

flounder permit and fishes exclusively in state waters.

* * * * *

5. In § 648.103, paragraph (c) is revised to read as follows:

§ 648.103 Minimum fish sizes.

* * * * *

(c) The minimum sizes in this section apply to whole fish or to any part of a fish found in possession, e.g., fillets, except that party and charter vessels possessing valid state permits authorizing filleting at sea may possess fillets smaller than the size specified if all state requirements are met.

6. In § 648.104, paragraph (a)(1) is revised, and paragraph (f) is added to read as follows:

§ 648.104 Gear restrictions.

(a) * * * (1) Otter trawlers whose owners are issued a summer flounder permit and that land or possess 100 or more lb (45.4 or more kg) of summer flounder from May 1 through October 31, or 200 lb or more (90.8 kg or more) of summer flounder from November 1 through April 30, per trip, must fish with nets that have a minimum mesh size of 5.5-inch (14.0-cm) diamond or 6.0-inch (15.2-cm) square mesh applied throughout the body, extension(s), and codend portion of the net.

* * * * *

(f) The minimum net mesh requirement may apply to any portion of the net. The minimum mesh size and the portion of the net regulated by the minimum mesh size may be adjusted pursuant to the procedures in § 648.100. [FR Doc. 97-24922 Filed 9-18-97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 970829216-7216-01; I.D. 073097B]

RIN 0648-AK15

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through 1998

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement a regulatory amendment to extend with some minor revisions the

current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) that expire December 31, 1997. This action is necessary to assure uninterrupted observer coverage requirements through 1998. This proposed rule also provides notice of proposed changes to observer qualifications and observer training/briefing requirements, which are non-codified elements of the Observer Program.

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

DATES: Comments on the proposed rule must be received by October 20, 1997.

ADDRESSES: Comments should be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim Groundfish Observer Program may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802; telephone: 907-586-7228. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for the proposed regulatory amendment also may be obtained from this address.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Area in the Exclusive Economic Zone are managed by NMFS under the FMPs. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are implemented by regulations for the U.S. fisheries at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted and NMFS implemented the Interim Groundfish Observer Program. The Interim Groundfish Observer Program superseded the North Pacific Fisheries Research Plan and extended the 1996

mandatory groundfish observer requirements through 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, and observer compensation and working conditions. NMFS continues to pursue a long-term solution and is developing an alternative that was supported by the Council at its June 1997 meeting. The Council is scheduled to take final action on a long-term alternative at its December 1997 meeting. Given that this alternative cannot be in place by January 1, 1998, the current interim program must be extended to assure uninterrupted observer coverage requirements.

At its June 1997 meeting, the Council unanimously requested NMFS to extend through 1998 the current interim program, with minor revisions recommended by NMFS. In addition, the Council recommended an adjustment to the existing observer conflict-of-interest standard that prohibits a person from serving as an observer if that person was employed in a North Pacific fishery during the previous 12-month period. The Council recommended a less restrictive standard that would prohibit an observer from working on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer during the previous 12-month period. Public testimony at the Council meeting indicated that the current conflict-of-interest standard may be too restrictive given that the interim observer program does not address the issue of an adequate observer compensation package. Until the observers are more adequately compensated, they may need to engage in non-observer employment in North Pacific fisheries.

Proposed Regulatory Changes For The 1998 Interim Groundfish Observer Program

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the preambles to the proposed and final rules implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996). Only minor changes from the 1997 regulations are being proposed for 1998. They are described and justified below.

1. Extend the effective period of 50 CFR 679.50 through December 31, 1998. The 1-year extension is intended to encompass the period of time necessary for NMFS to develop a long-term program that addresses concerns about

observer data integrity and observer compensation and working conditions.

2. Revise the conflict-of-interest regulation at § 679.50(h)(2)(i)(A)(4) to indicate that individuals may not serve as observers on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer, for a period of 12 consecutive months after being employed by that person. This revision is less restrictive than the current regulation.

