

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

[Docket No. 110831549–2180–01]

RIN 0648–BB42

## Groundfish Fisheries of the Exclusive Economic Zone off Alaska and Pacific Halibut Fisheries; Observer Program

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 86 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 76 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as the FMPs). If approved, Amendments 86 and 76 would add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), the FMPs, and other applicable law.

**DATES:** Written comments must be received no later than 1700 hours, Alaska local time (A.L.T.) June 18, 2012. Per section 313 of the MSA, NMFS will conduct public hearings on the proposed rule in Oregon, Washington, and Alaska during the public comment period. Details on the time, place, and format of the public hearings will be provided in a subsequent **Federal Register** notice.

**ADDRESSES:** You may submit comments, identified by FDMS Docket Number NOAA–NMFS–2011–0210, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal Web site at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “Submit a Comment” icon, then enter NOAA–NMFS–2011–0210 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

- **Fax:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

- **Hand delivery to the Federal Building:** Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 86 to the FMP for Groundfish of the BSAI and Amendment 76 to the FMP for Groundfish of the GOA, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to 202–395–7285.

Inspections for U.S. Coast Guard Safety decals may be scheduled through the U.S. Coast Guard Web site at <http://www.fishsafe.info/contactform.htm> or by contacting the Seventeenth Coast Guard District safety coordinator at <http://www.uscg.mil/d17/>, or via phone at (907–463–2810), or (907–463–2823).

**FOR FURTHER INFORMATION CONTACT:** Brandee Gerke, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) of the BSAI and GOA under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). 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.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the Protocol Amending the Convention, signed in Washington, DC, on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

The Council has submitted Amendments 86 and 76 for review by the Secretary of Commerce (Secretary) and a Notice of Availability of the FMP amendments was published in the **Federal Register** on March 14, 2012 (77 *FR* 50), with comments on the FMP amendments invited through May 14, 2012.

Comments may address the FMP amendments, the proposed rule, or both, but must be received by 1700 hours, Alaska local time (A.L.T.) on June 18, 2012, to be considered in the approval/disapproval decision on the FMP amendments. All comments received at that time, whether specifically directed

to the FMP amendments or to this proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

### Executive Summary

Fishery-dependent data collected by observers onboard vessels and at processing plants provide the cornerstone for management and conservation in North Pacific groundfish fisheries. The North Pacific Groundfish Observer Program (Observer Program) was created with the implementation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) in the mid-1970s. This proposed rule would implement a restructured funding and deployment system for observer coverage in North Pacific groundfish and halibut fisheries and extend observer coverage requirements to a broader range of vessels than are currently included in the North Pacific Groundfish Observer Program (Observer Program). This action would address longstanding concerns about statistical bias of observer-collected data and cost inequality among fishery participants with the Observer Program's current funding and deployment structure. Under the current structure, vessel and processing plant operators enter into direct contracts with observer providers to meet coverage requirements at 50 CFR 679.50. Existing coverage requirements, based on vessel length and processing volume, are set at 30 percent or 100 percent, and some vessels and processors are exempt from observer coverage.

In October 2010, the North Pacific Fishery Management Council (Council) unanimously adopted a motion to restructure the Observer Program's funding and deployment system. This proposed action would divide the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors would be included in one of the categories. The partial observer coverage category would include fishing sectors (vessels and processors) that would not be required to have an observer at all times and the full observer coverage category would include fishing sectors required to have all of their operations observed.

This proposed rule would restructure the funding and deployment system for all vessels, shoreside processors, and stationary floating processors in the partial observer coverage category. It would retain the existing funding and deployment system for operations in the full coverage category. Vessels and processors in the partial coverage

category would pay to NMFS an observer fee based upon the ex-vessel value of fish landed (ex-vessel value-based fee) for their observer coverage, per the authority granted by section 313 of the MSA. By creating two observer coverage categories with separate funding and deployment systems, the proposed rule would address cost inequity and data quality concerns with the existing Observer Program structure without imposing higher costs on fishing sectors that already pay for full observer coverage. Moreover, the two-category design would ensure that management programs with high observer coverage needs do not deplete the available funding for the partial coverage category fisheries.

An observer fee equal to 1.25 percent of the fishery ex-vessel value would be assessed on partial coverage category participants to fund their observer coverage under the authority of section 313 of the MSA. The 1.25 percent fee is estimated to generate revenue to fund observers for approximately 30 percent of the partial coverage category's harvest. NMFS and its contractor(s) would deploy observers in partial coverage sectors according to a randomized design to generate statistically representative estimates of total and retained catch and catch composition.

This proposed rule includes provisions for NMFS to develop and incorporate electronic video monitoring as a component of the restructured program. The MSA authorizes the use of collected fees for this purpose. Initially, NMFS would deploy electronic monitoring equipment on some vessels to learn more about the costs, benefits, and utility of video monitoring to optimize its use in the overall program. As discussed in this proposed rule, electronic video monitoring would likely not be available to all vessels who request video monitoring.

This proposed rule assumes that federal start-up funds will be available to the agency to transition from the current system under which the industry contracts directly with and pays the observer providers for the costs of the observers to the proposed system under which NMFS would contract directly with observer providers to have observers deployed in the partial coverage category sectors. The proposed rule does not include a mechanism to collect start-up funds from industry.

Under the proposed rule, each year, NMFS would prepare a report that reviews the progress of the program, describes the financial aspects of the program, and includes a plan for observer coverage rates for the partial

coverage category for the upcoming year. The Council would review the annual report, monitor the program's progress, and recommend appropriate adjustments that would be implemented through subsequent rules.

### Table of Contents

- I. Background
- II. Proposed Action
  - A. Observer Coverage and Deployment: Full Coverage Category
  - B. Observer Coverage and Deployment: Partial Coverage Category
    - 1. Funding
    - 2. Observer Deployment
      - a. Entering Vessels Into the Deployment System
      - b. Trip Selection Pool
      - c. Vessel Selection Pool
      - d. Release From Observer Coverage
    - e. Comparison of Vessel and Trip Selection Pools
    - f. Electronic Monitoring
    - g. Vessels Initially Set-Aside From a Selection Pool
  - C. Shoreside Processor and Stationary Floating Processor Observer Coverage
  - D. Observer Coverage in CDQ Fisheries
  - E. Observer Provider and Observer Responsibilities
  - F. U.S. Coast Guard Safety Decal
  - G. Ex-Vessel Value-Based Observer Fee
    - 1. Standard Ex-Vessel Prices
    - 2. Halibut and Sablefish Standard Prices
    - 3. Groundfish Standard Ex-Vessel Prices
    - 4. Confidential Data
    - 5. Landings Subject to an Observer Fee
    - 6. Fee Determination and Collection
    - 7. Payment Compliance
    - 8. Overpayment of Fees
  - H. Federal Processor Permit and Registered Buyer Permits
  - I. Annual Report and Review of the Deployment Plan and Fee Percentage
  - J. Program Review
  - K. Start-Up Funding
  - L. Other Revisions
  - M. Public Comment Topics
- III. Classification

### I. Background

The Observer Program provides the regulatory framework for NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Observer Program at 50 CFR 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

Observer requirements for fisheries off Alaska have been in place since the mid-1970s, when the MSA was implemented and NMFS began to

monitor U.S. EEZ foreign groundfish fisheries. The Secretary and the Council recognized that effective management of living marine resources requires the types of information that are either available only or most efficiently through an observer program. In 1989, the Council developed a domestic, industry-funded observer program that authorized the placement of observers on domestic fishing vessels and at shoreside processing plants participating in Alaskan groundfish fisheries in response to a large reduction in foreign fishing and an emergence of a domestic fleet. The domestic program was implemented in 1990 and foreign fishing ended in 1991. The domestic Observer Program was implemented through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386; December 6, 1989; and 55 FR 4839; February 12, 1990). Although requirements have increased for vessels and processors participating in limited access and individual quota-based fisheries (referred to as catch share programs), observer coverage requirements have remained mostly unchanged since approval of the Observer Program.

The Observer Program has an integral role in the management of North Pacific fisheries. The information collected by observers provides the best available scientific information for managing the fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA. Observers collect biological samples and fishery-dependent information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

High quality observer-collected data are a cornerstone of Alaska groundfish fisheries management. However, the quality and utility of observer-collected data are deficient due to the current structure of procuring and deploying observers in those fisheries with less than 100 percent observer coverage requirements. Under the current program, coverage requirements vary according to vessel length or the quantity of fish processed, and vessels less than 60 ft. length overall (LOA) and vessels fishing for halibut are exempt from coverage. A vessel equal to or greater than 60 ft. LOA, but less than 125 ft. LOA must carry an observer during at least 30 percent of its fishing

days in a calendar quarter (30 percent coverage). Vessel owners and operators in the 30 percent coverage category choose when to carry observers, and fishery managers do not control when and where observers are deployed.

Under the current program, owners of smaller vessels pay observer costs that are disproportionately high relative to their gross earnings. To address these concerns, the Council and NMFS have explored alternative program structures as part of four separate actions since the early 1990s. However, the Council identified problems with each of these actions. Only one alternative program structure was adopted (59 FR 46126; May 6, 1994), though, as explained in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**) it was rescinded prior to full implementation (61 FR 13782; March 28, 1996). While the Council was developing and considering options for an alternate program structure, the Council recommended, and the Secretary approved, several extensions of the Observer Program regulations. A thorough discussion of the history of the Observer Program, including past efforts to restructure and extend the Observer Program, is provided in the EA/RIR/IRFA prepared for this action (see **ADDRESSES**), and is not repeated here.

## II. Proposed Action

Section 313 of the MSA (16 U.S.C. 1862) authorizes the Council to prepare a fisheries research plan that requires observers to be deployed in North Pacific fisheries and establishes a system of fees to pay the costs of observer coverage. The system of fees must be fair and equitable to all participants in the fisheries and may vary by fishery, management area, or observer coverage level. The fees may be expressed as a fixed amount reflecting actual observer costs or as a percentage of the unprocessed ex-vessel value of the fish and shellfish. Section 313 provides that the fees may be applied to fish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery. The fee percentage cannot exceed 2 percent of the ex-vessel value of fish harvested, and proceeds must only be used for costs directly incurred in carrying out the plan. Fee proceeds cannot be used to pay administrative overhead costs, although they may be used to station observers or electronic monitoring systems on vessels and in processing plants, and for inputting observer-collected data.

At its October 2010 meeting, the Council adopted a motion to restructure the Observer Program's funding and

deployment system. This proposed action would divide the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors would be included in one of the categories. The partial observer coverage category would include fishing sectors (vessels and processors) that would not be required to have an observer at all times, and the full observer coverage category would include fishing sectors required to have all their operations observed. The Council's motion and this proposed rule would restructure the funding and deployment system for all fisheries and shoreside processors in the partial observer coverage category and retain the existing funding and deployment system for operations in the full coverage category. Vessels and processors in the partial coverage category would pay an ex-vessel value-based fee to NMFS for their observer coverage. By creating two separate categories of observer coverage with different funding and deployment systems, NMFS and the Council intend to address cost inequity and data quality concerns with the existing Observer Program structure without imposing higher costs on fishing sectors that currently pay for full observer coverage. Moreover, increased monitoring needs of future management programs would not reduce the funds available to provide observer coverage for the fisheries as a whole under the Council's motion.

### A. Observer Coverage and Deployment: Full Coverage Category

Since implementation of the domestic Observer Program in 1990, NMFS has required 100 percent observer coverage for vessels greater than or equal to 125 ft. LOA and for shoreside processors or stationary floating processors that process at least 1,000 metric tons (mt) of groundfish during a calendar month. NMFS has increased observer coverage requirements since 1990 for vessels and processors in catch share programs with increased monitoring needs such as the Western Alaska Community Development Quota (CDQ) Program, the American Fisheries Act (AFA), Amendment 80 to the BSAI FMP, and the GOA Rockfish Program. Under the proposed rule, NMFS would base observer coverage requirements on data needs for specific management programs rather than requirements based on vessel length or processing volume. The current length and volume-based requirements would be removed from regulations, and NMFS would assign vessels and processors to either

the partial or full coverage category based on NMFS' data needs.

Full observer coverage means that one or more observers is present at all times, (100 percent observer coverage). NMFS has determined that full observer coverage is needed in programs where catch is allocated to specific entities with quotas and limits of prohibited species catch, which must be discarded at-sea. Economic incentives exist for the industry to under report prohibited species catch discarded at-sea, especially in catch share programs where limits are placed on the amount of catch that may be retained and discarded. Therefore, the proposed rule would require full observer coverage on catcher vessels while they are fishing under a catch share program that has prohibited species catch limits.

Under the current Observer Program, most catcher/processors and

motherships are required to have one or two observers onboard at all times due to their participation in catch share programs. This proposed rule would not reduce the observer coverage currently required under those programs.

This proposed rule would also require full observer coverage on all other catcher/processors and motherships to enhance the accuracy of NMFS' catch accounting system. Currently, for catcher/processors with less than 100 percent observer coverage, NMFS uses industry production reports to account for retained catch. NMFS uses discard rates from catcher/processors when there is an observer onboard to estimate at-sea discards for catcher/processors with less than 100 percent observer coverage. Catcher/processor vessels report the processed weight of their catch. On catcher/processors with less than 100 percent observer coverage,

NMFS uses a product recovery rate to convert the retained processed weight to a whole-fish (round weight) weight equivalent. The application of product recovery rates for retained catch and at-sea discard rates used for less than 100 percent observed catcher/processor vessels to estimate their vessel's catch and discards introduces error into NMFS' catch accounting as discard rates may vary substantially among vessels. This proposed rule therefore would place all catcher/processors and motherships participating in the groundfish or halibut fisheries in the full coverage category to eliminate NMFS' need to use production reports based on product recovery rates to estimate retained catch and at-sea discard rates from other vessels to estimate discard rates for less than 100 percent observed catcher/processors.

TABLE 1—VESSELS AND PROCESSING PLANTS PROPOSED TO BE INCLUDED IN THE FULL OBSERVER COVERAGE CATEGORY

Proposed Full Coverage Category Vessels and Processing Plants

Catcher/processors (with limited exceptions noted below).

Motherships.

Catcher vessels while participating in:

AFA or CDQ pollock fisheries.

CDQ groundfish fisheries (except: sablefish; and pot or jig gear catcher vessels).

Central GOA Rockfish Program fisheries.

Inshore processors when receiving or processing Bering Sea pollock.

Vessels and processing plants in the full observer coverage category would be required to carry or provide at least one observer on 100 percent of the days they harvest, receive, or process groundfish or halibut. The proposed rule would not modify observer coverage, experience, or workload requirements at 50 CFR 679.50 for AFA directed pollock fishery vessels in the Bering Sea (BS), catcher/processors and motherships in the pollock CDQ fisheries in the BSAI, trawl catcher/processors while groundfish CDQ fishing, pot catcher/processors while CDQ fishing, catcher/processors and motherships in the Aleutian Islands (AI) pollock fishery, Amendment 80 vessels and non-AFA trawl catcher/processors, and Rockfish Program vessels.

Under the current Observer Program, owners and operators of vessels and processing plants contract directly with NMFS-permitted observer providers to meet the observer coverage requirements at 50 CFR 679.50. The fishing industry pays the observer providers directly for the cost of carrying observers. NMFS is not a party to the contracts between the industry and observer providers for the provision

of observer services. Under this proposed rule, vessels and processors in the full coverage category would continue to obtain observers through direct contracts with observer providers as under the current Observer Program. Responsibilities for observer providers and observers in the current regulations at 50 CFR 679.50(i) and (j) would remain substantively unchanged for the purposes of the full coverage category, although the numbering of the regulations would be modified.

All catcher/processors would be included in the full coverage category, thus, a vessel would need to be classified as either a catcher/processor or a catcher vessel; sometimes vessels are registered as both. NMFS' determination of whether a vessel is a catcher/processor or a catcher vessel for purposes of observer coverage would be based on the operation category designation on the vessel's Federal Fishing Permit (FFP). A vessel designated as a catcher/processor at the beginning of a fishing year<sup>1</sup> would be classified as a catcher/processor for the

entire fishing year for the purposes of observer coverage. If an FFP were amended during the fishing year to add a catcher/processor designation, that vessel would be assigned to the catcher/processor category for the remainder of the calendar year for the purposes of observer coverage. Except for the one-time election noted below, the catcher/processor designation would supersede the catcher vessel designation for vessels with both designations. Thus, a vessel with both a catcher/processor and a catcher vessel designation on the FFP would be assigned to the full coverage category for all fishing in that year, regardless of how the fishing was actually conducted.

This proposed rule would increase observer coverage requirements for catcher/processors less than 125 ft. LOA to 100 percent of the days they harvest, take delivery of, or process groundfish or halibut. However, the proposed rule would allow owners of vessels less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single calendar year, and owners of catcher/processors with an average daily groundfish production of less than 5,000 pounds in the most recent full calendar

<sup>1</sup> In this proposed rule, a fishing year is a calendar year.

year from January 2003<sup>2</sup> through January 2010, to make a one-time election as to whether their vessel will be in the partial observer coverage category or the full observer coverage category. For vessels less than 60 ft. LOA with catcher/processor and catcher vessel activity in the same year, the election would be effective as long as both operation categories are listed on the FFP. Should an operator amend their FFP to list only one operation type, the one-time election would no longer apply if the permit were subsequently amended again to list both operation types. The one-time election for catcher/processors with an average daily production of less than 5,000 pounds in the most recent year of operation prior to 2010 would apply for the duration the FFP of the qualified vessel is issued to the person making the one-time election. Upon transfer of the vessel to a new person, the one-time election would be void and the catcher/processor designation would be the default designation with a full observer coverage requirement if listed on the FFP.

NMFS would verify a vessel's eligibility for the one-time election with the official Catch Accounting System (CAS), which contains production information back to 2003. Owners of eligible vessels would be required to notify NMFS in writing of their observer coverage category choice at least thirty days prior to embarking on their first fishing trip under the new program so that vessels could be included in the

partial coverage category selection pools (described below). If the vessel meets the above criteria and the owner neglects to make a one-time election prior to the vessel's first trip, the catcher/processor designation would be the default designation.

