

based service or interconnected VoIP service, rather than making a TRS call via 711 in an emergency. Finally, for the reasons discussed above in limiting the duration of the waiver of the Commission's 711 call handling requirements for interconnected VoIP providers, the Commission believes that the public interest dictates that it limits this waiver relief for TRS providers to a period of six months.

#### Congressional Review Act

The Commission will not send a copy of document DA 07-4178 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A), because the document is not amending or revising the Commission's existing rules.

#### Ordering Clauses

Pursuant to Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, and Sections 0.141, 0.361, and 1.3 of the Commission's rules, 47 CFR 0.141, 0.316 and 1.3, document DA 07-4178 is adopted.

The *VON Coalition Petition*, *USTelecom Petition*, and *Hamilton Petition* are granted in part, and denied in part, as set forth herein.

Federal Communications Commission.

**Catherine W. Seidel**,

*Chief, Consumer and Governmental Affairs Bureau.*

[FR Doc. E7-21525 Filed 10-31-07; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 600

[Docket No. 071023555-7555-01; I.D. 062906A]

RIN 0648-AU46

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Observer Health and Safety

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

**ACTION:** Final rule.

**SUMMARY:** NMFS publishes this final rule to enhance the safety of observers and the efficiency of their deployment. The purpose of the final rule is to clarify prohibited actions regarding observers, reinforce that an observer may not be

deployed nor stay aboard an unsafe vessel, clarify when a fishing vessel is inadequate for observer deployment and how an owner or operator can resolve discrepancies, clarify when the safety decal requirement applies, and provide for an alternate NMFS safety equipment examination of certain small fishing vessels. This final rule is necessary to maintain and enhance the safety and effectiveness of fisheries observers in carrying out their duties as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the fishery management plans and regulations adopted under the Magnuson-Stevens Act.

**DATES:** Effective December 3, 2007.

**FOR FURTHER INFORMATION CONTACT:** Lisa Desfosse at 301-713-2328.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register's** website at <http://www.gpoaccess.gov/fr/index.html>.

##### Background

The Magnuson-Stevens Act, as amended (16 U.S.C. 1801 *et seq.*), the Marine Mammal Protection Act, as amended (MMPA) (16 U.S.C. 1361 *et seq.*), and the Atlantic Tunas Convention Act, as amended (ATCA) (16 U.S.C. 971 *et seq.*) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury to marine mammals and to other species listed under the Endangered Species (ESA), and to monitor compliance with existing Federal regulations. In addition, under the South Pacific Tuna Act of 1988 (SATA) (16 U.S.C. 973 *et seq.*), NMFS may require observers in the South Pacific tuna fishery.

Regulations governing health and safety of observers are codified at 50 CFR 600.725 and 600.746. They were first promulgated as a final rule at 63 FR 27213, May 18, 1998. These amendments apply to any vessel designated to carry an observer as part of a mandatory or a voluntary observer program under the Magnuson-Stevens Act, the MMPA, the ATCA, SPTA, or any other U.S. law.

This final rule clarifies and updates prohibitions; changes paragraph headings to better reflect contents; clarifies communications requirements;

requires pre-trip vessel safety checks; clarifies that corrective measures are required prior to an observer being deployed aboard a vessel; adopts an alternate NMFS safety equipment examination using a NMFS Pre-trip Safety Checklist for U.S. Coast Guard (USCG) Category I vessels (vessels less than 26 ft. (8 m)) under certain circumstances when a USCG Commercial Fishing Vessel (CFV) Safety Examination cannot be conducted; and clarifies that observer safety requirements apply from the time a vessel is notified of an observer requirement, rather than on the day the fishing trip is scheduled to begin. This action strengthens the ability of NMFS to assist with observer program compliance issues.

##### Observer Samples

This final rule revises the prohibitions of § 600.725 to prohibit tampering with or destroying an observer's samples or equipment, or interfering with a NMFS approved observer. This change was necessary because observers reported fishing vessel crews interfering with their sampling programs by throwing samples or equipment overboard or otherwise destroying or tampering with them. The changes also reflect that NMFS observers are now sometimes assigned to shoreside plants.

