

DRAFT
REGULATORY IMPACT REVIEW/INITIAL REGULATORY
FLEXIBILITY ANALYSIS
FOR REGULATORY CHANGES TO THE
AT-SEA SCALES
AND
OBSERVER SAMPLING STATION
PROGRAMS

APRIL, 1999

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April 30, 1999

1.0 Introduction

The requirements for all regulatory actions specified in Executive Order (E.O.) 12866 are summarized in the following statement from the order:

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

Executive Order 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant". A "significant regulatory action" is one that is likely to:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in any of the effects described above. In part, the RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for the Groundfish Fisheries of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and

Aleutian Islands Area. Both fishery management plans (FMP) were developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and became effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP became effective in 1982.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act, some of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

This Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) analyzes the impact of proposed regulatory amendments to 50 CFR part 679 that would revise the requirements for the design, use and approval of NMFS-approved scales, observer sampling stations and data transmission equipment

1.1 Purpose of and Need for the Action

On February 4, 1998, NMFS published a final rule establishing the performance, technical, operational, maintenance and testing requirements for scales used to weigh catch at sea (63 FR 5836). On June 4, 1998, NMFS published a final rule that established the requirements for observer sampling stations and required the use of scales and observer sampling stations on specified vessels participating in Multispecies Community Development Quota (MS CDQ) fisheries (63 FR 30381). Further information on the rationale for, and implementation of, the regulations establishing equipment and operational requirements for catch weight measurement is contained in the preambles to the final rules for these actions.

The regulations contained in § 679.28 establish performance and technical requirements for scales and observer sampling stations. They do not require their use in any fishery. The first Program to which these requirements applied was the MS CDQ Program. Section 211 (b)(6)(B) of the American Fisheries Act (AFA), requires that the 20 catcher/processors listed in the AFA weigh their catch in all groundfish fisheries off Alaska on a scale approved by NMFS.

Following implementation of the at-sea scales and observer sampling station regulations, NMFS and affected members of the fishing industry realized that some provisions required clarification and refinement. These changes are necessary to ensure NMFS's ability to effectively administer and manage these programs and to improve the clarity and consistency of the implementing regulations.

NMFS held a public workshop in Seattle, Washington on December 17, 1998. The workshop was designed to obtain input from vessel owners affected by the provisions of § 679.28, and was attended by 22 industry representatives, representing 26 of the 35 catcher/processors currently affected by the regulations.

1.2 Description of the Alternatives

Alternative 1: No Action Do not revise and clarify existing equipment regulations.

Alternative 2: Preferred alternative Implement regulations to clarify and revise the regulations concerning at-sea scales and observer sampling stations. Specifically, the following changes would be made:

1. Explicitly allow NMFS staff to inspect and approve scales for use at-sea;
2. Allow the use of scale approval stickers or seals in lieu of the currently required scale inspection report;
3. Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale;
4. Relax the requirements for the daily printout of haul information required when a vessel must weigh all catch;
5. Modify the requirements for visibility of the display on a total-catch weighing scale;
6. Require trawl catcher/processors to ensure that no removal of fish can take place between the bin and observer sampling station without it being visible to the observer;
7. Define "tally area" and "collection point" for longline catcher/processors and specify requirements for their dimensions, location and construction;
8. Define the phrase "clear and unobstructed passage", which is used in the current regulations;
9. Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specifying minimum station length and station width;

1.3 Description of fleet, fishery, and industry directly and reasonably indirectly impacted by the proposed action.

The preferred alternative would affect processor vessels (factory trawlers, freezer-longliners and motherships) that participate in specified fisheries where the use of either a NMFS-approved scales or a NMFS-approved observer sampling station is required. It would also affect processor vessels that may participate in these fisheries in the future. A summary of the requirements for

different gears and fisheries and the number of vessels affected, based on data from 1998, is shown in Table 1.

1.4 Qualitative Benefit Cost Analysis

Cost information, including fixed and variable operating cost statistics, is a crucial element of an effective net benefit analysis. Cost data for the proposed action fishery's harvesting and processing sectors are not currently available to NMFS. For this reason, NMFS cannot complete a quantitative cost/benefit examination of this action. However, a qualitative impact matrix for the preferred alternative is shown in Table 2. Those changes that may have an impact are more fully described and analyzed below.

