

(c) * * *

(4) A certified at-sea observer is on board, as required by § 648.11(g).

* * * * *

(e) * * *

(3) * * *

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

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■ 6. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

* * * * *

§ 648.55 Framework adjustments to management measures.

(e) * * *

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

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■ 7. In § 648.60, paragraph (a)(2) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) * * *

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

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[FR Doc. 07-2928 Filed 6-8-07; 2:52 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033-7033-01]

RIN 0648-XA75

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area

(BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2007, through 1200 hrs, A.l.t., July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for

public comment because the most recent, relevant data only became available as of June 7, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: June 7, 2007.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 07-2927 Filed 6-8-07; 2:52 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070209029-7118-02; I.D. 112906A]

RIN 0648-AU58

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

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to avoid expiration of these regulations on December 31, 2007, and ensure uninterrupted observer coverage in North Pacific groundfish fisheries. This action is intended to promote the goals and objectives of 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).

DATES: Effective on July 13, 2007.

ADDRESSES: Copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska

Region website at <http://www.fakr.noaa.gov>.

FOR FURTHER INFORMATION CONTACT:
Jason Anderson, 907-586-7228, or
jason.anderson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) in the Exclusive Economic Zone (EEZ) under the FMPs. The North Pacific Fishery Management Council (Council) has prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

High quality observer data are a cornerstone of Alaska groundfish fisheries management. However, the quality and utility of observer data suffer due to the current structure of procuring and deploying observers. Under the current program, coverage levels vary with the size of the vessel or the quantity of fish processed. Vessel owners and operators choose when and where to carry observers, and fishery managers do not control when and where observers are deployed. To address these concerns, the Council directed NMFS to develop an alternate program structure. Since the early 1990s, the Council and NMFS have explored alternative program structures as part of three separate actions. However, the Council identified problems with each of these actions and none were adopted. 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 need for, and history of, the Observer Program, including past efforts to restructure and extend the Observer Program, is provided in the proposed rule (72 FR 7948, February 22, 2007) and EA/RIR/FRFA prepared for this action (see **ADDRESSES**), and is not repeated here.

In October 2002, the Council tasked its observer advisory committee (OAC) to develop a problem statement and alternatives for restructuring the Observer Program. In April 2003, the Council adopted a suite of alternatives that contemplated restructuring the Observer Program in a stepwise approach, beginning in the GOA. However, as NMFS began evaluating

these alternatives, it became apparent that certain operational and data quality issues would be difficult to resolve in a revised program under which NMFS contracted directly with observers for observer services in the GOA, but retained the current system for procuring observer services in the BSAI.

From December 2003 through June 2005, the Council refined the suite of alternatives, and in June 2005 adopted the alternatives for analysis. These alternatives include options to restructure the Observer Program for all groundfish and halibut vessels fishing in the GOA only, for halibut vessels and certain sectors fishing in both the GOA and BSAI, and for all groundfish and halibut fisheries. Shoreside and stationary floating processors were included under each alternative depending on their location and management program. In addition to the "no-action" alternative under which the Observer Program would expire, the Council also asked staff to analyze an alternative that would remove the December 31, 2007, expiration date and continue current observer coverage regulations without an expiration date.

While the Council intended to adopt a preferred alternative by January 1, 2008, several issues arose during the course of analysis of the alternatives that has made this difficult. First, due to uncertainty about the applicability of overtime pay provisions of the Fair Labor Standards Act to contracted observers, staff were unable to adequately estimate observer costs under any of the restructuring alternatives. Second, the Research Plan authority to assess a fee for observer coverage could not be exclusively applied to a subset of the North Pacific groundfish fisheries vessels. Therefore, all the action alternatives except Alternative 2 (extension of the current program) required new statutory authorization for fee collection from a portion of the fleet or to implement different fee mechanisms for different sectors, as were considered in the analysis.

Because observer costs could not be adequately estimated and the uncertainty that Congress would authorize fee collection, NMFS recommended that the Council adopt Alternative 2 as its preferred alternative. The Council concurred and adopted Alternative 2 at its February 2006 meeting. The Council also amended the problem statement to reflect that, while Alternative 2 does not address most of the issues in the problem statement, it ensures Observer Program viability, and the continued collection of information necessary to manage the North Pacific

fisheries. While the costs of the restructuring alternatives cannot be adequately estimated at this time, the analysis prepared for this action includes restructuring alternatives to provide context to the Council's adoption of Alternative 2.

