

§ 679.55 Observer fees (Effective January 1, 2013)

(a) Responsibility.

The owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FPP) or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at § 679.55(c) must comply with the requirements of this section. Subsequent non-renewal of an FPP or a Registered Buyer permit does not affect the permit holder's liability for noncompliance with this section.

(b) Observer fee liability determination.

After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the

round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, landing port or port-group, and gear category. The total fee liability for each permit holder will be determined by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) Landings subject to the observer fee.

The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a)	Not applicable, an FFP is required to harvest these groundfish in the EEZ	Yes
(2) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a)	No	Yes
(3) Sablefish IFQ, regardless of where harvested	Yes	Yes
(4) Halibut IFQ or halibut CDQ, regardless of where harvested	Yes	Yes
(5) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, but is not subtracted from a total allowable catch limit under § 679.20(a)	No	No
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested	No	No

(d) Standard ex-vessel prices

(1) General.

NMFS will publish the standard ex-vessel prices used to determine the observer fee in the upcoming

year in the *Federal Register* during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and per equivalent headed-and-gutted weight for halibut.

(2) Effective duration.

The standard ex-vessel prices will remain in effect until revised by subsequent publication in the *Federal Register*.

(3) Standard ex-vessel price determination and use

(i) Groundfish standard ex-vessel prices. Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the Commercial Operator's Annual Report described at § 679.5(p) and the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), as well as methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: pelagic trawl gear, non-pelagic trawl gear, and non-trawl gear.

(ii) Halibut and fixed gear sablefish standard ex-vessel prices. NMFS will use data submitted to NMFS on the IFQ Registered Buyer report under § 679.5(l)(7) to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) Halibut;

(B) IFQ sablefish; and

(C) Sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) Confidentiality. Standard ex-vessel prices will be aggregated among ports if fewer than four processors participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.*

The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in

the *Federal Register* in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) Observer fee percentage.

The observer fee percentage is 1.25 percent.

(g) Fee collection.

A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) Payment

(1) Payment due date.

A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) Payment recipient.

Make electronic payment payable to NMFS.

(3) Payment address.

Payments must be made electronically through the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be provided on the payment website and on the observer fee liability invoice to be mailed to each permit holder.

(4) Payment method.

Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) Underpayment of fee liability.

(i) Under § 679.4, an applicant will not receive a new or amended FPP or Registered Buyer permit until he or she submits a complete permit application. For the application to be considered complete, all fees required by NMFS must be paid.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FPP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(i) Overpayment of fee.

Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) Appeals.

A permit holder who receives an IAD may either pay the fee liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder specified in paragraph (a) of this section has the burden of proving his or her claim.