation is to require a vessel operator to treat the observer with respect. The observer should not be provided with accommodations less than those provided for management personnel. At this time, NMFS has not developed a performance standard for accommodations that could be applied to all vessels, regardless of their size or gear type.

*Comment 5.* NMFS proposes that, if a person has been employed as a paid crew member or employee in a North Pacific fishery, they may not serve as an observer during the 12 consecutive months immediately following their employment in the fishery. This 12-month “cooling off” period following work in industry is unnecessary in that it is not a safeguard against conflict of interest; rather, it seems more a punishment. Because it is unnecessary, it places an unfair restriction on observers, whose right to work should be infringed upon only with good reason. Instead, the appearance of conflict of interest can be avoided by prohibiting an observer employed previously by a fishing company to work as an observer on that company’s vessels or in that company’s plants.

*Response.* NMFS disagrees. Observers play a critical role in fisheries management, and they, and the data they collect, must be above reproach. Any conflict of interest, perceived or real, because of employment as a crew member or employee in a North Pacific fishery in the past 12 months must be avoided. NMFS chose a 12-month period as being a reasonable amount of time to indicate a person’s commitment to the observer profession. NMFS will

avoid certifying persons as observers whose employment vacillated between the two fields.

*Comment 6.* The appearance of a conflict of interest would exist if an observer lines up work aboard one of his/her assigned vessels or plants while still under contract with an observer contractor. NMFS should restrict such activity.

*Response.* NMFS agrees and is adding a regulation at § 679.50(h)(2)(i)(A)(5) that states observers may not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while they are under contract with an observer contractor.

*Comment 7.* As proposed, § 679.50(i)(2)(v)(B) states that a deployment to a vessel or a shoreside processor cannot exceed 90 days without approval from the Observer Program Office. This could be misconstrued to allow a contractor to deploy an observer for hundreds of days without seeking approval from NMFS, so long as that observer didn’t stay more than 90 days on any one assignment.

*Response.* NMFS agrees and has revised paragraph (B) to clearly indicate that a deployment cannot exceed ninety days without approval from the Observer Program Office. NMFS’ intent is that an observer return to port after a 90-day period for debriefing.

*Comment 8.* Proposed regulations at § 679.50(i)(2)(v)(B) provide an observer contractor with flexibility in placing observers in certain situations with approval from the Observer Program Office. NMFS should expand this flexibility to apply in all three of the guidelines for observer placement set out under § 679.50(i)(2)(v). For instance, situations occur where vessels are operating for 95–105 days. If a contractor were held to the proposed maximum of ninety-day observer deployments, each vessel in that situation would require two separate observers. Justifiable situations such as these warrant NMFS making reasonable exceptions to the guidelines.

*Response.* NMFS agrees. In certain situations, flexibility is warranted when it will not jeopardize Observer Program objectives and the observer can successfully complete his or her duties. Regulations at § 679.50(i)(2)(v) have been revised to allow increased flexibility with respect to observer deployments with approval from the Observer Program Office.

*Comment 9.* As proposed, § 679.50(i)(2)(v)(A) states that observers must not be deployed on the same vessel for more than 90 days in a 12-month period. This guideline should

address shoreside processors also. Reasons do not exist for treating vessels any differently from shoreside processors, especially given the attempt to strengthen observer conflict of interest standards evident elsewhere in the proposed regulations.

*Response.* NMFS agrees and has revised the regulation at § 679.50(i)(2)(v)(A) to indicate that observers must not be deployed on the same vessel or at the same shoreside processor more than 90 days in a 12-month period.

*Comment 10.* Though NMFS does not directly employ observers, it often places itself in the role of an observer’s employer. NMFS evaluates observer performance, and NMFS can, in effect, fire observers for failing to perform. An employer is expected not only to make clear to its employees what is expected of them, but also to inform them when their work is falling short in ways that could jeopardize their continued employment. The proposed decertification process at § 679.50(j) does not require NMFS to live up to this second basic responsibility, even though NMFS has the opportunity to complete a performance evaluation on observers in the field. NMFS should be more accountable for the direction it gives, or doesn’t give, to its observers.

*Response.* NMFS reiterates that it certifies observers only. NMFS does not employ observers. Observers are trained through an intensive NMFS or NMFS-approved training program that includes detailed information on observer duties and the myriad of methods to be used to successfully complete observer assignments. NMFS reviews both the data collected and the sampling procedures employed by an observer at a mid-cruise review and at debriefing. NMFS makes every attempt and effort to assist an observer with any problems and questions the observer has regarding his or her deployment. Nevertheless, NMFS has overall responsibility for data quality and NMFS reserves the right to decertify observers for failure to perform required duties satisfactorily or for violations of conflict of interest or conduct standards.

#### Changes in the Final Rule from the Proposed Rule

This final rule has been revised from the proposed rule in the following ways:

1. Definitions at § 679.50(j)(3) relating to the decertification process have been moved to § 679.2. Other minor and non-substantive revisions also were made in several places to maintain consistency with the regulatory format of the recently consolidated regulations governing the fisheries in Federal waters

off Alaska (50 CFR part 679, 61 FR 31228, June 19, 1996).

