

population structure of black sea bass. The study would determine the ages of the undersized black sea bass using otoliths and scales. Then, using those data, the age, size, and sex composition of the current population would be compared with historic population data (Mercer 1978) that were obtained before the Mid-Atlantic black sea bass population was declared overfished. In addition, the study would seek to define the composition of commercial black sea bass catches off the Mid-Atlantic coast and Essential Fish Habitat for black sea bass using the NMFS groundfish database for offshore areas and the VIMS survey trawl database for inshore nursery areas.

EFPs would exempt up to three vessels from the 11-inch (27.94-cm) minimum commercial black sea bass fish size specified in the FMP and found at 50 CFR part 648, subpart I.

Based on the results of this EFP, this action may lead to future rulemaking.

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

Dated: March 26, 2002.

**John H. Dunnigan,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 011219306-1306-01; I.D. 110501A]

**RIN 0648 AM44**

#### Fisheries of the Exclusive Economic Zone Off Alaska; Proposed Rule to Amend Regulations for Observer Coverage Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues a proposed rule to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to refine observer coverage requirements and improve support for observers. The proposed rule is intended to ensure continued collection of high quality observer data to support the management 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). It is intended to promote the goals and objectives contained in those FMPs.

**DATES:** Comments on this proposed rule must be received by May 1, 2002.

**ADDRESSES:** Comments should be sent to Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed regulatory action and the Environmental Assessment (EA) prepared for the 1997 Extension of the Interim North Pacific Groundfish Observer Program may also be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:**

Bridget Mansfield, 907-586-7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) management areas in the exclusive economic zone (EEZ) under the FMPs for those areas. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600. Regulations implementing the interim Groundfish Observer Program were published November 1, 1996 (61 FR 56425), amended December 30, 1997 (62 FR 67755), and December 15, 1998 (63 FR 69024), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). NMFS' Observer Program provides for the collection of observer data necessary to manage Alaska groundfish fisheries. Observers provide information on total catch estimation, discard, prohibited species bycatch, and biological samples that are used for stock assessment purposes.

At its June 1998 meeting, the Council requested that NMFS analyze alternatives to respond to several areas of concern that the Council believes detract from the overall achievement of the goals of the Observer Program. At its June 2000 meeting, the Council adopted remedial actions to address these concerns. The actions in this proposed rule are intended to address concerns about (1) shoreside processor observer coverage; (2) shoreside processor

observer logistics; and (3) observer coverage requirements for vessels fishing with groundfish pot gear. These issues are separate such that agency approval or disapproval of one proposed action would not affect the others.

The need, justification, and economic impacts for each of the actions in this proposed rule, as well as impacts of the alternatives considered, were analyzed in the RIR/IRFA prepared for this action (see **ADDRESSES**). A description for each proposed measure follows:

#### *Shoreside Processor Observer Coverage*

Current regulations at § 679.50(d) require each shoreside processor to project for each calendar month the amount, in metric tons (mt), of groundfish that is expected to be received or processed at that facility. Observer coverage requirements for each month are based on those projections. A shoreside processor that processes 1,000 mt or more in 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. These processors are considered to have 100-percent coverage. A shoreside processor that processes 500 to 1,000 mt in 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. These shoreside processors are considered to have 30-percent coverage. Some shoreside processors may alternate between 30-percent and 100-percent coverage from month to month.

The current monthly observer coverage regime can result in coverage in some shoreside processors during periods of a month when relatively small amounts of groundfish are received. This is experienced primarily by the shoreside processors with 100-percent coverage. For instance, if 1,000 mt of groundfish are received or processed by the end of the first or second week in a month, but the shoreside processor receives or processes very small amounts of groundfish for the remainder of the month, it would still be required to maintain 100-percent observer coverage for all delivery or processing days.

