

Dated: June 9, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040521153-4153-01; I.D. 043004C]

RIN 0648-AS20

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS issues this final rule, correcting amendment to the regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to correct previous rulemakings and to provide consistency with current regulations. This final rule is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

DATES: Effective on June 16, 2004.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907-586-7228 or jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages 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 off Alaska under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS approved and implemented the Interim Groundfish Observer Program in 1996

(61 FR 56425, November 1, 1996). Regulations implementing the Observer Program provide the regulatory framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, the regulations authorize mandatory observer coverage requirements for vessels and shoreside processors and establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

A final rule to amend regulations governing the Observer Program was published in the **Federal Register** on December 6, 2002 (67 FR 72595). The intent of the final rule was to: (1) extend the applicability period of the regulations which would have otherwise expired on December 31, 2002; (2) clarify and improve observer certification and decertification processes; (3) change the duties and responsibilities of observers and observer providers to eliminate ambiguities and strengthen regulations; and (4) grant NMFS the authority to place NMFS staff and other qualified persons aboard vessels and at shoreside or stationary floating processors to increase NMFS' ability to interact effectively with observers, fishermen, and processor employees.

Subsequent to the publication of the December 6, 2002 (67 FR 72595) final rule in the **Federal Register**, NMFS staff discovered several errors in 50 CFR part 679. This correcting amendment corrects those errors in the CFR by updating terminology and cross references, removing redundant text, and consolidating some paragraphs for additional clarity and consistency. The following amendments are technical and non-substantive in nature and have no relationship to compliance by the public. For these reasons, prior notice and comment are unnecessary and NOAA is proceeding to this final rule to effectuate the correcting amendment to the regulations.

Need for Corrections

In § 679.1(f), the date of "December 31, 2002" is changed to "December 31, 2007" to reflect the current expiration date of the regulations governing the Observer Program.

Currently, observers must successfully complete a "briefing" prior to their deployment and receive an endorsement which reflects the type of briefing they completed. This rule amends section 679.2 by changing the word "certification" to "endorsement" within the definition of "Briefing" for

consistency with current terminology elsewhere in the regulations.

Also in § 679.2, the definitions of "Affiliates," "Decertification," "Direct financial interest" and "Suspension" contain the terms "observer contractor" or "observer contractors." This term, "observer contractor," was changed to "observer provider," which is defined elsewhere in § 679.2. This action removes this term "observer contractor" and replaces it with "observer provider" for consistency with other text in 50 CFR 679.

In § 679.50(i)(2)(ii), the colon after the end of the paragraph title is replaced with a period.

In § 679.50(i)(2)(i)(C)(4), the reference to (i)(2)(ix)(C) is removed and replaced with (i)(2)(x)(C).

In § 679.50(i)(2)(ii)(A), the reference to (i)(2)(ix)(E) is removed and replaced with (i)(2)(x)(E).

In § 679.50(i)(2)(iii)(B), the reference to (i)(2)(ix)(C) is removed and replaced with (i)(2)(x)(C).

The last sentence at § 679.50(i)(2)(vi)(E) which reads, "Unless alternate arrangements are approved by the Observer Program Office," is redundant with the first line of the next paragraph. The provision is restated for no particular reason. This final rule removes this redundant text from (i)(2)(vi)(E).

The term "Stationary floating processor" is defined at § 679.2. Regulations at § 679.50(i)(2)(vii)(D), (i)(2)(ix), (i)(3)(i)(A), (i)(3)(i)(B), (i)(3)(i)(C), (i)(3)(ii), (j)(2)(i)(A)(1)(i), (j)(2)(i)(A)(1)(ii), and (j)(2)(i)(A)(1)(iii) use terminology which is inconsistent with this definition, including "floating stationary processors," "floating stationary processing facility," "floating stationary processor facility," "floating processor facilities," and "floating processor." For consistency within the regulations, this final rule removes these terms and replaces them with "stationary floating processor" or "stationary floating processors."

The title to § 679.50(i)(2)(x)(G) is revised to read "Observer provider contracts" to better characterize the contents of the paragraph, consistent with other paragraphs in this section. The title to paragraph (i)(2)(x)(I) was inadvertently omitted. This final rule also adds the title "Other reports" to paragraph (i)(2)(x)(I) for consistency with other paragraphs in this section.

Observer coverage requirements for vessels are specified at § 679.50(c) and for shoreside or stationary floating processors at § 679.50(d). Regulations at § 679.50(i)(2)(x)(G)(1) and (i)(2)(x)(G)(2) together reference all of the observer coverage requirements for vessels at

§ 679.50(c). This final rule removes cross references in § 679.50(i)(2)(x)(G)(1) to (c)(1)(i) and (c)(1)(iv) and replaces them with a cross reference to § 679.50(c). Paragraph § 679.50(i)(2)(x)(G)(2) is removed because a similar change for that paragraph would make it redundant with paragraph (i)(2)(x)(G)(1). Regulations at § 679.50(i)(2)(x)(G)(3) and (i)(2)(x)(G)(4) together reference the observer coverage requirements for shoreside processors or stationary floating processors at § 679.50(d). This final rule removes cross references in § 679.50(i)(2)(x)(G)(3) to (d)(1), replaces it with a cross reference to § 679.50(d), and redesignates it as paragraph (i)(2)(x)(G)(2). Paragraph § 679.50(i)(2)(x)(G)(4) is removed because a similar change for that paragraph, that is, replacing the reference to (d)(2) with § 679.50(d), would make it redundant with paragraph (i)(2)(x)(G)(3). Finally, § 679.50(i)(2)(x)(G)(5) is redesignated as (i)(2)(x)(G)(3).