2. Regulations at § 679.50(a) will cross-reference CDQ observer coverage requirements at § 679.32(c) to clarify NMFS' intent that observer coverage requirements for catcher vessels participating in the CDQ pollock fisheries are in addition to the observer coverage requirements set forth at § 679.50.

3. In § 679.50(f)(1)(iii)(B) and § 679.50(f)(2)(iii)(B), the following changes have been made:

a. The reference to the motherships or shoreside processors required to have specified communication equipment has been simplified to reference those motherships or shoreside processors required to have an additional observer as required at paragraph (c)(1)(iii) or (d)(3) of this section. This change allows for the removal of redundant language.

b. The communication equipment requirements of motherships or shoreside processors that are required to carry a second observer has been subdivided into two components. Paragraph (1) contains hardware and software components and paragraph (2) contains the NMFS-supplied software component. These changes are necessary to accommodate an ongoing, but separate, development of hardware and NMFS-supplied software requirements necessary to support submission of observer or industry reports from processors to NMFS.

4. In response to public comment, an addition to the observer conflict of interest standards in the proposed rule was made at § 679.50(h)(2)(i)(A)(5) to indicate that observers may not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while they are under contract with an observer contractor.

5. In § 679.50(i)(2)(v), the following changes have been made:

a. In response to public comment, the proposed rule at § 679.50(i)(2)(v) was revised to require placement of observers according to the specified guidelines unless alternative arrangements are approved by the Observer Program Office.

b. In response to public comment, § 679.50(i)(2)(v)(A) was revised to indicate that observers must not be deployed on the same vessel or at the same shoreside processor for more than 90 days in a 12-month period.

c. In response to public comment, § 679.50(i)(2)(v)(B) was revised to clearly indicate that a deployment cannot exceed 90 days.

6. The information that NMFS collects from observer contractors at

§ 679.50(i)(2)(xiv) has been amended to include the following items that inadvertently were not included in the proposed regulations: A copy of each person's application for observer employment, observer's briefing location, date of each observer's physical examination, name of any observer who has been excused by NMFS from a briefing, the date the observer was excused, and the name of the NMFS staff person granting the excuse.

7. Proposed regulations at § 679.50(j)(5)(i)(C) and (j)(6)(i)(B) were combined into a new paragraph at (j)(4)(iii). This change allows for the removal of redundant language. Revisions to Paperwork Reduction Act (PRA) References in 15 CFR 902.1(b).

Section 3507(c)(B)(i) of the PRA requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. Section 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued. Because this final rule revises recordkeeping and reporting requirements, 15 CFR 902.1(b) is revised to: (1) Remove control number 0648-0280 that was approved for Research Plan information collection and is no longer necessary, (2) retain control number 0648-0307 under § 679.50 as it pertains to the already approved electronic transmission of observer data, and (3) reference correctly the new control number 0648-0318.

Under NOAA Administrative Order 205-11, 7.01, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated, to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the Federal Register.

Due to a reorganization in NMFS, the title, "Director of the Alaska Region" has been changed to "Administrator of the Alaska Region". The change has not yet been made in the regulations; consequently, this rule uses the term 'Director'.

#### Classification

The Director, Alaska Region, NMFS, has determined that Amendments 47, 47, and 6 are necessary for the conservation and management of the groundfish fisheries of the BSAI and the GOA and that they are consistent with the Magnuson Act and other applicable laws.

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an FRFA as part of the RIR, which describes the impact this

rule is expected to have on small entities. Based on that analysis, it was determined that this rule could have a significant economic impact on a substantial number of small entities. Observer costs are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA paid observer costs that were equal to or less than 1 percent of the exvessel value of catch. About 20 percent of vessels incurred observer costs that ranged from 2 to almost 8 percent of the exvessel value of catch. This proportion represents cost increases from Research Plan costs that were limited to 2 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. This proportion represents cost increases from the processor's portion of Research Plan costs that were limited to 1 percent of the exvessel value of catch. The Research Plan represented an alternative to this rule which could minimize the economic impact on some small entities. But for reasons already explained elsewhere (interim final rule at 61 FR 13782, March 28, 1996; and a notice of availability of an FMP amendment at 61 FR 36702, July 12, 1996), this rule repeals the Research Plan. No comments were received on the initial IRFA. Copies of the EA/RIR/FRFA can be obtained from NMFS (see ADDRESSES).