While developing the proposed rule, NMFS realized that some vessels used to harvest and freeze a minimal amount of whole fish meet the existing definition of a catcher/processor and so would be included in the proposed full coverage category. To better align observer coverage with the data needs from these vessels, this proposed rule would allow operators of catcher/processors that process no more than 1 mt of round weight equivalent groundfish on any day (to a maximum of 365 mt in a calendar year) to be included in the partial observer coverage category for the following year. This allowance is consistent with the existing catcher vessel definition for license limitation program groundfish. An operator of a catcher/processor that processes up to 1 mt of groundfish per day in the current calendar year would be eligible to follow the procedures for participating in the partial observer coverage category (described below) instead of the full observer coverage category for the following calendar year. NMFS proposes that owners of vessels that process up to 1 mt of groundfish per day could elect to be in the partial coverage category for the following year by registering with the Observer Declaration and Deployment System

(Deployment System) that they processed no more than 365 mt of groundfish in the current calendar year. If a vessel processes more than 1 mt round weight equivalent per day in a calendar year, it would not be eligible to participate in the partial observer coverage category in the following year. Vessels that process halibut or more than 1 mt of round weight equivalent groundfish per day would be designated a catcher/processor for purposes of observer coverage category assignment.

#### *B. Observer Coverage and Deployment: Partial Coverage Category*

The partial observer coverage category would be composed of groundfish and halibut catcher vessels and shoreside and stationary floating processors required to carry or provide an observer for less than 100 percent of their operations. Operations that would be in the partial observer coverage category include all catcher vessels except while participating in fisheries requiring full observer coverage (see above) and all shoreside or stationary floating processors except while receiving deliveries of BS pollock. If a catcher vessel or shoreside processor participates in fisheries with full observer coverage requirements and fisheries with partial observer coverage requirements, the operator would be subject to the respective coverage requirements and may be subject to both coverage categories within a year.

TABLE 2—VESSELS AND PROCESSING PLANTS PROPOSED TO BE INCLUDED IN THE PARTIAL OBSERVER COVERAGE CATEGORY

Proposed partial coverage category vessels and processing plants
Catcher vessels designated on an FFP when directed fishing for groundfish in federally managed or parallel fisheries, except those in the full coverage category.
Catcher vessels when fishing for halibut individual fishing quota (IFQ) or CDQ.
Catcher vessels when fishing for sablefish IFQ or fixed gear sablefish CDQ.
Catcher/processors with a maximum daily production of 1 mt, if so elect.
Catcher/processors meeting criteria above for one time election of coverage category, if so elect.
Shoreside or stationary floating processors, except those in the full coverage category.

The partial observer coverage category is designed to replace the fixed coverage levels currently specified in regulations with coverage designed to fit data needs for conservation and management, and to improve the quality of observer-collected data among fleets where only a portion of the fishing and processing activity is observed. Under the proposed rule, vessels and processing plants in the partial coverage category would be

assigned observer coverage through a NMFS deployment system with predetermined random selection probabilities. As described in section 3.2.3 of the analysis (see **ADDRESSES**), the use of a randomized design to assign observers to individual trips or vessels addresses NMFS' need to collect unbiased, representative data on catch and bycatch in the groundfish and halibut fisheries. The current program is

limited as vessels and plants that are required to have 30 percent observer coverage select when to carry observers, which statistically biases estimates of catch and bycatch. Moreover, NMFS lacks catch and effort information from groundfish vessels less than 60 ft. LOA and halibut vessels of any length. This proposed rule would remove exemptions from observer coverage for halibut vessels and for groundfish

<sup>2</sup> The Council's motion does not specify the period of time prior to 2010 that a vessel may

qualify for this one-time election. NMFS proposes 2003 as the lower bound for this time period

because Catch Accounting System data are not available before 2003.

vessels less than 60 ft. LOA and implement a randomized observer deployment process to improve the probability that unbiased information on catch and bycatch can be collected.

Operations in the partial coverage category would be randomly selected for observer coverage when fishing for halibut or when directed fishing for groundfish in the federally managed or State of Alaska (State) parallel groundfish fisheries. This proposed rule would define the commonly-used "parallel groundfish fishery" term as a fishery that occurs in State waters, is open at the same time as Federal groundfish fisheries in Federal waters, and groundfish catch is deducted from the Federal total allowable catch (TAC).

#### 1. Funding

Under the authority of section 313 of the MSA, the proposed rule would require participants in the partial coverage category to pay an ex-vessel value-based fee for observer coverage. The observer fee may be assessed against a subset of fishing vessels and processors, including those not required to carry an observer or electronic monitoring under the fisheries research plan (deployment plan). NMFS would use the ex-vessel value fee proceeds to contract with observer providers to deploy observers in the partial coverage category. Section 313 allows NMFS to use the fees to pay for stationing observers or electronic monitoring systems on board fishing vessels and fish processors.

The maximum ex-vessel value fee authorized under section 313 is 2 percent. In its October 2010 motion, the Council selected a fee of 1.25 percent. Under the ex-vessel value fee program, the fee amount would be paid by both vessels and processors in the partial coverage category. The Council's and NMFS' intent is for owners and operators of catcher vessels delivering to shoreside processors or stationary floating processors to split the fee liability 50/50 with the processor, such that each operation would pay 0.625 percent of the total ex-vessel value of the landing. While the intent is that vessels and processors would be responsible for their portion of the ex-vessel value fee, the owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FFP) would be responsible for collecting the fee, including the vessel's portion of the fee, at the time of landing and remitting the full fee amount to NMFS. However, because NMFS does not regulate business transactions between vessels and processors, the intended fee

liability split would not be codified in Federal regulations. The proposed regulations provide that NMFS would hold the processor liable for payment of the entire fee.

The proposed fee percentage (1.25 percent) seeks to balance the need for revenue to support the Observer Program while minimizing impacts on the industry sectors included in the restructured program. The Council considered a fee of less than 2 percent of the fishery ex-vessel value on vessels less than 60 ft. LOA to minimize the costs to the smallest operations. However, in order to develop a fee program that would be fair and equitable across all sectors in the restructured program, the Council determined that the same fee percentage should apply to all restructured sectors as they all benefit from resulting observer data that is essential for conservation and management of the fisheries in which they participate. Section 4.3.3 of the analysis (see **ADDRESSES**) estimates a 1.25 percent fee would generate about \$4.2 million per year, based on the estimated average of ex-vessel revenues from 2005 through 2008, and fund over 9,000 observer days. The amount of revenue needed to support the minimum proposed 30 percent at-sea observer coverage for the partial coverage category is estimated to be \$3.8 million, which would fund 8,093 observer days (see **ADDRESSES**). The estimate assumes that vessels less than 40 ft. LOA would not be observed, although they would be subject to the ex-vessel value fee and benefit from observer data collected on larger vessels. Vessels less than 40 ft. LOA would have zero probability of being selected for observer coverage in the initial year or years of the program; however, the criteria for no selection could change annually through an annual deployment plan. The Council determined that a 1.25 percent fee would fund the necessary observer days to reach the target coverage, with a buffer equal to roughly 10 percent of the estimated revenue. In addition, a fee of 1.25 percent would better ensure that an individual vessel or processor would not pay over the 2 percent maximum fee authorized in the MSA. Should the Council determine the 1.25 percent fee is insufficient or excessive following its review of the NMFS annual observer report to be prepared as part of this proposed action, the Council could adjust the fee percentage up or down through a subsequent regulatory action.

#### 2. Observer Deployment

A primary goal of the restructured program is to attain unbiased fishery

catch estimates by allowing NMFS to assign and deploy observers on vessels and plants that are currently unobserved or observed at a rate of 30 percent, using a random selection plan. The restructured Observer Program would require NMFS to efficiently allocate observer effort towards multiple objectives, such as estimating catch, bycatch, and protected species interactions, within the budget generated by ex-vessel value-based fee proceeds. By September 1 of each year, NMFS would complete an observer deployment plan containing projected observer coverage rates in the upcoming calendar year for the various sectors in the partial coverage category. The deployment plan would describe the methods by which vessels, plants, or individual fishing trips would be chosen for observer coverage.

Two distinct observer coverage selection pools are proposed for vessels in the partial coverage category—fishing trip selection and vessel selection. NMFS would establish criteria for inclusion in the respective pools (i.e., vessel length and gear-type) to maximize efficiency in generating representative estimates of catch and bycatch given available funds and anticipated fishing effort. NMFS would specify the vessel-length and gear-type criteria for each selection pool in the annual deployment plan.

#### a. Entering Vessels Into the Deployment System

To properly allocate observer resources, NMFS would need to estimate the level of participation for each selection pool for the upcoming calendar year. The more accurate the projected fleet activity, the higher the likelihood of achieving planned coverage levels. NMFS presented its proposed plan for compiling a list of expected fishery participants to the Council's Observer Advisory Committee in September, 2011 and to the Council in October, 2011. NMFS described a process whereby operators of vessels named on an Federal Fisheries Permit (FFP) would be required to enter their vessel information into the Deployment System by December 1 of the year prior to each fishing year in order to generate an accurate list of vessels that would participate in the fisheries in the upcoming year. However, NMFS amended this proposed provision to automate this process and provide latitude to vessel owners and operators, such that they would not be required to meet a December 1 entry deadline that they could be penalized for failing to meet.

As part of this proposed action, NMFS would establish the Deployment System as the communication platform among industry participants in the partial coverage category, the Observer Program, and contracted observer providers. The Deployment System would be available by Internet and phone. NMFS would provide instructions for accessing the Deployment System in the written notification to vessels that are auto-entered into the selection pools. Access to the Deployment System would also be available through the NMFS Alaska Region Web site (see **ADDRESSES**).

To generate a list of expected fishery participants for the upcoming calendar year, NMFS would auto-enter in the Deployment System (a) all partial coverage category vessels that are designated on an FFP and; (b) all catcher vessels that are not designated

on an FFP but that land sablefish IFQ or halibut IFQ or CDQ in a fishing year. NMFS would notify in writing, operators of vessels that are entered into the Deployment System for the upcoming year to indicate the applicable selection pool for his or her vessel and instructions for communicating with the Observer Program for the upcoming year.

An owner or operator would be required to manually enter in the Deployment System any vessel not auto-entered into a selection pool prior to embarking on a trip to directed fish for groundfish or to fish for halibut. An owner of a vessel designated on an FFP that is issued after December 1 of the year prior to the fishing year would be required to enter his or her vessel information into the Deployment System within 30 days of issuance of the FFP. While an FFP is issued to

specific a vessel, a permit to harvest IFQ and halibut CDQ is issued to a person and no vessel is named on the permit. Thus, operators of non-FFP vessels that are not auto-entered into the Deployment System due to a lack of prior year fishing activity would need to enter their vessel information into the Deployment System at least thirty days prior to embarking on a fishing trip for sablefish IFQ or halibut IFQ or CDQ to be entered into a selection pool. In this case, the Deployment System would notify the operator as to the selection pool into which the vessel is entered. NMFS requests public comment on the process proposed for NMFS to auto-enter vessels with fishing activity in a preceding year and the process proposed for vessel owners or operators to manually enter their vessel information due to issuance of a new FFP.

TABLE 3—DEPLOYMENT SYSTEM ENTRY PROCESS FOR VESSELS DESIGNATED ON AN FFP AND VESSELS NOT DESIGNATED ON AN FFP

	FFP Vessels	Non-FFP vessels (sablefish IFQ and halibut IFQ or CDQ)
Initial vessel list for upcoming year .....	NMFS generates a list of current FFP vessels	NMFS generates a list from current year landings.
Additions after December 1 of prior fishing year	Owners enter their vessel information into the Deployment System within 30 days of FFP issuance.	Operators enter their vessel information into the Deployment System at least 30 days prior to first trip.
Notification of selection pool (trip or vessel) .....	If in the initial vessel list, then owner or operator notified in writing from NMFS. If added after the initial list, then owner or operator notified via the Deployment System.	

b. Trip Selection Pool

NMFS would select individual fishing trips using the Deployment System for observer coverage in the trip selection pool. Initially, trips taken by hook-and-line and pot vessels 57.5 ft. LOA or greater and all trawl vessels in the partial coverage category would comprise the trip selection pool. NMFS would further subdivide the trip selection pool into groups with similar traits (sampling strata) and assign a specific sampling rate to each stratum to minimize the variance, and thus increase certainty, in observer-derived catch estimates. In subsequent years, NMFS would review the suitability of the sampling strata and rates and make necessary adjustments to the strata through the annual deployment plan.

Operators of vessels in the trip selection pool would be required to contact the Deployment System by phone or Internet (hail-in) at least 72 hours in advance of embarking on a fishing trip for halibut or directed fishing for groundfish. Upon hailing-in, the vessel operator would be prompted to enter information about the departure

location and duration of the upcoming fishing trip. The Deployment System would determine the sampling stratum for each vessel by the vessel's identification number and information provided in the user's Deployment System account (FFP or Alaska Department of Fish and Game [ADF&G] number). A determination as to whether the trip is or is not selected for observer coverage would be generated during the web session or call through a random process that would be described in the annual deployment plan. The vessel operator would be notified of the result (affirmative or negative for observer coverage) by the Deployment System, and the unique call identification number (receipt) would be provided. For selected trips, the Deployment System would provide the vessel operator with instructions on how to coordinate with an observer provider to obtain the required observer coverage as well as notify observer-provider(s) contracted by NMFS of trips subject to observer coverage. The observer provider would work with the vessel operator to coordinate observer logistics

in a manner consistent with the current observer deployment system. Operators would be prohibited from embarking on a trip selected for observer coverage without an observer, unless the Observer Program released the selected trip from observer coverage due to extenuating circumstances (e.g., the observer provider is unable to deploy an observer to the vessel within a day of the intended fishing trip departure).

A notification period of 72 hours prior to a fishing trip departure is proposed to allow the observer provider sufficient time to deploy an observer to the port of embarkation. NMFS recognizes that a longer notification window is preferable for observer providers to make arrangements to deploy an observer to the port indicated by the vessel operator and a shorter notification window is preferable for vessel operators, whose fishing plans may change over the course of a week. Existing regulations for similar observer deployment systems in Northeast and Western Pacific fisheries at 50 CFR 648.85 and 665.205, respectively, require operators to notify NMFS 72 hours in advance of an



intended fishing trip, NMFS considers that for the affected North Pacific groundfish and halibut fisheries 72 hours is a reasonable compromise between the need for an observer provider to have advanced notice of a selected trip and the operator's desire for flexibility in their fishing plans. An operator would not be required to wait 72 hours to embark on a trip that is registered with the Deployment System and not selected for observer coverage; rather they could depart at will. Further, an operator could embark on a fishing trip selected for observer coverage when the observer is on board, which could be less than 72 hours in some cases. Thus, NMFS proposes a prior-notification period of 72 hours and notes that there is a possibility that an observer could be deployed in less than 72 hours.

However, that would not be guaranteed.

NMFS recognizes several factors that could result in the failure of a vessel to commence a trip as planned, such as a mechanical breakdown or weather delay. Vessel operators may also alter fishing plans to avoid having to take an observer on a particular trip if selected for coverage. The delay or cancellation of a selected fishing trip would not result in an automatic release from observer coverage. NMFS would make an observer available to a vessel for up to 48 hours past the departure date and time of the fishing trip that was selected by the Deployment System. After 48 hours, if an operator has not embarked on a selected trip, the trip would be invalidated by the Deployment System and the observer could be deployed to another vessel. If a selected trip is cancelled by the operator or invalidated by the Deployment System, the observer coverage requirement would apply to the vessel's next trip. The vessel operator would be required to register a new trip with the Deployment System and wait for an observer to be available before embarking on the new trip. NMFS proposes the maximum 48-hour delay to provide some room for unexpected delays while avoiding the cost of paying for an observer to wait in port for more than two days before embarking on a trip.

Observer coverage would be required for the entire fishing trip if selected in the trip selection pool. The "fishing trip" definition at 50 CFR 679.2 specific to vessels in the partial coverage category of the groundfish and halibut Observer Program would be revised to refer to the period of time between when a catcher vessel departs a port to harvest fish until the offload of all fish from that vessel. With the exception of regulatory discards, a fishing trip would be prohibited from commencing with

fish aboard. The revised definition is intended to match the information entered into the Deployment System by the operator about the planned fishing trip departure time and to ensure that all fishing events and harvest from an entire trip are observed when selected. The "fishing day" definition at 50 CFR 679.2 would be removed from regulations as observer coverage would no longer be required as a portion of the days fished by an operation in a calendar quarter.

NMFS recognizes that some operators would not know their exact departure plans 72 hours in advance of some fast-paced fisheries. To address this uncertainty, vessel operators would be able to register more than one trip at a time with the Deployment System. The opportunity for the operator to register and enter information about multiple trips would inform them if any of their trips in a fast-paced open access fishery, such as the pollock or Pacific cod fisheries in the GOA, are selected for observer coverage. The observer provider would be notified of the registered trips that are selected for coverage so that logistics to deploy an observer could be arranged in advance. Moreover, NMFS and the observer provider contractor(s) would need to put observers on stand-by in the departure ports for deployment into fast-paced fisheries. Doing so would prevent the interruption of a vessel's fishing activity or the need for the Observer Program to release selected fishing trips from observer coverage.

#### c. Vessel Selection Pool

The vessel selection pool is proposed as an alternate to the trip selection pool. Vessel selection would reduce the volume of trip notifications received by the Deployment System. Further, vessel selection would increase NMFS' ability to deploy observers on small, fixed gear vessels, which would otherwise be logistically challenging under a trip selection protocol. Initially, vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using fixed gear to fish groundfish or halibut would comprise the vessel selection pool. Vessel criteria for inclusion in the vessel selection pool would be specified in annual deployment plans.

Vessels with an FFP or vessels used to harvest IFQ or CDQ halibut would be included in a selection pool. For the vessel selection pool, NMFS would randomly choose a subset of vessels based on either the FFP number or a combination of ADF&G registration number and planned fishing activity to observe for a predetermined time period.

