

[Federal Register: April 29, 1994]

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DEPARTMENT OF COMMERCE National Oceanic and Atmospheric Administration
50 CFR Parts 672 and 675 [Docket No. 930954-4110; I.D. 092193A] RIN 0648-AF54

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

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

ACTION: Final rule.

SUMMARY: NMFS issues final regulations to change requirements for observer coverage of the groundfish fisheries in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to improve management of the groundfish fisheries off Alaska. The intended effect of this action is to increase observer coverage of the groundfish harvests and to promote the fishery management objectives of the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI.

EFFECTIVE DATE: Effective July 1, 1994, except for Sec. 672.27(c)(1)(iii)(F), which will become effective May 31, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) and the Observer Plan may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, Alaska Region, NMFS at 907-586-7228. SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by vessels in the exclusive economic zone (EEZ) of the GOA and the BSAI is managed by the Secretary of Commerce (Secretary) according to the FMP for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 620, 672, and 675.

Amendments 13 and 18 to the groundfish FMPs for the BSAI and GOA, respectively, authorize a comprehensive domestic fishery observer program. An Observer Plan to implement the program was prepared by the Secretary in consultation with the Council and issued by NMFS, effective February 7, 1990 (55 FR 4839, February 12, 1990). At its December 1992 meeting, the Council reviewed draft changes to the Observer Plan that were developed by NMFS and a Council-Appointed Industry Oversight Committee. The Council recommended that NMFS make the draft changes and initiate a rulemaking to implement them.

A proposed rule to implement the Council's recommendation was published in the Federal Register October 28, 1993 (58 FR 57979). Comments on the proposed rule were invited through November 29, 1993. Two letters of comments were received and are summarized in the ``Response to Comments'' section of this preamble.

After reviewing the reasons for the draft changes to the Observer Plan and the comments on the proposed rule to implement them, NMFS has determined that this action is necessary for fishery conservation and management and implements the following changes to the Observer Plan and its implementing regulations at Secs. 672.27 and 675.25.

(1) Change the definition of a ``fishing trip'' and base observer coverage requirements on a new definition of ``fishing days'' instead of ``fishing trip days''. ``Fishing day'' is defined as a 24-hour period from 0001 Alaska local time (A.l.t.) through 2400 A.l.t. during which fishing gear is retrieved and groundfish, as defined at 50 CFR 672.2 and 675.2, are retained for further processing.

(2) Increase observer coverage on vessels equal to or greater than 60 feet (ft)(18.3 m) in length overall (LOA) but less than 125 ft (38.1 m) LOA during each calendar quarter, so that vessels in this size category are required to carry an observer 30 percent of the fishing days in each calendar quarter in which the vessels participate for more than 3 fishing days in a directed fishery for groundfish. Each vessel required to carry an observer during a calendar quarter must carry an observer during at least one fishing trip for each of the following fisheries in which the vessel participates: Pollock, Pacific cod, sablefish, rockfish, flatfish, and other species of groundfish.

(3) Increase observer coverage of vessels using hook-and-line gear in the Eastern Regulatory Area of the GOA by requiring operators of catcher/processor and catcher vessels using hook-and- line gear that participate in a directed fishery for groundfish to carry a NMFS-certified observer during at least one fishing trip in the Eastern Regulatory Area during each calendar quarter that they participate in a directed fishery for groundfish in this area;

(4) Revise observer coverage requirements for vessels using pot gear to participate in a directed fishery for groundfish, so that each vessel using pot gear that is equal to or greater than 60 ft (18.3 m) LOA is required to carry an observer during at least 30 percent of its fishing days during each calendar quarter in which it participates for more than 3 days in a directed groundfish pot gear fishery; and

(5) Revise the conflict of interest standards for NMFS-certified observers and observer contractors. Revisions include: (1) Placing restrictions on observers who were employed in the observed fishery within the preceding 12 months; and (2) prohibiting observer contractors from assigning observers in response to requests for or against a specific individual or a specific gender, race, creed, or age of individual.