This rule contains a new collection-of-information requirement subject to the PRA. The collection of this information has been approved by OMB (OMB control number 0648-0318). The new information requirement consists of certification applications for new observer contractors, reports submitted by observer contractors to NMFS that would be used by NMFS to facilitate Observer Program Office operations and

to monitor the ongoing requirements of a certified observer contractor, and appeals of suspension and/or decertification from observers and observer contractors. The annual public reporting burden for this collection of information is estimated to be: 60 hours per certification application (a contractor would apply every 3 years); 3 minutes per certificate of insurance; 7 minutes per training/briefing registration; 2 minutes per notification of observer physical examination; 2 hours per physical examination; 7 minutes per projected observer assignment; 7 minutes per weekly deployment/logistics report; 7 minutes per debriefing registration; 15 minutes per copies of 5 contracts; 2 hours per report of observer harassment, observer safety concerns, or observer performance problems; 80 hours per suspension/decertification appeal by an observer contractor (projected to occur only once in 5 years); and 4 hours per suspension/decertification appeal by an observer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This rule contains requirements for electronic transmission of observer data by vessels and shoreside processors receiving pollock harvested in the catcher vessel operational area. This information collection already was approved by OMB (OMB control number 0648-0307). Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### 15 CFR Part 902

Reporting and recordkeeping requirements.

##### 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: October 24, 1996.

Gary Matlock,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, and under the authority of 16 U.S.C. 773 *et seq.* and 16 U.S.C. 1801 *et*

*seq.*, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

#### 15 CFR CHAPTER IX

#### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, paragraph (b), the table is amended by removing in the left column under 50 CFR, the entries "679.51" and "679.52" and by removing in the right column the control numbers in corresponding positions; and by revising the following entry to read as follows:

##### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *				
(b) * * *				
CFR part or section where the information collection requirement is located				Current OMB control number (all numbers begin with 0648-)
* * * * *				
50 CFR	.....	.....	.....	.....
* * * * *				
679.50	.....	.....	.....	0307, 0318
* * * * *				
50 CFR Chapter VI	.....	.....	.....	.....

#### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

4. In § 679.1, paragraph (f) is revised to read as follows:

##### § 679.1 Purpose and scope.

\* \* \* \* \*

(f) *Groundfish Observer Program* (Applicable through December 31, 1997). Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

\* \* \* \* \*

5. In § 679.2, the following definitions are removed: "Bimonthly", paragraphs (3) and (4) of "Catcher vessel", "Exvessel price", "Fee percentage", "Research Plan", "Research Plan

fisheries", "Retained catch", and "Standard exvessel price".

a. In § 679.2, the following definitions are added in alphabetical order to read as follows: "Adequate evidence", "Affiliates", "Briefing", "Civil judgment", "Conviction", "Debriefing", "Decertification", "Decertification official", "Deployment", "Direct financial interest", "Indictment", "Legal proceedings", "NMFS investigator", "North Pacific fishery", "Observer contractor", "Observer Program Office", "Preponderance of the evidence", "Suspending official", and "Suspension".

b. In § 679.2, the following definitions are revised: "Buying station", paragraph (3) of "Catcher/processor", paragraph (1) of "Catcher vessel", "Fishing day", paragraph (3) of "Fishing trip", paragraph (2) of "Mothership", "Observed or observed data", "Observer", "Processor", "Round weight or round-weight equivalent", and "Shoreside processor".

##### § 679.2 Definitions.

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*Adequate evidence*, for purposes of subpart E of this part, means information sufficient to support the reasonable belief that a particular act or omission has occurred.

\* \* \* \* \*

*Affiliates*, for purposes of subpart E of this part, means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

\* \* \* \* \*

*Briefing* means a short (usually 2-4 day) training session that observers must complete to fulfill certification requirements.

*Buying station* means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a shoreside processor or mothership and that does not process those fish.

\* \* \* \* \*

*Catcher/processor* \* \* \*

(3) With respect to subpart E of this part, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

*Catcher vessel* \* \* \*

(1) With respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

*Civil judgment*, for purposes of subpart E of this part, means a judgment or finding of a civil offense by any court of competent jurisdiction.

*Conviction*, for purposes of subpart E of this part, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

*Debriefing* means the post-deployment process that includes a one-on-one interview with NMFS staff, a NMFS preliminary data review, observer completion of all data corrections noted, observer preparation of affidavits and reports, and completion of tasks related to biological specimens or special projects.

*Decertification*, as used in § 679.50(j), means action taken by a decertifying official under § 679.50(j)(7) to revoke indefinitely certification of observers or observer contractors under this section; an observer or observer contractor whose certification is so revoked is decertified.

*Decertifying official*, for purposes of subpart E of this part, means a designee authorized by the Regional Director to impose decertification.

*Deployment* means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing.

*Direct financial interest* means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

*Fishing day* means a 24-hour period, from 0001 hours A.L.T. through 2400 hours A.L.T., in which fishing gear is retrieved and groundfish are retained. Days during which a vessel only

delivers unsorted codends to a processor are not fishing days.

*Fishing trip* \* \* \*

(3) With respect to subpart E of this part, one of the following time periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver groundfish to other than a mothership, the time period during which one or more fishing days occur that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska.

*Indictment*, for purposes of subpart E of this part, means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

*Legal proceedings*, for purposes of subpart E of this part, means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

*Mothership* \* \* \*

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.

*NMFS investigator*, for purposes of subpart E of this part, means a designee authorized by the Regional Director to conduct investigations under this section.