Expiration of the Observer Program would result in significant costs to groundfish fishery participants. Without data collected by observers, NMFS would be forced to adopt a much more conservative approach towards managing the groundfish fisheries of the GOA and BSAI. Such an approach could lead to early fisheries closures because no observer data would be collected to monitor and estimate groundfish total allowable catch (TAC) and prohibited species catch. NMFS would likely rely more on population models to generate allowable biological catch and TAC recommendations. In addition, failure to maintain a groundfish observer program in the North Pacific would violate the terms of a variety of statutes, including the Endangered Species Act (ESA). The ESA requires observer coverage as a reasonable and prudent measure for certain management actions. These are non-discretionary measures under current biological opinions and are prescribed under the incidental take statements for endangered marine mammals, salmon, and seabirds.

In June 2006 the Council decided it would consider amendments to the FMPs proposing restructuring alternatives for the Observer Program when (1) legislative authority is established for fee-based alternatives; (2) the cost issues described above are clarified (by statute, regulation, or guidance) to allow estimated costs associated with the fee-based alternatives; or (3) the Council responds to changes in conditions that cannot be anticipated now.

On January 12, 2007, the President signed the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Public Law 109-479). The reauthorized Magnuson-Stevens Act includes language that appears to allow the Council to adopt a fee collection program as considered in the analysis. However, the exact nature of the fee program authorized by the Magnuson-Stevens Act must be determined, the Council must consider new FMP amendments to restructure the current Observer Program, and NMFS must undergo rulemaking to implement a new Observer Program. Therefore, implementing a fee collection and restructured Observer Program prior to the December 31, 2007, expiration date would be difficult. Additionally,

the observer cost issues described above remain unresolved.

Revisions to Observer Program Regulations

For the reasons described above, this action removes the December 31, 2007, expiration date from the section heading of § 679.50 and from regulations at § 679.50(j)(1)(vi). The current Observer Program will continue until the Council recommends and the Secretary approves and implements further action to amend the program. Continuation of the current Observer Program is necessary to prevent interruption of many current management programs.

The proposed rule to extend the Observer Program beyond 2007 was published in the **Federal Register** on February 22, 2007 (72 FR 7948), and the public review and comment period closed on March 23, 2007. No comments were received during the comment period.

Classification

The Administrator, Alaska Region, NMFS, determined that the regulatory amendment is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for the proposed rule, and described in the Classification section of the proposed rule. The public comment period ended on March 23, 2007, but no comments were received on the economic analysis in the proposed rule.

NMFS prepared a final regulatory flexibility analysis (FRFA). The FRFA incorporates the IRFA and a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

This action would extend the effective date of regulations governing the Observer Program beyond December 31, 2007, the current expiration date. Extending the Observer Program beyond December 31, 2007, is necessary for uninterrupted continuation of many of the current management programs. The entities that would be directly regulated by this action are groundfish harvesters and processors of the BSAI and GOA EEZ. These entities include the groundfish catcher vessels, groundfish catcher processor vessels, and shoreside processors active in these areas. It also

includes organizations to which direct allocations of groundfish are made, such as the BSAI Community Development Quota (CDQ) groups and the American Fisheries Act (AFA) fishing sectors.

The FRFA identified the following small entities that would be impacted by this action. Based on 2005 data, 23 of the 87 catcher/processors active in the North Pacific groundfish fisheries are considered small entities. All five North Pacific observer provider companies and the six CDQ groups are considered small entities. Estimates of the number of shoreside processors that are small entities include all Alaska processors that reported processing groundfish to NMFS in 2002. Due to insufficient ownership and affiliation information, it is not possible, at this time, to determine how many of the 73 shoreside processors qualify as small entities. However, at least eight shoreside processors would be considered large entities because of American Fisheries Act (AFA) affiliations. Finally, 807 catcher vessels have gross revenues less than \$4 million for groundfish, and would be considered small entities.

