

(2) The breaking strength of these weak links must not exceed 1100 lb (498.8 kg).

(C) Anchoring System. All anchored gillnet strings containing 20 or fewer net panels must be securely anchored with one of the following anchoring systems:

(1) Anchors with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string,

(2) Dead weights weighing at least 50 lb (22.7 kg) at each end of the net string, or

(3) A lead line weighing at least 100 lb (45.4 kg) per 300 ft (91.4 m) for each net panel in the net string.

\* \* \* \* \*

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## DEPARTMENT OF COMMERCE

### National Oceanic Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 001023289-0289-01; I.D. 083000C]

RIN 0648-AO25

#### Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through December 31, 2002

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to extend through 2002 the regulations implementing the Interim North Pacific Groundfish Observer Program (Interim Observer Program), which otherwise would expire December 31, 2000. This action is necessary to ensure uninterrupted observer coverage through December 31, 2002. The intention is to advance 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). This final rule does not amend the existing regulations, except to extend the certifications of observer contractors who are currently certified by NMFS.

**DATES:** Effective January 1, 2001.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim

Groundfish Observer Program, the RIR/FRFA prepared for the 1998 Interim Groundfish Observer Program, the RIR/FRFA prepared for the 1999-2000 Interim Groundfish Observer Program, and the RIR/FRFA prepared for this final regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to the Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668.

**FOR FURTHER INFORMATION CONTACT:** Bridget Mansfield, 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 Observer Program in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The regulations implementing the Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), and again through 2000 (63 FR 69024, December 15, 1998). The Interim Observer 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 that by 2003 a long-term program will be developed and implemented that addresses several current concerns. These 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 these concerns and to develop new options for an alternative infrastructure for an Observer Program. A new infrastructure would be expected to ensure the

continued collection of quality observer data and address observer coverage cost distribution issues through a fee system or alternate funding mechanism.

The development of a new infrastructure will require extensive time and coordination among NMFS staff, the OAC, and representatives of the industry sectors and observer interests. NMFS and the Council intend to implement a replacement structure for the program prior to the expiration of the Interim Observer Program on December 31, 2002.

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; 63 FR 69024, December 15, 1998, respectively).

A proposed rule to extend the Interim Observer Program through 2002 was published in the **Federal Register** on November 3, 2000 (65 FR 66223), for a 17-day public comment and review period that ended on November 20, 2000. No written comments were received. This final rule does not change the existing regulations, except to extend certification of observer contractors who are currently certified by NMFS under the terms and conditions set forth in the regulations at § 679.50(i).

#### Changes From the Proposed Rule

No changes are made in this final rule from the proposed rule published in the **Federal Register** (65 FR 66223 November 3, 2000).

#### Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Act of 1996, which requires a plain language guide to compliance with this final rule by affected small entities.

#### *How much observer coverage do I need?*

Observer coverage requirements for vessels over 60 ft (18.3 m) length overall (LOA) and up, other than motherships, that fish for groundfish in the BSAI or the GOA are applicable each calendar quarter and are specific to vessel type and length. Coverage requirements also vary according to the gear used and the directed fishery in which the vessel participates. Vessels under 60 ft (18.3 m) LOA are exempt from observer coverage under this final rule.

Coverage requirements for shoreside processors and motherships are specified according to projected landings in a given month. Additional coverage requirements for vessels and shoreside processors are specified under the Community Development Quota Program (CDQ) and American Fisheries Act (AFA).

The regulations found at 50 CFR 679.50 should be referenced for specific coverage requirements.

*Who is responsible for ensuring that observer coverage is met?*

The operator of the vessel or shoreside processor is responsible for obtaining appropriate coverage levels as specified by regulation. The owner of a vessel must ensure the operator complies and is liable with the operator for compliance.

*How do I obtain an observer?*

Vessel owner/operators are required to procure observers directly through a NMFS-certified observer provider company (contractor). A list of contractors is available from the NMFS Alaska Regional Office (see **ADDRESSES**) or from the North Pacific Groundfish Observer Program at (206) 526-4078.