*North Pacific fishery* means any commercial fishery in state or Federal waters off Alaska.

*Observed or observed data* refers to data collected by observers (see § 679.21(f)(7) and subpart E of this part).

*Observer* means any individual that is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor for the purpose of providing observer services to vessels or shoreside processors under this part, and is acting within the scope of his/her employment.

*Observer contractor* means any person that is awarded NMFS certification to provide observer services to vessels and shoreside processors under subpart E

and who contracts with observers to provide these services.

*Observer Program Office* means the administrative office of the Groundfish Observer Program located at Alaska Fisheries Science Center (see ADDRESSES, part 600).

*Preponderance of the evidence*, for purposes of subpart E of this part, means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Processor* means any shoreside processor, catcher/processor, mothership, any person who receives groundfish from fishermen for commercial purposes, any fisherman who transfers groundfish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption.

*Round weight or round-weight equivalent*, for purposes of this part, means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

*Shoreside processor* means any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving groundfish for personal consumption or bait.

*Suspending official*, for purposes of subpart E of this part, means a designee authorized by the Regional Director to impose suspension.

*Suspension*, as used in § 679.50, means action taken by a suspending official under § 679.50(j) to suspend certification of observers or observer contractors temporarily until a final decision is made with respect to decertification.

6. In § 679.4, paragraph (g) is removed and paragraphs (f)(1)(i), (f)(1)(ii), and (f)(2)(ii) are revised to read as follows:

**§ 679.4 Permits.**

(f) *Federal Processor permit*—(1) *General*—(i) *Applicability*. In addition to the permit and licensing

requirements in paragraphs (b) and (d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of groundfish must have a Federal processor permit issued by the Regional Director.

(ii) *Exception.* Any fisherman who transfers groundfish outside the United States, or any fisherman who sells groundfish directly to a restaurant or to an individual for use as bait or for personal consumption is not required to have a Federal processor permit.

\* \* \* \* \*

(2) \* \* \*

(ii) The fishery or fisheries for which the permit is requested.

\* \* \* \* \*

7. In § 679.5, paragraph (a)(2) is revised to read as follows:

**§ 679.5 Recordkeeping and reporting.**

(a) \* \* \*

(2) *Applicability, Federal processor permit.* Any processor that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

\* \* \* \* \*

8. In § 679.7, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(1) through (b)(3) respectively, paragraph (f)(14) is removed, paragraphs (f)(15) and (f)(16) are redesignated as paragraphs (f)(14) and (f)(15) respectively, paragraphs (g)(5) through (g)(7) are removed, paragraphs (g)(3), (g)(4), (g)(8), and (g)(9) are redesignated as paragraphs (g)(4), (g)(5), (g)(6), and (g)(7) respectively, a new paragraph (g)(3) is added, and paragraphs (a)(3), (g)(2), and newly redesignated paragraph (g)(7) are revised to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(3) *Groundfish Observer Program.*

Fish for or process groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

\* \* \* \* \*

(g) *Groundfish Observer Program.*

\* \* \*

(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.

\* \* \* \* \*

(7) 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.

9. In § 679.21, paragraph (c)(3) is revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(c) \* \* \*

(3) *Exemption.* Motherships and shoreside processors that are not required to obtain observer coverage during a month under § 679.50(c) and (d) are not required to retain salmon.

\* \* \* \* \*

10. Subpart E is revised to read as follows:

**Subpart E—Groundfish Observer Program**

**§ 679.50 Groundfish Observer Program applicable through December 31, 1997.**

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel subject to this part or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance. Observer coverage requirements specified under this section are in addition to observer coverage requirements specified at § 679.32(c) for vessel operators and processors participating in CDQ fisheries.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment.

(c) *Observer requirements for vessels.*

(1) Observer coverage is required as follows:

(i) A mothership of any length that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in

round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1 under § 679.23(e)(2) is required to have a second observer aboard, in addition to the observer required under paragraphs (c)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(iv) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry an observer during 100 percent of its fishing days except for a vessel fishing for groundfish with pot gear as provided in paragraph (c)(1)(vii) of this section.

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer at all times during at least one fishing trip in the Eastern Regulatory Area of the GOA during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days in that calendar quarter and at all times during at least one fishing trip in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(2) *Groundfish fishery categories requiring separate coverage.* Directed fishing for groundfish, during any fishing trip, that results:



(i) *Pollock fishery*. In a retained catch of pollock that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(ii) *Pacific cod fishery*. In a retained catch of Pacific cod that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iii) *Sablefish fishery*. In a retained catch of sablefish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iv) *Rockfish fishery*. In a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus* that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(v) *Flatfish fishery*. In a retained aggregate catch of all flatfish species, except Pacific halibut, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(vi) *Other species fishery*. In a retained catch of groundfish that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(2) (i) through (v) of this section.