Vessel operators required to manually enter their vessel information into the Deployment System would be notified by the Deployment System as to whether or not their vessel is selected for observer coverage. The Deployment System would provide instructions for the operator of a vessel selected for observer coverage to contact a NMFS-contracted observer provider to discuss logistics for obtaining observer coverage. The proposed rule would require operators to comply with the instructions provided by the Deployment System. For vessels that are auto-entered into the vessel selection pool, NMFS would indicate in the written notification whether or not a vessel is selected for observer coverage and would include instructions for the owner or operator to coordinate with the Observer Program and the contracted observer provider for required observer coverage.

For the vessel selection pool, the time period for which a selected vessel would be required to carry an observer would be specified in the annual deployment plan, in the Deployment System, and in the written notification sent out to non-FFP vessel operators. In section 3.7.2.3 of the analysis (see **ADDRESSES**), a period of 3 months was proposed as the initial vessel selection duration. Under that scenario, an observer would be required on every fishing trip while the vessel is directed fishing for groundfish or halibut over a 3-month period. Initially, the 3-month period would correspond to a quarter of the calendar year. A vessel selected in the first "block" of 3 months would return to the pool of vessels eligible for random selection and could be selected again in the following blocks. The potential for re-selection is referred to as "sampling with replacement." Sampling with replacement ensures that each selected sample is independent of the others so that each vessel has an equal probability of being selected on any given draw. Under the assumption that the vessels registered in the selection system represent similar entities, this randomization would protect against bias so that representative estimates of fishery catch from observer-collected data are generated. Given the large number of vessels expected in the pool, successive selections of the same vessel are unlikely but possible. The majority of vessels in the vessel selection system would be hook-and-line vessels participating in halibut IFQ and CDQ, and sablefish IFQ fisheries. In the future, the vessel selection time period could be adjusted through the annual deployment plan to match logical



increments of the fishing season and to ensure that operators of vessels selected are not choosing their fishing trip dates to avoid carrying an observer.

NMFS anticipates logistical complexities related to deploying observers on vessels less than 57.5 ft. LOA, and coordination between NMFS and vessel operators would be needed to successfully deploy observers with minimal impact to the vessel's normal operations. Vessels less than 57.5 ft. LOA have not previously been subject to observer coverage. Due to NMFS' limited experience with individual, less than 57.5 ft. LOA vessels, since they previously were unobserved vessels, NMFS expects vessel owners and operators to have justified concerns about crew and observer safety and displacement of crew members to carry an observer. When possible in the coordination process, at the request of the vessel owner or operator, the observer and a NMFS program coordinator may visit the vessel, meet with the captain and crew, and familiarize themselves with how an observer would sample aboard a particular vessel. At its discretion, NMFS could provide electronic monitoring equipment to the owner or operator for use on the vessel.

As a first step in coordination, upon first login to the Deployment System, vessel operators would indicate their assessment as to whether or not an

observer could be accommodated aboard their vessel. The operator would be prompted to enter the reason why an observer could not be accommodated (e.g., lack of space for an observer to sample) if so indicated. A program coordinator may visit any vessel selected for observer coverage where the operator indicated that an observer could not be accommodated to verify this assessment. If NMFS determined that the vessel was unsuitable to carry an observer, the Observer Program, in its discretion, could release the vessel from the requirement to be observed for the duration of the selection period.

d. Release From Observer Coverage

Any determination to release a selected vessel from observer coverage during the selected time period would be made on a case-by-case basis by the Observer Program. There are a variety of reasons for which a selected vessel or fishing trip could be released from observer coverage. For example, inclement weather could prevent an observer from getting into a port where a selected vessel is located. In that case, NMFS would work with the observer contractor to evaluate the situation and, if warranted, grant a release from coverage to prevent undue interruption to a vessel's operations. As it is impossible to anticipate every situation, the decision to grant a release or not grant a release will be made on a case-

by-case basis. The Observer Program would document the reasons and evidence the decision-maker relied on to make the decision to grant or deny a release and, if a release is granted, the duration for which the vessel is released from coverage. NMFS recognizes that the decision process on observer coverage releases needs to be efficient to limit impacts (such as delays) on the fishing community. Observer Program staff would inform the vessel operator via phone or email of its decision to release, or not, a selected vessel or trip from coverage and note the release in the corresponding trip information in the Deployment System. Information on release occurrences, and the reasons for them, would be included in future reporting on Observer Program operations to the Council. NMFS anticipates that the Contracting Officer Technical Representative (COTR) assigned to this contract will make these release decisions initially. The COTR would work on an "on call" basis to ensure the decisions are made in a timely manner. As experience is gained with the program and the reasons for releases are better understood, NMFS may be able to delegate routine releases to the observer contractor, with appropriate documentation as to the reasons, to ensure program efficiency.

e. Comparison of Vessel and Trip Selection Pools

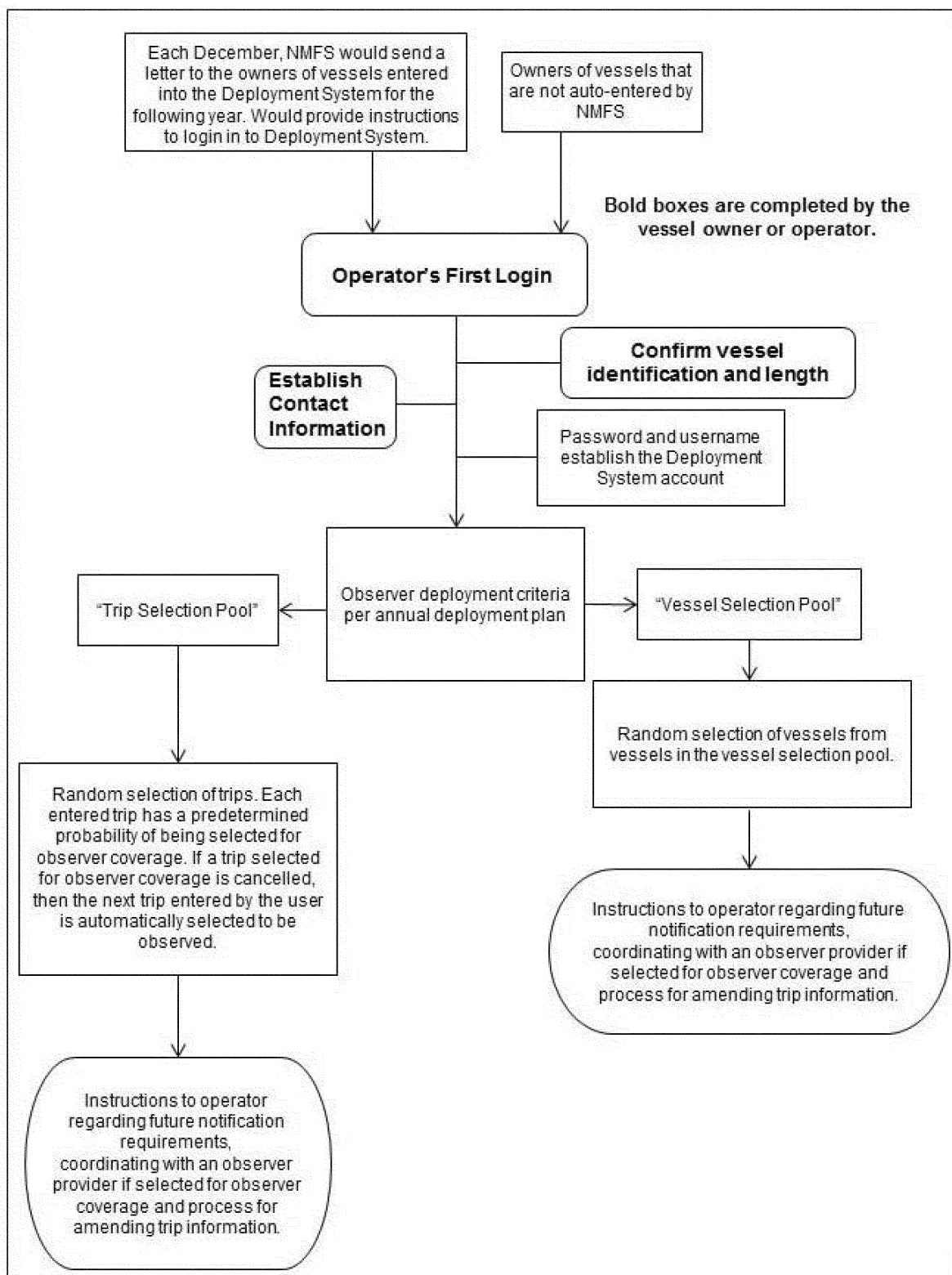
TABLE 4—PRIMARY DISTINCTIONS BETWEEN THE PROPOSED VESSEL AND TRIP SELECTION POOLS

	Vessel selection pool	Trip selection pool
Selected Unit .....	Vessel .....	Fishing Trip.
When Selected .....	Prior to each calendar quarter .....	At least 72 hours prior to trip.
When Operator Notified .....	Prior to each calendar quarter .....	Prior to each trip.
How Operator Notified of Selection .....	Via written notification .....	Via Deployment System.
Duration of Coverage .....	For the first year of the program, three months. Subject to change per annual deployment plan.	Fishing Trip.
Possible Electronic Monitoring Option .....	Upon release from observer coverage requirement.	No.
Owner's or Operator's Notification Requirements.	If selected, must provide access and comply with instructions provided by the Deployment System or the written notification, as applicable, to obtain observer coverage.	Must notify NMFS at least 72 hours prior to embarking on a groundfish or halibut fishing trip.

The following diagram depicts the proposed vessel and trip selection process within the Deployment System,

upon completion of the vessel entry

process, either through auto-entry or manual-entry described above:  
BILLING CODE 3510–22–P



## BILLING CODE 3510-22-C

## f. Electronic Monitoring

NMFS is encouraged by emerging technological developments that enable the use of electronic monitoring when its use is cost effective and can provide

NMFS and the Council information needed to meet a management objective. NMFS and the Council have been engaged in electronic monitoring development for several years, and they jointly conducted a 2008 workshop and

produced a report available at <http://alaskafisheries.noaa.gov/npfmc/conservation-issues/observer-program.html>, which is still relevant. Since then, NMFS and the International Pacific Halibut Commission jointly

conducted research comparing the use of electronic monitoring video systems and observers in hook-and-line fisheries. A full report of that study, "Bycatch characterization in the Pacific halibut fishery: a field test of electronic monitoring technology," is available at the North Pacific Fisheries Research Board Web site at: <http://project.nprb.org/>. NMFS is currently assisting industry efforts funded through a National Fish and Wildlife Foundation grant to further develop and operationalize electronic monitoring technology for use on small hook-and-line vessels where human observation can be challenging, and, at times, impossible.

The Council's Observer Advisory Committee (Committee) assessed electronic monitoring at its March 2011 meeting, considered the potential, and some of the limitations, of the current state of electronic monitoring technology relative to Alaskan fisheries management issues. The Committee noted that there are existing operational electronic monitoring systems using cameras in a surveillance capacity on several catcher/processors in the North Pacific groundfish fisheries off Alaska. In those applications, electronic monitoring is stable and functions as another set of eyes for an observer to see areas that are blocked from their line of sight, and to provide a preserved record of vessel activities when the observer is not present. However, data collected by these surveillance systems are not routinely extracted for fisheries management.

NMFS seeks to develop capacity, both in and out of house, for video deployment, review, and information extraction at the inception of the restructured program. NMFS presented an initial draft of regulations to implement the restructured Observer Program to the Committee in September 2011 and to the Council at its October 2011 meeting. The initial draft regulations included a provision that would have required vessels selected for coverage in the vessel selection pool to have either an observer or an electronic monitoring system onboard the vessel for the duration of the selection. Upon further review, concerns were raised about the legality of requiring electronic monitoring on vessels since NMFS has not yet developed performance standards or technical specifications for electronic monitoring. Subsequently, this provision was revised such that the only observer requirement for a vessel selected for coverage would be that an observer be onboard for the duration required. Upon release from the requirement to carry an observer

(described above), NMFS may provide an electronic monitoring system for use on a vessel if the operator coordinates with NMFS to make his or her vessel available for evaluation and installation of electronic monitoring equipment. However, NMFS would not have the authority to require a vessel to carry electronic monitoring equipment as part of this proposed rule.

The Council passed a motion at its October 2011 meeting which noted that NMFS will need to prioritize vessels that are suited for electronic monitoring and that initial efforts to use electronic video monitoring as a substitute for an observer would focus on hook-and-line vessels less than 57.5 ft. LOA fishing for halibut and sablefish IFQ. A lag is expected between the collection and review of camera-collected catch composition data; therefore, the Committee and Council recommended halibut and sablefish IFQ vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA for initial eligibility for electronic monitoring as NMFS does not rely on data collected at-sea for inseason management of these fisheries.

Electronic video monitoring for catch composition is still under development and the existing technology will likely improve with further refinement. NMFS encourages vendors to continue to develop the capacity to deploy and service electronic monitoring systems for Federal fisheries off Alaska. Dependent on funding, NMFS will look to develop the capacity to deploy electronic monitoring in all cases where it would be the best alternative for information collection.

#### g. Vessels Initially Set Aside From a Selection Pool

Under the proposed deployment system, NMFS would determine, on an annual basis, which vessel categories would be subject to the trip selection pool and which would be subject to the vessel selection pool. The fraction of each pool that is observed will depend on data needed for management of the fisheries and on the revenue generated for observer coverage through the ex-vessel value-based observer fee. Section 3.2.10 of the analysis describes the sequential development of the observer deployment design, ranging from a pilot design based on a minimal amount of prior information about the fisheries, to full optimization designed to minimize the variance in catch estimates. The process employed by NMFS to allocate observer coverage would become more precise over time as information is collected under the randomized design, permitting estimates of variance within and among vessel categories. Thus, from

year to year, the criteria for which partial coverage category vessels are in each pool may be adjusted to increase the sampling efficiency. The coverage rates may also vary among selection pools, and the probability of selection from some vessel categories may be low to none.

NMFS analyzed landings information to arrive at a minimum vessel length for inclusion in the vessel selection pool for the initial year of the restructured program. Full details are provided in section 3.2.7 of the analysis (see **ADDRESSES**). NMFS grouped historic data on total landed weight by vessel properties that are known before a trip begins (e.g., vessel length and gear type). It was important to group landing data by known vessel properties since observers are deployed prior to a landing and properties such as the target species are determined after the fishing trip. NMFS sought to maximize the sampling efficiency and precision in the resulting estimates by defining vessel length and gear type groups to minimize the variation in landed weight within a group and maximize the variation in landed weight between groups. The first grouping property was "gear type" due to large differences in landed weight between trawl and fixed (hook-and-line and pot) gear. The second grouping property was vessel length with a break in landed weights from vessels below and above 57.5 ft. LOA. Since there were no trawl vessels below 57.5 ft. LOA, this effectively separated trawl vessels. However, there were a large number of fixed gear vessels less than 57.5 ft. LOA. Landings made in 2007 and 2008 from vessels up to 57.5 ft. LOA using fixed gear were further analyzed to determine the vessel length where the amount of fish harvested per trip was significantly lower than the amount harvested by larger vessels. Section 3.2.7.2 of the analysis (see **ADDRESSES**) concluded that a vessel length of 39 ft. LOA was the break point below which the amount of harvest per trip was different than the amount of harvest per trip for larger vessels. NMFS rounded that length up to 40 ft. LOA as a vessel length below which observers would not be deployed in the initial year(s) of the program. NMFS also would not place observers on catcher vessels using jig gear in the first year of the restructured program due to the low weight of fish harvested annually by this gear type relative to other gear types.

Consistent with existing observer coverage requirements, the operator of a groundfish catcher vessel delivering an unsorted cod end to a mothership would not be required to notify NMFS

of his or her intent to embark on a fishing trip, carry an observer, or pay the ex-vessel value-based fee. The catch from these vessels would continue to be sampled by the observer aboard the mothership. Under the proposed rule the mothership operator would continue to contract directly with an observer provider for the required coverage. Groundfish or halibut landings from catcher vessels in the partial coverage category that is retrieved (sorted) onboard the catcher vessel before delivery to the mothership would be subject to the fee assessment and observer coverage under the new funding and deployment system.

Vessels designated on an FFP would be included in observer coverage requirements when directed fishing for groundfish in federally managed or State parallel groundfish fisheries; however, they would not be required to carry an observer or hail-in to the Deployment System when participating in groundfish fisheries that are managed by the State in State waters where harvests are not deducted from the Federal TAC. Finally, with the exception of vessels fishing halibut and sablefish IFQ or halibut CDQ, vessels without an FFP would not be required to comply with Federal observer coverage requirements.

#### *C. Shoreside Processor and Stationary Floating Processor Observer Coverage*

With three exceptions, existing observer coverage requirements for shoreside processors and stationary floating processors are based on the weight of groundfish delivered to the plant each month. A plant that receives at least 1,000 mt of groundfish in a month is required to have an observer present at the facility each day it processes or receives groundfish. A plant that receives between 500 mt and 1,000 mt of groundfish in a month is required to have an observer at the facility at least 30 percent of the days it processes or receives groundfish. Plants that receive less than 500 mt of groundfish in a month are not required to have an observer. The duties of observers in plants consist of compliance monitoring (e.g., verifying delivery weights recorded by scales), identifying and counting salmon bycatch in certain fisheries, and collection of biological samples to meet various science and management objectives.

Exceptions to the existing weight-based observer requirements for plants include plants receiving CDQ groundfish or species harvested under the GOA Rockfish Program and AFA inshore processors receiving pollock

from the BSAI. These plants are required to have an observer present at all times while these deliveries are being received or processed. When receiving BS pollock or GOA Rockfish Program deliveries, each plant is required to have a Catch Monitoring and Control Plan (CMCP) that defines how fish will be sorted and weighed during these deliveries. In these fisheries, the plant observer is responsible for confirming that a plant's activities conform to its stated CMCP.

Consistent with the dual coverage categories for vessels, the proposed rule would create two observer coverage categories for shoreside and stationary floating processing plants—full and partial. Classification in the coverage categories would be based on fishery management and monitoring needs and would replace existing requirements based on the weight of fish processed per month. The role of observers in plants in the partial coverage category would remain compliance monitoring, composition sampling as needed and biological information collection. With the exception of plants when receiving BS pollock (AFA and CDQ), all shoreside and stationary floating plants possessing a Federal Processing Permit (FPP) would be included in the partial coverage category and would pay the ex-vessel value-based fee to NMFS for their observer coverage. NMFS would deploy observers directly and plant operators would no longer contract with observer providers for their coverage.