The proposed action would maintain the current monthly observer coverage periods at shoreside processors based on monthly landings projections. However, during a month when a directed fishery for pollock or Pacific cod closes, a shoreside processor with 100-percent coverage requirements that received

pollock or Pacific cod from the fishery that closed in that given month would have the option to reduce observer coverage to 30-percent coverage requirements for the remainder of that month under certain conditions. These conditions are: (1) The shoreside processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed for the remainder of that month; and (2) groundfish landings received by the shoreside processor may not exceed 250 mt/calendar week for the remainder of that month. If a shoreside processor is expected to receive greater than 250 mt/wk during any calendar week of that month, the shoreside processor would be required to return to 100-percent observer coverage for the days fish are received or processed during that week and until processing of all groundfish received during that week is completed.

The reduced observer coverage period for a given shoreside processor would be authorized beginning on the fourth calendar day following the day that a pollock or cod fishery closes, allowing for observation of the delivery and processing of fish received prior to the closure, and would end on the last day of that month. Observer coverage for the month following would be based on monthly landings projections and thresholds as specified under current regulations at § 679.50, but also may be reduced for that month under the conditions of this proposed action. The RIR/IRFA prepared for this action indicates that some observer costs borne by the shoreside processors would be relieved without significantly impacting the quality or quantity of data collected by observers necessary for scientific or management purposes.

The Community Development Quota (CDQ) and American Fisheries Act (AFA) programs' observer coverage requirements found at § 679.50(d)(4) and (5), respectively, currently supersede general observer coverage requirements for shoreside processors, and will continue to take precedence over this proposed action.

#### *Shoreside Processor Observer Logistics*

Regulations at § 679.50(i)(2)(v) require observer contractors to provide all logistics to place and maintain observers at the site of a processing facility. This responsibility includes all travel arrangements, lodging, per diem, and any other services required to place observers at the processing facility.

Observers have experienced logistical difficulties impeding their ability to be present at a shoreside processor to observe groundfish deliveries. These difficulties primarily have been due

either to unreliable means of communication resulting in lack of notification by the shoreside processor or to unreliable transportation to the shoreside processor after being notified of an expected delivery. Observers have reported missing part of or entire deliveries when expected motorized transportation is delayed or does not arrive, and have had to walk or ride a bicycle between 1 mile and 5 miles in rain, snow, or sub-freezing temperatures when no alternative transportation is available.

Shoreside processor observers must be present at deliveries to perform prescribed duties. These include advising vessel observers of processing protocol at the shoreside processor, providing relief to vessel observers, verifying deliveries are weighed and accurately recorded, and obtaining biological samples from each delivery. When the shoreside processor observer is not present during a delivery, vessel observer sampling errors and loss of prohibited species data for that delivery may occur. Further, the shoreside processor observer cannot fulfill all prescribed duties, which could lead to loss of catch data and biological samples.

Observers have also reported being housed in substandard lodging while deployed at shoreside processors. Rooms with leaky ceilings or walls have been reported, as well as rooms located in shoreside processors next to loud machinery that operates 24 hours a day, preventing observers from sleeping. Observers generally spend from a week up to 3 months at a particular shoreside plant.

The Observer Program has determined that the difficulties described have generally been corrected by observer contractors, although these problems could resume at any time. Therefore, the intention of the proposed action is to ensure that such problems as described here do not recur in the future.

This proposed rule would amend the observer regulations to require the observer contractor to provide the following logistical support to observers deployed at shoreside processors: adequate housing meeting certain standards; reliable communication equipment such as an individually assigned phone or pager for notification of upcoming deliveries or other necessary communication; and, if the observer's accommodations are greater than 1 mile away from the processing facility, reliable motorized transportation to the shoreside processor that ensures timely arrival to allow the observer to complete assigned duties.

