

If you operate a vessel deploying hook-and-line gear other than snap gear, in state waters of IPHC Area 4E, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>55 ft LOA	minimum of paired streamer lines of a standard specified at § 679.24(e)(5)(iii)
If you operate a vessel deploying hook-and-line gear, in state waters of IPHC Area 4E, and it is snap gear, and your vessel is...	Then you must use this seabird avoidance gear in conjunction with requirements at § 679.24(e)...
>32 ft to 55 ft LOA and does not have masts, poles, or rigging >32 ft to 55 ft LOA and has masts, poles, or rigging >55 ft LOA	minimum of one buoy bag line and one other device <sup>1</sup> minimum of a single streamer line and one other device <sup>1</sup> minimum of a single streamer line of a standard specified at § 679.24(e)(5)(iv) and one other device <sup>1</sup>

<sup>1</sup>other device = weights added to groundline, another buoy bag line or single streamer line, or strategic offal discharge [see § 679.24(e)(6) for more details]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 030818203-3328-02; I.D. 071503D]

RIN 0648-AR32

#### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

**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 provide added flexibility in the deployment of observers in the Exclusive Economic Zone (EEZ) off the coast of Alaska. This action is intended to ensure continued collection of high quality observer data. It is necessary 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 12, 2004.

**ADDRESSES:** Copies of the Final Regulatory Flexibility Analysis (FRFA) prepared for this regulatory action and the Environmental Assessment (EA) prepared for the Extension of the Interim North Pacific Groundfish Observer Program beyond 2002 may be obtained from the Alaska Region,

NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

**FOR FURTHER INFORMATION CONTACT:**

Jason Anderson, 907-586-7228 or [jason.anderson@noaa.gov](mailto:jason.anderson@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

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 EEZ 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 approved and implemented, the Interim Groundfish Observer Program (Interim Program) in 1996 (61 FR 56425, November 1, 1996), which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the Interim Program were extended through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), again through 2002 (65 FR 80381, December 21, 2000), and again through 2007 (67 FR 72595, December 6, 2002). The Interim Program provides the regulatory framework for the collection by observers of data 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 observer provider responsibilities relating to the Observer Program.

A proposed rule to amend regulations governing housing requirements for observers deployed in the groundfish fisheries governed by the FMPs was published in the **Federal Register** on

September 3, 2003 (68 FR 52378), for a 30-day public review and comment period which ended October 3, 2003. NMFS received one letter of comment on the proposed rule, which is summarized and responded to in Response to Comments, below.

A final 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 January 7, 2003 (68 FR 715). The intent of the final rule was to address concerns about: (1) Shoreside processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing with groundfish pot gear; and (4) confidentiality of observer personal information. This final rule is intended to correct and clarify specific provisions of the January 7 rule.

#### Comments and Responses

One letter of comment was received on the proposed rule that contained four unique comments. Comments are summarized and responded to here.

*Comment 1:* The public should be able to comment on proposed rules through email.

*Response:* NMFS will begin accepting email comments on February 2, 2004.

*Comment 2:* Honest observers should be hired and not work in collusion with fishermen.

*Response:* NMFS has determined that reasonable housing for observers facilitates their ability to furnish unbiased data. Further, regulations at § 679.50(j)(2)(i) describe limitations on conflict of interest. These include requirements that observers must have no direct financial interest in a North Pacific fishery managed by an FMP and may not serve on a vessel owned or operated by someone who had previously employed the observer. Further, regulations at § 679.50(j)(2)(ii) require observers to accurately sample

catch and record data according to the Observer Manual. Observers who do not perform duties according to the Observer Manual or who knowingly record information which is not factual are subject to actions which include suspension, decertification, and/or prosecution.

*Comment 3:* NMFS should employ video technology to monitor shipboard and dockside operations.

