

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960717195-7255-03; I.D. 100897E]

RIN 0648-A195

Fisheries of the Exclusive Economic Zone Off Alaska; Insurance Coverage Provisions for Observer Contractors under the North Pacific Interim Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations that clarify an insurance coverage provision for observer contractors who provide observer services to vessels and shoreside processors participating in the groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to respond to the North Pacific Fishery Management Council's (Council's) Insurance Technical Committee (ITC) recommendation to correct the terminology used to delineate required insurance coverages, by changing the references to "Contractual General Liability" to read "Commercial General Liability."

DATES: Effective November 7, 1997.

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

SUPPLEMENTARY INFORMATION: In 1994, the ITC recommended that standardized insurance coverage provisions be required of

observer contractors who provide observer services to vessels and shoreside processors participating in the groundfish fisheries of the GOA and the BSAI. In 1996, NMFS implemented regulations (61 FR 56425, November 1, 1996) reflecting the ITC's recommendation and required observer contractors to provide NMFS with copies of "certificates of insurance" that verified the following coverage provisions: (1) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law, (2) coverage under the U.S. Longshore and Harbor Workers' Compensation Act, (3) States Workers' Compensation as required, and (4) Contractual General Liability.

At its June 4, 1997, meeting, the ITC clarified that its 1994 recommendation for standardized insurance provisions was intended to include a requirement for Comprehensive General Liability, not Contractual General Liability. Contractual General Liability refers to an endorsement to a Comprehensive General Liability policy, and extends the liability coverage to an additional party, for example, the vessel owner. In this instance, a contractual endorsement represents a shift in the responsibility of certain liabilities from the vessel owner to the observer contractor. While the observer contractor may offer this endorsement as an opinion in their contracts with vessel owners, the ITC intended that this shift of liability responsibilities be optional, not mandatory.

After the June Council meeting, the ITC clarified further that due to a recent change in the use of the standard liability coverage form used by insurance brokers, Commercial General Liability is the correct term to use, not Comprehensive General Liability.

Therefore, in consultation with the Council's ITC, NMFS clarifies regulations requiring standardized insurance provisions for observer contractors to accurately reflect the original intent of the ITC. Accordingly, NMFS revises the regulation at § 679.50(i) (2) (xiv) (E) (4) to clarify that observer contractors are required to provide a certificate of insurance that, in addition to other listed requirements, verifies Commercial General Liability coverage. This change means that observer contractors are not required to carry a contractual endorsement on their Commercial General Liability policy but they could offer the contractual endorsement as an option to the entities with whom they have contracts.

Classification

Pursuant to 5 U.S.C. 553 (b) (B), a rule may be issued without prior notice and opportunity for public comment if providing such notice and comment would be impractical, unnecessary, or contrary to the public interest. Additionally, a rule may be made effective prior to 30 days after its issuance if the rule relieves a restriction pursuant to 5 U.S.C. 553 (d) (1).

This final rule accurately implements the original intent of the ITC and NMFS concerning standardized insurance coverage provisions for observer contractors. The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) finds that

providing an opportunity for prior notice and comment on this rule is unnecessary. This rule does not eliminate the basic insurance requirement. Rather, by using the correct terminology, it merely clarifies the original intent to allow vessel owners and observer contractors to choose who pays for a particular type of endorsement. Furthermore, for parties who were previously required to purchase the endorsement, and who opt not to purchase that endorsement in the future, this rule will relieve a restriction. Accordingly, for the reasons set forth above, the Assistant Administrator finds good cause to dispense with prior notice and opportunity for public comment and to make this rule effective immediately upon publication in the **Federal Register**.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 30, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For 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 part 679 continues to read as follows:

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

2. In § 679.50, paragraph (i)(2)(xiv)(E)(4) is revised to read as follows:

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

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(i) * * *

(2) * * *

(xiv) * * *

(E) * * *

(4) Commercial General Liability.

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