#### *Groundfish Pot Fishery Observer Coverage Requirements.*

Under current regulations at § 679.50(c)(1), all catcher/processors or catcher vessels 60 ft (18.3m) LOA and greater, but less than 125 ft (38.1 m) LOA that fish for groundfish in the BSAI or the GOA are required to have an observer aboard for at least 30 percent of all fishing days in a calendar quarter and for at least one complete fishing trip for each groundfish category it fishes in that same quarter. Catcher/processors or catcher vessels 125 ft (38.1 m) LOA and greater are required to have an observer aboard for 100 percent of all fishing days in a calendar quarter. Vessels 125 ft (38.1 m) LOA and greater using pot gear are only required to maintain observer coverage for 30 percent of their fishing days. There are no observer coverage requirements for catcher vessels delivering unsorted catch to motherships.

A fishing day is defined as "a 24 hour period from 0001 hours Alaska local time (A.l.t.) through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained." For purposes of observer coverage, a fishing trip for catcher vessels not delivering to a mothership is defined in the following way: "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." A fishing trip for a catcher/processor or catcher vessel delivering to a mothership is defined, with respect to observer coverage requirements, in the following way: "a weekly reporting period during which one or more fishing days occur."

With exceptions for CDQ and AFA fisheries, observer coverage levels have remained generally unchanged since they were implemented in 1989 under FMP Amendments 18/13, which established the domestic Observer Program in the North Pacific. Coverage levels were initially established based on an analysis of precision in observer catch estimates and program costs. A comprehensive review of coverage needs by fishery would take into account all scientific, management, and compliance needs. The issue of observer coverage requirements is beyond the scope of this analysis.

Reports have been filed since 1996 by observers documenting circumstances where vessel operators indicated that they were retrieving only one pot while the observer was aboard to meet the minimum coverage requirement. In

1998 alone, over 160 retrievals of one pot per day or trip were made. These pots have often been set within a 30-minute steam from the dock. This practice is not prohibited under the current regulations and technically satisfies the coverage requirements. However, it is not considered within the range of normal fishing activity. Overall, observer data for the groundfish pot fishery from 1998-1999 indicate that an average of 123 pots were retrieved per day when an observer was aboard.

NMFS understands that occasions may arise when a trip must be shortened or the number of pots retrieved in a day may be fewer than average, but deliberate effort reduction when an observer is aboard results in biased data that are not representative of fishing effort, as intended. Observer coverage requirements are intended to capture unbiased data for a given fishery under normal fishing conditions. Observer coverage of days with intentionally reduced gear retrieval, compared to normal fishing activity, results in far less observer data collected relative to actual overall fishing effort. This inhibits the opportunity to accurately monitor fishing practices, catch rates and discards for in-season management, and reduces opportunity for collection of biological data used in stock assessments. When extrapolated to the level of the pot fleet, observer data from deliberate low effort days become more significant and artificially bias effort downward. Observer data show that the majority of pot retrievals per vessel per day is approximately between 95 and 200, with an average of 123, although daily retrieval rates range up to 500 or more per day.

The proposed action is intended to improve observer coverage requirements by ensuring that observer coverage levels more accurately reflect normal fishing effort across the groundfish pot fleet. NMFS considers the number of pot retrievals to be a better measure of actual fishing effort in the groundfish pot fishery than the number of fishing days. Ensuring that a certain percentage of pot retrievals will be observed, while not changing the basic coverage level, gives fisheries managers greater confidence that observer data extrapolated across the pot gear fleet to unobserved vessels would better reflect fleet-wide prohibited species catch, target catch, and bycatch and discard rates, because actual fishing effort may vary considerably between days when gear is retrieved. Biological data collected for stock assessments would likewise benefit in the same way.

The proposed action would amend coverage requirements for the groundfish pot gear fishery such that a

vessel equal to or longer than 60 ft (18.3 m) LOA fishing with pot gear that participates more than 3 days in a directed fishery for groundfish in a calendar quarter would need to carry an observer during at least 30 percent of the total number of pot retrievals for that calendar quarter. Such vessels also would need to continue to carry an observer for at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories in which the vessel participates during that calendar quarter. Groundfish will still be required to be retained each day the observer is on board and gear is retrieved, in order for the gear retrieved on that day to count toward observer coverage requirements.