Allow the use of scale approval stickers or seals in lieu of the currently required scale inspection report. Vessels that are required to use NMFS-approved scales must have all of their scales inspected annually to ensure that they meet NMFS performance standards. If a scale meets the performance standards, the scale inspector issues a scale inspection report to the vessel. This report must be maintained onboard whenever the vessel is participating in a fishery where the scale is required and must be shown to NMFS-authorized personnel when requested. Unfortunately, some vessel operators have not been able to locate the scale inspection report when asked to do so. This change would allow a vessel to display an approved scale sticker on each scale approved by NMFS instead of maintaining the scale inspection report. If the vessel chose not to do so, or if the inspection sticker was removed, altered or damaged, the vessel could continue to keep the scale inspection report on board. This proposed change would make it easier to determine if a given scale was currently NMFS approved and would simplify the vessels record keeping requirements. By reducing a regulatory burden, the proposed change would have a positive impact on boats with NMFS-approved scales, though the actual time savings would probably be less than 5 minutes per vessel per year.

Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale. Current regulations require that each NMFS-approved observer platform scale be accompanied by sufficient test weights to allow the scale to be tested at 10, 25 and 50 kg. These test weights must be certified by a National Institute of Standards and Technology (NIST) approved laboratory and the certification documents must be maintained on board the vessel. To maintain certification, the test weights must be taken to an approved lab where they can be recertified. Based on industry input, NMFS has decided that this requirement is needlessly restrictive. This proposed change would allow test weights to either have current NIST certification or be approved for continued use by a NMFS-authorized inspector at the time of the annual scale inspection. A weight would be approved for continued use if the weight remained accurate within specified tolerances and was in good condition. . By reducing a regulatory burden, this change will save the 36 vessels with approved test weights approximately \$100 per vessel per year.

Relax the requirements for the daily printout of haul information required when a vessel must weigh all catch. In order for a scale to be approved by NMFS, it must be capable of producing a printed report that details the amount of product that the scale has weighed. When a vessel is required to weigh total catch, the vessel operator must ensure that a report is printed at least once every 24 hours when use of the scale is required. These reports must be signed by the vessel operator and maintained by the vessel owner for three years. Each report must give the vessel name, the federal fisheries or processor permit number, the haul number, the date and time that weighing the haul began, the date and time that weighing the haul ended, the total weight of the haul, the total weight of all catch weighed on the scale and the date and time the report was printed. Because much of this information is also recorded by the observer, NMFS has determined that this requirement is needlessly burdensome and proposes to require that the daily printout only show the vessel name and permit number, the haul number, the total weight of the haul and the total cumulative weight on the scale. The other printout requirements would be removed. This proposed change would slightly reduce a regulatory burden and have a positive but insignificant impact on vessels required to weigh all catch.

Modify the requirements for visibility of the display on a total-catch weighing scale. Current regulations require that the display on a NMFS approved total-catch weighing scale be located so that the display and the scale are simultaneously visible to the observer. This requirement does not meet the needs of NMFS for accurate catch composition sampling. When an observer wishes to determine the species composition of a haul, they will often wish to sample only a portion of the haul and extrapolate the results of that sample to the entire haul. The best way for an observer to take an unbiased and accurate sample is to use the total-catch weighing scale to determine when to start and stop sampling. For this to work, the observer must be able to read the scale from near where the sampling takes place. NMFS proposes to require that the display be readable from where the observer samples unsorted catch. This change could negatively impact those vessels that have currently approved display locations that would not meet the revised requirements of the preferred alternative. Of the 23 vessels with approved total-catch weighing scales, 5 have displays in locations that would not be acceptable. Four of these would be able to move the display at minimal expense (less than \$200.00). The other vessel may need to purchase an auxiliary display that would cost approximately \$10,000, or reconfigure their factory layout.

Require trawl catcher/processors to ensure that no removal of fish can take place between the bin and observer sampling station without the removal being visible to the observer. Current regulations require that the observer sampling station on trawl catcher/processors be located within 4 m of where the observer samples unsorted catch. On most vessels, the observer can see the entire flow of fish between the bin and the observer sampling station and it would not be possible for vessel crew to remove fish without the observer's knowledge. On some vessels however, it would be possible for the crew to remove fish between the bin and the observer sampling station without the observer's knowledge. This prevents the observer from ensuring that their estimate of total catch and species composition is accurate and unbiased. This proposed change would require that it not be possible to pre sort catch between the bin and the observer sampling station without the observer's knowledge. This could be accomplished by

making sure that the observer can see or otherwise monitor the entire flow of fish at all points where the vessel crew has access to it.