The intent of these measures is to increase observer coverage of the groundfish harvests and to promote the fishery management objectives of the FMPs. Further descriptions of, and reasons for, these measures are contained in the preamble to the proposed rule (58 FR 57979, October 28, 1993). With the exception of Sec. 672.27(c)(1)(iii)(F), the effective date of the final rule is July 1, 1994. This date coincides with the beginning of the third calendar quarter and will facilitate the implementation of new quarterly observer coverage requirements by reducing confusion that would result from a mid-quarter effective date. Section 672.27(c)(1)(iii)(F) reduces observer coverage requirements for vessels 125 ft LOA or longer fishing for groundfish with pot gear, and thus, provides relief to vessel operators in this category. Therefore, NMFS has determined that the effective date for this section should not be delayed until July 1, 1994. The effective date for Sec. 672.27(c)(1)(iii)(F) is May 31, 1994.

Changes in the Final Rule From the Proposed Rule

This final rule includes three changes from the proposed rule. These changes are described as follows:

First, technical changes are made to Secs. 672.27 and 675.25 to include minor editorial revisions and metric equivalents for specified lengths of vessels that require different levels of observer coverage.

Second, Sec. 672.27(c)(1)(v)(C) is amended to clarify that a catcher

vessel delivering groundfish to a shoreside processor or to a mothership in Alaska State waters during a weekly reporting period will be assigned to a fishery category based on the retained catch composition of all groundfish delivered to processors during that weekly reporting period and reported on Alaska Department of Fish and Game fish tickets.

Finally, the Observer Plan is corrected by removing from Attachment 3 (Standards of Observer Conduct) an inappropriate reference to title 15 CFR subtitle A, part O, of the U.S. Department of Commerce Regulations. These regulations pertained to standards of conduct for employees of the U.S. Department of Commerce. Certified observers are not NMFS employees and therefore cannot be held to these standards. The Observer Plan continues to require certified observers to comply with the conflict of interest standards and general standards of behavior set out in Attachments 3 and 4 of the amended Plan.

Response to Comments

Two letters were received within the comment period that ended November 29, 1993. A summary of comments and NMFS's responses follow.

Comment 1. The proposed action bases observer coverage on fishing days instead of fishing trip days and increases observer coverage on vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA. This action would increase the financial burden on the catcher boat fleet, particularly on those vessels delivering to shoreside facilities that are required to have observer coverage. This results in an inequitable impact on the catcher boat fleet and further aggravates the disproportionate effect of the Observer Program on catcher vessels. Given these effects, implementation of measures to increase observer coverage should be delayed until after the North Pacific Fisheries Research Plan is effective.

Response. NMFS acknowledges that the proposed rule would increase observer costs for vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA that use trawl or hook-and-line gear to participate in a directed fishery for Alaska groundfish. Larger vessels currently are required to have an observer on board at all times and are not affected by the proposed change in coverage requirements. The increased observer coverage for vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA is necessary to obtain more adequate information on which the groundfish fisheries are managed, including better estimates of groundfish catch, discard amounts, and prohibited species bycatch rates. Delay of regulatory action to increase observer coverage until the North Pacific Fisheries Research Plan is effective would neglect identified data requirements necessary for effective management of the Alaska groundfish fisheries.

Comment 2. The increased financial burden to the small boat fleet that will ensue from increased observer coverage is out of proportion to the benefits that might result, particularly if NMFS continues to use observer data primarily as a basis for fishery closures or enforcement, rather than for more effective fishery management.

Response. NMFS's primary responsibility for inseason management of the groundfish resource is to monitor groundfish harvests and prohibited species bycatch rates, so that when a groundfish total allowable catch (TAC) or a prohibited species bycatch allowance is reached, fishery closures can be implemented to prevent specified TACs or bycatch allowances from being exceeded.

Existing observer coverage requirements established for vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA were determined by the Council and its ad hoc Observer Committee to be inadequate

to meet data needs for effective monitoring of groundfish and prohibited species catch amounts by this segment of the groundfish fleet. NMFS concurs in this determination and has approved the Council's recommended increase in observer coverage for vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA. The increase is intended to improve the level of observer coverage from this size class of vessel without imposing costs that are disproportionate to the benefits that are anticipated to result from better inseason management of the groundfish fisheries.