#### *Confidentiality of Observer Personal Information*

Since 1991, observers have reported that resumes containing employment histories, home addresses and phone numbers, as well as past observer deployment evaluations, have been forwarded to fishing companies by the observer contractors without the observer's permission. This personal information was often forwarded on to individual vessels aboard which the observer was deployed.

The potential exists for misuse and abuse of this personal information, with overt intimidation of observers being the primary concern. Observers have reported that such personal information has been referred to by vessel personnel during discussions of potential violations raised by the observer. The manner in which such information was referred to has been interpreted by some observers as an implication of potential forthcoming repercussions or the questioning of an observer's qualifications. This type of direct or implied intimidation can result in observers, particularly those less experienced, declining to report potential violations witnessed during a deployment, thus undermining their effectiveness in monitoring fisheries activities and practices.

In 1996, a group of observers asked both NMFS and the Association of Professional Observers (APO) to request that observer providers cease the practice of distributing observer's personal information. Upon such a request by NMFS and the APO, observer providers verbally agreed to stop forwarding personal information about observers to industry. However, concerns remain that this practice could resume in the future in the absence of regulations prohibiting it.

At the Council's request, alternatives for resolution of this issue were

presented at the April 2000 Council meeting and final action was taken by the Council in June 2000. The Council voted to add an additional alternative to the analysis which would prohibit the release of personal information such as might be found on an observer's resume, including social security number, home address and phone number, and employment history, but would exclude observers' deployment scores and evaluations from the prohibition on distribution. Subject to exceptions, however, the Privacy Act generally prohibits the release of records on individuals held by the Federal government without prior written consent by that individual. As such, there are restrictions on the release of, among other information, an observer's deployment scores or evaluations, except under certain circumstances as explained below.

Under the current observer service delivery model, in which observers are not Federal employees and no contract exists between the government and observer providers (providers), NMFS' control over deployment of observers is limited. Providers have responsibility for providing qualified observers and monitoring their performance to ensure satisfactory execution of their duties (see § 679.50(i)(2)(i) and (xiii)). The providers' chief means of monitoring observer performance, and thus of deciding whether to continue to hire an individual, is through observer deployment evaluations and scores that are issued by NMFS and forwarded to the contractor upon the completion of each deployment.

Observer provider companies' monitoring of observer performance is considered by NMFS to be beneficial toward achieving an Observer Program goal of maintaining high quality data. NMFS is in the process of establishing a Privacy Act "system of records" for individual observer information. One routine use that will be established will be to provide observer deployment scores and evaluations to observer providers.

The Council stated that its concern in voting to allow interested industry participants access to observer evaluations and deployment scores is based on instances related by vessel or plant owner/operators that their complaints against observers were not adequately addressed by NMFS. The Council stated that it felt that if an observer with a poor deployment record continued to be deployed, industry participants should have access to this information. However, NMFS has long-standing policies for handling observers with poor deployment scores or

evaluations and for addressing complaints about observers by vessel or plant owner/operators. The agency believes these policies are more effective in resolving potential problems than having contractors provide industry access to personal information about an observer.

For each completed deployment, the observer is thoroughly debriefed by Observer Program staff who are all prior observers and are professionally trained to conduct debriefings. The debriefer reviews all data, observer logbooks, and other assigned tasks related to this deployment for accuracy and completion of duties for all the vessels or plants covered by the observer during that deployment. A review of the observer's sampling techniques and handling of other procedural issues is conducted and any needed improvements are discussed. All necessary data corrections are made by the observer during the debriefing. Any necessary affidavits are also prepared by the observer at this time. Upon completion of the debriefing, the debriefer prepares a written final evaluation of the observer's performance for that deployment. It includes descriptions of the challenges faced by the observer and whether the observer handled each issue successfully or unsuccessfully. The evaluation also includes a recommendation on rehiring the observer, and any conditions required to be met by the observer upon rehire, such as specific training or briefing requirements.