The new funding and deployment system proposed by this rule would allow NMFS to deploy observers in plants in a randomized fashion according to management needs. The increased flexibility in observer deployment relative to the current program expected through the proposed funding and deployment system would eliminate the need for plants to be observed 100 percent of the days they receive or process groundfish. Deliveries of BS pollock harvested by AFA and CDQ vessels are the exception, and full coverage would continue to be required for plants when taking deliveries of BS pollock as observers are needed to conduct a full census of incidentally harvested Chinook salmon. All other deliveries could be adequately monitored for compliance and biological data collection at a rate of less than 100 percent through a randomized sampling design. Based on this rationale, the proposed rule would remove the current requirements for 100 percent observer coverage for shoreside processing plants and stationary floating processor plants receiving groundfish

CDQ, GOA Rockfish Program, and AI pollock deliveries.

Processing plants would be in the full coverage category when receiving BS pollock and would contract directly for their observer coverage with permitted observer providers under the existing Observer Program funding and deployment system. These same plants would be in the partial coverage category for all other groundfish and halibut deliveries.

Observers in the processing plants in the partial coverage category would be assigned to multiple shoreside plants under a randomized design to fulfill NMFS' monitoring needs. Unlike the two-pool selection and hail-in system for vessels, there would not be such a selection system and notification requirement for shoreside plants.

Observers would be assigned to ports and randomly assigned by NMFS to offloads as they occur using the existing operation notification requirements at \$ 679.50 for shoreside processors and stationary floating processors which require managers to notify observers of planned facility operations and expected receipt of groundfish prior to receipt of those fish. NMFS would notify a plant when it is randomly selected for coverage. An observer would be assigned to a plant for the duration of a randomly selected offload. The probability of selection for an observed offload would vary according to the types of deliveries a plant receives. The probability of selection would be higher for plants that receive deliveries from the GOA Rockfish Program due to the need for rapid turnaround and transmission of data. Random assignment of observers to plants would maximize the efficiency of the plant observer and increase the likelihood that biological samples are taken throughout the fishing season, thus providing an unbiased estimate of the fleet's catch as required for stock assessments. Actual sample sizes (number of deliveries observed or number of biological samples obtained) and resulting sampling fractions (observed vs. total deliveries) would depend on the amount of revenue generated in prior years from the ex-vessel value-based fee and the number of trips completed in the fishing year.

#### *D. Observer Coverage in CDQ Fisheries*

Observer coverage requirements for vessels participating in the groundfish and halibut CDQ fisheries would be structured to comply with section 305(i)(1)(B)(iv) of the MSA, which requires that the harvest of allocations under the CDQ program for fisheries with IFQs or fishing cooperatives shall

be regulated no more restrictively than for other participants in the applicable non-CDQ sector. This requirement is described in more detail in a final rule implementing regulatory amendments to comply with this provision (77 FR 6492; February 8, 2012). Observer coverage requirements for vessels halibut CDQ fishing and fixed gear sablefish CDQ fishing would be the same as requirements that apply for the halibut and fixed gear sablefish IFQ Programs. Catcher/processors would be in the full coverage category, and catcher vessels would be in the partial coverage category. Observer coverage requirements for vessels pollock CDQ fishing would be the same as the requirements that apply to vessels directed fishing for pollock in the BS under the AFA. Catcher/processors, motherships, and catcher vessels would be in the full coverage category. Observer coverage requirements for catcher/processors using trawl gear in the CDQ fisheries for species other than pollock would be the same as the requirements that apply to the “non-AFA trawl catcher/processors” under the Amendment 80 Program. These

catcher/processors would be in the full coverage category.

If a voluntary cooperative exists in a non-CDQ sector, the same observer coverage requirements that apply to these vessels while they are fishing under a voluntary cooperative would apply while they are participating in CDQ fisheries. A voluntary cooperative currently exists among the catcher/processors using hook-and-line gear to harvest Pacific cod in the BSAI. If the voluntary cooperative receives an exemption from the operational requirements at § 679.32(c)(3)(i) from NMFS pursuant to § 679.32(e), the catcher/processors in the voluntary cooperative, when CDQ fishing, would be required to comply with the same observer coverage requirements that apply to them in the non-CDQ fisheries. Under this proposed rule, these catcher/processors would be in the full coverage category for both their non-CDQ and CDQ fishing.

Additional experience requirements for observers in some of the CDQ fisheries would be maintained, as described in proposed new § 679.51(a)(2)(vi)(A). With one exception, existing level 2 and lead

level 2 observer experience requirements at § 679.50 would be required for CDQ vessel observers in the full coverage category. The one exception is that catcher/processors using hook-and-line gear that participate in a voluntary cooperative in a non-CDQ fishery would not be subject to these additional requirements while CDQ fishing, if NMFS approved such an exemption for these vessels under § 679.32(e).

The only remaining vessel categories in the CDQ fisheries that were not covered by the CDQ regulation of harvest final rule are catcher vessels participating in CDQ fisheries for groundfish other than sablefish or pollock. NMFS proposes to place catcher vessels using pot or jig gear in the CDQ fisheries in the partial observer coverage category because halibut prohibited species catch by these vessels does not accrue against the halibut prohibited species catch limit. Catcher vessels using hook-and-line gear or trawl gear would be placed in the full coverage category because their prohibited species bycatch accrues against the CDQ group’s transferable prohibited species bycatch allocations.

**TABLE 5—OBSERVER COVERAGE REQUIREMENTS THAT WOULD APPLY TO VESSELS PARTICIPATING IN THE GROUNDFISH AND HALIBUT CDQ FISHERIES UNDER THIS PROPOSED RULE**

Fishery or vessel category	Trawl gear	Catcher vessels using		Catcher/ processors	Motherships
		Hook-and-line gear	Pot or jig gear		
Are in the following observer coverage categories:					
Halibut CDQ .....	n/a .....	partial .....	n/a .....	full .....	n/a.
Sablefish CDQ .....	full .....	partial .....	partial .....	full .....	n/a.
Pollock CDQ .....	full .....	n/a .....	n/a .....	full .....	full.
Other Groundfish CDQ .....	full .....	full .....	partial .....	full .....	full.

#### *E. Observer Provider and Observer Responsibilities*

Current responsibilities for observer providers and observers are detailed in the regulations at 50 CFR 679.50(i) and (j). This proposed rule would retain these requirements and responsibilities for observer providers (under proposed new § 679.52) and observers (under proposed new § 679.53) serving operations in the full coverage category. The current responsibilities would not apply to observer providers and observers serving the partial coverage category. For the partial coverage category, NMFS would contract with observer providers instead of issuing permits to them as under the current Observer Program. NMFS’ contracts with providers would include a statement of work with performance

measures. The Federal contracts would stipulate the time frame of the contract, set minimum observer pay and benefit requirements, observer deployment logistics and limitations, limitations on conflict of interest, communications with observers and with NMFS, requirements to provide qualified observers in a timely manner, and other aspects to ensure high quality observer data are available for management. Moreover, observer qualifications, training requirements, and performance expectations would be defined in contracts with observer providers such that the contents of the existing § 679.50(j) (which would be amended to § 679.53) would not apply to observer services provided through direct government contracts. Instead of the level 2 observer and lead level 2

observer endorsements currently stipulated through regulations at § 679.50(j)(1)(v)(D), (the proposed new § 679.53(a)(5)(iv)), qualification requirements for observers serving in the partial observer coverage category would be specified in NMFS’ contracts with observer providers. NMFS expects this will increase NMFS’ ability to match observer skill with sampling complexity and provide NMFS with increased flexibility to respond to changing fisheries management needs, which is a primary objective of restructuring.

NMFS recognizes that an observer provider could simultaneously contract directly with NMFS and the industry and thereby be subject to different requirements under the two different funding and deployment systems.

Observers would have to be certified according to the requirements of current paragraph § 679.50(j) (which would be proposed new § 679.53) to observe full coverage category fisheries while observers working for providers in the partial coverage category would have different performance requirements and would not have a certification per se.

#### *F. U.S. Coast Guard Safety Decal*

Current regulations at § 600.746 and § 679.50 require all vessels to pass a U.S. Coast Guard Commercial Fishing Vessel Safety Examination prior to carrying an observer. This requirement would pertain to all vessels that would be required to carry an observer under this proposed rule. The existing exemption for vessels less than 26 ft. LOA in remote locations would be maintained under this proposed rule; all other vessels without a valid safety decal would continue to be considered inadequate for carrying an observer. Observers are instructed not to board a vessel if the safety decal is absent or expired. An operator's obligation to carry an observer when selected would not be obviated for lack of a valid safety decal, rather, the operator would be prohibited from embarking on a selected trip. Therefore, it behooves any vessel eligible to be selected for observer coverage to undergo a U.S. Coast Guard safety equipment examination prior to being selected to carry an observer to avoid potential fishing delays for lack of a current safety decal. Once issued, the decal is valid for 2 years. Dockside examinations for U.S. Coast Guard safety decals may be arranged by contacting the U.S. Coast Guard (see **ADDRESSES**).

#### *G. Ex-Vessel Value-Based Observer Fee*

Observer coverage in the proposed partial coverage category would be funded through revenue generated from an ex-vessel value-based fee. The Council approved a 1.25 percent ex-vessel value-based observer fee to be paid by all groundfish and halibut vessels and processors for landings and fish subject to the observer fee. Examples of these landings and fish are described in a later section. Section 2.9.2 of the analysis (see **ADDRESSES**) describes which observer deployment costs are authorized and which would be intended to be covered with the ex-vessel value fee proceeds, and which costs NMFS would fund through agency contributions. NMFS would prepare an annual report on the financial aspects of the restructured program and the revenues provided by the 1.25 percent ex-vessel fee. The Council would review the 1.25 percent ex-vessel value fee

percentage after completion of the second year of observer deployment in the restructured program. The Council could revise the fee assessment percentage in a subsequent rule at any time, upon evaluation of program revenues and costs, observer coverage levels, fishery management objectives, and future deployment plans. This report would be provided to the Council at the same time NMFS would provide the annual deployment plan.

Ex-vessel value refers to the price paid to fishermen for their raw, unprocessed catch. The objective of the ex-vessel value-based fee is to collect 1.25 percent of the ex-vessel value of each groundfish and halibut landing from operations in the partial coverage category. NMFS applied several principles to develop proposed methods to derive the ex-vessel value of groundfish and halibut landings for purposes of the observer fee. The ex-vessel value fee should be: broad-based such that all fishery partial coverage category participants pay a share; fair and equitable among participants; easy to collect without undue burden on participants; assessed on any post-season price settlements or retroactive payments in addition to assessments at the time of landing; account for non-monetary exchange of fish or other forms of compensation; and assessed on weight equivalents used to debit quotas (e.g., round weight for groundfish and headed and gutted weight for halibut). Observer fees would not be linked to the actual level of observer coverage for individual vessels and plants as it is under the current program. Instead, each participant in the partial coverage category would pay an equal percentage of the value they derive from the groundfish and halibut fisheries to contribute toward the cost of collecting observer data for conservation and management of the fisheries as a whole.

##### **1. Standard Ex-Vessel Prices**

NMFS would annually establish standard ex-vessel prices for species subject to the observer fee. These prices would be used in assessing fees and in estimating the total ex-vessel value of the fisheries for the coming year. To avoid new reporting requirements for participants in the partial coverage category, NMFS would use existing reports and ex-vessel value determinations to establish standard prices for groundfish and halibut landings for purposes of the observer fee. Proposed data sources for ex-vessel price information are NMFS' halibut and sablefish IFQ Buyer Report, and the State of Alaska's Commercial Fishery Entry Commission's (CFEC) gross

revenue data, which are based on the Commercial Operator Annual Report (COAR) and ADF&G fish tickets. Section 2.9.2 of the analysis (see **ADDRESSES**) describes the data sources evaluated by NMFS to develop the proposed fee derivation method.

##### **2. Halibut and Sablefish Standard Prices**

NMFS collects IFQ cost recovery fees at the start of each year to recover costs incurred by the agency for IFQ program management in the previous year. Regulations at § 679.5(l)(7)(i)(B) require an IFQ Registered Buyer, that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut, to submit annually to NMFS a complete IFQ Buyer Report by October 15 of the year the Registered Buyer receives IFQ fish. The IFQ Buyer Report includes information on the pounds purchased and values paid (with price adjustments) for each IFQ species by port or port group and month. Information provided through the IFQ Buyer Reports is used to generate standard prices for ex-vessel value-based cost recovery fees collected under the authority of the MSA section 304(d)(2)(A).

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. The standard prices are calculated in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish and headed and gutted net weight for halibut.

Under the proposed rule, volume and value data collected on the IFQ Buyer's report would be used to calculate the standard ex-vessel prices to determine the value in the following year for purposes of the observer fee for halibut IFQ and CDQ landings, sablefish IFQ landings, and sablefish landings that accrue against the fixed gear sablefish CDQ allocation by catcher vessels in the partial coverage category. Observer fees would be assessed on all landings in a year to pay for observer coverage in the following year.

Catcher vessels harvesting halibut CDQ would be in the partial observer coverage category, and landings of halibut CDQ by these vessels would be subject to the observer fee. However, because halibut CDQ is not yet included in a cost recovery program, no data about the ex-vessel value of halibut CDQ is currently collected by NMFS. Therefore, this proposed rule would require that Registered Buyers submit, on the IFQ Buyer Report, the pounds

purchased and values paid for halibut CDQ. These additional data about halibut CDQ would not be used to calculate standard ex-vessel prices for the IFQ cost recovery program.

However, the data for both halibut IFQ and halibut CDQ would be combined by NMFS to calculate an average annual standard ex-vessel price for halibut by port or port-group for the observer fee. While the standard ex-vessel prices for halibut IFQ for the cost recovery program are calculated monthly by port or port-group, the observer fee standard ex-vessel prices would be calculated as a single annual average for halibut IFQ and halibut CDQ combined, by port or port-group.

Catcher vessels harvesting fixed gear sablefish CDQ would be in the partial observer coverage category and landings of fixed gear sablefish CDQ by these vessels would be subject to the observer fee. NMFS proposes to use existing data collected about the pounds purchased and values paid for sablefish IFQ to calculate the standard ex-vessel prices to determine the observer fee liability for fixed gear sablefish CDQ. NMFS does not propose to require Registered Buyers to submit additional information about sablefish CDQ on the IFQ Buyer Report because, unlike sablefish IFQ, fixed gear sablefish CDQ is not required to be delivered to a Registered Buyer.

The standard ex-vessel prices used to determine the observer fee for halibut and fixed gear sablefish would be published in the **Federal Register** in the annual notice of standard ex-vessel prices that will apply to groundfish and halibut landings subject to the observer fee. Under the IFQ cost recovery program, data from ports are combined to protect confidentiality in cases where price information is provided by less than three processors. The port and port groups used to collect the observer fee under this proposed rule could be different from the ports or port groups used to collect cost recovery fees because the observer fee is an annual price, thus, the number of buyers and harvesters in a port may allow information to be reported where it would be confidential for some or all of the individual months.

### 3. Groundfish Standard Ex-Vessel Prices

NMFS would calculate standard prices for all groundfish, except fixed gear sablefish, by averaging the most recent annual prices from the State of Alaska's CFEC for their gross earnings estimates by the applicable species, port of landing, and gear combinations. Three gear categories would be established: pelagic trawl gear, non-pelagic trawl gear, and all other gear.

Section 2.9.2 of the analysis (see **ADDRESSES**) describes the methods employed by the CFEC to estimate ex-vessel prices based initially on landings data from ADF&G fish tickets and ultimately refined with information from the COAR. The COAR contains statewide buying and production information and is generally considered the best routinely collected information to determine the ex-vessel value of groundfish harvested from waters off Alaska. The COAR is completed by the first buyers of fish harvested from State and Federal waters off the coast of Alaska. Post-season price adjustments and bonuses paid to harvesters are required to be reported in the COAR. The report is due to the ADF&G by April 1 of the year after the fishing occurred. The standard, average price would be weighted by the amount of pounds at each price for each species, port, and gear combination.

CFEC ex-vessel prices are available in the fall of the year following the year the fishing occurred. Thus, in any given year, it is not possible to base ex-vessel fee liabilities on standard prices that are less than two years old. For example, the most recent standard prices available for the determination of liabilities in 2013 will be those from 2011. Notwithstanding this limitation, the COAR data were determined to comprise the best available information to establish the ex-vessel value of the groundfish fisheries off Alaska.

The proposed approach to establish the ex-vessel value for the purpose of the observer fee would apply price information from earlier years to current year harvest volumes. Fish prices and harvest volumes vary annually. Thus, a value estimate based on price information from earlier years would not equate to the true ex-vessel value for a particular year. As noted, a 2-year lag would occur between the date fish are landed and when standard prices for those landings are applied. Section 2.9.2.2.4 of the analysis (see **ADDRESSES**) shows potential impacts of the time lag on the ex-vessel value estimated with prior-year and current-year information from 2001 through 2009. The time lagged ex-vessel value estimate was lower than the actual ex-vessel value over most of the years considered. Thus, while it would be possible for the ex-vessel value fee to exceed 1.25 percent of the actual ex-vessel value in a particular year, over two to three years, the 1.25 percent fee percentage would likely not be exceeded.

The effect of averaging the standard price estimates over multiple years was evaluated in section 2.9.2.2.4 of the analysis (see **ADDRESSES**) as a way to

stabilize interannual variability in fish prices and thus, ex-vessel value fees and resulting revenue for observer coverage. Increasing the period of time over which prices are averaged decreases the effect of a price that is substantially different from other years on the average price. Using fewer years for the average price allows the price to respond more quickly to increases or decreases in ex-vessel price. Three, five, and seven-year averages were considered in section 2.9.2.2.4 of the analysis (see **ADDRESSES**). The Council balanced the need to use recent and relevant data against the need to reduce the possible undue influence of unusual annual values, and selected the 3-year average as part of its preferred alternative. Thus, standard groundfish (except fixed gear sablefish) ex-vessel prices for observer fees would be the 3-year average of the price estimated for each species, gear, and port combination.

