

retained. Regardless of the length of a trip, no more than three yellowfin tuna per person may be possessed on board a vessel. The recreational retention limit for yellowfin tuna applies to a person who fishes in any manner, except to a person aboard a vessel issued an Atlantic Tunas vessel permit under § 635.4. The recreational retention limit for yellowfin tuna applies to persons, including captain and crew, aboard a vessel that has been issued an Atlantic HMS Charter/Headboat permit only when the vessel is engaged in a for-hire trip.

(e) *Bluefin tuna*. Refer to § 635.23 for Atlantic bluefin tuna recreational retention limits.

(f) *North Atlantic swordfish*. One North Atlantic swordfish per person up to three per vessel per day may be retained. Regardless of the length of a trip, no more than the daily limit of North Atlantic swordfish may be possessed on board a vessel. The recreational retention limit for North Atlantic swordfish applies to a person who fishes in any manner, except to a person aboard a vessel that has been issued a limited access North Atlantic swordfish permit under § 635.4.

6. In § 635.31, paragraph (b)(2)(ii) is revised and paragraph (b)(3) is added to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) It is accompanied by a Billfish Certificate of Eligibility (COE) form, obtained from NMFS, or its equivalent that documents that the fish was harvested from other than the Atlantic Ocean management unit.

(A) The Billfish COE required under this section must indicate, in English, the name and homeport of the harvesting vessel, and the date and port of offloading. Only the purchaser of the billfish from the harvesting vessel must complete this information.

(B) The Billfish COE must be signed and dated by each dealer in possession of the product throughout the chain of custody up to but not including the consumer. This signature indicates a declaration that the billfish were not harvested from the management unit.

(C) A Billfish COE may refer to billfish taken from only one harvesting vessel. If a shipment contains billfish taken from more than one vessel, a separate billfish COE must accompany the shipment for each harvesting vessel.

(D) A model Billfish COE can be obtained by contacting the Division Chief. An equivalent form may be used

provided it contains all of the information required under this section.

(3) For the purposes of this paragraph, a dealer or seafood processor means any individual, other than a consumer, who engages in any activity, other than fishing, of industry, trade, or commerce, including but not limited to the buying or selling of a regulated species or parts thereof and activities conducted for the purpose of facilitating such buying and selling.

\* \* \* \* \*

7. In § 635.71, paragraph (b)(6) is revised and paragraphs (c)(6), (e)(14), and (e)(15) are added to read as follows:

**§ 635.71 Prohibitions.**

\* \* \* \* \*

(b) \* \* \*

(6) As an angler, fail to report a BFT, as specified in

§ 635.5(c)(1) or (3).

\* \* \* \* \*

(c) \* \* \*

(6) As an angler, fail to report a billfish, as specified in § 635.5(c)(2) or (3).

\* \* \* \* \*

(e) \* \* \*

(14) Exceed the recreational catch limit for North Atlantic swordfish, as specified in § 635.22(f).

(15) As an angler, fail to report a North Atlantic swordfish, as specified in § 635.5(c)(2) or (3).

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 011219306-2283-02; I.D. 110501A]**

**RIN 0648-AM44**

**Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to 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:** Final rule.

**SUMMARY:** NMFS issues a final 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. This action 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) and to promote the goals and objectives contained in those FMPs.

**DATES:** Effective on February 5, 2003.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this regulatory action and the 1996 Environmental Assessment (EA) RIR/FRFA prepared for the Interim North Pacific Groundfish Observer Program and the RIR/FRFAs for the subsequent extensions of the Interim North Pacific Groundfish Observer Program may also be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

**FOR FURTHER INFORMATION CONTACT:** Sue Salvesson, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** 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 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 implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the 1996 Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), and extended through 2002 under a final rule published December 21, 2000 (65 FR 80381). The program was extended again through 2007 by way of a final rule published on December 6, 2002 (67 FR 72595). The Interim Program provides the 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, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel,

processor, and contractor responsibilities relating to the Observer Program. NMFS intends the Interim Program to be effective until a long-term program is developed and implemented that addresses several current concerns. These concerns include data integrity, observer compensation, working conditions for observers, and equitable distribution of observer costs.

NMFS is working with the Council and the Council's Observer Advisory Committee (OAC) to address the above concerns and others through development of new options for an alternative infrastructure for the Observer Program.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rules extending this program through 1998 and again through 2000 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997; 63 FR 47462, September 8, 1998; and 63 FR 69024, December 15, 1998, respectively).