Currently, observers are also given an overall score of 0 or 1 for each deployment. A score of 1 indicates that the observer has met Observer Program expectations, and a score of 0 indicates that the observer has not met Observer Program expectations for that deployment. The severity of circumstances and reasons may vary for NMFS issuing a deployment score of 0. When such circumstances are considered quite serious, an investigation may be initiated. An observer in such cases may be suspended, and in the most serious cases, decertified. However, each case is considered individually with due diligence by Observer Program staff.

Complaints from vessel owner/operators or plant managers regarding specific observers are considered individually by the Observer Program. If a chronic, valid problem is found with an individual observer, a recommendation for not rehiring that observer may be issued. In the most extreme cases, an observer could be suspended or decertified. While some complaints about observers may be

valid and are dealt with according to program policy, vessel or plant owner/operators sometimes may be concerned by activities of an observer who is appropriately following NMFS protocol. In these cases, NMFS will work with vessel or plant personnel to facilitate a better understanding of the observer's duties.

#### Classification

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

This proposed rule would extend without change existing collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0318.

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.

NMFS determined that this proposed rule warrants a Categorical Exclusion from National Environmental Policy Act (NEPA) requirements for an EA. The changes proposed in this action are consistent with the intent and purpose of the Interim Observer Program, and the proposed actions fall within the scope of the EA, the RIR and the Final Regulatory Flexibility Act (FRFA) analyses prepared for the 1997 Interim Groundfish Observer Program (August 27, 1996). The proposed actions will not result in a significant change from those assessed in that EA/RIR/FRFA, because it would implement only minor administrative and technical changes to an existing regulation. The changes will provide improved benefits to those listed in the August 27, 1996, EA/RIR/FRFA for the Interim Observer Program, the RIR/FRFA for the extension of the Interim Observer Program through 1998 dated October 28, 1997, and the RIR/FRFA for the extension of the Interim Observer Program through 2000, dated June 4, 1998. Copies of these analyses are available from NMFS (see ADDRESSES).

NMFS prepared an IRFA, which describes the impact this proposed rule would have on small entities, if adopted. The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and minimize any impact on small entities. The IRFA must discuss significant alternatives to the proposed

rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities, (2) consolidating or simplifying of reporting requirements, (3) using performance rather than design standards, and (4) allowing exemptions from coverage for small entities. A copy of this analysis is also available from NMFS (see ADDRESSES).

Observer costs borne by vessels and processors are based on whether an observer is deployed aboard a vessel or at a shoreside processor, and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. Most of the catcher vessels participating in the groundfish fisheries off Alaska that are required to carry an observer (i.e., vessels 60 ft (18.3 m) LOA and longer) meet the definition of a small entity under the Regulatory Flexibility Act (RFA). Since 1995, about 270 catcher vessels annually carry observers. The FRFAs prepared for the 1998 and 2000 Interim Observer Program describe the degree to which these vessels may be economically impacted by observer coverage levels or other regulatory provisions of the Observer Program.

This proposed action is expected to result in economic impacts benefitting shoreside processors that are able to reduce observer coverage levels during a month in which the closure of a pollock or cod fishery occurs. Exact quantification of the overall effects on observer coverage at shoreside plants in the BSAI and GOA is not possible due to the number of unpredictable variables involved, particularly fishery closure dates. However, the approximate timing of pollock and cod fishery closures could result in some reduced observer coverage five months per year under this proposed change. The CDQ and AFA observer requirements, which would take precedence over general coverage requirements under this alternative, are not factored into the IRFA analysis, except to note that plants receiving fish caught under those programs would benefit less in terms of cost savings from coverage reduction. Reduction in observer coverage under the conditions of this proposed action are most likely to result in savings between \$270-\$1,620 per month per plant, based on per-day observer costs to industry, excluding additional costs such as the observer's airfare. This action does provide the opportunity for a plant that has decided to reduce observer coverage in a month to return to 100-percent observer coverage for the remainder of the month and lift the 250-

mt/week cap on landings received if a fishery is reopened.

