

snapper-grouper species currently not under a bag limit (excluding tomate and blue runner); require escape vents and escape panels with degradable hinges and fasteners in black sea bass pots; and specify that a vessel with longline gear on board may only possess certain deep-water species of snapper-grouper.

A proposed rule to implement Amendment 9 has been received from the Council. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with Amendment 9, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish it in the **Federal Register** for public review and comment.

Comments received by November 9, 1998 whether specifically directed to the amendment or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve Amendment 9. Comments received after that date will not be considered by NMFS in this decision. All comments on Amendment 9 or on the proposed rule during their respective comment periods will be addressed in the final rule.

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

Dated: September 1, 1998.

**Bruce Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 980826225-8225-01 ; I.D. 081498C]

RIN 0648-AL50

**Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through December 31, 2000**

**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 extend the current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program

(Observer Program) that expire December 31, 1998. This action is necessary to assure uninterrupted observer coverage through December 31, 2000.

This action is intended to accomplish the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

**DATES:** Comments on this proposed rule must be received by October 8, 1998.

**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 J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. 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, and the RIR/Initial Regulatory Flexibility Analysis (IRFA) prepared for this proposed regulatory action also may be obtained from the same address.

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

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area 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 also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted and NMFS implemented the Interim Groundfish Observer Program. The Interim Groundfish Observer Program superseded the North Pacific Fisheries Research Plan and extended the 1996 mandatory groundfish observer requirements through 1997 (61 FR 56425, November 1, 1996) and again through 1998 (62 FR 67755, December 30, 1997). The intent of the Interim Observer Program is to provide for the collection of observer data necessary to manage the Alaska groundfish fisheries while a long-term program is being developed to address concerns about

observer data integrity, observer compensation and working conditions, and equitable distribution of observer coverage costs. During 1997 and 1998, NMFS attempted to address the first two concerns through the development of a joint partnership agreement (JPA). The JPA would be an agreement with a third party organization that would be implemented by 1999 for that organization to provide observer procurement services for the Alaska groundfish industry. The Pacific States Marine Fisheries Commission (PSMFC) expressed a willingness to serve as the third party organization to provide these services under a JPA. Throughout 1997 and 1998, NMFS consulted with the Council on the progress toward development of a JPA between NMFS and PSMFC.

At its December 1997 meeting, the Council further requested NMFS to address the observer coverage cost distribution issue through either reconsideration of the North Pacific Fisheries Research Plan that was repealed in 1995 (61 FR 56425, November 1, 1996), or the development of an alternative funding mechanism. The Council intended that options to address the cost distribution issue be developed concurrently with the JPA, although the implementation schedule of the JPA and of measures to address industry cost concerns were anticipated to differ.

During late spring 1998, NMFS became aware of two issues that forestalled the ability of PSMFC to go forward with the JPA concept as endorsed by the Council and conceptualized by NMFS. First, the authorities and respective roles of NMFS and PSMFC under a JPA could subject the agreement to the Services Contract Act (SCA). While it would be possible to develop a JPA under the SCA, under the SCA's wage provisions costs of observer services under the JPA would likely increase beyond those negotiated under union settlement and envisioned by the Council for this program.

Second, the role envisioned for PSMFC under the JPA would increase PSMFC's exposure to potential lawsuits. PSMFC determined this exposure to be too high. Furthermore, NMFS could not sufficiently indemnify PSMFC against legal challenge because (1) no statutory authority for such indemnification exists, and (2) the Anti-Deficiency Act precludes open-ended indemnification. Regulations developed to implement the JPA could deflect potential lawsuits away from PSMFC to NMFS.

Nonetheless, such deflection could not sufficiently reduce the potential for lawsuits in a manner that would allow PSMFC to go forward with the JPA as endorsed by the Council.

At its June 1998 meeting, the Council was informed that development of a JPA failed due to the issues described here. Subsequently, the Council requested NMFS to develop new options for an alternative infrastructure for the Observer Program that would (1) better assure the continued collection of quality observer data, and (2) address observer coverage cost distribution issues through a fee collection or alternative funding mechanism. NMFS is scheduled to report back to the Council at its October 1998 meeting on a plan to achieve these objectives. The Council also recognized that the development of measures to address concerns about the continued integrity of observer data and industry cost distribution issues would require extensive time and coordination efforts among NMFS staff, different industry sectors, and representatives of observer interests. At its June 1998 meeting, the Council unanimously requested NMFS to extend the current Interim Observer Program through December 31, 2000.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed rule and final rule implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996, respectively) as well as the proposed and final rule that extended the interim program through 1998 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997, respectively). Consistent with the final rule extending the existing observer program into 1998, § 679.50(i)(1)(i) of the proposed rule specifies that observer contractors certified prior to January 1, 1999, and providing observer services during 1998, would be exempt from the requirement to submit an application for certification. The intent of this provision is to alleviate an unnecessary paperwork burden on those observer contractors who are certified by NMFS and currently provide observer services. No other changes to the existing regulations are proposed at this time.

#### Classification

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

This 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 numbers 0648-0318 and 0648-0307.

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 existing regulations implementing the interim observer program through December 31, 2000, is consistent with the intent and purpose of the Interim Groundfish Observer Program. The proposed action is a necessary extension of the rule implementing the Interim Groundfish Observer Program and will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Groundfish Observer Program, dated August 27, 1996, and the RIR/FRFA for the extension of Interim Observer Program through 1998 dated October 28, 1997. Copies of these analyses are available from NMFS (see ADDRESSES).