A proposed rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on April 2, 2002 (67 FR 15517), for a 30-day public review and comment period that ended on May 1, 2002. NMFS received 2 letters of comment on the proposed rule which are summarized and responded to in Response to Comments, below.

This final rule addresses concerns about (1) shoreside and stationary floating processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing for groundfish with pot gear; and (4) confidentiality of observer personal information.

*Shoreside or stationary floating processor observer coverage.* New regulations will maintain the current monthly observer coverage periods at shoreside or stationary floating processors based on monthly landings projections. However, during a month when a directed fishery for pollock or Pacific cod closes, a shoreside or stationary floating 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

or stationary floating 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 or stationary floating processor may not exceed 250 mt/calendar week for the remainder of that month. If a shoreside or stationary floating processor is expected to receive greater than 250 mt/wk during any calendar week of that month, the shoreside or stationary floating processor would be required to return to 100-percent observer coverage for the days fish are received or processed during that week until all groundfish received during that week is processed.

The reduced observer coverage period for a given shoreside or stationary floating 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 action.

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 or stationary floating processors, and will continue to take precedence over this allowance for reduced coverage.

*Shoreside or stationary floating processor observer logistics.* This final rule amends the observer regulations to require the observer provider company to provide the following logistical support to observers deployed at shoreside or stationary floating 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.* This final rule also amends regulations governing coverage requirements for the

groundfish pot gear fishery to require a vessel equal to or longer than 60 ft (18.3 m) length overall (LOA), fishing with pot gear that participates more than 3 days in a directed fishery for groundfish in a calendar quarter, to carry an observer during at least 30 percent of the total number of pot retrievals for that calendar quarter. Such vessels would also 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.* Observer providers are required to ensure 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.

#### Response to Comments

Two letters on the April 2, 2002, proposed rule (67 FR 15517) were received that contained a total of 15 unique comments. Comments are summarized and responded to here.

*Comment 1:* Observer coverage should be flexible before a fishery opens as well as when it closes. Many of the directed fisheries in the Gulf of Alaska start mid-month. The way the regulations are written, a shoreside processor is required to have an observer 100 percent of the time during that month even though the fishery which will trigger the coverage will not occur until many days into the month. The regulation change regarding the step down in coverage needs to be a two-way door, prior to a fishery season opening date and after a fishery closure date.

*Response:* NMFS considered both options in the analysis prepared for the proposed rule and continues to support the revised coverage regulations as proposed. The analysis showed that if shoreside processors were given the leeway to reduce coverage based on some landings criteria both before and after fishery closures, observer coverage for shoreside plants would essentially shift to a system of weekly observer coverage based on weekly landings projections. The analysis concluded that such a change would result in an observer coverage system for shoreside

processors that would be extremely burdensome, both financially and logistically, to shoreside processors, observer providers, and observers. The primary causes of this burden would be the logistical complexities and costs involved in deploying observers to and from shoreside processors on a weekly basis. NMFS would be supportive of a reexamination of these issues in the future, if the Council develops an alternative observer delivery model that would provide for weekly coverage standards in a cost effective and practical manner.

*Comment 2:* Virtually all IFQ sablefish received by Kodiak shoreside processors are eastern headed and gutted fish. The present shorebased observer regulations require 100 percent observer coverage for sablefish landings for some months. Why do observers need to observe these landings if there are no biological data to collect from headed/gutted fish? IFQ sablefish should be exempted from shorebased coverage requirements.

*Response:* Observer data are used in preparing annual stock assessments for sablefish. In particular, both catch rate and length data are used. Not all IFQ sablefish are delivered headed and gutted, some are delivered whole in refrigerated seawater. Observers obtain length data and otoliths from those fish. Observers also collect information from other groundfish that are delivered with IFQ sablefish.

*Comment 3:* According to the analysis prepared for this proposed rule, a shoreside processor that has chosen to reduce observer coverage to 30 percent does not have the ability to increase coverage back to the 100-percent level for the pollock and Pacific cod reopener. This provision needs to be highlighted in the regulations. NMFS also needs to make a concerted effort to communicate with industry regarding any reopening before the 4 day window expires after a fishery closes, when a plant is allowed to reduce coverage from 100 percent to 30 percent for the remainder of the month.