### 4. Confidential Data

Standard prices that would apply to groundfish and halibut landings in the upcoming year would be published in the **Federal Register** each December. NMFS would adhere to applicable guidance for protecting confidentiality of data submitted to or collected by NMFS, and for shared ADF&G/CFEC and NOAA data, as prescribed by a Reciprocal Data Access Agreement (1999) which meet or exceed the stringent confidential data handling and disclosure. Therefore, pursuant to guidance restricting disclosure of confidential data, but allowing disclosure of aggregated data, NMFS would not publish any price information that would permit the identification of an individual or business. For example, at least four persons would need to make landings of a species with a particular gear type at each port in order for NMFS to publish those price data at the level of individual ports. Price data that would be confidential due to the 4-person minimum would be aggregated by subarea in the BSAI (BS subarea and AI subarea) and by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA). If confidentiality requirements are still not met by aggregating prices across ports at the subarea or regulatory area level, they would be aggregated at the level of GOA and BSAI or statewide.

### 5. Landings Subject to an Observer Fee

Vessels and processors subject to the proposed action commonly participate in fisheries managed under State or Federal jurisdiction. Most federally managed fisheries occur in the EEZ and



most fisheries managed by the State occur in waters within 3 nm of the coast, although some federally managed fisheries occur in State waters and vice versa. This rule proposes to distinguish between fish harvested in fisheries in State and Federal waters where catch is subtracted from the Federal TAC and fish harvested in State-managed fisheries in State waters where catch is subtracted from a guideline harvest level (GHL).

Groundfish which accrue against a Federal TAC are those listed in Table 2a to part 679. The current list of groundfish species in Table 2a to part 679 is shown in Table 6 below. These are the groundfish species that would be subject to the observer fee. Table 2a to part 679 is amended periodically to reflect species added or removed from management under the FMPs. In the future, the observer fee would apply to the list of groundfish species in Table 2a to part 679 at the time of landing, which may differ from the list in Table 6 below.

**TABLE 6—GROUND FISH THAT CURRENTLY ACCRUE AGAINST FEDERAL TACS AND WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT**

Species and Species Code
Atka mackerel (193)
Pacific cod (110)
Pollock (270)
Octopus (870)
Squid (875)
Flatfish, any other flatfish species without separate codes (120)
Alaska plaice (133)
Arrowtooth flounder (121)
Bering flounder (116)
Kamchatka flounder (117)
Starry flounder (129)
Greenland turbot (134)
Sablefish, blackcod (710)
Sculpins (160)
<b>SHARKS</b>
Pacific sleeper shark (692)
Salmon shark (690)
Spiny dogfish (691)
Other sharks (689)
<b>SKATES</b>
Whiteblotched skate (705)
Aleutian skate (704)

**TABLE 6—GROUND FISH THAT CURRENTLY ACCRUE AGAINST FEDERAL TACS AND WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT—Continued**

Species and Species Code
Alaska skate (703)
Big skate (702)
Longnose skate (701)
Other skates, any other skate species without separate codes (700)
<b>SOLE</b>
Butter sole (126)
Dover sole (124)
English sole (128)
Flathead sole (122)
Petrals sole (131)
Rex sole (125)
Rock sole (123)
Sand sole (132)
Yellowfin sole (127)
<b>ROCKFISH</b>
Aurora (185)
Black—BSAI only (142)
Blackgill (177)
Blue—BSAI only (167)
Bocaccio (137)
Canary (146)
Chili pepper (178)
China (149)
Copper (138)
Darkblotched (159)
Dusky (172)
Greenstriped (135)
Harlequin (176)
Northern (136)
Pacific ocean perch (141)
Pygmy (179)
Quillback (147)
Redbanded (153)
Redstripe (158)
Rosethorn (150)
Rougheye (151)
Sharpchin (166)
Shortbelly (181)
Shortraker (152)
Silvergray (157)
Splitnose (182)
Stripetail (183)
Thornyhead, all <i>Sebastes</i> species, (143)
Tiger (148)
Vermilion (184)
Widow (156)
Yelloweye (145)
Yellowmouth (175)
Yellowtail (155)

The objective of the observer fee assessment is to levy a fee on all landings accruing against the Federal TAC made by vessels that are subject to Federal regulations and not included in the full coverage category. Therefore, a fee would only be assessed on landings from vessels designated on an FFP or from vessels landing IFQ or CDQ halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC would be included in the fee assessment. Table 7 provides additional information about which landings would and would not be subject to the observer fee.

If a vessel is designated on an FFP, the only groundfish landings that would not be subject to the ex-vessel value-based fee are landings of Pacific cod, pollock, and sablefish accruing against the State GHL, or landings of groundfish species that do not accrue against a Federal TAC (those not listed in Table 2a to part 679, such as lingcod or dark rockfish, or groundfish retained as bait and not sold). Groundfish accruing against a Federal TAC and landed in conjunction with GHL Pacific cod, pollock, or sablefish would be included in the observer fee assessment if delivered by a vessel named on an FFP and excluded from the observer fee assessment if the vessel does not possess an FFP.

If a vessel is being used to conduct fishing that does not require that vessel be named on an FFP, then none of the groundfish, other than sablefish IFQ, landed by that vessel would be subject to the observer fee assessment, even if those groundfish are listed in Table 2a to part 679 and accrue against a Federal TAC. Landings of IFQ or CDQ halibut or IFQ sablefish by vessels in the partial observer coverage category would be subject to the observer fee even if those vessels were conducting fishing that did not require an FFP.

**TABLE 7—LANDINGS THAT WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT FOR VESSELS WITH AND WITHOUT AN FFP**

If fish in the landing is from the following fishery or species	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP	If the vessel is designated on an FFP or required to be designated on an FFP
(1) Groundfish listed in Table 2a to part 679 (FMP groundfish) that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a) Includes:		

TABLE 7—LANDINGS THAT WOULD BE SUBJECT TO THE OBSERVER FEE ASSESSMENT FOR VESSELS WITH AND WITHOUT AN FFP—Continued

If fish in the landing is from the following fishery or species	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP	If the vessel is designated on an FFP or required to be designated on an FFP
<ul style="list-style-type: none"> <li>FMP groundfish landed while fishing for halibut IFQ, halibut CDQ, sablefish IFQ, or salmon (troll) in the EEZ.</li> <li>Groundfish CDQ.</li> <li>Demersal shelf rockfish in the Southeast Outside District of the GOA.</li> <li>Black rockfish and blue rockfish in the BSAI.</li> <li>FMP groundfish sold for bait (disposition code = 62).</li> </ul>	not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to part 679 that is harvested in <i>Alaska State waters</i> and subtracted from a total allowable catch limit specified under § 679.20(a). Includes: <ul style="list-style-type: none"> <li>FMP groundfish harvested in a parallel groundfish fishery as defined at § 679.2.</li> <li>FMP groundfish landed while fishing for halibut IFQ, halibut CDQ, sablefish IFQ, or salmon (troll) in Alaska State waters.</li> <li>Groundfish CDQ harvested in Alaska State waters.</li> <li>Demersal shelf rockfish caught in Alaska State waters adjacent to the Southeast Outside District of the GOA.</li> <li>FMP groundfish that are non-target species harvested while fishing in a State of Alaska guideline harvest level (GHL) fishery for pollock, Pacific cod, or sablefish.</li> <li>FMP groundfish sold for bait (disposition code = 62).</li> </ul>	No .....	Yes.
(3) Sablefish IFQ, regardless of where harvested .....	Yes .....	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested .....	Yes .....	Yes.
(5) Groundfish listed in Table 2a to part 679 that is harvested in the <i>Alaska State waters</i> , but is not subtracted from a total allowable catch limit specified under § 679.20(a). Includes:	No .....	Yes.
<ul style="list-style-type: none"> <li>Groundfish managed under State of Alaska guideline harvest levels, which currently include pollock, Pacific cod, and sablefish.</li> </ul>	No .....	No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested. Includes:	No .....	No.
<ul style="list-style-type: none"> <li>Lingcod.</li> <li>Black rockfish and blue rockfish in the GOA.</li> <li>Dark rockfish in the GOA and BSAI.</li> <li>Salmon caught in the troll fishery.</li> </ul>	No .....	No.
(7) FMP groundfish retained as bait and not sold (disposition code 92)	No .....	No.

## 6. Fee Determination and Collection

Under this proposed action, the 1.25 percent ex-vessel value fee liability would be split between processors or Registered Buyers and vessel owners or operators, although the split would not be in regulation. The processor or Registered Buyer would collect the vessel operator's observer fee liability at landing and remit the fee to NMFS on an annual basis. The fee liability would be determined by multiplying the standard price for groundfish by the round weight equivalent for each species and gear combination, and the standard price for halibut by the headed and gutted weight equivalent. The fee liability for each landing would be 1.25 percent of the sum of the individual species/gear combination amounts.

Information submitted to NMFS by processors and Registered Buyers via eLandings would be used to determine the fee liability for each landing. eLandings is the web-based data entry component of the Interagency Electronic Reporting System that allows processors, Registered Buyers, and others to submit, edit, and summarize landings, production, discard, and disposition data. When reports of catch and production are submitted via eLandings they are available to NMFS, the International Pacific Halibut Commission, and ADF&G in near real-time. Registered buyers who do not process any groundfish and are not able to use eLandings use an alternate electronic reporting system (the "legacy" IFQ system). If Registered Buyers need to make changes to IFQ

reports then they are required to file manual landing reports with NMFS and that information is entered into the halibut and sablefish IFQ accounting system by NMFS contractors.

Under existing regulations, processors and Registered Buyers enter delivery information including the weight of each species of fish in the landing into eLandings or, in some cases for halibut and sablefish, through an alternate electronic reporting system or manual landing report to NMFS. Originally, NMFS envisioned that the standard ex-vessel prices would be entered into eLandings at the beginning of each year. Further, that eLandings would be programmed to calculate the fee liability for each landing based on the landing weights entered by the processor for each species and the pre-programmed prices. However, upon further review,

NMFS has determined that the information entered by processors in eLandings does not provide all of the information necessary to determine if a landing is subject to the observer fee. Specifically, eLandings is not designed to perform some functions of NMFS' CAS that are needed to determine if landings of fish harvested in State waters accrue against the Federal TAC or the GHL and thus whether or not the landing would be subject to the observer fee. These determinations are made through NMFS' CAS and the State's examination of landing reports (ADF&G fish tickets). Although NMFS could program eLandings to allow the processor to designate whether the groundfish from a landing accrued against a Federal TAC, the processor may not have all of the information to make that determination and could inadvertently assign catch to the wrong category, thereby generating inaccurate information about the observer fee liability associated with the landing. In addition, halibut IFQ and CDQ landings or sablefish IFQ landings reports submitted via the legacy reporting system or manual landing report do not always get entered into eLandings, so information about the fee liability associated with each landing could not be provided to the Registered Buyer via eLandings for these landings.

As an alternative to providing fee liability information through eLandings, NMFS would develop a separate web-based application that would assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing is subject to the observer fee. For any groundfish or halibut subject to the observer fee, the web-application would apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing. All processors and Registered Buyers would have access to the web-application through a user id and password issued by NMFS. This information generally would be available within 24 hours of the time that the landing report was submitted via eLandings or the manual landing report was submitted to NMFS. NMFS would expedite the availability of observer fee calculations for halibut to the extent possible to accommodate the common practice of rapid settlements between buyers and harvesters for halibut landings. Processors would deduct the harvester's fee liability from their payment and add

the processor's portion of the fee liability. Reports, such as a receipt of the fee liability for each landing, would be available through the observer fee web-application. Processors could provide a copy of these reports to harvesters for their records. The information generated by this web-application also would provide the annual billing for the processors and Registered Buyers. The fee remittal process would be as follows:

1. Annually, NMFS would publish a standard price per pound by port, species, and gear type in the **Federal Register**.

2. NMFS would program the most recent standard prices into an observer fee web-based application at the beginning of each year.

3. Processors would enter the delivery information and the pounds of each species landed into eLandings.

4. The observer fee web-application would evaluate the landings report and calculate the fee liability for the landing. This information will generally be available within 24 hours of receipt of the report.

5. Processors could access the web-based application at least 24 hours after submitting a report to view the landing-specific observer fee liability information and to print a copy of the fee liability report for harvesters.

6. Processors would withhold the vessel operator's portion and self-collect the processor's portion of the observer fee liability.

7. By January 15 of each year, NMFS would invoice processors for the total fee liability determined by the sum of the fees reported by the observer fee web-application for each processor for the prior calendar year.

8. Processors would remit the fees to NMFS electronically by February 15.

9. NMFS would audit the payments to ensure all liabilities are paid in full.

The Council requested that NMFS determine, during the development of the regulations, whether current-year ex-vessel prices could be used to determine the ex-vessel observer fee using a billing system similar to the halibut and sablefish IFQ cost recovery fee program to collect fees from processors and harvesters. NMFS continues to propose the method by which shoreside processors and Registered Buyers would be informed in December of the standard ex-vessel prices that would apply for landings in the upcoming year, and billed in the beginning of the next calendar year for all landings in the prior year. The standard ex-vessel prices would be established by using data reported on the COAR and the IFQ Registered

Buyer's Report. Section 2.9.2 of the analysis (see **ADDRESSES**) explains why basing the ex-vessel value fee on current-year prices would not be feasible and that standard prices based on prior years' data would need to be established to determine the ex-vessel value of landings for purposes of the observer fee. A fee collection system similar to the one used to collect cost recovery fees for IFQ halibut and sablefish would require processors to submit a buyer's report to NMFS that would virtually duplicate the information collected through the COAR. This would also require NMFS to duplicate the process used by the State CFEC to estimate gross earnings and arrive at standard prices. Moreover, a fundamental component of the proposed observer fee is that shoreside processors and Registered Buyers would collect half of the fee liability from fishermen at the time of landing. This collection can only be done if the shoreside processors and fishermen know the amount of the fee liability associated with each landing at the time of landing. This would not be possible using current year's prices, because these prices are not available until the end of the year, or in the case of data from the COAR, until late the next year. Using current years' prices would require NMFS to invoice each vessel operator and shoreside processor in the partial coverage category, rather than just the shoreside processors and Registered Buyers thereby increasing NMFS' administrative costs substantially.

#### 7. Payment Compliance

An FPP or Registered Buyer permit holder who has incurred a fee liability would be required to pay the fee to NMFS by February 15 of the year following the calendar year in which the landing was made. Full payment of the observer fee liability would be required before NMFS would issue a new or renewed FPP or Registered Buyer permit.

If an FPP or Registered Buyer permit holder (permit holder) makes a timely payment to NMFS of an amount less than the fee liability NMFS estimated, the permit holder would have the burden of demonstrating that the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment and the Fee Submission Form, NMFS determines the permit holder has not paid a sufficient amount, NMFS would notify the permit holder by letter. NMFS would explain the discrepancy and the permit holder would have 30 days to either pay the remaining amount that

NMFS determined should be paid or provide evidence that the amount paid is correct. In the meantime, any applications for new or renewed FPP or Registered Buyer Permits for the permit holder would be deemed incomplete and would not be approved by NMFS.

If the permit holder submits evidence in support of his or her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate observer fee, prepare an Initial Administrative Determination (IAD). The IAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A permit holder disagreeing with the IAD could appeal an IAD through the NMFS Office of Administrative Appeals as described in existing regulations at 50 CFR 679.43. An IAD that is not appealed within 60 days of issuance to the NMFS Office of Administrative Appeals, would become a final agency action.

During the pendency of the appeal proceedings outlined here, the following conditions would exist: The application for new or renewed FPPs or Registered Buyer Permits would not be approved by NMFS, so the FPP or Registered Buyer permit holder could not receive or process groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut or IFQ sablefish, respectively, unless they could do so under valid permits not associated with the fee liability dispute. An FPP or Registered Buyer Permit holder could pay the disputed fee difference under protest in order to allow NMFS to approve pending permit applications. If the final agency action determines that the permit holder owes additional fees and if the permit holder has not paid such fees, NMFS would deem any future, new FPP or Registered Buyer permit applications to be incomplete. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection. Non-renewal of an FPP or Registered Buyer permit would not affect the permit holder's liability for observer fees incurred while they possessed or were required to possess an FPP or Registered Buyer permit.

#### 8. Overpayment of Fees

Upon issuance of final agency action, any amount submitted by an FPP or Registered Buyer permit holder to NMFS in excess of the observer fee liability determined to be due by the final agency action would be returned to

the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

#### *H. Federal Processor Permit and Registered Buyer Permits*

Shoreside processors and stationary floating processors are required to possess a FPP to receive or process groundfish harvested in the GOA or BSAI per existing regulations at § 679.4. To receive IFQ or CDQ halibut or IFQ sablefish, a person must possess a Registered Buyer permit (§ 679.4). Currently, both FPPs and Registered Buyer permits are issued for a 3-year period which begins on January 1 of the first year and ends on December 31 of the third year. Under this proposed rule, shoreside and stationary floating processors and Registered Buyers would be required to submit the balance of the observer fee liability to NMFS by February 15 in the year after the landings occurred. To match the observer fee payment schedule proposed by this action, NMFS proposes to modify the current 3-year FPP and Registered Buyer permit cycles to an annual cycle, running from March 1 through the last day of February.

The effective FPP duration is not specified in regulations; however the effective duration for a Registered Buyer permit is specified as the date it is issued through the end of the current 3-year permit cycle. NMFS proposes to amend regulations at § 679.4(d)(3) such that a Registered Buyer permit would be effective until the date of expiration rather than a cycle of specified duration. The effective duration for FPPs and Registered Buyer permits would be from the latter of March 1 or the date of issuance, through the end of February; although these dates would not be codified in regulations consistent with the existing regulations for the FPP effective duration.

The proposed rule would require that a permit holder pay his or her observer fee liability in order to meet the requirement to submit a complete permit application. FPP or Registered Buyer Permits could be renewed online at the time the permit holder submits electronic payment to NMFS for their observer fee liability, or at any time thereafter. The fee payment and permit renewal application would be web-based and would allow the user to print their FPP or Registered Buyer Permit upon payment of observer fee. The process for new FPP and Registered Buyer Permit applications would be unchanged from the existing regulations at § 679.4; as well, the process for modifying a permit would remain

unchanged from the process in the existing regulations.

