

[Federal Register: May 16, 1994]

DEPARTMENT OF COMMERCE 50 CFR Part 675

[Docket No. 931059-4126; I.D. 092293E]

Groundfish 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 is implementing a regulatory amendment to require increased observer coverage and improved equipment for estimating groundfish total catches by vessels and processors participating in the Western Alaska Community Development Quota (CDQ) pollock fisheries. This action is intended to improve estimates of total groundfish catches in the CDQ fisheries.

EFFECTIVE DATES: June 15, 1994, except for Sec. 675.27(h)(2), which is effective August 15, 1994.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) prepared for this action may be obtained from the Fisheries Management Division, Alaska Region, NMFS, Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Sally Bibb, Fisheries Management Division, (907) 586-7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by operators of U.S. vessels in the exclusive economic zone of the Bering Sea and Aleutian Islands (BSAI) management area is managed by the Secretary of Commerce (Secretary) according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 675. General regulations that also pertain to U.S. fisheries appear at 50 CFR part 620.

This regulatory amendment will require increased observer coverage and improved equipment for estimating total catch for vessels and processors participating in the Western Alaska CDQ pollock fisheries. Two NMFS-certified observers will be required on processor vessels, one or more observers in shoreside processing operations, and one observer on catcher vessels delivering to processors. In addition, processor vessels will be required to have either measured, marked, and certified fish-receiving bins to improve volumetric estimates of total catch, or scales to weigh total catch. A description of, and reasons for, these actions were discussed in the proposed rule published in the Federal Register on December 27, 1993 (58 FR 68386). Public comment on the proposed rule was invited through January 26, 1994. Four letters of comment were received within the comment period.

Management of the CDQs requires an estimate of the total catch weight of pollock for each vessel participating in the CDQ fisheries. The purpose of this rule is to standardize the equipment available to observers to make volumetric estimates of the weight of all groundfish caught, including pollock, or to require that the fish be weighed.

The volume of fish in the bin is determined by the area of the base of the bin and the height of fish throughout the bin. Fish poured into bins do not always form a flat, smooth surface, or settle at the same height throughout the bin. The surface of the fish often slopes from front to back or from one

side to another in the bin. Fish may stack up higher in one corner than in others or pile up in the middle of the bin.

The process of making volumetric estimates of the catch using certified bins generally occurs in five steps. First, a certified engineer, or other authorized person, measures the inside of all bins that will be used to make volumetric estimates of catch weight, witnesses the placement of marked increments every 10 cm on the internal sides of the bin, and prepares a height-to-volume conversion table that indicates the volume of the bin, in cubic meters, below the level of each 10-cm increment. Second, the observer estimates the average height of fish in a bin by visual inspection. In order to determine the average height of fish in a bin, an observer must be able to see the level of fish throughout the bin. Third, the observer uses a height-to-volume conversion table to determine the volume associated with the average height of fish in the bin. Fourth, the observer applies a density factor indicating weight per unit volume (metric tons (mt) per cubic meter (m³) or mt/m³) to estimate the total weight of all fish in the bin. Fifth, the observer samples a portion of the fish in the bin to determine species composition (the proportion of each species or species group) and applies this distribution to the estimate of total groundfish weight to estimate the total weight of pollock. This last step provides the observer's estimate of pollock catch that is attributed to the vessel and applied against the CDQ. The volumetric methods are used to estimate the total catch weight of all groundfish, and species composition samples are used to estimate how much of that groundfish is pollock.

Changes From the Proposed Rule

There are three changes from the proposed rule in the final rule. The first change is to delete the phrase ``NMFS or U.S. Coast Guard enforcement'' from sentences referring to authorized officers in Sec. 675.27 (h)(2)(i)(A) and (ii)(B)(1). Removing the phrase makes the references consistent with the definition of authorized officers in 50 CFR 620.2. The second change is to clarify the intent of the first sentence of Sec. 675.27(h)(2)(ii) by replacing the phrase ``estimate its total weight'' with ``estimate the total weight of its groundfish catch''. The third change is to clarify the intent of Sec. 675.27(h)(2)(ii)(A)(2). The requirement that marked increments be readable from the outside of the bin at all times has been changed to read ``Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times.'' The phrase ``on each side of the bin'' is deleted from the last sentence of the paragraph. Although NMFS requires that all internal sides of the bin be marked, the markings on the side of the bin containing the viewing port or window need not be visible from the outside of all bins. This issue is also addressed in the response to Comment 9.