3. Expand the prohibition at § 679.7(g)(1) to include sexual harassment and bribery as unlawful interferences with an observer. The proposed amendment would make the regulations consistent with section 307(1)(L) of the Magnuson-Stevens Act. NMFS notes that situations could occur in which a person's (e.g., vessel owner/operator, shoreside processor required to have observer coverage) offer of employment in a North Pacific fishery to an observer carrying out observer duties could constitute a bribe. Bribes and sexual harassment are prohibited under section 307(1)(L) of the Magnuson-Stevens Act and can be prosecuted as criminal offenses, punishable by fine and/or imprisonment.

4. Revise the 30-percent observer coverage requirement regulation at § 679.50(c)(vi) and (vii) to clarify that required coverage is specific to the gear type. This means that observer coverage obtained for a vessel using hook-and-line gear cannot be used to comply with observer coverage requirements for the same vessel when it is used to fish with pot gear.

5. Clarify the regulation at § 679.50(i)(2)(xiv)(G) to alleviate confusion on what information observer contractors currently are required to submit to NMFS. The proposed clarification specifies that an observer contractor must submit completed and unaltered copies of signed and valid contracts with specific entities requiring observer services or with specific observers to the Observer Program Office upon request. Required copies of contracts must be submitted by mail or fax. Types of signed and valid contracts include the contracts an observer contractor has with: (a) vessels required to have 30-percent observer coverage, (b) vessels required to have 100-percent observer coverage, (c) shoreside processors required to have 30-percent observer coverage, (d) shoreside processors required to have 100-percent observer coverage, or (e) observers (to include contracts for the various compensation or salary levels of

observers, the levels being based on observer experience).

6. Correct the regulation at § 679.50(j)(7)(iv) that referenced the wrong paragraph. The 1997 Interim Groundfish Observer Program regulations at § 679.50(j)(7)(iv) stated that "[t]he appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (i)(7) of this section, as appropriate." The correct references are to paragraphs (j)(5) or (j)(6). This proposed revision replaces "(i)(7)" with "(j)(6)".

Non-codified Elements Of The Observer Program

Three elements of the 1997 Observer Program were not codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS's selection criteria for observer contractors. These elements were published in the **Federal Register** (61 FR 40380, August 2, 1996) and are available upon request. Although they were not codified, they are viewed as a part of the rule and NMFS will publish a notification in the **Federal Register** and provide an opportunity for public comment prior to changing any of these elements. NMFS proposes making minor revisions to two of the elements as follows:

1. Revise item "B" of the "NMFS Observer Qualifications—Education and Experience Standards" to require observers to have taken at least one course that used extensively dichotomous keys. During training, observers spend approximately 15 hours of class time in fish identification lectures and laboratories. Much of this time is spent identifying fish to species using dichotomous keys. Observers with previous course work using dichotomous keys are better able to apply that training.

2. Revise the "NMFS Observer Training/Briefing Requirements" to require all prior observers to complete a 4-day briefing prior to their first deployment in any calendar year. One-day briefings would be required prior to subsequent deployments within a calendar year. Additional briefing time is required to fully prepare observers to use the new observer electronic reporting package (ATLAS), to review any other regulatory or programmatic changes on an annual basis, and to engage in an annual review of species identification, enabling observers to complete more efficiently that aspect of their duties.

The observer qualifications, as proposed to be revised, are set forth below. NMFS' selection criteria for

observer contractors would remain unchanged.

A. Prospective observers must have a bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences.

B. Candidates must have a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course. Candidates must also have successfully completed at least one undergraduate course in mathematics and one in statistics worth a combined total of at least 5 semester hours. In addition, all applicants are required to have computer skills that enable them to work competently with standard database software and computer hardware.

C. Prospective observers are also required to complete successfully any screening test(s) administered by NMFS. These tests would measure basic mathematics, algebra, and computer skills as well as other abilities necessary for successful job performance.

D. If a sufficient number of candidates meeting these educational prerequisites is not available, the observer contractor may seek approval from NMFS to substitute individuals with either a senior standing in an acceptable major, or with an Associate of Arts (A.A.) degree in fisheries, wildlife science, or an equivalent.