*Response:* The proposed rule correctly stated that a shoreside processor that has reduced observer coverage from 100 percent to 30 percent in a given month under the terms of this rule, and subsequently expects to receive or process greater than 250 mt per week upon the reopening of a Pacific cod or pollock fishery in that same month, must return to 100-percent coverage for each subsequent week of that month in which 250 mt or greater is expected to be received or processed. The commentor is correct in asserting that the analysis prepared for this rule did

not include the provision for returning to 100-percent coverage upon the reopening of a Pacific cod or pollock fishery. The analysis has since been revised to reflect this provision in the rule, and no change from the proposed rule is made to the final rule.

NMFS strives for timely communication with industry regarding the reopening of a closed fishery. Once harvest amounts relative to available total allowable catch are determined, NMFS provides the public notice of any fishery reopening in a manner that is intended to minimize operational costs to industry. In 2002, the reopenings of the GOA pollock fishery occurred only in the Central Regulatory Area (statistical area 630) and were announced within a 3–4 day time period after the fishery closed. NMFS intends to continue to provide this level of effective response to the extent practicable.

*Comment 4:* According to the analysis prepared for the proposed rule, the ability to reduce observer coverage to 30 percent (from 100 percent during a given month) related to fisheries closures other than for Pacific cod or pollock was not considered because of concerns regarding loss of data for a variety of species that are landed in small quantities. However, the Kodiak shoreside processors are the only shorebased processors in Alaska that currently offer markets for the directed rockfish and flatfish harvests. Therefore, this exclusion directly impacts this subset of processors. The idea that more observer data will be collected if the plant maintains 100-percent observer coverage beyond the end of the season is flawed. Once a fishery closes, no more catch will be delivered for those species and, therefore, there is no additional opportunity to collect data. Also, for both flatfish and rockfish, allocations are split between the catcher/processor and the shorebased processor sector, so additional data are available from the catcher/processors. Allowing the regulations to extend to the other directed fisheries besides pollock and Pacific cod would help reduce shorebased observer cost without impacting observer data.

*Response:* NMFS analyzed the impacts of the reduction of shoreside processor observer coverage requirements on observer data and associated costs based on requests from industry and the resulting Council motion. The industry request and Council motion were limited to reducing shoreside observer coverage from 100 percent to 30 percent based on pollock and Pacific cod directed fishery closures. Therefore, consideration of

observer coverage reduction at shoreside processors relative to closures for other directed fisheries is beyond the scope of the analysis prepared for this action. While there may be some advantage in extending this type of coverage reduction mechanism to other directed fishery closures, NMFS intends to implement this change as described in the proposed rule. NMFS, in consultation with the Council, may consider extending this provision to other fisheries after review of the implementation of this provision in the pollock and Pacific cod fisheries.

*Comment 5:* NMFS has indicated that in some circumstances it is acceptable for an observer to lodge on a vessel after the observer has been released from duty on a vessel, but not prior to the requested date of deployment of the observer to a vessel. However, no guidelines exist as to what those acceptable circumstances might be. NMFS has provided verbal guidance that it would be acceptable for an observer to lodge on a vessel if the observer was released from duty at 3 a.m.; but apparently it would not be acceptable to lodge on the vessel if the vessel wants to depart at 3 a.m. Not allowing contractors to have the flexibility to lodge observers on vessels that they are or will be assigned to, and not allowing vessels to have the option to minimize lodging costs will significantly increase costs to vessels who frequently volunteer to lodge their observers earlier or later than needed for their coverage.

*Response:* The final rule has been clarified to provide clearer guidance on when observers may be housed on vessels they will be, or currently are, assigned to. The intent of this regulation is to avoid the lodging of an observer aboard a vessel on which he or she is not working or currently assigned. An observer released from duty aboard a vessel could lodge aboard the vessel for no more than 24 hours provided the skipper or at least one crew member is aboard while the observer is lodged there, and provided this lodging is logistically practical for the observer and the vessel personnel. If the observer wants to get off the vessel as soon as it docks or if the vessel skipper requests the observer leave upon docking, arrangements must be made by the observer provider for the observer to move to land-based accommodations. Likewise, an observer assigned to a vessel would be allowed to lodge on that vessel up to 24 hours prior to departure, provided the skipper or at least one crew member is aboard, and as long as this is logistically practical for the observer and the vessel personnel.

*Comment 6:* Can shoreside processors provide their own internal pager system as a means for communication with the observer assigned to that processor?

*Response:* The observer provider company is ultimately responsible for ensuring that observers are issued individual communications devices and maintaining them in working order as specified in the rule. If it is logistically more convenient to meet these requirements through an arrangement with the shoreside processor, the observer provider company may do so.