##### Observer Safety

Paragraph (b) of § 600.746 addresses observer safety, and the heading is changed accordingly. Paragraph (b) stated that an observer is not required to board, or stay aboard, a vessel that is inadequate or unsafe as described in paragraph (c) of the section. The definition was intended to allow the observer to subjectively decide whether to board. This language could be interpreted to not allow an observer to board a vessel to determine if the vessel is unsafe. The final rule replaces the term "is not required" with, "will not be deployed," clarifying the original intent of the regulation that observers not depart in or stay aboard vessels inadequate for observer deployment. Further, the term "inadequate or unsafe" is revised to "inadequate for observer deployment." This change clarifies that, while NMFS cannot determine the absolute safety of a vessel, NMFS can require standards of accommodation and safety on a vessel prior to an observer deploying in that vessel.

##### Proof of Examination

The regulations at § 600.746(c) considered a vessel inadequate or unsafe for carrying an observer unless

the vessel's owner or operator can: (1) show proof to NMFS of either a current USCG CFV Safety Examination decal or a USCG certificate of examination; and (2) notify NMFS of that compliance when requested. This rule amends the current regulations to allow the owner or operator to show proof of passing the USCG CFV Safety Examination when the decal may have been lost due to window replacement, other repair, or accident.

#### *Accommodations and Safety Requirements*

This final rule updates accommodations requirements at 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679. Each NMFS region will provide information to vessel owners/operators in a manner appropriate to that region or fishery, as established by the appropriate Regional Administrator. The rule also clarifies that both the accommodations requirement and the USCG CFV Safety Examination requirement or alternate examination procedure set out in paragraph (h) of this section must be satisfied for the vessel to be considered adequate under the requirements of paragraph (c).

#### *Vessel Requirement*

The rule revises § 600.725 to include paragraph (w) "Any vessel that is carrying one or more observers must maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel."

#### *Vessel Pre-Trip Safety Check*

The regulations at § 600.746(c)(3) encourage, but do not require, observers to use the pre-trip safety check, including the check for USCG required safety equipment. A vessel may have met the requirements for issuance of a current USCG CFV Safety Examination decal, or passed an appropriate USCG inspection; however, the equipment required for issuance of the decal or passing of the inspection may not be present or in satisfactory condition prior to the initial deployment of the observer.

This final rule will require that the vessel's captain or the captain's designee accompany the observer in a safety check prior to the initial deployment. The observer will use a checklist that includes the six items listed in the regulation, plus items required by the USCG and added by each observer program, in consultation

with USCG, to be fishery area and vessel specific. The vessel's captain or designee must also accompany the observer in a walk through the vessel's spaces to ensure that no obviously hazardous conditions exist about the vessel. This pre-trip check may be incorporated into the vessel safety orientation to be provided by a Federally documented vessel to the observer as required by 46 CFR 28.270.

This final rule also clarifies at § 600.746(f)(5) that an emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport and at § 600.746(f)(6) that survival craft, when required, "shall have sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage."

#### *Corrective Measures*

This final rule revises the current language of § 600.746(d) corrective measures to require that the vessel owner/operator selected to carry an observer must comply with the safety requirements when the vessel is notified. Additionally, this final rule clarifies that in a voluntary program, it is the choice of the owner/operator of the vessel whether to correct safety discrepancies and allow the vessel to carry an observer.

#### *Alternate NMFS Safety Equipment Examination*

The current regulations do not allow for an alternative to the USCG CFV Safety Examination in cases where NMFS observers are required to board smaller vessels in remote areas (primarily in Alaska) in order to carry out their duties. Their remote location precludes them from traveling to a location where a CFV safety examination can be performed, and USCG personnel, in certain circumstances, may not be able to travel to all locations to conduct an examination. This final rule revises § 600.746 to allow a USCG Category I vessel (a vessel less than 26 ft. (8 m.) in length) an alternative method for meeting the safety requirement by passing an alternate NMFS safety equipment examination that is consistent with the USCG CFV Safety Examination standards for USCG Category I vessels. The alternate safety examination would be conducted by a NMFS approved observer, NMFS employee, or an authorized observer provider. This alternate NMFS safety equipment examination (designed in consultation with USCG to be fishery-area-specific) would only be available to

USCG Category I vessels in a remote location, and only for a period up to 30 days after date of notification that the vessel is required to carry an observer.

#### *Duration*

This final rule revises § 600.746(e) to § 600.746 (h) and amends the language by adding the phrase "at the time of written or verbal selection of the vessel to carry an observer" by the observer program. This clarifies that vessels are required to comply with the observer safety requirements at the time their vessel is selected to carry an observer, which may be days or weeks in advance of the actual deployment date of an observer to the selected vessel. This will allow NMFS to check vessels for compliance with the safety requirements prior to the deployment of an observer.