Four letters of comment were received during the comment period. One letter was in support of the rule. Three letters included comments or suggestions on technical or operational aspects of the rule. Fourteen individual comments were contained in these four letters. No comments were in opposition to the rule.

Comment 1: Increased observer coverage and improved equipment for estimating total catch in the CDQ fisheries will be beneficial to fishery managers and to CDQ fishing partners.

Response: NMFS concurs.

Comment 2: NMFS should identify standards for catch measurement and leave it to the industry to decide what equipment and methods would meet those standards.

Response: This rule offers two options for processor vessels to provide improved estimates of catch in the CDQ fisheries. One is based on volumetric estimates and the other is based on a scale weight. While a performance standard for the accuracy of a scale system can be established by NMFS and tested by an observer, the same standard of accuracy cannot be established for volumetric estimates. The accuracy of a scale system depends on the performance of a piece of equipment, while the accuracy of volumetric estimates depends on the accurate measuring of the bin volume, on the ability of an observer to determine the volume visually, and on variation in the density of the fish. The only way to test the accuracy of volumetric estimates of total groundfish catch weight is to compare the volumetric estimates of fish weight with the scale weight of the same fish. A scale large enough to assess the accuracy of volumetric estimates of catch aboard a processor vessel would be more effectively used to weigh the catch directly. Rather than specifying an accuracy standard for volumetric estimates, NMFS has established guidelines for the equipment that must be provided for the observer to make volumetric estimates.

Comment 3: NMFS should fairly apply regulations for improved total catch weight to all sectors.

Response: This rule addresses only processors and vessels participating in the CDQ fisheries. All catcher vessels must meet the same requirements, regardless of their size. Shoreside processors are required to report scale weights, because scales are currently available in all the plants. All processor vessels are offered the same options to provide improved estimates of catch.

Comment 4: The appropriate method for estimating total catch weight should distinguish between the pelagic pollock fisheries and other mixed-species fisheries.

Response: The CDQ fisheries are predominantly pelagic pollock fisheries in that most trawl hauls contain 95 percent or more pollock by weight. The primary difference between pelagic pollock fisheries and mixed-species fisheries, with respect to volumetric estimates of total groundfish catch weight, is the appropriate density factor to use in the volume-to-weight conversion. NMFS distinguishes between the pelagic pollock fishery and other mixed-species fisheries by applying a standard density factor of 0.93 mt/m³ for all trawl hauls in the pelagic pollock fishery and by using the observer's estimate of the appropriate density factor for hauls with less than 95 percent pollock.

Comment 5: The appropriate location of certified marks inside bins depends on the configuration of the individual bin and should be determined on a case-by-case basis.

Response: NMFS agrees that many bins have different configurations and that specifying the location and number of certified markings that would provide the most accurate volumetric estimates from each bin on each vessel may be more desirable. However, NMFS does not have the resources to review and approve the bin configurations for individual vessels. For this reason, the final rule contains specifications that must be met for each bin used to make volumetric estimates of catch weight.

Comment 6: Vessel owners should be required to submit a description of the system they plan on using, with endorsement by prospective certifiers, well in advance of the effective date, to assure that they have selected a workable system and that they have adequate time to get it in place and certified.

Response: The processor or vessel owners are responsible for completing these modifications by the effective date (i.e., August 15, 1994, see Sec.

675.27(h)(2)). Therefore, NMFS is providing approximately 3 months for modifications to the vessel that may be necessary under this rule.

Comment 7: Visual access to the bins and to all walls in the bins is difficult to achieve, costly, and sometimes impossible.

Response: Information about the average height of fish in a bin is a critical element in volumetric estimates of groundfish catch weight. NMFS believes that processor vessel operators must provide the appropriate viewing ports or windows, bin lighting, and readable markings in order to provide the observer with the opportunity to make an estimate of the average height of fish in the bin that is as accurate as possible.