*Response:* To the extent video technology is related to improved observer working conditions, NMFS agrees. In addition, NMFS is researching alternative technology which may be suitable for monitoring components of the fisheries. The International Pacific Halibut Commission recently completed a study examining the feasibility of electronic monitoring systems in the Pacific halibut longline fleet operating off the coast of Alaska. If alternative technologies are feasible, efficient, and provide high quality data, then NMFS may incorporate such technology in future monitoring programs.

*Comment 4:* NMFS should hire undercover investigators to keep fishermen and observers honest.

*Response:* The NMFS Office of Law Enforcement (OLE) is charged with enforcement of the laws and regulations which govern fisheries off the coast of Alaska. They use various methods in their enforcement program, including undercover operations. Undercover operations are mainly used when other methods would not work for a specific situation, and are not undertaken lightly.

### Observer Deployment Logistics

This final rule amends the observer provider responsibility regulations to allow an observer to be housed: (1) On a stationary floating processor; (2) on a vessel he or she will be assigned to; (3) on a vessel for 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; and (4) on a vessel for 24 hours following the vessel's arrival in port when the observer is scheduled to disembark. In addition, this final rule makes two additional revisions to the proposed rule.

Subsequent to publication of the January 7 final rule, Observer Program staff received comments from two separate observer providers concerned with their ability to effectively deploy observers under the current regulations at § 679.50(i)(2)(vi). In order to account for potential logistics problems, both observer providers described a common practice whereby observers are flown to their port of departure 3 or 4 days before the vessel is scheduled to depart. Flight

cancellations and delays due to weather are common, so fishing companies often request that observers arrive prior to their anticipated departure date.

Observers often arrive at their assigned vessel and encounter delays in the vessel's departure. Vessel operators often are unable to predict exactly when they will be able to leave port for a fishing trip due to weather, mechanical failure, labor disputes, and other unanticipated problems. These delays result in periods of time when an observer may be housed on an assigned vessel that is not traveling to fishing grounds or actively involved in fishing. These circumstances were not considered when promulgating the January 7 final rule.

Current regulations at § 679.50(i)(2)(vi) prevent observers from being housed on an assigned vessel until 24 hours before its departure time. The intent of regulations at § 679.50(i)(2)(vi) is to avoid lodging an observer aboard a vessel on which he or she is not working or currently assigned. This action clarifies NMFS' intent by removing the 24 hour restriction and provides fishing operations increased flexibility to deal with these uncertainties, and observer providers improved opportunities to serve their customers.

This action also provides for housing observers aboard stationary floating processors. Current regulations at § 679.50(i)(2)(vi)(B) govern the housing requirements for observers assigned to shoreside processing facilities and for observers between vessel or shoreside assignments while still under contract to an observer provider. Observers commonly are deployed to stationary floating processors and catcher vessels delivering to stationary floating processors. Stationary floating processors often are in remote locations and observers commonly are housed on these stationary floating processors before, after, and in between catcher vessel assignments and while assigned to a stationary floating processor. This action extends the housing requirements to observers being deployed in these circumstances. Given the remoteness of these stationary floating processors, NMFS considers the practice of housing observers deployed to catcher vessels delivering to stationary floating processors reasonable. Accommodation requirements at § 679.50(i)(2)(vi)(B) for observers being housed on stationary floating processors are the same as those for a licensed hotel, motel, bed and breakfast, or other shoreside accommodation.

Further, this action clarifies two housing situations where the observer is

scheduled to disembark the vessel. First, the observer could be housed on a vessel for up to 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark after completing those duties. This accounts for assignments to catcher boats that target pollock, where the observer is required to monitor the offload for prohibited species. Second, the observer could be housed on a vessel for up to 24 hours following the vessel's arrival in port where the observer is scheduled to disembark. This accounts for assignments to all other vessels where the observer's duties are complete upon arrival to port.

This action amends current regulations at § 679.50(i)(2)(vi)(D) by removing unnecessary text. Existing regulations require that observers be provided housing within the standards outlined in the regulations. Therefore, alternative housing must be arranged if these standards are not met. The ancillary conditions previously contained in subparagraph (D) were interpretive and their removal does not change the intent of NMFS.