#### **Summary of Comments and Responses**

NMFS received several substantive comments from the public. Below are summaries of significant public comments and the NMFS' responses with proposed changes.

#### *Comments Relating to Observer Safety*

*Comment 1:* Safety has improved as a result of the observer health and safety regulations, but some NMFS observer programs have had difficulty requiring vessels to comply with the observer health and safety regulations, e.g., lack of adequate bunk space to accommodate an observer, and/or lack a survival craft of sufficient capacity to accommodate all persons on the vessel, including the observer. We believe the proposed deletions of 50 CFR 600.746(d) and (f) may in fact exacerbate the problem. Regulations that direct NMFS to ensure that vessels take corrective actions to come into compliance with the accommodation and safety requirements, or else not fish, are not only necessary, but should be strengthened. Otherwise, vessels that fail safety examinations may have little incentive to correct deficiencies before fishing. Accordingly, we strongly urge that 50 CFR 600.746(d) and (f) be retained in the Final Rule and fully implemented to ensure that the observer safety regulations achieve their intended effect.

*Response:* The language contained in 50 CFR 600.746(d) was in conflict with the revised language in 50 CFR 600.746(e), which makes clear that vessels are required to comply with the observer safety requirements from the time the vessel is selected to carry an observer, which may be days or weeks in advance of the actual deployment. The language contained in 50 CFR

600.746(d) was deleted because it could be interpreted to mean compliance is required only immediately prior to the observer boarding the vessel and is inconsistent with the revisions in 50 CFR 600.746(e).

However, NMFS agrees with the comment with regard to the proposed deletion of 50 CFR 600.746(f). NMFS agrees that this provision must be retained to ensure that the observer safety regulations achieve their intended effect and will reinstate this provision.

#### *Comments Relating to Proof of Examination*

*Comment 2:* The proposed rule adds language to paragraph (d)(1), clarifying that the decal must have been issued in the past two years, or at an interval consistent with current Coast Guard regulations. The Commercial Fishing Vessel (CFV) dockside safety examination program was expanded to fish catching vessels by Coast Guard policy only, on a voluntary basis, making the statement partially inaccurate.

*Response:* NMFS agrees and will add, “or policy” so that paragraph (d)(1) will read: “clarifying that the decal must have been issued in the past two years, or at an interval consistent with current Coast Guard regulations or policy.”

#### *Comments in Relating to Alternate Safety Equipment Examination*

*Comment 3:* Certain NMFS observer programs have been unable to successfully deploy observers on small vessels (<26 feet) that do not have access to USCG examiners in their area. Many of these fishing sites are in very remote areas where USCG examiners are rarely accessible. In these situations, an alternate safety equipment examination performed either by the NMFS certified contract observer, their employer, or a NMFS observer program employee, is reasonable. The proposed regulatory text is vague and could be open to a broader interpretation. It does not reference remote sites; instead it references the unavailability of examiners or the unavailability of transportation to or from an inspection station. It should be clear that this alternate examination is not meant to apply to fishing vessels in more populous areas where fishers may assert they tried to schedule an examination yet could not.

*Response:* In the preamble, NMFS makes clear that the intent of the proposed rule is to address vessels <26 ft. in remote areas, primarily in Alaska. This is the focus of the regulation, but the regulation still provides flexibility to address other scenarios that may arise in

the future in other areas. To further clarify the proposed rule’s intent, in the first sentence of 50 CFR 600.746(g), NMFS will insert, “If a vessel is under 26 ft. (8 m) in length, in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination...”

#### *Comments Relating to Display or Show Proof*

*Comment 4:* While subparagraphs (3) and (4) adequately address the fish processing vessels and fish tender vessels, respectively, there is no mention of an alternative means to show proof for fish catching vessels.

*Response:* NMFS agrees with this comment and in § 600.746, will renumber subparagraphs (3) and (4), to (i) and (ii). NMFS will also add, (iii) “For vessels not subject to (i) and (ii) above, a dockside examination report form indicating the decal number and date and place of issue.” and place (i), (ii), and (iii) under subparagraph (2).