Requiring both adequate observer housing and reliable motorized transportation when observers stay a mile or more from their duty stations is unlikely to cause significant economic effects. Furthermore, there are no alternatives that would meet statutory objectives yet impose fewer economic impacts.

Economic impacts from the requirement that shoreside observers be assigned cell phones or pagers to ensure notification of upcoming deliveries is estimated for cell phones to be approximately \$5,250 for the first year and \$4,243 for each subsequent year per contractor, and pager costs per contractor would be \$1,820 for the first year and \$1,288 for each subsequent year.

Distributed equally between the five active contractors, costs per contractor for cell phones would be \$5,250 for the first year and \$4,243 for each subsequent year. Pager costs would be \$1,820 for the first year and \$1,288 in subsequent years. These estimations will vary as the number of shoreside processors needing observer coverage varies and as the number of contractors that provide observers to the shoreside processor varies.

Based on NMFS' understanding of current financial arrangements between observer contractors and industry clients, it is assumed that any costs associated with provision of individually assigned cell phones or pagers to observers will be passed by the contractors on to their industry clients, and will not ultimately impact the contractors. Of the approximately 27 shoreside processors that would absorb these costs, approximately 5 might be considered small entities. These industry clients are regulated entities such that they are required to have observer coverage, but would not be directly required to supply the cell phones or pagers. Total annual costs that would be passed onto each of these small entities are estimated to be \$750 per cell phone for the first year of this service, with subsequent years at \$600 per year. Total annual costs that would be passed onto each of these small entities for the first year of pager service, including purchase and activation fee, are estimated to be \$260, while subsequent years are estimated at \$180 per pager.

Two options are proposed for communications devices, cell phones and pagers, with pagers offered as a much less expensive option, minimizing significant economic impact on affected small entities. Additional alternatives

for direct communication devices for observer communication with shoreside processors are not available, since observers are highly mobile. VHF radios were not considered since they would not be restricted to use with vessels at sea.

Alternatives were also considered to better achieve observer coverage reflecting actual fishing effort within the groundfish pot fishery, so that observer data received by in-season managers accurately reflect catch and effort levels. The status quo alternative, while posing no additional burden to small entities, would fail to achieve these important management and monitoring objectives. The preferred alternative would require that pot vessels carry observers for 30 percent of the pots retrieved instead of for 30 percent of the fishing days in a calendar quarter. This does not change overall coverage requirements and presents minimal impact on small entities, with a possible exception of a small number of vessels who legally, but intentionally, minimize their observer coverage relative to their actual fishing effort, contrary to the intent of coverage requirements. While this alternative may result in an increase in costs for this small group of vessels as a result of more observer days to meet coverage requirements, this theoretically should not be necessary. This alternative actually offers to all vessels the possibility of saving some observer costs by introducing an incentive to retrieve more gear while an observer is aboard, thereby reducing observer days.

Four other alternatives and/or options considered, while achieving the management goals of collection of observer data representative of catch and effort levels, would each impose greater costs on small entities than either the status quo or preferred alternatives. These alternatives/options include: (1) requiring a groundfish pot vessel to have an observer aboard during at least 30 percent of the total pot retrievals by that vessel in that calendar quarter and for at least 30 percent of its fishing days in that calendar quarter; (2) requiring a groundfish pot vessel have an observer aboard during at least 30 percent of the total pot retrievals by that vessel in that calendar quarter, and for at least 30 percent of its fishing days in that calendar quarter, and for the retrieval and delivery of at least 30 percent of the landed catch by that vessel for that calendar quarter; (3) amending the definition of a fishing day for pot vessels, for purposes of observer coverage, as a 24-hour period from 0001 hrs A.l.t. - 2400 hrs A.l.t. during which at least 12 sets are retrieved and groundfish are retained; and (4)

requiring all groundfish pot vessels equal to or greater than 60 ft (18.3 m) LOA to carry an observer each day it fishes with pot gear during a calendar quarter.