The proposed rule would remove regulations at 50 CFR 679.5 (f)(2)(i) through (iv) which state the information that must be provided on the FPP application as these fields are provided on the application and are not necessary to list in the regulatory text. The regulations would be amended to refer the applicant to the Web site where the application can be accessed. This proposed rule would also amend 50 CFR 679.5(f)(2)(v) by requiring the owner or operator of a shoreside processor or shoreside floating processor to certify that the information on the application is true, correct, and complete when signing and dating his or her application for a new, amended, or renewed FPP.

NMFS would not issue a renewed FPP or Registered Buyer permit if a liable party fails to pay their observer fee liability. Shoreside and stationary floating processors and Registered Buyers would continue to be prohibited from receiving groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut without a valid permit.

Section 2.9.2.2.3 of the analysis (see **ADDRESSES**) prepared for this action noted that NMFS would suspend or revoke FPPs or Registered Buyer permits if a holder failed to pay their observer fee liability; no changes were proposed for the 3-year effective duration in the Council analysis for FPPs and Registered Buyer permits. In development of this proposed rule, NMFS identified administrative and enforcement efficiencies that could be accomplished through a modification to the effective duration for FPPs and Registered Buyer permits from a 3-year cycle to an annual cycle to coincide with the observer fee collection cycle. This proposed amendment was not part of the Council's motion, but rather was identified by NMFS as a way to increase efficiencies in program administration.

#### *I. Annual Report and Review of the Deployment Plan and Fee Percentage*

Per the Council's motion, NMFS would release a completed report by September 1 of each year. The annual report would contain detailed information on the financial aspects of the program and the annual deployment plan—the proposed stratum and coverage rates for the deployment of observers in the following calendar year. Prior to September, the Council may request its Observer Advisory Committee, Groundfish Plan Teams, or Scientific and Statistical Committee to review and comment on a draft of the annual report. NMFS would consult

with the Council each year on the deployment plan for the upcoming year. The Council would select a meeting for the annual report consultation that provides sufficient time for Council review and input to NMFS. The Council would likely need to schedule this review for its October meeting. The Council would not formally approve or disapprove the annual report, including the deployment plan, but NMFS would consult with the Council on the annual report to provide an opportunity for Council input. The final deployment plan would be developed per NMFS' discretion to meet data needs for conservation and management.

NMFS would include information on how industry participants have adapted to the new program in the annual report. The Council could revise the fee assessment percentage or other aspects of the observer regulations through rulemaking after it had an opportunity to evaluate program revenues and costs, observer coverage levels, fishery management objectives, and future sampling and observer deployment plans.

#### *J. Program Review*

Beginning five years after implementation of this proposed action, the Council would assess whether the goals and objectives leading to these proposed modifications to the Observer Program have been achieved. Per the Council's motion, implementation is considered the first year of observer deployment under the new program.

#### *K. Start-Up Funding*

Start-up funds would need to be available for NMFS to contract with observer providers for observer coverage in the partial coverage category. Funds equal to or greater than the full cost of a contractual task order must be on deposit in the North Pacific Fishery Observer Fund (NPOF) for the task order to be assigned to a contractor. Government-contracted work cannot commence until a task order is assigned. Currently, there are no funds in the NPOF. In the out-years of the modified Observer Program, revenues for contracts for the partial coverage category would be provided through the ex-vessel fee, thus, a one-time action is needed to fund the transition from direct industry contracts with observer providers to government contracts with observer providers. Potential ways to fund the first year of the new deployment system include: Collecting ex-vessel fees from partial coverage category participants for a period of time prior to issuing contracts and deploying observers under the new

system; Federal contributions to the NPOF, if available; or a combination of Federal funding and industry fees.

The Council recommended that, in the absence of a Federal contribution for start-up funds for the new system, vessels and processors subject to the 1.25 percent ex-vessel fee assessment under the proposed action would continue to pay for their observer coverage required under the existing regulations at \$ 679.50. These vessels and processors would pay the difference between their ex-vessel value fee liability under the new system and the actual observer coverage costs they incurred to comply with existing observer coverage requirements at \$ 679.50. It was noted in section 3.3 of the analysis (see **ADDRESSES**) that one to three years after publication of the final rule may be required to collect sufficient revenue to deploy observers under the new funding and deployment system using this approach. The Council's motion noted that, if available, Federal funding would be used towards the initial deployment of observers under the new deployment system and would offset the amount of fees collected from industry to transition to the new deployment system.

NMFS proposes to use Federal funds to pay for the first year of observer coverage for the partial coverage category and anticipates that funds will be available for this purpose. Federal funding would assist the transition of one industry-funded Observer Program to an alternate industry-funded Observer Program and accelerate the ability for NMFS to address longstanding concerns with data quality and cost equity in operations that are observed at a rate of less than 100 percent. This approach would also preclude the need for NMFS to calculate and collect the difference of an operation's observer costs under the status quo system and the associated rulemaking for that one-time event. This proposed rule does not include the additional regulations that would be needed to collect start-up funds from industry and to specify how vessels and processors would pay the difference between their ex-vessel value fee liability under the new system and the actual observer coverage costs they incurred to comply with existing observer coverage requirements in the transition year or years.

#### *L. Other Revisions*

Because the proposed rule retains the existing funding and deployment system for the full observer coverage category, many of the existing regulations in subpart E to 50 CFR 679

(subpart E) would not be modified by this proposed rule. However, revisions and additions under this proposed rule would result in the renumbering of all sections at Subpart E. As such, subpart E as it would be revised by this proposed rule is presented in its entirety in the regulatory text section. However, NMFS does not propose to amend regulations that are not within the scope of this proposed rule, which are the sections where the regulatory text is unchanged from the existing regulations in subpart E. Regulations that are substantively unchanged by this proposed rule include responsibilities for vessels and shoreside and stationary floating processors required to carry an observer or maintain observer coverage and provisions for release of observer data to the public. The following sections would only be modified to make them specific to operations in the full coverage category: "Procurement of observer services," "observer provider permitting and responsibilities," and "observer certification and responsibilities."

#### *M. Public Comment Topics*

NMFS invites public comment on all aspects of this proposed rule to implement Amendments 86 and 76 to the FMPs. Under this proposed rule, catcher/processors not meeting the limited exceptions to opt in to the partial coverage category would be in the full coverage category. Catcher/processors using jig gear would be included in the full coverage category while catcher vessels using jig gear would not be required to carry an observer in the initial year(s) of the new program, and NMFS specifically requests the public to comment on this aspect of the proposed rule.

### **III. Classification**

Pursuant to sections 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the MSA, and other applicable law, subject to further consideration of comments received during the public comment period.

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

#### *Regulatory Impact Review (RIR)*

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). Amendments 86 and 76 were chosen based on those measures that maximized net benefits to

the affected participants in the BSAI and GOA groundfish and halibut fisheries. Specific aspects of the RIR are discussed below in the initial regulatory flexibility analysis (IRFA) section.

#### Initial Regulatory Flexibility Analysis (IRFA)

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the proposed action, why it is being considered, and the legal basis for this proposed action are contained at the beginning of this section and in the **SUMMARY** section of the preamble and not repeated here. A summary of the analysis follows. A copy of the complete analysis is available from NMFS (see **ADDRESSES**).

The Small Business Act has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business “involved in fish harvesting” is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations, worldwide.

#### Number and Description of Small Entities Regulated by the Proposed Action

The proposed action would directly regulate entities that harvest or process groundfish and halibut in Federal waters of the BSAI and GOA and vessels holding an FFP and harvesting groundfish in State waters that are accounted for under a Federal TAC. This specifically includes landings of (1) groundfish in the parallel fisheries in State waters, (2) groundfish incidental to harvest in the State waters fisheries (Pacific cod, pollock, sablefish), and (3) groundfish incidental to harvest in the halibut or sablefish IFQ in State waters. Organizations to which direct allocations of groundfish are made would also be regulated by the proposed action. In the BSAI, this includes the six CDQ groups, the AFA fishing sectors (i.e., at-sea, inshore), and the catcher/processor sector under BSAI FMP Amendment 80. Refer to the RIR for descriptions of each fishing sector by

area, gear type, and program (see **ADDRESSES**).

A total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shoreside processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by the proposed action. Of the directly regulated entities, 80 are estimated to be large. The table below summarizes all of the potentially directly regulated small entities, by sector, under the proposed action. The IRFA likely overestimates the number of directly regulated small entities. NMFS does not have access to data on ownership and other forms of affiliation for most segments of the fishing industry operating off Alaska, nor does NMFS have information on the combined annual gross receipts for each entity by size. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered.

**TABLE 8—ESTIMATED NUMBER OF SMALL ENTITIES POTENTIALLY DIRECTLY REGULATED BY THE PROPOSED ACTION BASED ON 2008 LANDINGS DATA. THE TOTAL NUMBER OF ENTITIES IS ADDITIVE SUCH THAT A VESSEL OR PROCESSOR CANNOT APPEAR IN MORE THAN ONE CATEGORY**

Sector	Number of small entities
Halibut & sablefish IFQ <sup>1</sup> .....	1,411
Groundfish catcher vessels <sup>2</sup> ....	125
Groundfish catcher/processors <sup>2</sup> .....	6
Motherships <sup>3</sup> .....	1
Shoreside processors & stationary floating processors ....	~146
CDQ groups .....	6

<sup>1</sup> Includes any vessel that fished halibut IFQ, sablefish IFQ, or halibut CDQ. An estimated 761 of these vessels also fished groundfish.

<sup>2</sup> Groundfish catcher vessel and catcher/processor data represent an estimate of the number of vessels that fished groundfish and did not fish halibut or sablefish IFQ.

<sup>3</sup> Catcher/processors that acted as a catcher/processor and a mothership during 2008 are included in the catcher/processor category. The mothership category includes vessels that only operated as a mothership in 2008.

#### Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed action and existing Federal rules has been identified.

#### Description of Significant Alternatives to the Proposed Action That Minimize Adverse Impacts on Small Entities

The Council considered five alternatives for this action, one no-action and four action alternatives, and two options that could apply to the action alternatives. All of the action alternatives included assessing a fee and deploying observers on halibut vessels and vessels less than 60 ft. LOA in the GOA and the BSAI, which are likely the smallest of the small entities affected by this proposed rule. Impacts of this proposed rule on small entities are described in section 5 of the analysis (see **ADDRESSES**). During deliberations on the preferred alternative, the Council was mutually concerned with minimizing impacts to small entities, providing equity within the program, and increasing data quality, by including small vessels and halibut vessels in the Observer Program for the first time. While significant alternatives to the proposed action meeting these RFA criteria have not been identified, several provisions included in the proposed action were included with the expectation that they may reduce economic impacts on small entities.

The proposed observer deployment among vessels in the partial coverage category differs for the smallest vessels. In the initial year(s) of the restructured program, NMFS proposes that catcher vessels using jig gear and catcher vessels less than 40 ft. LOA using pot or hook-and-line gear would not be selected to carry an observer. Catcher vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using pot or hook-and-line gear would be subject to a vessel selection pool, in which they could be randomly selected to carry an observer for a specified period of time. Vessels in the “no selection” and vessel selection pools would be required to pay the ex-vessel value observer fee for landings subject to the new program, though they would not incur other direct or indirect costs of carrying an observer to the same extent as operators of vessels with higher selection probabilities.

At its June 2010 meeting, upon hearing public testimony about the limited ability for some smaller vessels to carry an observer, and recognizing that the proposed action provides a funding mechanism for electronic monitoring, the Council approved a motion for NMFS to make electronic monitoring available as an alternative tool for fulfilling observer coverage requirements. The electronic monitoring option would not change the funding mechanism or fee amount proposed in

this action, but could serve to reduce economic impacts on small entities by providing an alternative to carrying a human observer.

The Council included a provision for some flexibility for small catcher/processors that would be included in the new funding and deployment system. Under the Council's preferred alternative, all catcher/processors would be placed in the full coverage category and operate under the status quo system funding and deployment system. Thus, groundfish and halibut catcher/processors less than 60 ft. LOA that have not been subject to observer coverage requirements would now be required to have 100 percent coverage under direct contracts with observer providers. To minimize impacts on these entities, the Council included the provision for catcher/processor vessels less than 60 ft. LOA with a history of both catcher/processor and catcher vessel activity in a single year or any catcher/processor vessel with an average daily production of less than 5,000 pounds in the most recent full calendar year of operation prior to January 1, 2010, to make a one-time election as to whether they will be in the partial observer coverage category with the ex-vessel revenue fee structure or the full observer coverage category with the status quo funding system.

The Council considered, but did not adopt Option 1, which would establish an ex-vessel value fee equal to half of that selected under the preferred alternative to be assessed on all halibut IFQ landings and on groundfish landings from vessels less than 40 ft., less than 50 ft., or less than 60 ft. LOA. An estimated 61 groundfish catcher vessels less than 60 ft. LOA and almost the entire IFQ fleet (greater than 1,400 vessels) would have been assessed a reduced fee under Option 1, based on 2008 data. However, upon deliberations, and premised on the concept that all sectors benefit from the resulting data, the Council chose to apply the same fee percentage to all sectors in the partial observer coverage category, to develop a fair and equitable fee program across all sectors subject to the new funding and deployment system. Because the Council selected a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system, all small entities, regardless of the sector in which they participate or vessel size, will benefit from a reduced fee relative to the maximum 2 percent fee that was under consideration.

With the exception of the provisions discussed above, there do not appear to be significant alternatives to the

proposed action that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities. The Council recognized that costs of observer coverage could be minimized or eliminated for small entities (indeed, entities of all sizes) through a Federal subsidy program for observer coverage in the North Pacific, similar to federally funded observer subsidy programs in other regions of the United States. However, because the Council cannot appropriate Federal funds, or lobby Congress for additional funds, an alternative for full Federal taxpayer funding of observer coverage in the North Pacific was not included by the Council.

#### Recordkeeping and Reporting Requirements

If a new FFP is issued after December 1 of the year prior to the upcoming fishing year, owners of vessels in the partial observer coverage category would be required to enter their vessel information into the Deployment System within 30 days of the FFP issuance date. A vessel owner or operator intending to land halibut IFQ or CDQ or sablefish IFQ would be required to enter their vessel information into the Deployment System at least 30 days prior to embarking on his or her first halibut or sablefish IFQ trip of the fishing year if the vessel did not land halibut IFQ or CDQ or sablefish IFQ in the preceding year. Operators of vessels subject to the trip selection pool in the partial observer coverage category per this proposed rule would be required to hail-in to the Deployment System at least 72 hours prior to embarking on a fishing trip to fish for halibut or directed fish for groundfish. Operators of vessels in the vessel selection pool would be required to coordinate with NMFS' observer contractors per instructions provided by the Deployment System to arrange for observer coverage when the vessel is selected for coverage. No new reporting requirements are proposed for operators of vessels in the full observer coverage category or operators of shoreside processors and stationary floating processors to obtain required observer coverage.

Landings information submitted by managers of shoreside processors and stationary floating processors under regulations current at the time, would be used to assess the observer fee liability for each landing. Managers of shoreside processors and stationary floating processors would access reports generated by NMFS' web-based

application for a statement of the observer fee liability associated with each landing.

Proposed changes to § 679.5 would add a reporting requirement to IFQ Registered Buyers. Registered buyers who purchase CDQ halibut would be required to report annually, the monthly total weight of CDQ halibut landed and purchased by the Registered Buyer, the monthly total price paid for CDQ halibut purchased by the Registered Buyer, and the monthly total amount paid for any retro-payments of CDQ halibut. Existing recordkeeping and reporting requirements for IFQ Registered Buyers would also continue to apply.

This proposed rule would also modify the information requirements listed at § 679.5(l)(7)(i) such that, instead of listing all of the Registered Buyer identification data fields at § 679.5(l)(7)(i)(C)(1), the regulations would refer to the information instructed on the report form. In this manner, a regulatory amendment would not be required to change the data fields on the report form if a new field is added, or a superfluous field removed at a future date. The regulations would also be revised to instruct a Registered Buyer to submit his or her completed report to the address provided on the report form. The mailing address at § 679.5(l)(7)(i)(D) would be removed to allow for current address information to be provided on the form, rather than in regulations, to prevent the need for a regulatory amendment, should the address change in the future.

#### Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden is provided below by OMB collection number.

##### OMB Control No. 0648-0206

Public reporting burden per response is estimated to average 21 minutes for Federal Processor Permit application; and 21 minutes for Federal Fisheries Permit application.

##### OMB Control No. 0648-0272

Public reporting burden per response is estimated to average 30 minutes for Registered Buyer Permit application.

##### OMB Control No. 0648-0318

Public reporting burden per response is estimated to average 30 minutes for Observer Fee and receipt of the observer



fee liability generated with each landing; 2 hours for registration with the Alaska Observer Deployment System; 4 hours for appeals; 60 hours for Application for an observer provider permit; 30 minutes for Industry request for assistance in improving observer data quality issues; 60 hours for Application for an observer provider permit; 15 minutes for Update to provider information; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer candidate; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer provider; 5 minutes for Notification of observer physical examination, Observer Providers; 7 minutes for Projected observer assignments; 7 minutes for Observer briefing registration; 40 hours for Observer Conduct and Behavior policy; 15 minutes for Copies of contracts; 30 minutes for Copies of invoices; 7 minutes for Observer deployment/logistics reports; 7 minutes for Observer debriefing registration; 12 minutes for Certificate of insurance; 2 hours for Other reports (of problems).

OMB Control No. 0648-0398

Public reporting burden per response is estimated to average 2 hours for Registered Buyer Ex-vessel Value and Volume Report (Buyer Report).

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the ADDRESSES above, and email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to 202 395-7285.

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.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 9, 2012.

**Alan D. Risenhoover,**

*Acting Deputy Assistant Administrator for Regulatory Programs, 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.*; 16 U.S.C. 1801 *et seq.*; 16 U.S.C. 3631 *et seq.*; Pub. L. 108-447.