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of 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 aboard a vessel 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 and required to carry observers (i.e., vessels 60 ft (18.3 mt) LOA and longer) meet the definition of a small entity under the Regulatory Flexibility Act (RFA). Since 1995, about 270 catcher vessels carry observers annually. The FRFAs prepared for the 1997 and 1998 Interim Groundfish Observer Program describe the degree to which these catcher vessels would be economically impacted by observer coverage levels or other regulatory provisions of the Observer Program. The proposed action is not expected to result in any economic impacts beyond those already analyzed in these previous FRFAs because this rule would not implement any changes in required observer coverage levels or other regulations implementing the Interim Observer Program, except for an extension of the effective date, and the underlying socioeconomic conditions of the fishery and participating small

entities has remained constant. These impacts are summarized from the IRFA prepared for this proposed action as follows:

Table 4 of the IRFA summarizes costs by groundfish harvesting and processing sector considering observer costs as a fraction of exvessel groundfish value alone, and of the sum of exvessel values for groundfish and halibut. For most sectors, ranges, averages and medians are similar for both groundfish only and groundfish plus halibut categories. Participation in halibut fisheries occurred in only four of the ten sectors examined (100 percent and 30 percent fixed-gear catch vessels (CVs), 30 percent fixed-gear catcher/processor vessels (CPs), and 30 percent trawlers CVs). The data in Table 4 are based on 1995 assumptions for estimated costs per observer day (\$180-\$198/day) and indicate that vessel and processor observer costs ranged from .02 to 24.8 percent of the operations exvessel value of catch. Fixed gear vessels generally experience the highest relative cost for observer coverage (about 3.5 percent of the groundfish exvessel value for catch vessels > 125 ft LOA and 2.5 percent for catch vessels > 60 ft and < 125 ft LOA). These relative costs are decreased slightly to 3.4 and 2.0 percent, respectively, if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.5 percent and 1.0 percent, respectively). Note that these relative costs would increase under the proposed action to the extent that observer union negotiations continue to result in increased costs per deployment day.

Table 4 also presents data based on an assumption for estimated costs per observer day of \$325/day. Under this higher cost scenario, vessel and processor observer costs ranged from .04 percent to 40.7 percent of the operations' exvessel value of catch. Again, fixed gear vessels generally experience the highest relative cost for observer coverage (about 6.3 percent of the groundfish exvessel value for catcher vessels > 125 ft LOA and 4.2 percent for catcher/processor vessels > 125 ft LOA). The relative costs for catcher vessels is decreased slightly to 6.1 if the vessels' exvessel value of halibut catch is also considered. Shoreside processors and trawl catcher processors generally paid the least for observer coverage relative to exvessel value (0.8 percent and 1.7 percent, respectively).

Under both cost scenarios, the highest relative costs of observer coverage were correlated with vessel operations that were at the lowest end of the revenue spectrum within each sector examined. The fact that fixed gear operations generally pay higher relative costs for observer coverage reflects that these operations generally receive less revenue from the groundfish/halibut fisheries compared to trawl operations. The single case where observer costs exceeded 20 percent reflected a single vessel operation that earned less than \$5,500 in groundfish revenues for 1995.

The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable

statutes and that minimize any significant 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.

Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not considered by the Council or in this analysis. Such alternatives are not relevant to this proposed action and would not mitigate the impacts on small entities. Allowing exemptions for small entities from this proposed action would not be appropriate because the objective to assure uninterrupted observer coverage requirements through 2000 could not be achieved if small entities were exempted.

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. Similarly, vessels between 60 ft (18.3 m) and 125 ft (38.1 m) LOA have lower levels of observer coverage than those for vessels over 125 ft (38.1 m) LOA. These measures, 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 adversely affecting implementation of the conservation and management

responsibilities imposed by the FMPs and the Magnuson-Stevens Act.

The EA/RIR/FRFA prepared for the 1997 Interim Groundfish Observer Program (61 FR 56425, November 1, 1996) included the North Pacific Fisheries Research Plan (Research Plan) as an alternative. However, the Research Plan currently is not a viable alternative to the proposed interim observer program because fees collected in 1995 were refunded in early 1996 and, if the Research Plan were pursued as the preferred alternative, start-up funding would have to be collected again. Regulations implementing the existing observer program will expire at the end of 1998. Implementation of a fee-based observer program is not feasible by the end of this year, which would be necessary to provide observer coverage for the 1999–2000 groundfish fisheries. The preferred alternative for an interim observer program is the only option that could be implemented by January 1, 1999, so that the groundfish fisheries could commence without interruption.

With the demise of the JPA, the Council again requested NMFS to address industry cost distribution issues through a fee collection or alternative funding mechanism. NMFS is scheduled to report back to the Council at its October 1998 meeting on a plan to achieve this objective.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 1, 1998.

**Hilda Diaz-Soltero,**

*Acting Assistant Administrator for Fisheries, 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, the section heading, paragraphs (i)(1)(i), and (i)(1)(iii) are revised to read as follows:

**§ 679.50 Groundfish Observer Program applicable through December 31, 2000.**

\* \* \* \* \*

(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 and methods to be used. Observer contractors certified prior to January 1, 1999, and that have provided observer services during 1998, 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, 2000. NMFS can decertify or suspend observer contractors pursuant to paragraph (j) of this section.

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