In the FRFA, Alternative 1 is the no action alternative. Under this alternative, the current Observer Program would continue to be the only system under which groundfish observers would be provided in the BSAI and GOA groundfish fisheries. Regulations authorizing the current program expire at the end of 2007.

Alternative 2 is the preferred alternative, and would extend the existing program. Under this alternative, the 2007 sunset date for the existing program would be removed and the program would be extended indefinitely with no changes to the overall service delivery model until the Council took further action.

Alternative 3 would restructure the Observer Program for GOA groundfish and all halibut fisheries, while BSAI groundfish fisheries would be administered under the current system. A new ex-vessel value fee program would be established to fund coverage for GOA groundfish vessels, GOA-based processors, and halibut vessels operating throughout Alaska. Regulations that divide the fleet into zero, 30 percent, and 100 percent coverage categories would no longer apply to vessels and processors in the GOA. Fishermen and processors would no longer be responsible for obtaining their own observer coverage. Rather, NMFS would determine when and where to deploy observers based on data collection and monitoring needs, and would contract directly for observers

using fee proceeds and/or direct Federal funding.

Alternative 4 would restructure the Observer Program for all fisheries with coverage less than 100 percent. All vessels and processors assigned to Tiers 3 and 4 would participate in the new program throughout Alaska and pay an ex-vessel value based fee. In general, this alternative would apply to all halibut vessels, all groundfish catcher vessels less than 125 ft (38.1 m) length overall and all non-AFA shoreside processors. All vessels and processors assigned to Tiers 1 and 2 (100 percent or greater coverage) would continue to operate under the current "pay-as-you-go" system throughout Alaska.

Alternative 5 would restructure the Observer Program for all groundfish and halibut fisheries off Alaska. This alternative would establish a new fee-based groundfish observer program in which NMFS has a direct contract with observer providers for all GOA and BSAI groundfish and halibut vessels. Under this alternative, vessels with 100 percent or greater coverage requirements would pay a daily observer fee and vessels with coverage requirements less than 100 percent would pay an ex-vessel value based fee.

As noted in the preamble above, Alternative 1 was rejected because it would result in significant costs to the fleet.

The impacts to small entities of the Alternatives 2 through 5, expressed as a percentage of the ex-vessel value of groundfish and halibut landed, are presented in the EA/RIR/FRFA prepared for this action and are summarized here. Current observer costs expressed as a percentage of ex-vessel landed catch value can be considered a reasonable estimate of the costs to each sector of the fleet under Alternative 2 (rollover of the existing program). In the BSAI management area for the years 2000 through 2003, these costs averaged 2.54 percent for catcher/processors, 1.49 percent for catcher vessels, and 0.89 percent for all processors, including motherships. In the GOA management area for these same years, these costs averaged 1.11 percent for catcher/processors, 1.71 percent for catcher vessels, and 0.65 percent for all processors.

Adoption of any of these alternatives as presented in the EA/RIR/FRFA would require selection of a low, middle, or high ex-vessel fee percentage. Estimated costs expressed as a percentage of ex-vessel value of groundfish and halibut landings for the low, middle, and high endpoint options for Alternative 3 are 0.52 percent, 0.70 percent, and 1.05 percent, respectively. Estimated costs in

terms of a percent of ex-vessel value for Alternative 4 are 0.69 percent, 0.83 percent, and 1.15 percent. Finally estimated costs in terms of a percent of ex-vessel value for Alternative 5 are 0.69 percent, 0.83 percent, and 1.15 percent. Each of these alternatives was rejected because they would not continue to provide the benefits associated with the Observer Program beyond 2007.

Because of the looming sunset clause contained within the No Action alternative, only Alternative 2 accomplishes the stated objectives, is consistent with applicable statutes, and would minimize the economic impact of the action on small entities. Alternative 2 is the only alternative that achieves

the primary objective of this action to extend the Observer Program beyond December 31, 2007.

No additional recordkeeping, reporting, or compliance requirements are associated with this action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: June 8, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; 3631 *et seq.*

■ 2. In § 679.50, the section heading is revised to read and paragraph (j)(1)(vi) is removed as follows:

§ 679.50 Groundfish Observer Program.

* * * * *

[FR Doc. E7-11419 Filed 6-12-07; 8:45 am]

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