This final rule corrects a cross reference in § 679.50(i)(2)(x)(I)(5) by removing the text “(h)(2)(i) and (h)(2)(ii)” and replacing it with the text “(j)(2)(i) and (j)(2)(ii)”.

Last, this final rule corrects the numbering at § 679.50(j)(2)(i)(A)(3) and redesignates the paragraph as (j)(2)(i)(A)(3).

Classification

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that this final rule is necessary for the conservation and management of the groundfish fisheries of the BSAI and GOA. The Regional Administrator also has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries, NOAA (AA) finds good cause to waive prior notice and opportunity for public comment otherwise required by the section. NOAA finds that prior notice and comment are unnecessary as this rule has a non-substantive effect on the public. This correcting amendment updates terminology, corrects cross references to other regulatory text, removes redundant text, and consolidates some paragraphs for additional clarity and consistency. NOAA finds that because of the non-substantive nature of the correction, no particular public interest exists in this final rule for which there is justification or need for prior notice and comment.

Because this correcting amendment does not institute any substantive obligations for the public, the

requirement for a 30-day delay in the effective date to this action pursuant to 5 U.S.C. 553(d) does not apply.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C., or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 8, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

■ 2. At each of the locations in the “Location” column, remove the phrase indicated in the “Remove” column and replace it with the phrase indicated in the “Add” column for the amount of times specified in the “Frequency” column.

Location	Remove	Add	Frequency
§ 679.1(f)	(applicable through December 31, 2002)	(applicable through December 31, 2007)	1
§ 679.2 Definition for “Briefing”	certification	endorsement	1
§ 679.2 Definition for “Affiliates”	observer contractor	observer provider	2
§ 679.2 Definition for “Direct financial interest” and “Decertification”	observer contractor	observer provider	1
§ 679.2 Definition for “Decertification” and “Suspension”	observer contractors	observer providers	1
§ 679.50(i)(2)(i)(C)(4)	(i)(2)(ix)(C)	(i)(2)(x)(C)	1
§ 679.50(i)(2)(ii)	<i>Ensure that observers complete duties in a timely manner.</i>	<i>Ensure that observers complete duties in a timely manner.</i>	1
§ 679.50(i)(2)(ii)(A)	(i)(2)(ix)(E)	(i)(2)(x)(E)	1
§ 679.50(i)(2)(iii)(B)	(i)(2)(ix)(C)	(i)(2)(x)(C)	1
§ 679.50(i)(2)(vi)(E)	duties. Unless alternate arrangements are approved by the Observer Program Office.	duties.	1
§ 679.50(i)(2)(vii)(D)	floating	stationary floating	1
§ 679.50(i)(2)(ix)	floating processor facilities	stationary floating processors	1
§ 679.50(i)(2)(x)(G)	<i>Copies of observer provider contracts with entities requiring observer services and with observers.</i>	<i>Observer provider contracts.</i>	1
§ 679.50(i)(2)(x)(I)	Reports	<i>Other reports.</i> Reports	1
§ 679.50(i)(2)(x)(I)(5)	(h)(2)(i) or (h)(2)(ii)	(j)(2)(i) or (j)(2)(ii)	1
§ 679.50(i)(3)(i)(A) and (j)(2)(i)(A)(1)(i)	floating stationary processor facility	stationary floating processors	1

Location	Remove	Add	Frequency
§ 679.50(i)(3)(i)(B) and (j)(2)(i)(A)(1)(ii)	floating stationary processing facility	stationary floating processors	1
§ 679.50(i)(3)(i)(C), and (j)(2)(i)(A)(1)(iii)	floating stationary processing facilities	stationary floating processors	1
§ 679.50(i)(3)(ii)	floating stationary processors	stationary floating processors	1

■ 3. In § 679.50, the section heading is revised, paragraphs (i)(2)(x)(G)(2) and (i)(2)(x)(G)(4) are removed, paragraph (i)(2)(x)(G)(3) is redesignated as (i)(2)(x)(G)(2), paragraph (i)(2)(x)(G)(5) is redesignated as (i)(2)(x)(G)(3), and paragraph (i)(2)(x)(G)(1) and newly redesignated paragraph (i)(2)(x)(G)(2) are revised to read as follows:

§ 679.50 Groundfish Observer Program (applicable through December 31, 2007).

* * * * *
 (i) * * *
 (2) * * *
 (x) * * *
 (G) * * *

(1) Vessels required to have observer coverage as specified at paragraph (c) of this section;

(2) Shoreside or stationary floating processors required to have observer coverage as specified at paragraph (d) of this section; and

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