This change could have a negative impact on any trawl catcher/processor or mothership required to have an observer sampling station, especially those that have already designed and installed a station. A total of 23 boats currently have approved stations. NMFS estimates that 17 vessels would meet the proposed requirements. The remaining 6 could meet the proposed requirements simply by installing mirrors or viewing windows in strategic locations.. These alterations should cost less than \$500.00 per vessel. Because NMFS does not know how many additional trawl catcher/processors will choose to participate in MSCDQ fisheries, the impact on vessels requiring stations in the future is unknown. However, the impact on these vessels should be minimal since they would be able to incorporate the proposed requirements into the original station design.

Define “tally station” and “collection area” for nontrawl catcher/processors and specify requirements for their dimensions, location and construction. Current regulations require that the observer sampling station on a vessel using nontrawl gear must be within 5 m of where catch is brought on board, unless that location is unsafe, and that clear and unobstructed passage must be provided between the sampling station and where the observer samples unsorted catch. These regulations do not accurately reflect the needs of NMFS observers, nor do they explain clearly to vessel owners what they must do to build an observer sampling station that meets the requirements. This proposed change would clarify and expand the requirements for an observer sampling station by defining and requiring two new areas on longline catcher/processors: the collection area and the tally station. The collection area would be located where the observer, or a crew member under the observer’s guidance, collects fish for sampling as they enter the boat and where the observer can see the gear as it leaves the water. It would have to be equipped with a railing, grating and adequate lighting. The tally station would be defined as a location where the observer can see the gear as it leaves the water and can count and identify fish. It would have to be within 5 m of where fish enter the vessel and would have to be equipped with a railing, grating and adequate lighting. Clear and unobstructed passage would have to be provided between the observer sampling station and the collection area. Access would have to be provided to the tally area.

This change could have a negative impact on any longline vessel required to have an observer sampling station. A total of 13 longline catcher/processors currently have approved stations. NMFS estimates that approximately 7 would meet the proposed requirements. The remaining 6 will need to install grating and perhaps modify or install railing. The costs of these modifications would be minimal. The cost of these alterations would be expected to be between \$100 and \$1,500 per vessel.

Define the phrase “clear and unobstructed passage”. Current regulations require clear and unobstructed passage between the observer sampling station and where the observer samples unsorted catch on both trawl and nontrawl vessels. This term is ambiguous and needs to be clarified. This change would define clear and unobstructed passage as follows:

Where clear and unobstructed passage is required, passageways must be at least 65 cm wide at their narrowest point, be free of tripping hazards and have at least 1.8 m of head room. Doorways or companionways must be unobstructed.

By clarifying existing regulations, this change may have a positive impact on vessels that do not currently have an observer sampling station but may require one in the future. This change would negatively impact vessels that have already had a station approved and may need to make changes to continue that approval. Because this definition is fairly similar to the procedural definition that NMFS currently uses the impact should be slight. NMFS believes that all vessels with currently approved sampling stations would continue to meet the standards for clear and unobstructed passage and this change should have no impact on currently approved vessels.

Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specifying minimum station length and station width. Current regulations require that an observer sampling station have a minimum work space at least 1.8 m by 2.5 m. Based on input from affected vessel owners, NMFS has determined that this requirement is overly restrictive and proposes to require a minimum area of 4.5 square meters. This would give the observer the same amount of space while allowing the vessel owner greater flexibility in the station design. In order to ensure that sampling stations are not built with too little space for the observer to work in front of the table, the regulations will further specify that the area in front of the table where the observer works must be at least 90 cm deep.

Require that the observer platform scale be mounted so that the weighing surface is no more than 0.7 m above the floor. Current regulations require that a NMFS-approved platform scale be provided as part of each observer sampling station. The scale must be rigidly attached to the boat. Regulations do not specify at what height it should be attached and in many cases boat owners have installed the scale either flush with or on top of the observer sampling table, in some cases as high as 1.5 m off the floor. At the time these regulations were written, NMFS did not consider the need to mount the scale closer to the floor. However, based on comments received from observers, it is clear that when the scale is mounted with the platform more than 0.7 m above the floor, it becomes difficult or impossible for many observers to use because they are unable to lift a heavy basket that high.