Use of observer data is not limited to inseason management of the fisheries and compliance monitoring of regulatory programs. Observer data also are used to assess the status of fishery resources and as a basis for assessment and development of management measures. NMFS has released certain observer data to the public under the Freedom of Information Act for purposes of independent industry analyses of prohibited species bycatch rates and operational factors that may reduce bycatch rates of these species. Additional observer data may be disclosed to support industry initiatives to reduce prohibited species bycatch rates under a proposed rule published in the Federal Register January 19, 1994 (59 FR 2817). These Federal and private initiatives to use observer data for more effective fishery management will be enhanced to the extent that more observer data are collected from vessels under 125 ft (38.1 m) LOA as set out in this final rule.

Comment 3. The purpose and intent of the proposed rule to correct problems encountered by NMFS in administering observer coverage on vessels equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA are supported. However, given the direction in which the fishery management process is progressing, 30 percent coverage for these vessels likely is inadequate; 100 percent observer coverage on all vessels capable of carrying an observer should be considered.

Response. One hundred percent observer coverage on vessels equal to or greater than 60 ft LOA but less than 125 ft LOA has been required for particular fisheries for specified areas and limited time periods to meet special management needs (59 FR 3000, January 20, 1994, as modified at 59 FR 4009, January 28, 1994, and 59 FR 15346, April 1, 1994). However, the additional costs associated with 100 percent observer coverage on all vessels in the groundfish fishery under 125 ft LOA in all areas at all times would impose disproportionate costs on this sector of the groundfish fleet and, therefore, are not now justified under the current open access groundfish management program. NMFS will continue to assess the need for increased observer coverage to meet special resource or fishery management needs.

Comment 4. Despite support for the proposed action, concerns remain about the ability of vessels to manipulate observer coverage in certain fisheries and/or in certain areas where prohibited species bycatch rates may be higher. To address these concerns, the final rule should be amended to require a vessel equal to or greater than 60 ft (18.3 m) LOA but less than 125 ft (38.1 m) LOA to carry an observer for 30 percent of the days it engages in any particular fishery during any calendar quarter in which it meets the threshold (3-day) minimum requirement on a fishery-by-fishery basis.

Response. The final rule limits the manipulation of observer coverage by decreasing the number of fishing days in a quarter that trigger observer coverage requirements, basing coverage requirements on fishing days rather than fishing trip days, and requiring observation of at least one trip for each fishery that a vessel participates in during a quarter. These measures should reduce the potential for manipulation of observer coverage and increase the amount of observer data available for the management of specific

fisheries. Nonetheless, an opportunity still exists for a vessel operator to manipulate observer coverage to reduce or increase coverage in different fisheries.

The EA/RIR/FRFA prepared for this action considered an alternative for increased observer coverage similar to the one presented in Comment 4. The alternative was more stringent and could provide more observer data of certain fisheries relative to the preferred alternative implemented under this final rule. However, this alternative was not adopted by the Council for several reasons. First, concerns were expressed that some fishermen would have difficulties complying with 30 percent observer coverage in each fishery because fishermen would need to be aware of and plan for the target fishery each trip and keep track of the exact number of fishing days by fishery. Second, 30 percent coverage by fishery would be relatively more expensive for a vessel in the 60-125 ft (18.3 m-38.1 m) LOA category to comply with relative to the preferred alternative. Last, compliance monitoring would be more difficult and associated enforcement costs would be increased relative to the preferred alternative under the final rule due to calculations to check 30 percent observer coverage by fishery.

Comment 5. The proposed action to increase coverage of the longline fisheries in the eastern GOA is inadequate for two reasons. First, the proposed action is subject to manipulation. Second, the overall level of reliable observer-generated data from the hook-and-line gear fleet in the eastern GOA is deplorable. To respond to these inadequacies, the final rule should require all vessels in the 60-125 ft (18.3-38.1 m) LOA category that use hook-and-line gear to carry observers a minimum of 30 percent of the fishing days they operate in the eastern GOA during any particular calendar quarter on a fishery-by-fishery basis. Furthermore, NMFS should make a concerted effort to place observers on vessels under 60 ft (18.3 m) LOA so that data can be gathered about the operating characteristics of the small boat fleet that accounts for most of the hook-and-line harvest in the eastern GOA.