(3) *Assignment of vessels to fisheries*. At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round weight or round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

(i) *Catcher/processors*. A catcher/processor will be assigned to a fishery category based on the retained groundfish catch composition reported on the vessel's weekly production report submitted to the Regional Director under § 679.5(i).

(ii) *Catcher vessel delivery in Federal waters*. A catcher vessel that delivers to a mothership in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership under § 679.5(i).

(iii) *Catcher vessel delivery in Alaska State waters*. A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters will be

assigned to a fishery category based on the retained groundfish catch composition reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(d) *Observer requirements for shoreside processors*. Observer coverage is required as follows. A shoreside processor that:

(1) Processes 1,000 mt or more in round weight or round weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) Processes 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on September 1, under § 679.23(e)(2), is required to have an observer, in addition to the observer required under paragraphs (d) (1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(e) *Inseason adjustments in observer coverage requirements*.

(1) The Regional Director may adjust the observer coverage requirements set out under paragraphs (c) and (d) of this section at any time to improve the accuracy, reliability, and availability of observer data, so long as the changes are based on one or more of the following:

(i) A finding that fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component have changed significantly, or are likely to change significantly.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(2) *Procedure*. Observer coverage requirements may be adjusted in accordance with § 679.25(c). NMFS must publish changes in observer coverage requirements in the Federal Register, with the reasons for the changes and any special instructions to vessels or shoreside processors required to carry observers, at least 10 calendar days prior to their effective date.

(f) *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 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) *Transmission of data*. Facilitate transmission of observer data by:

(A) *Observer use of equipment*.

Allowing observers to use the vessel'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) *Hardware and software*. Ensuring that each mothership that is required to have a second observer aboard under paragraph (c)(1)(iii) of this section, is equipped with INMARSAT Standard A satellite communication capabilities and cc:Mail remote. The operator of each mothership shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: A personal computer with a 486 or greater capacity processing chip, a DOS 3.0, or a successor version of DOS with 10 megabytes free hard disk storage, and 8 megabytes RAM.

(2) *NMFS-supplied Software*.

Ensuring that each mothership that is required to have a second observer aboard under paragraph (c)(iii) of this section, obtains the data entry software provided by the Regional Director for use by the observer.

(C) *Functional and operational equipment*. Ensuring that the communication equipment that is on motherships as specified at paragraph



(f)(1)(iii)(B) of this section, and that is used by observers to enter and transmit data, is fully functional and operational.

(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.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft 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 responsibilities.* A manager of a

shoreside processor must do the following:

(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 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) Hardware and software.* Ensuring that each shoreside processor that is required to have an additional observer under paragraph (d)(3) of this section, makes available to the observer the following equipment or equipment compatible therewith: A personal computer with a 486 or greater capacity processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, and 8 megabytes RAM.

(2) *NMFS-supplied software.* Ensuring that each shoreside processor that is required to have an additional observer under paragraph (d)(3) of this section, obtains the data entry software provided by the Regional Director for use by the observer.

(C) *Functional and operational equipment.* Ensuring that the communication equipment that is in the shoreside processor as specified at paragraph (f)(2)(iii)(B) of this section and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside 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 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.

(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) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(g) *Procurement of observer services.* Owners of vessels or shoreside processors required to carry observers under paragraphs (c) and (d) of this section must arrange for observer services from an observer contractor or contractors. A list of observer contractors is available upon request from the Observer Program Office.

(h) *Certification and decertification of observers—(1) Certification of observers—(i) Requirements.* NMFS will certify individuals who:

(A) Meet education and/or experience standards available from the Observer Program Office.

(B) Have successfully completed a NMFS-approved observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(C) Have not been suspended or decertified under paragraph (j) of this section.

(ii) *Term.* An observer's certification expires upon completion of a deployment. Observers can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Standards of observer conduct—(i) Conflict of interest.*

(A) *Observers:*

(1) May not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

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

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

(4) May not serve as observers during the 12 consecutive months immediately following the last day of the observer's employment in a North Pacific fishery.

(5) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor in a North Pacific fishery while under contract with an observer contractor.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest under this paragraph (h)(2).

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must diligently perform their assigned duties.

(B) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations of regulations relevant to conservation of marine resources or their environment that are observed.

(C) Observers must not disclose collected data and observations made on board 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.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(1) Engaging in excessive drinking of alcoholic beverages;

(2) Engaging in the use or distribution of illegal drugs; or

(3) Becoming physically or emotionally involved with vessel or processing facility personnel.

(i) *Certification and decertification of observer contractors*—(1) *Certification of observer contractors*—(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Director describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors certified prior to January 1, 1997, are exempt from submitting an application.

(ii) *Selection.* The Regional Director may select one or more observer contractors based on the information submitted by applicants under

paragraph (i)(1)(i) of this section and on other selection criteria that are available from the Observer Program Office.

(iii) *Term.* Observer contractors will be certified through December 31, 1997. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Responsibilities and duties of observer contractors* include but are not limited to the following:

(i) Recruiting, evaluating, and hiring qualified candidates to serve as observers, including minorities and women.