This proposed change would require that the scale be mounted so that the weighing surface is no more than 0.7 m above the floor. Because many vessels installed scales at greater heights, this change would cause these boats to remount the scale. Depending on the construction of the scale base and the layout of the sampling station, lowering the scale will cost approximately \$50.00 to \$200.00. In no case will it require substantial modification of either the factory or the observer sampling station.

Require trawl catcher/processors to provide at least 1 m of belt space immediately downstream from the total-catch weighing scale for the observer's use. Observers need to estimate the species composition of each haul on a trawl catcher/processor. Because it is not practical to weigh all of the catch by species, the observer often sorts a smaller sample of the catch and

expand the species weights from the sample to give an estimate of the total weight of each species. There are three basic sample types taken by observers. The smallest sample is a basket sample. When basket sampling, the observer will divert at least 80 kg of fish into baskets. Each of the fish in the baskets is measured and identified. Basket samples are often used to determine the size composition of the target catch in a haul. They are also used to determine the species composition of a haul when there are many abundant species in the haul. If the observer believes that it will be possible to count, weigh and identify all of some species in a larger sample, he or she will take a partial haul sample. In a partial haul sample, the observer randomly selects a portion of the haul and sorts and weighs all of the chosen species in that portion of the haul. The observer may choose to partial haul for everything, for non-target species, or only for prohibited species. When a processor has a total-catch weighing scale, the observer is able to use the scale weight to make an unbiased decision about when to start and stop sampling. When the observer chooses to count and weigh all of a given species in a haul, it is a whole haul sample. The observer may take all three types of sample from a single haul. For example, the observer may basket sample the target species, whole haul for prohibited species and partial haul for everything else.

In most cases, as the amount of the haul sampled increases, the accuracy of the estimates increase as well. Most vessel owners believe that larger samples prevent overestimation of the total catch of uncommon and prohibited species. Because catch of these species often drives the allowable harvest of target species, the vessel owners and operators often encourage the observer to partial or whole haul for prohibited species. However, the observer's ability to take larger samples, or even to take partial or whole haul samples at all, can be constrained by a lack of belt space where they can sort the sample. All trawl catcher/processors with approved sampling stations have provided sufficient space below the total-catch weighing scale voluntarily in order to encourage the observer to take larger samples. In most cases, the space was already available, but in some cases vessels had to make factory modifications that would not have been necessary had they known in advance the requirements for partial haul sampling.

As part of the approval of an observer sampling station, this proposed change would require that trawl catcher/processors provide at least 1 m of belt space downstream from the total-catch weighing scale for the observer's use when processing samples. This will give guidance to vessel owners wishing to encourage the observer to take larger samples and will ensure that it is possible for the observer to use each of the three primary sampling strategies on all trawl catcher/processors. Because all trawl catcher/processors with approved sampling stations meet these requirements, no vessel will be required to modify their factory and there will be no direct costs associated with meeting this proposed requirement.

Require that Catcher/processors participating in CDQ fisheries use NMFS-supplied data transmission software and provide the equipment necessary to operate it. CDQ groups are allocated between 7.5 and 20 percent of the total allowable catch for each species or species group in the BSAI. This is then divided between each of the 6 CDQ groups. Many of the quotas are further subdivided by seasonal or area harvest limits. It is the responsibility of each CDQ group to manage its quotas and to ensure that its harvesting partners do not exceed these quotas.

To do this, the CDQ groups depend on the estimates of total catch made by the observer. Since in some cases it would be possible for a CDQ harvesting partner to take a group's entire allotment of a species in a single haul, it is critical that both NMFS and the CDQ group get reliable and timely harvest information. This is simplest for vessels that participate in the NMFS electronic reporting system. Participation in this program is already required for some processors participating in specified fisheries and most other processors participate voluntarily. For a vessel to use the electronic reporting system, they must install NMFS-supplied data entry software and provide the computer and communication equipment necessary for its use. All processor vessels are currently required to provide the computer hardware and communication equipment. However, only specified motherships are required to install the NMFS software and ensure that the system is functional and operational. All processors currently participating in the CDQ fisheries have the communication equipment, computer hardware and software onboard their vessels. However, in order to ensure that timely data transmission will continue to occur, NMFS believes that providing functional and operational equipment and the use of the electronic reporting software should be required.