*Comment 5:* Commercial fishing industry vessels may undergo a safety examination, but are not generally required to be inspected, unless they are over a certain tonnage, also operate as a cargo vessel, or also operate as a small passenger vessel. In such cases they may be issued a certificate of inspection (COI). Currently, we know of no fishing vessels that are required to be inspected.

*Response:* The intent of subparagraph (d) (3) (4) (modified to (i) and (ii)), is to address alternate means to show proof of a decal for observers deployed on fish processing and tending vessels. The language has been revised to also address fishing vessels, (iii) For vessels not subject to (i) and (ii) above, a dockside examination report form indicating the decal number and date and place of issue.

#### **Classification**

NMFS has determined that this final rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

#### **Final Regulatory Flexibility Analysis (FRFA)**

Section 603 of the Regulatory Flexibility Act (RFA) requires that NMFS prepare a Final Regulatory Flexibility Analysis (FRFA) summarizing significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA). The agency’s response to those

comments and changes made to the rule as a result of the comments are below. There were no comments on the IRFA or the economic impacts of the rule. There are no reporting, recordkeeping, or other compliance costs associated with this rulemaking.

#### **Description and Number of Entities Affected**

NMFS has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts of \$4,000,000 or less, as small businesses. NMFS estimates that approximately 8,925 vessels could be required to carry an observer in NMFS-regulated fisheries. Current, precise data on the number of commercial fishing vessels that are small entities are not presently available because year-to-year participation by such entities in any given fishery is variable, due to economic, regulatory, climatic, and other factors. However, combining the best available data estimates from each of the regional observer programs derived an estimate of 8,755–8,825 vessels.

The rule clarifies an existing NMFS requirement that vessels display a USCG CFV Safety Examination decal. The decal is obtained by passing a free (except to some processor vessels) examination of compliance with USCG safety regulations, that is scheduled at a time convenient to the vessel owner/operator. No disproportionate economic impacts between small and large entities were identified for this action. Furthermore, there are no disproportionate economic impacts among groups of entities based on types of gear, areas fished, or vessel size.

#### **Preferred Alternative**

This final rule does not require that vessel operators expend more than the existing rules require (e.g., for the purchase of a larger life raft to accommodate an observer). However, failure of a vessel to comply with this rule may cause loss of fishing time. The cost of a lost fishing day varies among fisheries. For example, an average cost of a day-at-sea across all vessels 40–80 ft in length (i.e., all gears) in the Northeast in 2006 was \$895, but this figure would vary in other fisheries, depending upon the value of the fishery, the type of management regime governing that fishery and the degree to which the vessel derives its income from that fishery. The risk of loss of fishing time due to this proposed rule is minimal, because vessel owners are already required to comply with USCG safety regulations and to obtain a USCG

CFV Safety Decal when fishing in a federally permitted fishery that requires observer coverage. Therefore, this rule does not impose any new compliance costs.

**“No Action” and Other Alternatives**

Under the “no action” alternative to this rule, no new costs would be incurred. However, the difference between the cost of “no action” and the cost of the preferred alternative is minimal and NMFS believes that most of the affected vessels already voluntarily follow the USCG safety regulations and comply with the existing NMFS requirement for a USCG CFV Safety Decal when fishing in a federally permitted fishery that requires observer coverage.

A more detailed copy of this analysis is available from NMFS (see ADDRESSES).

**List of Subjects in 50 CFR Part 600**

Fisheries, Fishery, Fishing vessels, Reporting and recordkeeping requirements.

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

Dated: October 26, 2007.

**Samuel D. Rauch III,**

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

■ For the reasons set out in the preamble, 50 CFR part 600 is amended as follows:

**PART 600—MAGNUSON-STEVENS ACT PROVISIONS**

■ 1. The authority citation for part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

■ 2. In § 600.725, paragraphs (p), (t), and (u) are revised and paragraph (w) is added to read as follows:

**§ 600.725 General prohibitions.**

\* \* \* \* \*

(p) Fail to show proof of passing the USCG Commercial Fishing Vessel Safety Examination or the alternate NMFS safety equipment examination, or fail to maintain the vessel safety conditions necessary to pass the examination, when required by NMFS pursuant to § 600.746.

\* \* \* \* \*

(t) Assault, oppose, impede, intimidate, or interfere with a NMFS-approved observer.

(u)(1) Prohibit or bar by command, impediment, threat, coercion, interference, or refusal of reasonable assistance, an observer from conducting his or her duties as an observer; or

(2) Tamper with or destroy samples or equipment.