Response. The alternative coverage requirements suggested in Comment 5 for longline vessels in the eastern GOA was considered by the Council, but not adopted for reasons similar to those presented in the response to Comment 4.

The Council considered lowering the size limit for vessels required to carry observers to vessels less than 60 ft (18.3 m) LOA. The Council did not adopt this alternative because of increased costs to industry and increased chance of injury to an observer or crew on small vessels because of limited working space and accommodations. Under the current Observer Plan, NMFS has determined that implementation of changes to the observer coverage requirements for vessels under 60 ft (18.3 m) LOA would require separate regulatory action. Furthermore, staffing and budget constraints prevent NMFS from placing employees onboard small vessels to serve as observers. Given these regulatory and practical constraints, observer coverage requirements for the small boat fleet would best be pursued under the North Pacific Fisheries Research Plan, which is pending approval and implementation by the Secretary.

Comment 6. The proposed action to lower observer coverage on vessels using pot gear is premature and not supported as long as observer data generated from the pot gear fisheries are used for allocative purposes. Data used to support allocative measures should be based on comparable levels of observer coverage. Therefore, observer coverage on vessels using pot gear should remain unchanged until an individual vessel quota system is implemented that will effectively address resource allocation issues.

Response. Since the implementation of the domestic observer program in

1990, observer data collected onboard pot gear vessels participating in a directed fishery for groundfish consistently indicate that relatively low levels of prohibited species bycatch mortality are associated with these operations. The Council recommended that NMFS reduce the observer coverage requirements for pot vessels equal to or greater than 125 ft (38.1 m) LOA from 100 percent to 30 percent because of the very low bycatch mortality associated with these operations and the Council's expressed policy to encourage selective fishing practices that typically experience low prohibited species bycatch mortality rates. Under the final rule, the resulting levels of observer coverage of vessels using pot gear will assure the collection of sufficient observer data to identify any changes in assumed bycatch mortality rates and other factors that may affect future resource allocation issues.

Classification

The FRFA prepared for this rule concluded that it could have significant effects on a substantial number of small entities (i.e., small businesses, small organizations, and small governmental jurisdictions with limited resources). A copy of the EA/RIR/FRFA prepared for this action is available (see ADDRESSES).

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

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: April 22, 1994. Rolland A. Schmitt, Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672--GROUND FISH OF THE GULF OF Alaska

1. The authority citation for part 672 continues to read as follows:
Authority: 16 U.S.C. 1801 et seq.

2. In Sec. 672.27, the first sentence of paragraph (a) and paragraphs (b), (c)(1)(ii)(D) and (c)(1)(iii)(C) and (D) are revised and paragraphs (c)(1)(ii)(E), (c)(1)(iii)(E), (c)(1)(iii)(F), (c)(1)(iv) and (c)(1)(v) are added to read as follows:

Sec. 672.27 Observers.

(a) Observer Plan. The operator of a fishing vessel subject to 50 CFR parts 672 and 675, and the manager of a shoreside processing facility that receives groundfish from a vessel subject to 50 CFR parts 672 and 675, must comply with the Observer Plan. * * *

(b) Purpose. The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of fisheries for groundfish, as defined at Sec. 672.2 and Sec. 675.2 of this chapter, or for other purposes consistent with the Marine Mammal Protection Act.

(c) * * *

(1) * * *

(ii) * * *

(D) Fishing trip means the time period that starts on the day when fishing gear is first deployed and ends on the day the vessel offloads groundfish, returns to an Alaskan port, or leaves the EEZ off Alaska and adjacent waters of the State of Alaska, and during which one or more fishing days, as defined in this section, occur.

(E) Fishing day means a 24-hour period, from 0001 A.l.t. through 2400 A.l.t., in which fishing gear is retrieved and groundfish, defined at Sec. 672.2 or Sec. 675.2 of this chapter, are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

(iii) * * *

(C) A catcher/processor or catcher vessel 125 feet (38.1 meters) in length overall or longer must carry a NMFS-certified observer at all times while fishing for groundfish, except for a vessel fishing for groundfish with pot gear as provided for in paragraph (c)(1)(iii)(F) of this section.