*Comment 7:* If the present communication system between shoreside processors and their observers is working, is a pager or cell phone necessary?

*Response:* Yes. While the present communications systems between processors and observers may be successful for some processors, the current approach is not working for others. In light of these failures, NMFS believes that regulation on how these important communications must occur is necessary to some degree. Communications are largely reliant on the dependability of the individuals involved, as well as the communications equipment available. In cases where individuals involved are highly dependable, any system has a better chance of working. NMFS cannot control the level of human dependability in all cases, but the agency can require a certain standard for communications equipment that must be available to individual observers. In promulgating such regulations, NMFS must apply these requirements to all shoreside processors without bias.

*Comment 8:* What accommodations will be made for those shoreside processors where cell and/or pager services are not available?

*Response:* Where cell phone or pager service is not available at the location of the shoreside processor, walkie-talkies may be an acceptable substitute. However, due to inherent range restrictions and unreliability of these devices, they would be approved only on a case by case basis. Where cell phone or pager service is not available and walkie talkies are not approved, another method of communication between the processor and the observer would need to be proposed by the observer provider company to the Observer Program for approval.

*Comment 9:* Who is responsible for lack of compliance when an observer drops his or her cell/pager in the harbor while going out to a vessel and it takes a lot of money and a week to get a new one to the observer? What obligation

does the plant have to notify the observer during that down time?

*Response:* The observer provider company is responsible for ensuring observers have individual communications devices in working order. If a device ceases to be in working order, the provider must provide a back up device in a timely manner such that the observer is able to communicate with the processor regarding the next delivery following the loss or failure of the communications device. In light of that, having one or two working back-up devices on site at all times to avoid "down time" makes logistical sense. The regulations do not include an exception for "down time".

*Comment 10:* Who is liable if the observer takes the pager out of cell/pager range?

*Response:* The observer provider company is responsible for providing the equipment in working order. As is currently the case, the observer is expected to remain in reasonable communication with the processor. That includes remaining in range of such communication devices as the individual circumstances of the shoreside processor operations and location dictate.

*Comment 11:* It is unclear whether the criteria for lodging an observer assigned to a shoreside plant "within a mile of a shoreside processor" is determined by road distance or "as the crow flies".

*Response:* This requirement relies on the distance along the road or path traveled by the observer between his or her lodging and the shoreside processor to which he or she is assigned.

*Comment 12:* In some ports where observers lodge away from the plant premises, taxi service is not available 24 hours/day. Under these conditions, what will happen when a taxi is not available and the observer has to rely on transportation from the plant given that NMFS has implied in the analysis that plant transportation is unreliable? Plants which have to lodge their observers more than a mile away will see a significant increase in transportation costs for their observers. Is there any time a taxi would not be considered acceptable motorized transportation?

*Response:* Reliable, alternate arrangements that meet the requirements of the rule must be made when a taxi is not available. A taxi would not be considered acceptable transportation if it cannot transport an observer to the shoreside processor in a timely manner to allow the observer to perform his or her official duties. These duties include being present at the processor at appropriate times during

the delivery and/or processing of the fish from delivery that requires sampling. Once in a while, a taxi may not be able to deliver an observer to the assigned shoreside processor in a timely manner to perform assigned duties due to unexpected mechanical break down of a taxi or other unforeseen circumstances. However, if such events become chronic and transportation by taxi becomes unreliable and untimely, alternate transportation arrangements that conform to the regulatory requirements must be made.

*Comment 13:* Do observers still have the option of walking or taking a bike to their assigned plant if they prefer to do so?

*Response:* Yes. Observers may choose to walk or ride a bicycle between their shoreside lodging and the shoreside processor to which they are assigned, as long as transportation, as described in regulations, is always available.

*Comment 14:* If this new regulation goes into effect, vessels using pot gear would be forced to wait until near the end of the season or quarter to obtain their 30-percent coverage for the number of pot lifts they performed. Consequently, the demand for observer coverage may exceed the availability of observers. Vessels may not be able to comply with required coverage as contractors would be less likely to be able to cover all of the pot boats during the end of the season crunch. Additionally, under those circumstances, vessels will see cost increases because they won't be able to share observer airfare, transportation and subsistence costs with other vessels.

*Response:* NMFS believes that proper planning by pot gear vessels and observer providers can ensure observer availability in most cases. However, NMFS does acknowledge that last minute changes in management decisions related to fishery openings and closures can present challenges for compliance with observer coverage requirements. NMFS strives to take coverage needs into consideration when determining midseason fishery openings.