*What if an observer is not available when I need one?*

In general, a vessel may not fish for groundfish and a shoreside processor may not process groundfish without a required observer. NMFS encourages vessels and shoreside processors that anticipate the need for an observer to contact, as early as possible and in writing, the contractors that provide observers to allow enough time to ensure the availability of an observer when needed. A written contract regarding the terms of agreement with the contractor for providing observer coverage also is encouraged. If an observer also is not available when the vessel or shoreside processor has requested one, the vessel or shoreside processor may need to adjust operations. For a vessel or shoreside processor requiring 100 percent observer coverage, if an observer is not available when scheduled operations would require one, the vessel or shoreside processor would be in violation of coverage regulations should the vessel continue to fish for groundfish, or, in the case of a mothership or shoreside processor, continue to receive and process groundfish. Vessels or shoreside processors that require 30 percent observer coverage in a given calendar quarter or month may have some latitude to obtain observer coverage later

that quarter or month. However, the vessels or shoreside processors requiring 30 percent observer coverage will be considered in violation of coverage regulations if, by the close of the calendar quarter or month, they do not obtain the appropriate level of coverage for that period.

*What are my responsibilities to the Observer aboard my vessel or at my shoreside processor?*

At no cost to the observers or the U.S. Government, vessels must provide food and accommodation equivalent to that of the vessels' officers or other management-level personnel of the vessel. Vessels and shoreside processors must maintain safe conditions, and vessels must adhere to U.S. Coast Guard rules for safe operation of the vessel and display a valid Commercial Fishing Vessel Safety Decal issued by the Coast Guard. Vessels and shoreside processors must facilitate the transmission of observer data by providing the appropriate computer and communications hardware equipped with NMFS-supplied software. Observers must have free and unobstructed access to equipment and areas of a vessel or shoreside processor, as outlined in the regulations, that are necessary for observers to complete their work. Such access must also be available to records such as the Daily Fishing Log, Daily Catch Processing Log, product transfer forms, scale information or production records, or any logs or documents required by regulation. Observers must be notified in advance of fish being brought aboard the vessel or a delivery being received at a shoreside processor, unless the observer requests otherwise. Observers must be reasonably assisted in carrying out their duties, including being provided with a safe work area. The Community Development Quota Program and American Fisheries Act programs have additional requirements outlined in regulations implementing those programs.

*What are the responsibilities of an observer provider company?*

The observer provider (specified in the regulations as the contractor) must be certified by NMFS to provide observer services to vessels and shoreside processors operating in the BSAI and GOA. Contractors are required to provide a NMFS-certified observer to a shoreside processor or vessel upon request. This means that they are responsible for recruiting and hiring qualified candidates; providing observers' salaries; benefits and personnel services in a timely manner;

providing all logistics, including travel and per diem costs to get an observer to place of deployment. Contractors must meet requirements of deployment length and assignment criteria and must replace an observer or prospective observer under specified conditions. Contractors must maintain communication with deployed observers with an employee on call 24 hours a day for observer emergencies and must ensure observer data, biological samples, and other communication are transmitted or transferred to NMFS within the specified time frames. Contractors must also ensure that observers meet all NMFS training, briefing, and debriefing requirements, as well as all equipment maintenance and replacement requirements. Contractors are responsible to monitor observers' performance to ensure satisfactory conformance to NMFS standards. Contractors are responsible to provide NMFS with information as specified in regulations under § 679.50(i)(2)(xiv). Finally, contractors must conform with conflict-of-interest standards as set out in § 679.50(i)(3).

#### **Classification**

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

This final rule extends 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 numbers 0648-0307 and 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.