(D) A catcher/processor or catcher vessel equal to or greater than 60 feet (18.3 meters) length overall but less than 125 feet (38.1 meters) length overall must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry a NMFS-certified observer during at least one fishing trip during that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(1)(iv)(A) through (F) of this section in which the vessel participates.

(E) A catcher/processor or catcher vessel fishing with hook-and- line gear that is required to carry an observer under paragraph (c)(1)(iii)(D) of this section must carry a NMFS-certified observer during at least one fishing trip in the Eastern Regulatory Area of the Gulf of Alaska during each calendar quarter in which the vessel participates in a directed fishery for groundfish in the Eastern Regulatory Area.

(F) A catcher/processor or catcher vessel equal to or greater than 60 feet (18.3 meters) length overall fishing with pot gear must carry a NMFS-certified observer during at least 30 percent of its fishing days in each calendar quarter in which the vessel participates for more than 3 fishing days in a directed fishery for groundfish. Each vessel that participates for more than 3 fishing days in a directed fishery for groundfish using pot gear must carry a NMFS-certified observer during at least one fishing trip during a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(1)(iv)(A) through (F) of this section in which it participates.

(iv) Groundfish fishery categories requiring separate coverage-

(A) Pollock fishery. Fishing that results in a retained amount of pollock, during any weekly reporting period, that is greater than the retained amount of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(1)(iv) (A) through (F).

(B) Pacific cod fishery. Fishing that results in a retained amount of Pacific cod, during any weekly reporting period, that is greater than the retained amount of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(1)(iv) (A) through (F).

(C) Sablefish fishery. Fishing that results in a retained amount of sablefish, during any weekly reporting period, that is greater than the retained amount of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(1)(iv) (A) through (F).

(D) Rockfish fishery. Fishing that results in a retained aggregate amount of rockfish of the genera *Sebastes* and *Sebastolobus*, during any weekly reporting period, that is greater than the retained amount of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(1)(iv) (A) through (F).

(E) Flatfish fishery. Fishing that results in a retained aggregate amount of all flatfish species, except Pacific halibut, during any weekly reporting period, that is greater than the retained amount of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(1)(iv) (A) through (F).

(F) Other species fishery. Fishing that results in a retained amount of groundfish, during any weekly reporting period, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(1)(iv) (A) through (c)(1)(iv)(E) of this section.

(v) Assignment of vessels to fisheries. During any weekly reporting period, the retained catch composition of groundfish species or species groups of a vessel for which a TAC has been specified under Sec. 672.20 or Sec. 675.20 of this chapter, in round-weight equivalents, will determine to which of the fishery categories listed under paragraph (c)(1)(iv) (A) through (F) of this section the vessel is assigned.

(A) A catcher/processor vessel will be assigned to fishery categories at the end of each weekly reporting period based on the round-weight equivalent of the retained groundfish catch composition included in the weekly production report for the vessel submitted to the Regional Director under Sec. 672.5(c)(2) or Sec. 675.5(c)(2) of this chapter.

(B) A catcher vessel that delivers to mothership processors in Federal waters during a weekly reporting period will be assigned to fishery categories based on the round-weight equivalent of the retained groundfish catch composition included in the weekly production report for the mothership submitted to the Regional Director for that week under Sec. 672.5(c)(2) or Sec. 675.5(c)(2) of this chapter.

(C) A catcher vessel that delivers groundfish to shoreside processors or to mothership processors in Alaska State waters during a weekly reporting period will be assigned to a fishery category based on the round-weight equivalent of the groundfish delivered to processors during that weekly reporting period and reported on one or more Alaska Department of Fish and Game fish ticket or tickets as required under Alaska State regulations at A.S. 16.05.690.

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PART 675--GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for 50 CFR part 675 continues to read as follows: Authority: 16 U.S.C. 1801 et seq.

4. Section 675.25 is revised to read as follows:
Sec. 675.25 Observers.

Observer requirements authorized under the Observer Plan are set out at Sec. 672.27 of this chapter.