NMFS identified two necessary changes from the proposed rule to the final rule. Section 679.50(i)(2)(vi)(A)(2) is changed to provide consistency with terminology used in § 679.50(i)(2)(vi)(B) and (C). By changing text to require observer providers to provide lodging, per diem, and any other necessary services to observers assigned to vessels or shoreside or stationary floating processing facilities, the regulations are clarified and consistent with NMFS intent.

During review of the final rule, NMFS determined that § 679.50(i)(2)(vi)(C)(1) of the proposed rule was ambiguous. NMFS recognizes that there may be logistical difficulties in the deployment of an observer and departure of the vessel. Further, NMFS determined that vessels would only pay for an observer for those days necessary to coordinate the observer's logistics and the vessel's departure plans. This text is modified to allow an observer to be housed on a vessel to which he or she is assigned prior to that vessel's departure from port.

### Classification

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

NMFS prepared a FRFA. The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. A copy of this analysis is available from the NMFS (see **ADDRESSES**). The need for, and objectives of, this action are described

above in the preamble and are not repeated here.

The proposed rule was published in the **Federal Register** on September 3, 2003 (68 FR 52378). An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the classifications section of the preamble to the rule. The public comment period ended on October 3, 2003. No comments were received on the IRFA.

For this action, the small regulated entities include: (1) Fishing vessels with observer coverage requirements and total gross annual revenues of less than \$3.5 million from all the operation's commercial activity taken together; (2) processing facilities with observer coverage requirements and fewer than 500 employees, when all their affiliated operations, worldwide, are combined; (3) the Community Development Quota groups; and (4) observer providers. Therefore, small regulated entities could number about 350, although this number declines to about 215 if the catcher vessels in the American Fisheries Act pollock cooperatives are excluded, as the Regulatory Flexibility Act "affiliation" criteria suggest they appropriately be.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

The preferred alternative does not have any adverse impacts on small entities. The effective impacts of the preferred alternative relative to the status quo are to (1) clarify the regulatory basis for the current practice of housing catcher vessel observers on floating processors between deployments, and (2) provide fishing operations and observer providers with the ability to efficiently deal with the uncertainties associated with departure from port, such as mechanical problems or adverse weather conditions, in a manner fully compliant with regulations. In general, the information on operating behavior and costs that would make it possible to predict how fishermen and markets will react to the new regulation, and how their costs and revenues will change, is not available. However, in qualitative terms, the impacts of the preferred alternative are beneficial.

The preferred alternative provides fishing operations with planning

flexibility to deal with these uncertainties, and to give observer providers improved opportunities to serve their customers. The action would have an effect equivalent to the lengthening of a fishing trip. Observers would receive normal contracted compensation for the additional days. Regulations currently require vessels to provide food and accommodations to observers assigned to that vessel, just as they would for any other crew member. Since observers may not be housed on vessels they are not assigned to, vessels have an incentive to hire observers (and feed them) for only those days necessary for coordinating their departure from port.

The status quo is the alternative to the preferred action. The status quo was rejected because it would not accomplish the objectives of the action. This alternative decreases the observer provider's ability to effectively deploy observers. In order to account for possible weather delays and other potential logistics problems, observer providers often send observers to their port of departure prior to their assigned vessel's scheduled departure. The uncertainties associated with departure from port and the economic costs associated with this uncertainty make this alternative less desirable than the preferred alternative. Because this alternative results in adverse impacts to small entities, this alternative was rejected.

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

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 7, 2004.

**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 (i)(2)(vi)(A)(2), (B), (C), and (D) are revised to read as follows:

#### **§ 679.50 Groundfish Observer Program (effective through 12/31/07).**

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(A) \* \* \*

(2) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels or 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 or stationary floating processor, and each observer between vessel, stationary floating processor or shoreside assignments while still under contract with a permitted observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(C) An observer under contract may be housed on a vessel to which he or she is assigned:

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

(2) For a period not to exceed twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(3) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

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