The extension of the regulations implementing the Interim Observer Program through December 31, 2002, is consistent with the intent and purpose of the Interim Observer Program. The extension will provide the same benefits as listed 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 an FRFA, which describes the impact this final rule

would have on small entities. A copy of this analysis is also available from NMFS (see ADDRESSES). No comments on the Initial Regulatory flexibility Analysis were received during the public comment period on the proposed rule. NMFS has determined that this final rule could have a significant impact on a substantial number of small entities. Alternatives that addressed modifying reporting requirements for small entities or the use of performance standards rather than design standards for small entities were not included in the analysis, because such alternatives are not relevant to this final action and would not mitigate impacts on small entities. Allowing exemptions for small entities would not be appropriate because the objective to ensure uninterrupted observer coverage requirements through 2002 would not be achieved would undermine the collection of information needed to effectively manage the Alaska groundfish fisheries.

Under the definition of small entity for the fisheries harvesting and processing industry, 6 companies certified by NMFS to supply observers and 19 shoreside processors that would be impacted by this action are considered small entities with fewer than 500 employees. With the exception of Anchorage, 17 Alaskan communities impacted by this rule qualify as "small jurisdictions", under Regulatory Flexibility Act definitions. None of these communities is directly regulated by this action, and there are no anticipated indirect effects associated with the action that would accrue to this group of "small entities".

Approximately 1,315 vessels that caught groundfish off Alaska while fishing Federal total allowable catch amounts in 1997 were provisionally considered to be small entities. Most persons operating in the fisheries impacted by the action are small entities given their expected gross annual revenues less than \$3 million. The ownership characteristics of vessels operating in the fisheries have not been thoroughly analyzed to determine if they are independently owned and operated or affiliated with a larger parent company.

This may represent an overestimate of vessels considered to be small entities, because in 1997, the most recent year for which data on the number of vessels considered to be large entities is available, 59 vessels were considered large entities based solely on their

Alaska groundfish fishery ex-vessel value and product value. This is considered to be an underestimate of large entities for the following reasons: (1) earnings from other fisheries and activities were not included; (2) a vessel's owner's earnings from other sources were not included; (3) ex-vessel value of a delivery by a catcher vessel to an at-sea processor was included only when a fish ticket with value was submitted for the delivery; (4) vessel-specific fish ticket landings weight and value data are used to estimate ex-vessel value for catcher vessels, but such data are not available for all deliveries to inshore processors.

However, this action does include 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. Recently, NMFS proposed reductions in observer coverage for some CDQ vessels and shoreside processors. 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 prepared under the Magnuson-Stevens Fishery Conservation and Management Act.

The Assistant Administrator for Fisheries, NOAA, (AA) finds for good cause under 5 U.S.C. 553(d) that delaying the effectiveness of this rule for 30 days would be contrary to the public interest. Such a delay would cause the Observer Program to expire. For conservation and management reasons, NMFS could not allow fishing in 2001 without requiring observer coverage necessary to monitor and manage the Alaska groundfish fisheries. Also, this final rule is not establishing any new requirements with which affected parties must come into compliance. For these reasons, a delay in the effective date is not warranted. Accordingly, the AA makes the extension effective on January 1, 2001.

The President has directed Federal agencies to use plain language in their communications with the public,

including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments such be sent to the Administrator, Alaska Region (see ADDRESSES).

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 14, 2000

**William T. Hogarth,**  
Deputy Assistant Administrator for Fisheries,  
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, the section heading, and paragraphs (i)(1)(i) and (i)(1)(iii) are revised to read as follows:

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

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Administrator describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements to be used. Observer contractors certified for the year 2000 to provide observers through the North Pacific Groundfish Observer Program, are exempt from this requirement to submit an application and are certified for the term specified in paragraph (i)(1)(iii) of this section.

\* \* \* \* \*

(iii) *Term.* Observer contractors will be certified through December 31, 2002. NMFS can decertify or suspend observer contractors pursuant to paragraph (j) of this section.

\* \* \* \* \*

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