E. If a sufficient number of individuals meeting the above qualifications is not available, the observer contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

F. To qualify for certification, all prospective observers must undergo safety and cold water survival training that requires the prospective observers to demonstrate their ability to properly put on an immersion suit in a specified time period, enter the water, travel approximately 50 m to a ladder, and climb out of the water.

The additional mathematics, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications that would have been required under the Research Plan, had it been fully implemented. The NMFS observer training/briefing requirements are set forth below.

A. Observers who have completed a deployment must be recertified prior to another deployment. All observers will be required to complete a 4-day briefing prior to their first deployment in any calendar year. One-day briefings will be required prior to subsequent deployments within a calendar year.

Certification following 1- or 4-day briefings will expire after 1 month if deployment is delayed. Observers who have not been deployed for a period of 18 months will be required to complete a 3-week training course.

B. If an observer is not deployed within 1 month after completion of training, the individual must complete a 1-day briefing. If the observer is not deployed within 3 months after training, the individual must complete a 4-day briefing. If the observer is not deployed within 6 months after training, the individual must retake the full training course.

C. Observers may be required to attend an additional 4-day briefing based upon an evaluation of data collected during their most recent deployment.

Classification

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

The proposed changes occurring through this regulatory action are within the scope of issues thoroughly analyzed for the implementation of the 1997 Interim Groundfish Observer Program (61 FR 56425, November 1, 1996). Therefore, the EA/RIR/FRFA prepared for the Interim Groundfish Observer Program and the preambles to the proposed and final rules implementing that program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1 1996) are incorporated by reference into the analysis prepared for this action. This action is a necessary adjustment to the rules governing the Interim Groundfish Observer Program and will provide the same benefits as listed in the EA/RIR/FRFA for the Interim Groundfish Observer Program, dated August 27, 1996. A copy of this analysis is available from NMFS (see ADDRESSES). The changes caused by this action are consistent with the intent and purpose of the Interim Groundfish Observer Program.

NMFS prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Based on the analysis, it was determined that this proposed rule could have a significant economic impact on a substantial number of small entities. A copy of this analysis is available from the Council (see ADDRESSES). Observer costs borne by vessels and processors are based on whether an observer is aboard a vessel and on overall coverage needs. Higher costs are borne by those vessels and shoreside processors that require higher levels of coverage. Most of the catcher vessels participating in the groundfish

fisheries off Alaska and required to carry observers (i.e., vessels 60 ft LOA and longer) meet the definition of a small entity under the RFA. In 1995, about 270 catcher vessels carried observers. These catcher vessels would not be further economically impacted by observer coverage levels because the proposed rule would not implement any changes in observer coverage levels.

Under the proposed rule, an observer conflict-of-interest regulation would be relaxed, thereby potentially creating increased employment opportunities for observers. Five observer contractors are likely to be affected by this proposed rule. All are considered small entities, and none are likely to experience significant economic impacts. Given that observers are contracted employees of observer contractors, this proposed change could increase the economic benefits realized by observer contractors.

Although the proposed number of observer briefing days required in a 12-month period would increase from 2 to 4 under the proposed rule, the number of observer briefing days required for subsequent deployments within a calendar year would decrease from 2 to 1. The net change in number of observer briefing days is anticipated to be minimal. The briefing day costs (lodging, per diem) are approximately \$135-200 per day and are dependent on the briefing location (Alaska or Washington). The cost is borne by either the observer or the observer contractor and is dependent upon the specific contractual arrangements between these entities. The briefing day costs are typically passed on from the observer or the observer contractor to the vessel or processor that is required to have the observer coverage. In 1996, 384 observers (employed by five observer contractors) were briefed for the North Pacific groundfish fisheries.

The RFA requires that the IRFA describe significant alternatives to the proposed rule that accomplish the stated objectives of the applicable statutes and that minimize any significant impact on small entities. Consistent with the stated statutory objectives, the IRFA must discuss significant alternatives to the proposed rule such as (1) establishing different reporting requirements for small entities that take into account the resources available to small entities; (2) consolidation or simplification of reporting requirements; (3) the use of performance rather than design standards; and (4) allowing exemptions from coverage for small entities. Alternatives that addressed modifying reporting requirements for small entities

or the use of performance rather than design standards for small entities were not considered by the Council or in this analysis. Such alternatives are not relevant to this proposed action and would not mitigate the impacts on small entities. Allowing exemptions for small entities from this proposed action would not be appropriate because the objective to assure uninterrupted observer coverage requirements through 1998 could not be achieved if small entities were exempted.