This proposed change would require that processor vessels participating in CDQ fisheries comply with the regulations for the transmission of observer data as set forth in 50 CFR 679.50(f)(1)(iii). Specifically, they would be required to provide the computer hardware and communication equipment necessary to use the NMFS-supplied software and ensure that the specified equipment is functional and operational. Because all processors currently participating in the CDQ fisheries currently meet these requirements, the impact of this change should be minimal.

1.5 Administrative, enforcement and information costs

There would be no additional administrative enforcement or information costs associated with the preferred alternative.

1.6 Conclusion

Under E.O. 12866, an action is considered significant if it would:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues.

The preferred alternative would make minor regulatory adjustments to existing programs. Each of these changes could have small negative or positive impacts on those vessels participating in these programs. Based on the analysis presented above, the proposed regulatory changes would not be expected to be significant based on the above criteria.

2.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS (IRFA)

The Regulatory Flexibility Act (RFA) first enacted in 1980 was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in an IRFA, NMFS generally includes only those entities, both large and small, that can reasonably be expected to be directly or indirectly affected by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in these analyses that are design to address RFA compliance.

To ensure a broad consideration of impacts and alternatives, NMFS has prepared an IRFA pursuant to 5 USC 603, without first making the threshold determination of whether or not this proposed action would have a significant economic impact on small entities. An Initial Regulatory Flexibility Analysis is conducted below to comply with the RFA.

2.1 Requirement to Prepare an IRFA

The central focus of the IRFA should be on the economic impacts of a regulation on small entities and on the alternatives that might minimize the impacts and still accomplish the statutory objectives. The level of detail and sophistication of the analysis should reflect the significance of the impact on small entities. Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to address:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:
 1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
 2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
 3. The use of performance rather than design standards;
 4. An exemption from coverage of the rule, or any part thereof, for such small entities.

2.2 What is a Small Entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominate in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the US 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 \$ 3 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, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$3 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established “principles of affiliation” to determine whether a business concern is “independently owned and operated.” In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern’s size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50% or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50% of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations. The RFA defines “small organizations” as any nonprofit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

2.3 Reason for Considering the proposed action

This action would make minor technical revisions to existing programs. It is necessary to ensure NMFS's ability to effectively administer and manage these programs and to improve the clarity and consistency of the implementing regulations.

2.4 Objectives of, and legal basis for, the proposed action

The proposed action is fully described above in the Regulatory Impact Review.

2.5 Number and description of small entities affected by the proposed action

This action will impact factory trawlers, freezer-longliners and motherships that participate in a fishery where use of a scale or observer sampling station is required. The number of vessels impacted and the nature of those impacts are summarized in Tables 1 and 2 of the Regulatory Impact Review. Though all of the motherships have gross receipts in excess of \$3,000,000, NMFS does not know how many, if any, of the factory trawlers and freezer longliners may qualify as small entities.

This action would directly affect those vessels currently equipped with scales or observer sampling stations. This would be 21 factory trawlers, 3 motherships, and 13 freezer longliners. The motherships and factory trawlers have gross annual receipts in excess of \$3,000,000 and would not be considered small entities. Many of the freezer longliners would not be considered small entities either. However, because NMFS has not analyzed the ownership patterns of the vessels nor their individual revenue, we are unable to determine which, if any, of the freezer longliners would qualify as small entities.

This action may also affect those small entities not currently equipped with scales or observer sampling stations that may wish to participate in fisheries requiring them in the future. Because these programs do not affect catcher vessels, only freezer-longliners that are small entities and do not currently participate in programs requiring scales or sampling stations would be impacted. In 1998, there were 21 freezer longliners that harvested groundfish in the BSAI that were not equipped with scales or sampling stations. NMFS is not able to estimate how many of these vessels will be future participants in fisheries requiring scales or sampling stations.

2.6 Recordkeeping and Reporting Requirements

The preferred alternative would impose no new reporting or recordkeeping requirements not already covered by an existing Office of Management and Budget approval. By reducing the collection of information for the daily scale printout and removing the requirements for maintaining NIST certification of test weights, the preferred alternative would reduce existing recordkeeping and compliance requirements.

2.7 Relevant Federal rules that may duplicate, overlap, or conflict with proposed action

There are no existing Federal rules that would duplicate, overlap or conflict with the proposed action.

2.8 Measures taken to reduce impacts on small entities

This action was designed to improve existing programs and involves numerous minor changes. Because few if any of the entities impacted by this action would be considered small, no specific

measures were taken to reduce impacts on small entities. However, many of these changes were suggested by industry and are designed to clarify and simplify existing regulations or to remove unnecessary restrictions. Those parts of the action which may negatively impact small entities have been designed to minimize that impact through consultation with observers, NMFS staff and affected vessel owners.