2. In § 679.1, revise paragraph (f) to read as follows:

### § 679.1 Purpose and scope.

\* \* \* \* \*

(f) *Groundfish and Halibut Observer Program.* Regulations in this part govern elements of the Groundfish and Halibut Observer Program.

\* \* \* \* \*

3. In § 679.2,

a. Remove the definitions for “Fishing day” and “Legal proceedings”;

b. Revise the definitions for “Catcher/processor (C/P)”, “Decertification”, “Fishing Trip”, “Mothership”, and “Observer”; and

c. Add a definition for “Parallel groundfish fishery” in alphabetical order to read as follows:

### § 679.2 Definitions.

\* \* \* \* \*

*Catcher/processor (C/P)* means, with respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and processing that fish.

\* \* \* \* \*

*Decertification*, as used in § 679.53(c), means action taken by a decertifying official under § 679.53(c)(3) to revoke certification of an observer or observer provider. An observer or observer provider whose certification is so revoked is decertified.

\* \* \* \* \*

*Fishing Trip* means: \* \* \*

\* \* \* \* \*

(3) *Groundfish and Halibut Observer Program.* With respect to subpart E of this part, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.

\* \* \* \* \*

*Mothership* means a vessel that receives and processes groundfish from other vessels.

\* \* \* \* \*

*Observer* means any

(1) Individual employed by a permitted observer provider or a NMFS observer contractor for the purpose of serving in the capacity of an observer aboard vessels and at shoreside processors or stationary floating processors under this part; or

(2) NMFS employee deployed at the direction of the Regional Administrator or individual authorized by NMFS, aboard a vessel or at a shoreside processor or stationary floating processor for the purpose of serving in the capacity of an observer as required for vessels, shoreside processors, or stationary floating processors under § 679.51(a) or (b), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

\* \* \* \* \*

*Parallel groundfish fishery.* With respect to subpart E of this part, parallel groundfish fishery means a fishery that occurs in waters of the State of Alaska (from 0 to 3 nm) adjacent to the BSAI or GOA management areas and open concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal Total Allowable Catch.

\* \* \* \* \*

4. In § 679.4,

a. Redesignate paragraphs (d)(3)(iv) and (d)(3)(v) as paragraphs (d)(3)(v) and (d)(3)(vi), respectively, and paragraph (f)(2)(v) as (f)(2)(vi);

b. Revise paragraph (d)(3)(iii) and newly redesignated (d)(3)(v); and

c. Add paragraphs (d)(3)(iv) and (f)(2)(v) to read as follows:

### § 679.4 Permits.

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iii) A Registered Buyer permit is issued on an annual cycle defined as March 1 through then end of February of the next calendar year, to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) For the Registered Buyer application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(v) A Registered Buyer permit is in effect from the first day of March in the year for which it is issued or from the date of issuance, whichever is later, through the end of the current annual cycle, unless it is revoked, suspended,

surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

\* \* \* \* \*

(f) \* \* \* (1) *Requirement.* No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI unless the owner obtains a Federal processor permit (FPP) issued under this part. An FPP is issued without charge.

(2) *FPP application.* To obtain, amend, or renew an FPP, the owner must complete an FPP application per the instructions at <http://alaskafisheries.noaa.gov/ram>.

(i) For the FPP application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(ii) *Signature.* The owner or authorized representative of the owner of the shoreside processor, stationary floating processor, or CQE floating processor must sign and date the application, certifying that all information is true, correct, and complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, proof of authorization must accompany the application.

\* \* \* \* \*

5. In § 679.5, revise paragraph (l)(7)(i) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(l) \* \* \*

(7) \* \* \*

(i) *IFQ Registered Buyer Ex-vessel Volume and Value Report (IFQ Buyer Report)*

(A) *Applicability.* An IFQ Registered Buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut or CDQ landings of halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this

paragraph (l) and as provided by NMFS for each reporting period, as described at § 679.5(1)(7)(i)(E), in which the Registered Buyer receives IFQ fish or CDQ halibut.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish or CDQ halibut.

(C) *Information required.* A complete IFQ Buyer Report must include the following information as instructed on the report form at <http://alaskafisheries.noaa.gov/ram>:

(1) *IFQ Registered Buyer identification.*

(2) *Pounds purchased and values paid.* (i) The monthly total weights, represented in IFQ equivalent pounds by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(ii) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(3) *Value paid for price adjustments* — (i) *Retro-payments.* The monthly total U.S. dollar amount of any retro-payments (correlated by IFQ species or CDQ halibut, landing month(s), and month of payment) made in the current year to IFQ, or to CDQ halibut permit holders for landings made during the previous calendar year;

(ii) *Electronic submittal.* Certification, including the NMFS ID and password of the IFQ Registered Buyer; or

(iii) *Non-electronic submittal.* Certification, including the printed name and signature of the individual submitting the IFQ Buyer Report on behalf of the Registered Buyer, and date of signature.

(D) *Submittal.* If applicable, the Registered Buyer must complete an IFQ Buyer Report and submit by mail or FAX to NMFS at the address provided on the form, or electronically to NMFS

online at <http://alaskafisheries.noaa.gov/ram>.

\* \* \* \* \*

6. In § 679.7, a. Redesignate paragraph (g)(7) as (g)(9);

b. Revise paragraph (a)(3) and paragraph (g) heading; and

c. Add paragraphs (g)(7) and (g)(8) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(2) \* \* \*

(3) *Groundfish and Halibut Observer Program.* (i) Fish or process groundfish except in compliance with the terms of the Groundfish and Halibut Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by a NMFS employee or other individuals authorized by NMFS under § 679.51(c) or § 679.51(d)(1)(ii), deploy observers in the full observer coverage category at § 679.51(a)(2) and (b)(2) without an observer provider permit issued under § 679.52(a).

\* \* \* \* \*

(g) *Groundfish and Halibut Observer Program.*

\* \* \* \* \*

(7) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without registering with the Observer Declaration and Deployment System per requirements at § 679.51(a)(1)(ii).

(8) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without carrying an observer if the fishing trip is selected for observer coverage per § 679.51(a)(1)(ii)(D)(2), or the vessel is selected for observer coverage per § 679.51(a)(1)(ii)(E).

\* \* \* \* \*

7. In § 679.32, a. Remove paragraphs (c)(1) introductory text, (c)(3)(i)(A) introductory text, and (c)(3)(ii)(A);

b. Redesignate paragraphs according to the following table;

Redesignate paragraph(s)	As paragraph(s)
(c)(1)(i) .....	(c)(1)(ii)(A).
(c)(1)(ii) .....	(c)(1)(ii)(B).
(c)(3)(i)(B) through (c)(3)(i)(F) .....	(c)(3)(i)(A) through (c)(3)(i)(E), respectively.
(c)(3)(ii)(B) through (c)(3)(ii)(G) .....	(c)(3)(ii)(A) through (c)(3)(ii)(F), respectively.

c. Revise newly redesignated paragraphs (c)(3)(i)(A) heading, (c)(3)(i)(A)(1), (c)(3)(i)(B)(1), (c)(3)(i)(C)(1), (c)(3)(i)(D), (c)(3)(i)(E)(1);

d. Revise paragraphs (c)(2)(i)(A), (d)(2)(i), and (e)(3)(i)(A); and  
e. Add paragraphs (c)(1)(i), (c)(1)(ii) heading and introductory text, and (d)(1)(iii) to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(c) \* \* \* (1) *Sablefish CDQ fishing with fixed gear.* (i) *Observer Coverage.*

Operators and owners of catcher vessels sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(1). Operators and owners of catcher/processors sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(2).

(ii) *Data sources used for CDQ catch accounting.* NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(2) \* \* \*

(i) \* \* \*

(A) Comply with observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) *Catcher vessels using trawl gear and delivering sorted catch to a processor.* \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(B) \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(C) \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(D) *Observed catcher vessels using nontrawl gear.* Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is

not authorized under § 679.4 of this part, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or weight by the observer.

(E) \* \* \*

(1) Each CDQ set on a vessel using nontrawl gear must be sampled by an observer for species composition and weight.

\* \* \* \* \*

(d) \* \* \* (1) \* \* \*

(iii) Comply with observer coverage requirements at § 679.51(b)(2) of this part.

(2) \* \* \*

(i) Comply with observer coverage requirements at § 679.51(b)(1) of this part.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) *Application form.* The application to use alternative CDQ harvest regulations is available on the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. \* \* \*

\* \* \* \* \*

8. Under part 679, revise subpart E heading to read as follows:

#### Subpart E—Groundfish and Halibut Observer Program

9. In § 679.50,

a. Remove and reserve paragraph (b) and remove paragraphs (c) through (i); and

b. Revise section heading and paragraph (a) to read as follows:

#### § 679.50 Applicability.

(a) *General.* (1) The operator of a vessel designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b); the operator of a processor designated or required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3); and the operator of a vessel used to harvest IFQ halibut, CDQ halibut, or IFQ sablefish must comply with this subpart. The owner of a vessel or a shoreside processor must ensure that the operator or manager complies with this subpart.

(2) *Exceptions.* A catcher vessel that delivers only unsorted codends to a mothership is not subject to the requirements of this subpart.

(3) For purposes of this subpart, halibut means CDQ and IFQ halibut.

10. A new § 679.51 is added to read as follows:

#### § 679.51 Observer requirements for vessels and plants.

The following table provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs.

Program	Catcher/processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
Groundfish CDQ—Nontrawl Gear .....	(a)(2)(vi)(A)(3) through (4)	(a)(2)(i)(C) hook-and-line; (a)(1)(i) pot.	(a)(2)(vi)(A)(5) .....	(b)(1)
Groundfish CDQ—Trawl Gear .....	(a)(2)(vi)(A)(1) .....	(a)(2)(i)(C) .....	(a)(2)(vi)(A)(5) .....	(b)(1)
Halibut—CDQ and IFQ .....	(a)(2)(i)(A) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)
Sablefish—CDQ and IFQ .....	(a)(2)(i)(A) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)
BS pollock—AFA and CDQ .....	(a)(2)(vi)(B)(1) and (2) .....	(a)(2)(i)(C) .....	(a)(2)(vi)(B)(1) and (2) .....	(b)(2)
Aleutian Islands pollock .....	(a)(2)(vi)(B)(3) through (4) .....	(a)(1)(i)(A) .....	(a)(2)(vi)(B)(4) .....	(b)(1)
Rockfish Program .....	(a)(2)(vi)(D) .....	(a)(2)(i)(C) .....	N/A .....	(b)(1)
Amendment 80 vessels and Non-AFA trawl catcher/processors fishing in the BSAI.	(a)(2)(vi)(C) .....	N/A .....	N/A .....	N/A
Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(a)(2)(i) and (vi) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)

(a) *Observer requirements for vessels—(1) Groundfish and halibut fishery partial observer coverage category—(i) Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed

fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) A catcher vessel designated on an FFP under § 679.4(b)(1); or

(B) A catcher vessel when fishing for halibut with hook-and-line gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i), § 679.4(d)(2)(i), or § 679.4(e)(2), or for

sablefish IFQ with hook-and-line or pot gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i) or § 679.4(d)(2)(i).

(ii) *Registration and notification of observer deployment.* The Observer Declaration and Deployment System (Deployment System) is the communication platform for the partial observer coverage category by which

NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through the Deployment System for coordinating with an observer contractor for any required observer coverage. Access to the Deployment System is available through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(A) NMFS will automatically enter into the Deployment System for the following year all partial coverage category vessels that are designated on an FFP and all catcher vessels that are not designated on an FFP but that landed sablefish IFQ or halibut IFQ or CDQ in the current year. NMFS will notify in writing, owners of vessels automatically entered into the Deployment System. The written notification will indicate the applicable selection pool.

(B) If an FFP is issued after December 1 of the year preceding the fishing year and the vessel is in the partial observer coverage category per paragraph (a)(1)(i)(A) of this section, the vessel owner must enter the vessel information into the Deployment System within thirty days of the FFP date of issuance.

(C) The operator of a vessel in the partial observer coverage category per paragraph (a)(1)(i)(B) of this section must enter the vessel information into the Deployment System at least thirty days prior to embarking on his or her first fishing trip of the year for halibut or sablefish IFQ if the vessel did not land halibut or sablefish IFQ in the preceding year.

(D) Upon entry into the Deployment System per paragraph (a)(1)(ii)(B) or (C) of this section, the Deployment System will notify the owner or operator as to whether his or her vessel is entered in either a "vessel" or "trip" selection pool. Owners and operators must comply with all further instructions set forth by the Deployment System.

(E) *Trip Selection Pool.* (1) A minimum of 72 hours prior to embarking on each fishing trip, the operator of a vessel in the trip selection pool must register the anticipated trip with the Deployment System.

(2) When a fishing trip is registered with the Deployment System per paragraph (a)(1)(ii)(E)(1) of this section, the vessel operator will be notified by the Deployment System whether the trip is selected for observer coverage and a receipt number corresponding to this notification will be provided by the Deployment System. Trip registration is complete when the vessel operator receives a receipt number.

(3) An operator may embark on a fishing trip registered with the Deployment System:

(i) *Not selected trip.* At any time if the Deployment System indicates that the fishing trip is not selected for observer coverage.

(ii) *Selected trip.* When an observer is aboard the vessel if the Deployment System indicates that the fishing trip is selected for observer coverage.

(4) *Delayed trip.* A selected fishing trip not embarked upon within 48 hours of the time specified in the registration with the Deployment System is invalidated. The operator must register any new trip in accordance with paragraph (a)(1)(ii)(E)(1) of this section.

(5) *Observer Coverage Duration.* If selected, a vessel is required to carry an observer for the entire fishing trip.

(i) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.

(ii) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.

(F) *Vessel Selection Pool.* (1) A vessel selected for observer coverage is required to have an observer onboard for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by the Deployment System.

(2) At its discretion, NMFS may provide electronic monitoring equipment to a vessel owner or operator to use on a vessel. A vessel owner or operator must coordinate with NMFS to make the vessel available for evaluation and installation of electronic monitoring equipment if NMFS determines that electronic monitoring is appropriate.

(iii) The Observer Program may release a selected trip per paragraph (a)(1)(ii)(E) of this section or a selected vessel per paragraph (a)(1)(ii)(F)(1) of this section, from observer coverage on a case-by-case basis.

(2) *Groundfish and halibut fishery full observer coverage category—*(i) *Vessel classes in the full coverage category.* The following classes of vessels are in the full observer coverage category when harvesting halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

- (A) Catcher/processors;
- (B) Motherships; and
- (C) Catcher vessels while:

(1) Directed fishing for pollock in the BS;

(2) Using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2); or

(3) Participating in the Rockfish Program.

(ii) *Observer coverage requirements.* Unless subject to the partial observer coverage category per paragraph (a)(1)(i) of this section, a vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer coverage in accordance with paragraph (a)(2)(vi) of this section.

(iii) *Observer workload.* The time required for an observer to complete sampling, data recording, and data communication duties per paragraph (a)(2) of this section may not exceed 12 consecutive hours in each 24-hour period.

(iv) *Catcher/processor classification.*

(A) For purposes of this subpart, a vessel is classified as a catcher/processor according to the operation designation on its FFP. A vessel designated as a catcher/processor at any time during the calendar year is classified as a catcher/processor for the remainder of the calendar year.

(B) An owner or operator of a catcher/processor that processes no more than one metric ton round weight of groundfish on any day, may register with the Deployment System in accordance with paragraph (a)(1)(ii) of this section to be included in the partial observer coverage category in lieu of the full coverage category for the following calendar year.

(v) *One-time election of observer coverage category.* The owner of a vessel less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010; or any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the partial observer coverage category at (a)(1) of this section, or the full observer coverage category at (a)(2) of this section. The daily groundfish production average is based on the number of days the vessel operated each year from January 1, 2003, through January 1, 2010.

(A) *Notification of election.* The person named on the FFP for a vessel eligible for the one-time election must notify the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, of their election in writing, at

least thirty days prior to embarking on his or her first fishing trip.

(B) *Default coverage category.* If an owner forgoes the opportunity for a one-time election, the vessel will be assigned to the partial or full observer coverage category per (a)(1)(i) or (a)(2)(i) of this section.

(C) *Effective Duration.* The one-time election is effective for:

(1) The duration that both the catcher/processor and catcher vessel designations are listed on the FFP for vessels less than 60 ft. LOA; or

(2) The duration the FFP is issued to the person named on the FFP at the time of the election for catcher/processors with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, through January 1, 2010.

(vi) *Additional observer requirements—(A) CDQ fisheries.* The owner or operator of a vessel must comply with the following requirements each day that the vessel is used to catch, process, deliver, or receive CDQ groundfish.

(1) *Catcher/processors using trawl gear and directed fishing for pollock CDQ in the BSAI and motherships taking deliveries from catcher vessels directed fishing for pollock CDQ in the BSAI.* See § 679.51(a)(2)(vi)(B)(2).

(2) *Catcher/processors using trawl gear and groundfish CDQ fishing.* See § 679.51(a)(2)(vi)(C).

(3) *Catcher/processors using hook-and-line gear.* A catcher/processor using hook-and-line gear and groundfish CDQ fishing must have at least two level 2 observers aboard, at least one of whom must be a lead level 2 observer, unless the vessel is participating in a voluntary cooperative and exempted from this regulation under § 679.32(e), or NMFS approves an alternative fishing plan under § 679.32(c)(3)(ii)(F) authorizing the vessel to carry only one lead level 2 observer. See § 679.53(a)(5)(v) for endorsement requirements for lead level 2 observers.

(4) *Catcher/processors using pot gear for groundfish CDQ fishing.* A catcher/processor using pot gear must have at least one lead level 2 observer aboard the vessel. More than one observer must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(5) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two level 2 observers aboard the mothership, at least one of whom must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload

restriction would otherwise preclude sampling as required.

(B) *BSAI pollock fisheries—(1) Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to harvest, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(2) *Pollock CDQ catcher/processors and motherships.* The owner or operator of a catcher/processor or mothership used to catch, process, or receive pollock CDQ must comply with the observer coverage requirements in paragraph (a)(2)(vi)(B)(1) of this section for each day that the vessel is used to catch, process, or receive pollock CDQ.