(ii) Ensuring that only observers provide observer services.

(iii) Providing observers as requested by vessels and processors to fulfill requirements under paragraphs (c) and (d) of this section.

(iv) Providing observers' salary, benefits and personnel services in a timely manner.

(v) Providing all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities. Unless alternative arrangements are approved by the Observer Program Office:

(A) Observers must not be deployed on the same vessel or at the same shoreside processor for more than 90 days in a 12-month period.

(B) A deployment cannot exceed 90 days.

(C) A deployment cannot include assignments to more than four vessels and/or shoreside processors.

(vi) Supplying alternate observers or prospective observers if one or more observers or prospective observers are not approved by NMFS, fail to successfully complete observer training or briefing, are injured and must be replaced, or resign prior to completion of duties.

(vii) Maintaining communications with observers at sea and shoreside facilities. Each observer contractor 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 facilities, in transit, or in port awaiting boarding.

(viii) In cooperation with vessel or processing facility owners, ensuring that all observers' in-season catch messages and other required transmissions between observers and NMFS are delivered to NMFS within a time specified by the Regional Director.

(ix) Ensuring that observers complete mid-deployment data reviews when required.

(x) Ensuring that observers complete debriefing as soon as possible after the completion of their deployment and at locations specified by the Regional Director.

(xi) Ensuring all data, reports, and biological samples from observer deployments are complete and submitted to NMFS at the time of the debriefing interview.

(xii) Ensuring that all sampling and safety gear are returned to the Observer Program Office and that any gear and equipment lost or damaged by observers is replaced according to NMFS requirements.

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of observer conduct under paragraph (h)(2) of this section.

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail) or by fax.

(A) Observer training registration consisting of a list of individuals to be hired upon approval by NMFS and a copy of each person's academic transcripts, resume, and application for observer employment. The list must include the person's name and sex. The person's social security number is requested. Observer briefing registration consisting of a list of the observer's name, requested briefing class date, and briefing location. If the Observer Program Office has excused an observer from attending a briefing, the briefing registration must also include the names of observers excused from briefing, the date the observer was excused, and the name of the NMFS staff person granting the excuse. This information must be submitted to the Observer Program Office at least 5 working days prior to the beginning of a scheduled observer certification training or briefing session.

(B) Projected observer assignments that include the observer's name; vessel or shoreside processor assignment, type, and code; port of embarkation; target species; and area of fishing. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session.

(C) Observer deployment/logistics reports that include the observer's name, cruise number, current vessel or shoreside processor assignment and code, embarkation date, and estimated and actual disembarkation dates. This information must be submitted weekly

as directed by the Observer Program Office.

(D) Observer debriefing registration that includes the observer's name, cruise number, vessel or shoreside processor name(s), and requested debriefing date.

(E) Copies of "certificates of insurance" that name the NMFS Observer Program Task Leader as a "certificate holder". 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 cancelled:

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

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

(3) States Workers' Compensation as required.

(4) Contractual General Liability.

(F) Notification that, based upon a physical examination during the 12 months prior to an observer's deployment, an examining physician has certified that an observer does not have any health problems or conditions that would jeopardize the observer's safety or the safety of others while deployed, or prevent the observer from performing his or her duties satisfactorily, and that prior to examination, the certifying physician was made aware of the dangerous, remote and rigorous nature of the work. This information, including the date of the physical examination, must be submitted prior to the completion of the training or briefing session.

(G) A copy of each type of signed and valid contract an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Copies of contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request.

(H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems must be submitted within 24 hours after the observer contractor becomes aware of the problem.

(3) *Conflict of interest.* Observer contractors:

(i) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling

supplies or services to these vessels or shoreside facilities, or concerns purchasing raw or processed products from these vessels or shoreside facilities.

(ii) Must assign observers without regard to any preference by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation.

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts 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 contractors.

(j) *Suspension and Decertification Process—(1) Applicability.* This paragraph (j) sets forth the procedures for suspension and decertification of observers and observer contractors under this section.

(2) *Policy.* (i) NMFS must certify responsible and qualified observers and observer contractors only. Suspension and decertification are discretionary actions that, taken in accordance with this section, are appropriate means to effectuate this policy.

(ii) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS may impose suspension or decertification only for the causes and in accordance with the procedures set forth in this section.

(iii) In addition to suspension and decertification, observers and observer contractors who violate provisions of this part may be subject to penalties, fines, and other sanctions as authorized by law.

(3) *Public availability of suspension or decertification records.* Public availability of suspension or decertification records will depend upon the provisions of the Freedom of Information Act and other applicable law.

(4) *Effect and timing of suspension or decertification.* (i) Observers or observer contractors decertified or suspended must not provide services prescribed by this section to vessels and shoreside processors.

(ii) Suspension and decertification actions may be combined and imposed simultaneously.