3.0 SUMMARY AND CONCLUSIONS

This action would revise and clarify the equipment and technical requirements for at-sea scales, observer sampling stations and observer transmission of data by making numerous, minor revisions to the regulations implementing these programs. The action is necessary to ensure NMFS ability to effectively manage these programs and to improve the clarity and consistency of the implementing regulations, and it is being promulgated under the authority of the Magnuson-Stevens Act. This action will directly impact the 21 factory trawlers, 13 freezer-longliners and 3 motherships currently equipped with scales or observer sampling stations. NMFS believes that none of the motherships or factory trawlers would qualify as small entities. However, NMFS does not know how many, if any, of the freezer-longliners would qualify as small entities. The preferred alternative would impose no new reporting or recordkeeping requirements nor would it duplicate, overlap or conflict with existing Federal rules. In most cases, the preferred alternative will impose no new costs on vessel owners. However, in some cases vessel owners may be required to make alterations to their vessels that could cost as much as \$10,000. In addition to the preferred alternative, the analysis considered a "no action" alternative that would not revise the existing regulations. This alternative was rejected because it would fail to make the changes necessary for successful management of these programs.

The ownership characteristics of vessels that would be impacted by this action have not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Furthermore, because NMFS cannot quantify the exact number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS cannot make a finding of non-significance under the RFA.

4.0 Prepared by

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Table 1. Summary of scale and observer sampling station requirements for various vessel types and fisheries.

	Number of vessels	Total catch weighing scale	Observer Sampling station scale	Observer Sampling station
Processors harvesting BSAI groundfish in 1998				
Motherships	5	sometimes	sometimes	sometimes
Trawl C/Ps	50	sometimes	sometimes	sometimes
Hook and Line C/Ps	34	No	sometimes	sometimes
Processors intending to participate in CDQ fisheries				
Motherships	2	yes	yes	yes
Trawl C/Ps	22	yes	yes	yes
Hook and Line C/Ps	13	no	yes	yes
Processors listed under the AFA that do not intend to participate in CDQ fisheries				
Motherships	2	no	no	no
Trawl C/Ps	8	yes (in 2000)	yes	no
Hook and Line C/Ps	0	N/A	N/A	N/A
Processors not listed under the AFA and not intending to participate in CDQ fisheries				
Motherships	3	no	no	no
Trawl C/Ps	20	no	no	no
Hook and Line C/Ps	16	no	no	no

Table 2. Summary of the qualitative impacts of the preferred alternative on different classes of vessel.

Proposed change	Trawl Catcher/Processors and motherhips		Hook and Line Catcher/Processors	
	With Approved Stations (23 vessels)	Without Approved Stations (30 vessels)	With Approved Stations (13 vessels)	Without Approved Stations (21 vessels)
Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale.	Positive	Positive	Positive	Positive
Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specifying minimum station length and station width.	Positive	Positive	Positive	Positive
Require that the observer sampling scale be mounted no more than 0.7 m above the floor.	possibly Negative	none	Possibly Negative	None
Relax the requirements for the daily printout of haul information required when a vessel must weigh all catch.	Positive	Positive	None	None
Require trawl C/Ps to provide 1 m of belt space below the total-catch weighing scale for the observer's use.	Possibly Negative	Possibly Negative	N/A	N/A
Require the use of NMFS supplied data transmission software by C/Ps participating in CDQ fisheries.	Negative	Negative	Negative	Negative
Define the phrase "clear and unobstructed passage" where used in the current regulations.	None	Possibly Positive	None	Possibly Positive
Define tally station and collection area for longline C/Ps and specify requirements for their construction.	N/A	N/A	Negative	Negative
Modify the requirements for visibility of the display on a total-catch weighing scale.	Negative	None	N/A	N/A
Require that the observer be able to monitor the entire flow of fish between the bin and the observer sampling station on trawl C/Ps.	Possibly Negative	Possibly Negative	N/A	N/A
Allow the use of scale approval stickers or seals in lieu of the currently required scale inspection report.	None	None	None	None
All other changes.	None	None	None	None
Overall impact	Neutral	Neutral	Possibly negative	Neutral

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Revised:
4/26/99 per comments Sbibb
5/12/99 per comments LQueirolo