The EA/RIR/FRFA prepared for the Interim Groundfish Observer Program (61 FR 56425, November 1, 1996) included the North Pacific Fisheries Research Plan (Research Plan) as an alternative. However, the Research Plan is no longer a viable alternative to the proposed interim observer program. The political and economic concerns that led the Council to repeal the Research Plan still exist. Furthermore, fees collected in 1995 were refunded in early 1996 and if the Research Plan was pursued as the preferred alternative, start-up funding would have to be collected again. Regulations implementing the existing observer program will expire at the end of 1997. It is not feasible to implement a fee-based observer program by the end of this year, which would be necessary to provide observer coverage for the 1998 groundfish fisheries. The preferred alternative for an interim observer program is the only option that could be implemented by 1998 so that the groundfish fisheries could commence without interruption.

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection-of-information requirement has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0648-0318. The estimated current burden for submission of observer contract information is 15 minutes.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including rather the information has 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.

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.

Since the repeal of the Research Plan and at the direction of the Council, NMFS has been developing a long-term alternative program structure to address the problems identified with the current observer program structure. The Council is scheduled to take final action at its December 1997 meeting.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 15, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.7, paragraph (g)(1) is revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(g) * * *

(1) Forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer.

* * * * *

3. In § 679.50, the section heading, paragraphs (c)(1)(vi) and (vii), (h)(2)(i)(A)(4), (i)(1)(iii), introductory text of (i)(2)(xiv), (i)(2)(xiv)(G), and (j)(7)(iv) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1998.

* * * * *

(c) * * *

(1) * * *

(vi) A catcher/processor or catcher vessel fishing with hook-and-line gear that is required to carry an observer under paragraph (c)(1)(v) of this section must carry an observer during at least

one entire fishing trip using hook-and-line gear in the Eastern Regulatory Area of the GOA during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area using hook-and-line gear.

(vii) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer during at least 30 percent of its fishing days while using pot gear in that calendar quarter and during at least one entire fishing trip using pot gear in a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

* * * * *

(h) * * *

(2) * * *

(i) * * *

(A) * * *

(4) May not serve as observers on any vessel or at any shoreside processor owned or operated by a person who previously employed the observer, for a period of 12 consecutive months after being employed by that person.

* * * * *

(i) * * *

(1) * * *

(iii) *Term.* Observer contractors will be certified through December 31, 1998. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) * * *

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail), fax, or other method specified by NMFS.

* * * * *

(G) A completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Completed and unaltered

copies of signed and valid contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request. Types of signed and valid contracts include the contracts an observer contractor has with:

(1) Vessels required to have observer coverage as specified at paragraphs (c)(1)(i) and (iv) of this section,

(2) Vessels required to have observer coverage as specified at paragraphs (c)(1)(ii), (v), and (vii) of this section,

(3) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(i) of this section,

(4) Shoreside processors required to have observer coverage as specified at paragraph (d)(1)(ii) of this section,

(5) Observers (to include contracts for the various compensation or salary levels of observers, the levels being based on observer experience).

Required copies of contracts must be submitted by mail or faxed to: NMFS Observer Program Office, 7600 Sandpoint Way Northeast, Seattle, WA 98115-0070; fax number 206-526-4066.

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(j) * * *

(7) * * *

(iv) If the appeals officer grants review based on the written petition, he or she may request further written explanation from observers, observer contractors, or the decertifying officer or suspending officer. The appeals officer will then render a written decision to affirm, modify, or terminate the suspension or decertification or return the matter to the suspending or decertifying official for further findings. The appeals officer must base the decision on the administrative records compiled under paragraphs (j)(5) or (j)(6) of this section, as appropriate. The appeals officer will serve the decision on observers or observer contractors and any affiliates involved, personally or by certified mail, return receipt requested, at the last known residence or place of business.

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