(iii) Suspension or decertification of observer contractors includes all divisions or other organizational elements of observer contractors, unless the suspension or decertification

decision is limited by its terms to specific divisions or organizational elements. The suspending or decertifying official may, at his or her sole discretion, include any affiliates of observer contractors if they are specifically named and given written notice of the suspension or proposed decertification and an opportunity to respond under paragraph (j)(5)(iii)(B) or (j)(6)(iii)(C) of this section.

(5) *Suspension—(i) General.* (A) The suspending official may, in the public interest, suspend observers or observer contractors for any of the causes in paragraph (j)(5)(ii) of this section, using the procedures in paragraph (j)(5)(iii) of this section.

(B) Suspension may be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when NMFS determines that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(ii) *Causes for suspension.* The suspending official may suspend observers or observer contractors:

(A) Upon a determination, based upon adequate evidence, that observers or observer contractors committed any acts or omissions constituting a cause for decertification under paragraph (j)(6)(ii) of this section; or

(B) Upon indictment for any of the causes for decertification in (j)(6)(ii)(A)(1) or (j)(6)(ii)(B)(1) of this section.

(iii) *Procedures—(A) Review.* The suspending official must review all available evidence and must promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying officer.

(B) *Notice of suspension.* When observers or observer contractors and any specifically named affiliates are suspended, they must be immediately advised personally or by certified mail, return receipt requested, at the last known residence or place of business:

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that observers or observer contractors have committed acts or omissions constituting grounds for suspension under (j)(5)(ii) of this section. Such acts or omissions may be described in terms sufficient to place observers or observer

contractors on notice without disclosing NMFS' evidence.

(2) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue.

(3) Of the cause(s) relied upon under paragraph (j)(5)(ii) of this section for imposing suspension.

(4) Of the effect of the suspension.

(5) That, within 30 days after receipt of the notice, the observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(6) That additional proceedings to determine disputed material facts may be conducted unless:

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(C) *Dispute.* For suspensions not based on an indictment, if NMFS determines that the observers' or observer contractors' submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official:

(1) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension.

(2) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(D) *Suspending official's decision.* (1) The suspending official's decision must be based on all the information in the administrative record, including any submission made by observers or

observer contractors on action based on an indictment:

(i) In which observers or observer contractors' submissions do not raise a genuine dispute over material facts; or

(ii) In which additional proceedings to determine disputed material facts have been denied on the basis of NOAA General Counsel advice.

(2) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The suspending official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(3) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(4) The suspending official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(5) Prompt written notice of the suspending official's decision to affirm, modify, or terminate the notice of suspension issued under this paragraph (j)(5) must be served on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(E) *Period of suspension.* (1) Suspension is for a temporary period pending the completion of any investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under paragraph (j)(7) of this section, unless sooner terminated by the suspending official or as provided under this paragraph (j). If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(2) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated.

(F) *Scope of suspension for observer contractors.* The scope of suspension must be the same as that for decertification under paragraph (j)(6)(v), except that the procedures set out under paragraph (j)(5) must be used in imposing suspension.

(6) *Decertification*—(i) *General.* The decertifying official may, in the public interest, decertify observers or observer contractors for any of the causes in paragraph (j)(6)(ii) of this section using the procedures in paragraph (j)(6)(iii) of this section. The existence of a cause for

decertification does not necessarily require that observers or observer contractors be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observers' or observer contractors' present fitness. Accordingly, if a cause for decertification exists, observers or observer contractors have the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

(ii) *Causes for decertification*—(A) *Observers.* (1) The decertifying official may decertify observers for a conviction of or civil judgment for the following:

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties of observers as prescribed by NMFS;

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

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

(2) The decertifying official may decertify observers, based upon a preponderance of the evidence, upon a determination that observers have:

(i) Failed to satisfactorily perform the duties of observers as prescribed by NMFS; or

(ii) Failed to abide by the standards of conduct for observers as prescribed under paragraph (h)(2) of this section.

(B) *Observer contractors.* (1) The decertifying official may decertify observer contractors for a conviction of or civil judgment for the following:

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section;

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

(iii) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present fitness of observer contractors.

(2) The decertifying official may decertify observer contractors, based upon a preponderance of the evidence,

upon a determination that observer contractors have:

(i) Failed to satisfactorily perform the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section; or

(ii) A conflict of interest as set out under paragraph (i)(3) of this section.

(iii) *Procedures*—(A) *Investigation and referral.* NMFS personnel must promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator must investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(B) *Review.* The decertifying official must review all available evidence and must promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(C) *Notice of proposed decertification.* If the decertifying official determines to proceed with decertification, he or she must serve a notice of proposed decertification upon observers or observer contractors and any specifically named affiliates, personally or by certified mail, return receipt requested, at the last known residence or place of business, advising:

(1) That decertification is being considered.

(2) Of the reasons for the proposed decertification in terms sufficient to put observers or observer contractors on notice of the conduct or transaction(s) upon which it is based.

(3) Of the cause(s) relied upon under paragraph (j)(6)(ii) of this section for proposing decertification.

(4) That, within 30 days after receipt of the notice, observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(5) Of NMFS' procedures governing decertification decision making.