This regulation, which bases observer coverage levels on the actual amount of gear fished, rather than days fished, is intended to ensure observer data that are more representative of actual fishing effort. The majority of vessels, for which days fished does reflect average fishing effort over the course of a quarter or season, should see no substantive change in the way they estimate observer coverage needs. Likewise, no more problem should exist with observer availability at the end of the quarter or season than what is currently

experienced. Additionally, observer coverage needs should be somewhat predictable over time, allowing vessels to meet coverage needs prior to the end of the season or quarter.

*Comment 15:* We believe that this proposed regulation would not solve the identified issue of pot gear vessels going out just beyond the harbor and pulling one pot to obtain observer coverage for that day. Vessels would now be able to set just a few pots and pull them as many times as possible in one day to obtain a large portion of their coverage.

*Response:* NMFS does not anticipate this type of behavior, particularly because it would not be cost effective. If and when this behavior occurs, NMFS will respond accordingly.

### Changes From the Proposed Rule

To provide clarity in the application of certain provisions of this action, regulatory text in § 679.50(d)(3) and (i)(2) is changed from the proposed rule. Nearly all Observer Program regulations that apply to shoreside processors also apply to stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. Thus, the final rule is changed from the proposed rule to apply to both shoreside processors and stationary floating processors.

The final rule also is changed to reflect revised regulatory text that became effective January 1, 2003, under a separate final rule that extended the Observer Program through December 31, 2007 (67 FR 72595, December 6, 2002). These changes include redesignating proposed changes to paragraphs (i)(2)(v) and (i)(2)(xiii) as final changes to paragraphs (i)(2)(vi) and (i)(2)(xii), respectively. The portion of redesignated paragraph (i)(2)(xii) that addressed an expectation of observer providers to monitor observer performance is deleted because this provision was superseded in the December 6, 2002, final rule. Last, redesignated paragraph (i)(2)(vi) is revised to incorporate the regulatory guidance referenced to in the response to comment 5.

### Classification

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

The amendment of the existing regulations implementing the Interim Observer Program is consistent with the intent and purpose of the Interim Observer Program. These actions follow previous actions to refine observer coverage requirements and improve support for observers. Previous actions

addressing these matters were analyzed in the EA/RIR/FRFA for the Interim Observer Program dated August 27, 1996, 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 a FRFA which describes the impact this final rule would have on small entities. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). In addition to the discussion below, the FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings, and the finding from the EA/RIR/FRFA for the Observer Program and its extension. No comments on the IRFA were received during the public comment period on the proposed rule. Thus, no new data were incorporated into the analysis during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 15520, April 2, 2002) and is not repeated here.

This action includes measures that will 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. Vessels 60 ft (18.3 m) and greater, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) and above. Since the inception of the North Pacific Groundfish Observer Program in 1989, NMFS has strived to mitigate the economic impacts of the observer program on small entities. In doing so, NMFS has not significantly adversely affected the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Fishery Conservation and Management Act.

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 30, 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 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)(vi) and (i)(2)(xii) are revised; and new paragraph (d)(3) is added to read as follows:

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

\* \* \* \* \*

(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 gear retrieved that day 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 or stationary floating 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 this 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 or stationary floating 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 or stationary floating processor during a month with reduced observer coverage, as authorized under this paragraph (d)(3), the shoreside or stationary floating processor must return to observer coverage requirements as specified in paragraph (d)(1) of this section until all fish received during that week is processed. The shoreside or stationary floating 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) \* \* \*

(vi) Observer deployment logistics.

(A) An observer provider must provide to each of its observers under contract:

(1) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(2) Lodging, per diem, and any other necessary services to observers aboard fishing vessels or at the site of shoreside or stationary floating processing facilities.

(B) Except as provided in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this section, 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.

(C) Observers may be housed on vessels they will be, or currently are, assigned to for a period not to exceed 24 hours:

(1) Prior to their vessel's initial departure from port;

(2) Following the completion of an offload where the observer has duties and is scheduled to disembark; or

(3) Following the completion of an offload where the observer has duties and is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel

skipper or at least one crew member is aboard and that such housing is logistically practical for the observer and the vessel personal. Alternative housing accommodations must be arranged if the conditions in this paragraph (D) are not met or if the observer wants to get off the vessel as soon as it docks or if the vessel operator requests the observer to leave upon docking.

(E) 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:

\* \* \* \* \*

(xii) *Maintain confidentiality of information.* An observer provider must ensure 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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