(3) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

(4) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(C) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have aboard at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery. More than two observers are required if the observer workload restriction would

otherwise preclude sampling as required.

(D) *Catcher/processors participating in the Rockfish Program—(1) Rockfish cooperative.* A catcher/processor vessel that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have at least two observers aboard for each day that the vessel is used to catch or process fish in the Central GOA from May 1 through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration. More than two observers must be aboard if the observer workload restriction at paragraph (a)(2)(iii) of this section would otherwise preclude sampling as required.

(2) *Rockfish sideboard fishery for catcher/processors in a rockfish cooperative.* A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two observers aboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(b) *Observer requirements for shoreside processors and stationary floating processors—(1) Shoreside processor and stationary floating processor partial observer coverage category.* (i) Unless otherwise specified in paragraph (b)(2) of this section, a shoreside processor or a stationary floating processor designated or required to be designated on an FFP under § 679.4(f)(1) is in the partial observer coverage category when receiving or processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at § 679.2.

(ii) *Coverage.* The manager of a shoreside processor or stationary floating processor must provide observers access to unsorted and sorted catch any time an observer is present at the facility.

(2) *Shoreside processor and stationary floating processor full observer coverage category.* An AFA inshore processor is in the full observer coverage category.

(i) *Coverage level.* An AFA inshore processor must provide an observer for each 12 consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS. An AFA inshore processor that, for more than 12 consecutive hours in

a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must provide two observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BS directed pollock fishery.

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

(c) *NMFS employee observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (a) or (b) of this section or under § 679.7(f)(4) must use, upon written notification by the Regional Administrator, a NMFS employee to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes as specified by the Regional Administrator.

(2) Prior to deployment of a NMFS employee, the agency will provide written notification to the owner or operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE., Seattle, WA 98115-0070 or transmitted by facsimile to 206-526-4066.

(d) *Procurement of observer services—*(1) *Full coverage category.* (i) The owner of a vessel, shoreside processor, or stationary floating processor required to have full observer coverage under paragraphs (a)(2) and (b)(2) of this section must arrange and pay for observer services from a permitted observer provider.

(ii) The owner of a vessel, shoreside processor, or stationary floating processor is required to arrange and pay for observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that the vessel, shoreside

processor, or stationary floating processor shall use a NMFS employee or individual authorized by NMFS in lieu of, or in addition to, an observer provided through a permitted observer provider to satisfy requirements under paragraphs (a)(2) and (b)(2) of this section or for other conservation and management purposes.

(2) *Partial coverage category.* The owner of a vessel in the partial observer coverage category per paragraph (a)(1) of this section must comply with instructions provided by the Deployment System to procure observer coverage for the required duration.

(e) *Responsibilities—*(1) *Vessel responsibilities.* An operator of a vessel required to carry one or more observers must:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses, or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have on board:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I;

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

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) *Observer use of equipment.* Allowing observers to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

(1) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device

that provides a point-to-point connection to the NMFS host computer.

(2) *NMFS-supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (e)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(3) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (e)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Document access.* Allow observers to inspect and copy the shoreside processor's or stationary floating processor's landing report, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(v) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

11. A new § 679.52 is added to read as follows:

**§ 679.52 Observer provider permitting and responsibilities.**

(a) *Observer provider permit—*(1) *Permit.* The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) *New observer provider.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at § 679.51(c)(3).

(3) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and other employees. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) *Contact information—(A) Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(C) *Authorized agent.* For an observer provider with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in paragraph (c) of this section.

(iv) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, describing any criminal convictions, Federal contracts they have had and the performance rating they received on the contract, and previous decertification action while working as an observer or observer provider.

(v) A description of any prior experience the applicant may have in

placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) *Application evaluation.* (i) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors. If the applicant is a corporation, the review board also will evaluate the following criteria for each owner, or owners, board members, and officers:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(1) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property, or

(2) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph.

(7) *Expiration of observer provider permit.* (i) An observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider

under this section to the North Pacific groundfish or halibut industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to an observer provider if NMFS' deployment records indicate that the observer provider has not deployed an observer during a period of 12 continuous months. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. An observer provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers.* An observer provider that supplies observers for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) must:

(1) *Provide qualified candidates to serve as observers.* (i) To be a qualified candidate an individual must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-prepared pamphlets and other information describing observer duties.

(iii) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that includes the following conditions for continued employment:

(A) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(B) That the observer completes in-person mid-deployment data reviews, unless:

(1) The observer is specifically exempted by the Observer Program, or



(2) The observer does not at any time during his or her deployment travel through a location where an Observer Program employee is available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(C) The observer informs the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) *Ensure an observer completes duties in a timely manner.* An observer provider must ensure that an observer employed by that observer provider performs the following in a complete and timely manner:

(i) When an observer is scheduled for a final deployment debriefing under paragraph (b)(10)(v) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(ii) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties that are not part of NMFS groundfish observer requirements;

(iii) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(iv) Return all sampling and safety gear to the Observer Program Office.

(3) *Observer conduct.* (i) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(ii) An observer provider shall provide a copy of its conduct and behavior policy:

(A) To observers, observer candidates; and

(B) By February 1 of each year to the Observer Program Office.

(4) *Assign observer to vessels and processors.* An observer provider must

assign to vessels or shoreside or floating processors only observers:

(i) With valid North Pacific groundfish and halibut observer certifications and endorsements to provide observer services;

(ii) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (b)(10)(iii) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Who have successfully completed all NMFS required training and briefing before deployment.

(5) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees, salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(6) *Provide observer deployment logistics.* (i) An observer provider must provide to each observer it employs:

(A) All necessary transportation, including arrangements and logistics, 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

(B) Lodging, per diem, and any other necessary services necessary to observers assigned to fishing vessels or shoreside processing or stationary floating processing facilities.

(ii) Except as provided in paragraph (b)(6)(iii) of this section, an observer provider must provide to 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 an 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.

(iii) An observer under contract may be housed on a vessel to which the observer is assigned:

(A) Prior to the vessel's initial departure from port;

(B) For a period not to exceed 24 hours following completion of an offload for which the observer has duties and is scheduled to disembark; or

(C) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) 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.

(v) Each observer deployed to a shoreside processing facility must 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.

(7) *Limit observer deployment.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(i) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12-month period;

(ii) Deploy an observer for more than 90 days in a single deployment;

(iii) Include in a single deployment of an observer, assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(iv) Move an observer from a vessel or stationary floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(8) *Verify vessel safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under § 679.51(e)(1)(ii)(B)(1) before the vessel with an observer aboard may depart. One of the following acceptable means of verification must be used to verify the decal validity:

(i) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(ii) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(9) *Provide 24 hours a day communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving an observer or problems concerning observer logistics, whenever an observer is at sea, stationed at a shoreside processor or stationary floating processor, in transit, or in port awaiting vessel or processor (re)assignment.

(10) *Provide information to the Observer Program Office.* An observer provider must provide all the following information to the Observer Program Office by electronic transmission (email), fax, or other method specified by NMFS within the specified timeframes.

(i) *Registration Materials.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(A) Observer training registration, including:

- (1) Date of requested training;
- (2) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle, and last names), date of birth, and gender;
- (3) A copy of each candidate's academic transcripts and resume; and
- (4) A statement signed by the candidate under penalty of perjury that discloses any criminal convictions of the candidate.

(B) Observer briefing registration, including:

- (1) Date and type of requested briefing session and briefing location; and
- (2) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(ii) *Statement of projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes the observer's name; vessel, shoreside processor, or stationary floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) *Physician's Statement.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on the physical examination, the observer or observer candidate does

not have any health problems or conditions that would jeopardize their individual safety or the safety of others while the observer or observer candidate is deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician read the NMFS-prepared pamphlet provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of this section and was made aware of the duties of the observer as well as the dangerous, remote, and rigorous nature of the work. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(iv) *Observer deployment/logistics report.* A deployment/logistics report must be submitted by Wednesday, 4:30 p.m., Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. The report must include the location of any observer employed by the observer provider who is not assigned to a vessel, shoreside processor, or stationary floating processor.

(v) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time, and location for debriefing. Observer debriefing registration information must be provided at the time the debriefing is scheduled and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(vi) *Certificates of Insurance.* Copies of "certificates of insurance" that name the NMFS Observer Program leader as the "certificate holder" shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that

the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions:

(A) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum);

(B) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum);

(C) States Worker's Compensation, as required; and

(D) Commercial General Liability.

(vii) *Observer provider contracts.*

Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2) of this part, by February 1 of each year. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

(A) Vessels required to have observer coverage as specified at § 679.51(a)(2);

(B) Shoreside processors or stationary floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

(viii) *Observer provider invoices.* A certified observer provider must submit to the Observer Program Office a copy of all invoices for observer coverage required or provided pursuant to § 679.51(a)(2) and § 679.51(b)(2).

(A) A copy of the invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(B) Invoices must contain the following information:

- (1) Name of each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside

processing plant to which the invoice applies;

(2) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days must be identified on the invoice;

(3) Rate charged in dollars per day (daily rate) for observer services;

(4) Total charge for observer services (number of days multiplied by daily rate);

(5) Amount charged for air transportation; and

(6) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these expenses must be separated and identified.

(ix) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (a)(6) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (a)(3)(i) through (iv) of this section. Within 30 days of the effective date of such change. The information must be submitted by fax or mail to the Observer Program Office at the address listed in § 679.51(c)(3). Any information submitted under (a)(3)(iii) or (a)(3)(iv) of this section will be subject to NMFS review and determinations under (a)(4) through (7) of this section.

(x) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(A) Within 24 hours after the observer provider becomes aware of the following information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t), and (u) of this chapter;

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1 (a)(1) through (7), or processor safety;

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described in § 679.53(b)(1) through (b)(2), or;

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these

reports shall include the underlying facts and circumstances of the violation.

(11) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(12) *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.

(c) *Limitations on conflict of interest.* Observer providers: (1) Are authorized to provide observer services under an FMP or the Halibut Act for the waters off Alaska as required in § 679.51(a)(2) or (b)(2), or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(2) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP or the Halibut Act for the waters off Alaska, including, but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor or stationary floating processor facility involved in the catching or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska, or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska.

(3) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed.

(4) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fish processing

activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of the observer provider.

12. A new § 679.53 is added to read as follows:

**§ 679.53 Observer certification and responsibilities.**

(a) *Observer Certification—(1) Applicability.* Observer certification authorizes an individual to fulfill duties for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) as specified in writing by the NMFS Observer Program Office while under the employ of an observer provider permitted under § 679.52(a) and according to certification endorsements as designated under paragraph (a)(5) of this section.

(2) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program on whether to issue or deny observer certification.

(3) *Certification requirements.* NMFS may certify an individual who, in addition to any other relevant considerations:

(i) Is employed by a permitted observer provider company at the time of the issuance of the certification;

(ii) Has provided, through their observer provider:

(A) Information identified by NMFS at § 679.52(b)(10)(i)(A)(3) and (4) and in writing from the Observer Program; and

(B) Information identified by NMFS at § 679.52(b)(10)(iii) regarding the observer candidate's health and physical fitness for the job;

(iii) Meet all education and health standards as specified in § 679.52(b)(1)(i) and § 679.52(b)(10)(iii), respectively;

(iv) Has successfully completed a NMFS-approved training as prescribed by the Observer Program.

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(B) If a candidate fails training, he or she will be orally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the oral notification, the Observer Program will notify the observer candidate in writing. The written notification will

specify why the candidate failed the training and whether the candidate may retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of a written determination denying certification, as specified under paragraph (a)(4)(i) of this section.

(v) Have not been decertified under paragraph (c) of this section.

(4) *Agency determinations on observer certification*—(i) *Denial of certification*. The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(ii) *Issuance of an observer certification*. An observer certification will be issued upon determination by the NMFS observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (a)(3) of this section.

(5) *Endorsements*. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(i) *Certification training endorsement*. A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries or Halibut Act fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time specified by the Observer Program after his or her most recent debriefing. In order to renew the endorsement, the observer must successfully retake the certification training. Observers will be notified of any changes to the endorsement expiration period prior to the effective date of the change.

(ii) *Annual general endorsement*. Each observer must obtain an annual general endorsement to their certification prior to his or her initial deployment within any calendar year subsequent to a calendar year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer

Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements*. Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Level 2 endorsements*. A certified observer may obtain a level 2 endorsement to their certification. A level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in fisheries as prescribed in § 679.51(a)(2)(vi)(A) through (D). A level 2 endorsement to an observer's certification may be obtained if the observer meets the following requirements:

(A) Previously served as an observer in the groundfish or halibut fisheries off Alaska and has completed at least 60 days of observer data collection;

(B) Received an evaluation by NMFS for his or her most recent deployment that indicated the observer's performance met Observer Program expectations standards for that deployment; and

(C) Complies with all the other requirements of this section.

(v) An observer who has obtained a level 2 endorsement to his or her observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a "lead" level 2 observer endorsement if the observer meets the following requirements:

(A) A "lead" level 2 observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(B) A "lead" level 2 observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(C) A "lead" level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 60 sets on a vessel using nontrawl gear.

(b) *Standards of observer conduct*—(1) *Limitations on conflict of interest*. (i) An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2):

(A) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery, or

(3) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery.

(B) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observer's official duties.

(C) May not serve as an observer on any vessel or at any shoreside or stationary floating processing facility owned or operated by a person who previously employed the observer.

(D) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(ii) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(2) *Standards of Behavior*. An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2) must:

(i) Perform assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(ii) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(iii) Not disclose collected data and observations made aboard the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(c) *Suspension and Decertification*—  
(1) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications issued under paragraph (a) of this section and issue initial administrative determinations of observer certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of an observer as specified in writing by the Observer Program; or

(B) Failed to abide by the standards of conduct for an observer as prescribed under paragraph (b) of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program;

(B) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (c)(2) of this section, the suspension/decertification official will issue a written initial administrative determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e). The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or in cases in which public health, interest, or safety require such action. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(4) *Appeals.* A certified observer who receives an IAD that suspends or

revokes his or her observer certification may appeal pursuant to § 679.43.

13. A new § 679.54 is added to read as follows:

**§ 679.54 Release of observer data to the public.**

(a) *Summary of weekly data.* The following information collected by observers for each catcher/processor and catcher vessel during any weekly reporting period may be made available to the public:

(1) Vessel name and Federal permit number.

(2) Number of Chinook salmon and “other salmon” observed.

(3) The ratio of total round weight of incidentally caught halibut or Pacific herring to the total round weight of groundfish in sampled catch.

(4) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls.

(5) The number of observed trawl hauls or fixed gear sets.

(6) The number of trawl hauls that were basket sampled.

(7) The total weight of basket samples taken from sampled trawl hauls.

(b) *Haul-specific data.* (1) The information listed in paragraphs (b)(1)(i) through (xiii) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date.

(ii) Time of day gear is deployed.

(iii) Latitude and longitude at beginning of haul.

(iv) Bottom depth.

(v) Fishing depth of trawl.

(vi) The ratio of the number of Chinook salmon to the total round weight of groundfish.

(vii) The ratio of the number of other salmon to the total round weight of groundfish.

(viii) The ratio of total round weight of incidentally caught halibut to the total round weight of groundfish.

(ix) The ratio of total round weight of herring to the total round weight of groundfish.

(x) The ratio of the number of king crab to the total round weight of groundfish.

(xi) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(xii) Sea surface temperature (where available).

(xiii) Sea temperature at fishing depth of trawl (where available).

(2) The identity of the vessels from which the data in paragraph (b)(1) of this section are collected will not be released.

(c) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (a) and (b) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

14. A new § 679.55 is added to read as follows:

**§ 679.55 Observer fees.**

(a) *Responsibility.* The owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FPP) or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at § 679.55(c) must comply with the requirements of this section. Subsequent non-renewal of an FPP or a Registered Buyer permit does not affect the permit holder's liability for noncompliance with this section.

(b) *Observer fee liability determination.* After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, landing port or port-group, and gear category. The total fee liability for each permit holder will be determined by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) *Landings subject to the observer fee.* The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a)..	Not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a).	No .....	Yes.
(3) Sablefish IFQ, regardless of where harvested .....	Yes .....	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested .....	Yes .....	Yes.
(5) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, but is not subtracted from a total allowable catch limit under § 679.20(a)..	No .....	No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested..	No .....	No.

(d) *Standard ex-vessel prices*—(1) *General.* NMFS will publish the standard ex-vessel prices used to determine the observer fee in the upcoming year in the **Federal Register** during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and per equivalent headed-and-gutted weight for halibut.

(2) *Effective duration.* The standard ex-vessel prices will remain in effect until revised by subsequent publication in the **Federal Register**.

(3) *Standard ex-vessel price determination and use*—(i) *Groundfish standard ex-vessel prices.* Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the Commercial Operator's Annual Report described at § 679.5(p) and the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), as well as methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: pelagic trawl gear, non-pelagic trawl gear, and non-trawl gear.

(ii) *Halibut and fixed gear sablefish standard ex-vessel prices.* NMFS will use data submitted to NMFS on the IFQ Registered Buyer report under § 679.5(l)(7) to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) Halibut;

(B) IFQ sablefish, and;

(C) Sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) *Confidentiality.* Standard ex-vessel prices will be aggregated among ports if fewer than four processors participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.* The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in the **Federal Register** in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent.

(g) *Fee collection.* A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) *Payment*—(1) *Payment due date.* A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) *Payment recipient.* Make electronic payment payable to NMFS.

(3) *Payment address.* Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be provided on the payment Web site and on the observer fee liability invoice to be mailed to each permit holder.

(4) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) *Underpayment of fee liability.* (i) Under § 679.4, an applicant will not receive a new or amended FFP or Registered Buyer permit until he or she submits a complete permit application. For the application to be considered complete, all fees required by NMFS must be paid.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FFP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(i) *Overpayment of fee.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) *Appeals.* A permit holder who receives an IAD may either pay the fee liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder

specified in paragraph (a) of this section has the burden of proving his or her claim.

[FR Doc. 2012-8856 Filed 4-12-12; 4:15 pm]

**BILLING CODE 3510-22-P**