(6) Of the effect of the issuance of the notice of proposed decertification.

(7) Of the potential effect of an actual decertification.

(D) *Dispute.* In actions not based upon a conviction or civil judgment, if it is found that observers' or observer contractors' submissions raise a genuine dispute over facts material to the proposed decertification, the decertifying official:

(1) Must afford observers or observer contractors an opportunity to submit

additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification.

(2) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(E) *Decertifying official's decision.* (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official must make a decision on the basis of all the information in the administrative record, including any submission made by observers or observer contractors. The decision must be made after receipt of any timely information and argument submitted by observers or observer contractors.

(2) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The decertifying official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(3) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(4) The decertifying official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(5) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification may be established by a preponderance of the evidence.

(F) *Notice of decertifying official's decision.* (1) If the decertifying official decides to impose decertification, observers or observer contractors and any affiliates involved must be given prompt notice personally or by certified mail, return receipt requested, at the last known residence or place of business. Such notice must:

(i) Refer to the notice of proposed decertification.

(ii) Specify the reasons for decertification.

(iii) Advise that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(2) If decertification is not imposed, the decertifying official must promptly notify observers or observer contractors and any affiliates involved, by certified mail, return receipt requested, at the last known residence or place of business.

(iv) *Period of decertification.* (A) Decertification must be in force indefinitely or until rescinded.

(B) The decertifying official may rescind decertification, upon observers' or observer contractors' request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the decertification was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the decertification was imposed; or

(5) Other reasons the decertifying official deems appropriate.

(v) *Scope of decertification.* (A) The improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with observer contractors may be imputed to the observer contractors when the conduct occurred in connection with the performance of duties for or on behalf of observer contractors, or with observer contractors' knowledge, approval, or acquiescence. Observer contractors' acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(B) The improper conduct of observer contractors may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with observer contractors who participated in, knew of, or had reason to know of the observer contractors' conduct.

(7) *Administrative review of suspension or decertification.*

(i) Observers or observer contractors may petition for review of a suspension decision issued under paragraph (j)(5)(iii) of this section or a decertification decision issued under paragraph (j)(6)(iii) of this section within 30 days after the date the decision was served. The petition must

be addressed to the appeals officer identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals officer's written decision to affirm, modify or terminate the suspension.

(ii) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

(A) A finding of material fact is clearly erroneous based upon the administrative record;

(B) A substantial and important question of policy or discretion is involved; or

(C) A prejudicial error has occurred.

(iii) If the appeals officer declines review based on the written petition, observers or observer contractors must be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence or place of business.

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (i)(7) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

(v) An appeals officer's decision imposing suspension, or decertification or an unpetitioned suspending, or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.

(k) *Release of observer data to the public*—(1) *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:

(i) Vessel name and Federal permit number.

(ii) Number of chinook salmon and "other salmon" observed.

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch.

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total

round weight of groundfish in sampled hauls.

(v) The number of observed trawl hauls or fixed gear sets.

(vi) The number of trawl hauls that were basket sampled.

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (k)(2)(i) (A) through (M) of this section and collected by observers from observed hauls on board 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:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

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

(3) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) 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.

#### PART 679—[AMENDED]

11. In part 679, remove "NMFS-certified" wherever it occurs.

[FR Doc. 96-27891 Filed 10-31-96; 8:45 am]

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## DEPARTMENT OF STATE

### Bureau of Consular Affairs

#### 22 CFR Part 41

[Public Notice 2455]

#### Documentation of Nonimmigrants and Immigrants Under the Immigration and Nationality Act, as Amended—Place of Application

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

**SUMMARY:** This final rule amends the regulation by allowing the Deputy Assistant Secretary to designate the geographical areas over which consular offices have jurisdiction to process nonimmigrant visas. Consequently, an alien may now be authorized to apply at any nonimmigrant visa issuing office within the territory of the country of the alien's residence.

**EFFECTIVE DATE:** The effective date of this final rule is December 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Stephen K. Fischel, Chief, Legislation and Regulations Division, 202-663-1204.

**SUPPLEMENTARY INFORMATION:** Current Department of State regulations concerning the place of application for aliens seeking issuance of a nonimmigrant visa require that the applicant apply for a visa at the consular office in the consular district in which the alien resides (or in the case of a resident of Taiwan, at the American Institute in Taiwan) unless

(1) the alien is physically present in the United States and can apply to the Visa Office for the issuance or reissuance of a visa under 22 CFR 41.111(b); or

(2) the consular officer in a country where the alien is physically present has agreed to accept the alien's visa application either as a matter of discretion or at the direction of the Department.

This new regulation introduces greater flexibility in designating the jurisdictional consular office for nonimmigrant processing. To address resource reductions in some countries, the Department needs flexibility in managing its visa workload and has centralized and consolidated visa services in specific consular offices. The consolidation process may accord a consular office nonimmigrant visa processing jurisdiction over a geographical area which may not exactly comport with consular districts defined by the Secretary of State