The overall implementation of the Interim Observer Program includes measures that minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Similarly, vessels 60 ft (18.3 m) LOA and longer, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) LOA and longer. These requirements, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without significantly adversely affecting the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Act.

#### List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: March 27, 2002.

**Rebecca Lent,**

*Deputy Assistant Administrator, for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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. In § 679.50, paragraphs (d)(3) through (6) are redesignated as (d)(4) through (7); paragraph (c)(1)(vii), newly redesignated paragraph (d)(4) and paragraphs (i)(2)(v) and (i)(2)(xiii) are revised; and new paragraph (d)(3) is added to read as follows:

#### § 679.50 Groundfish Observer Program applicable through December 31, 2002.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(vii) Vessels using pot gear. (A) 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:

(1) For at least 30 percent of the total number of pot retrievals for that calendar quarter, and

(2) For at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(B) Groundfish are required to be retained each day that pot gear is retrieved in order for that gear to count toward observer coverage requirements for all catcher vessels and catcher/processors using pot gear and required to carry observers.

\* \* \* \* \*

(d) \* \* \*

(3) Is subject to observer requirements specified in paragraph (d)(1) of this section that receives pollock or Pacific cod, may reduce observer coverage in the event that a directed fishery for such species closes, subject to the following conditions:

(i) The shoreside processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed, beginning on the fourth calendar day following the day that the directed fishery for pollock or Pacific cod was closed and ending on the last day of the month, except as allowed in paragraph (d)(3)(iv) of this section.

(ii) Observer coverage for the month following the month with reduced observer coverage will be based on monthly landings projections and thresholds as specified in paragraphs (d)(1) and (2) of this section, but may also be reduced for that subsequent month as specified in this paragraph (d)(3) of this section.

(iii) Total groundfish landings received by a shoreside processor under reduced observer coverage as authorized under this paragraph (d)(3) may not exceed 250 mt per calendar week.

(iv) If greater than 250 mt in round weight equivalent of groundfish are projected to be received in a given calendar week by a shoreside processor

during a month with reduced observer coverage, as authorized under this paragraph (d)(3), the shoreside processor must return to observer coverage requirements as specified in paragraph (d)(1) of this section until processing of all fish received during that week is completed. The shoreside processor may then return to reduced observer coverage as authorized under this paragraph (d)(3) for the remainder of the calendar month.

(4) 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.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(v) Providing all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel and shoreside processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason. It is the responsibility of the observer provider company to ensure the maintenance of the observers aboard the fishing vessels, including lodging, per diem, and any other necessary services. It is the responsibility of the observer provider company to maintain observers at the site of a shoreside processing facility by providing lodging and per diem and any other necessary services. Each observer deployed to a shoreside processing facility, and each observer between vessel or shoreside assignments while still under contract with a certified observer provider company, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, or with private land-based accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations

must include an individually assigned bed for each observer for the duration of that observer's shoreside assignment or period between vessel or shoreside assignments, such that no other person is assigned to that bed during the same period of the observer's shoreside assignment or period between vessel or shoreside assignments. Additionally, no more than four beds may be in any individual room housing observers at accommodations meeting the requirements of this section. Each observer deployed to shoreside processing facilities shall be provided with individually assigned communication equipment in working order, such as a cell phone or pager for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties. Unless alternative arrangements are approved by the Observer Program Office.

\* \* \* \* \*

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of conduct under paragraph (h)(2) of this section and ensuring that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

\* \* \* \* \*

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