\* \* \* \* \*

(w) Fail to maintain safe conditions for the protection of observers including compliance with all U.S. Coast Guard and other applicable rules, regulations, or statutes applicable to the vessel and which pertain to safe operation of the vessel.

■ 3. In § 600.746, paragraphs (b) through (f) are revised and paragraphs (g), (h), and (i) are added to read as follows:

**§ 600.746 Observers.**

\* \* \* \* \*

(b) *Observer safety.* An observer will not be deployed on, or stay aboard, a vessel that is inadequate for observer deployment as described in paragraph (c) of this section.

(c) *Vessel inadequate for observer deployment.* A vessel is inadequate for observer deployment if it:

(1) Does not comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 285, 300, 600, 622, 635, 648, 660, and 679), or

(2) Has not passed a USCG Commercial Fishing Vessel Safety Examination, or for vessels less than 26 ft (8 m) in length, has not passed an alternate safety equipment examination, as described in paragraph (g) of this section.

(d) *Display or show proof.* A vessel that has passed a USCG Commercial Fishing Vessel Safety Examination must display or show proof of a valid USCG Commercial Fishing Vessel Safety Examination decal that certifies compliance with regulations found in 33 CFR Chapter 1 and 46 CFR Chapter 1, and which was issued within the last 2 years or at a time interval consistent with current USCG regulations or policy.

(1) In situations of mitigating circumstances, which may prevent a vessel from displaying a valid safety decal (broken window, etc.), NMFS, the observer, or NMFS’ designated observer provider may accept the following associated documentation as proof of the missing safety decal described in paragraph (d) of this section:

(i) A certificate of compliance issued pursuant to 46 CFR 28.710;

(ii) A certificate of inspection pursuant to 46 U.S.C. 3311; or

(iii) For vessels not required to obtain the documents identified in (d)(1)(i) and (d)(1)(ii) of this section, a dockside examination report form indicating the decal number and date and place of issue.

(e) *Visual inspection.* Upon request by an observer, a NMFS employee, or a

designated observer provider, a vessel owner or operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation, in a manner and according to a timeframe as directed by NMFS. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(f) *Vessel safety check.* Prior to the initial deployment, the vessel owner or operator or the owner or operator’s designee must accompany the observer in a walk through the vessel’s major spaces to ensure that no obviously hazardous conditions exist. This action may be a part of the vessel safety orientation to be provided by the vessel to the observer as required by 46 CFR 28.270. The vessel owner or operator or the owner or operator’s designee must also accompany the observer in checking the following major items as required by applicable USCG regulations:

- (1) Personal flotation devices/immersion suits;
- (2) Ring buoys;
- (3) Distress signals;
- (4) Fire extinguishing equipment;
- (5) Emergency position indicating radio beacon (EPIRB), when required, shall be registered to the vessel at its documented homeport;
- (6) Survival craft, when required, with sufficient capacity to accommodate the total number of persons, including the observer(s), that will embark on the voyage; and
- (7) Other fishery-area and vessel specific items required by the USCG.

(g) *Alternate safety equipment examination.* If a vessel is under 26 ft (8 m) in length, and in a remote location, and NMFS has determined that the USCG cannot provide a USCG Commercial Fishing Vessel Safety Examination due to unavailability of inspectors or to unavailability of transportation to or from an inspection station, the vessel will be adequate for observer deployment if it passes an alternate safety equipment examination conducted by a NMFS certified observer, observer provider, or a NMFS observer program employee, using a checklist of USCG safety requirements for commercial fishing vessels under 26 ft (8 m) in length. Passage of the alternative examination will only be effective for the single trip selected for observer coverage.

(h) *Duration.* The vessel owner or operator is required to comply with the requirements of this section when the vessel owner or operator is notified orally or in writing by an observer, a

NMFS employee, or a designated observer provider, that his or her vessel has been selected to carry an observer. The requirements of this section continue to apply through the time of the observer's boarding, at all times the observer is aboard, and at the time the

observer disembarks from the vessel at the end of the observed trip.

(i) *Effect of inadequate status.* A vessel that would otherwise be required to carry an observer, but is inadequate for the purposes of carrying an observer, as described in paragraph (c) of this

section, and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[FR Doc. E7-21550 Filed 10-31-07; 8:45 am]

**BILLING CODE 3510-22-S**