Comment 8: Marking all internal walls of a bin may result in less accurate estimates of the height of fish in the bin than could be obtained by marking fewer walls. For example, if all markings in a bin with more than four walls were used to calculate a simple average of the height of fish in the bin, the procedure would skew the height estimate toward the part of the bin with the most marked walls.

Response: The accuracy of the estimates of height of fish in a bin is based on the procedure used by the observer to determine average height and not necessarily on the number of marked walls. Identifying the sides of the bin that would always provide the best information to observers is difficult, because the surface of the fish in the bin is often not level or smooth due to the trim of the vessel or other reasons. NMFS believes that the requirement to mark all internal sides of the bins provides the maximum amount of reference points for an observer. Observers will use as much information as is available to determine the average height of fish in a bin, but they will not be instructed to calculate a simple average of the height of fish at each marked wall for reasons suggested in the letter of comment.

The rule requires that vessel operators submit certification documents prepared by an authorized, independent agent who measured the bins, witnessed the location of the marks, and calculated the volume of the bin associated with each set of marks. Instructions or recommendations from the certifying agent to estimate properly the average height of fish in the bin, or to use height-to-volume conversion tables, would improve the reliability of the volumetric estimates.

Comment 9: It is not necessary to mark the inside of the bin wall that contains the viewing port or window, because the observer cannot see these marks from outside the bin.

Response: NMFS agrees that, for some bins, an observer would not be able to see the marks on the bin wall that contains the viewing port. However, in other cases, the observer can look inside the bin from the viewing port and see the level of fish against the wall that contains the viewing port, thereby increasing the accuracy of the estimated average height of fish in the bin. NMFS prefers one standard for all bins used for volumetric estimates. NMFS will continue to require markings on all internal walls of the bin, but will not require that the markings on the side of the bin that contains the viewing port or window be readable from the outside of the bin.

Comment 10: Ultrasonic bin level sensors (bin sensors) should be considered as an alternative to determine the average height of fish in bins that are not visually accessible.

Response: Bin sensors employ transducers installed in the overhead of the bin to measure the distance from the top of the bin to the surface of the fish in the bin. The transducers determine distance by 'sounding' or measuring the amount of time it takes for an ultrasonic sound wave to travel from the transducer to the surface of the fish. The average height of fish could be

estimated by locating transducers in several places throughout a bin.

NMFS has two concerns about the use of bin sensors. First, the appropriate number of transducers, location of the transducers, and direction in which they are pointed are important determinants of the accuracy of the information provided from the bin sensors. The appropriate system design depends on the configuration of the individual bin, the way fish are loaded into the bin, and the distribution of fish once inside the bin. Developing regulations that would specify a general system design applicable to all bins would be difficult. Also, NMFS does not have the resources to review and evaluate system designs for individual bins or to work with the industry to develop the appropriate configuration for individual bins.

The second, and more serious, concern relates to NMFS' ability to monitor both the initial calibration of the bin sensors and their use aboard the processor vessel to determine the level of fish in a bin. One mothership in the Alaska groundfish fisheries currently uses bin sensors to make volumetric estimates of the groundfish catch delivered by catcher vessels. However, these bin sensors are installed in fish receiving bins that have markings on the internal sides of the bins that can be seen from outside the bin. In this case, there is little difficulty in verifying the readings of the bin sensors.

Once properly calibrated, the transducers should continue to perform accurately unless the equipment malfunctions or breaks down. However, the bin sensors can be recalibrated at any time to provide either more or less accurate readings. NMFS does not intend to monitor the use of bin sensors by requiring that only observers have access to the control panel.

Representatives of a bin-sensor manufacturer suggested that each bin should contain five transducers, each of which would take an individual reading of the height of fish in the bin directly below the transducer. Transducers can be calibrated individually. Therefore, in order to verify that all transducers are reading accurately, hatches would have to be placed in the overhead of the bin next to each transducer so that the observer could drop a tape measure and check the distance against that recorded by the bin sensor. NMFS believes that this procedure would be burdensome to the processor vessel operator because of the necessity to place up to five hatches in each bin to verify transducer readings, and that it would be time-consuming and difficult for the observer.

The manufacturer's representative also suggested that the information from the initial calibration of the system, such as the distance from each transducer to the bottom of the bin, could be used to determine whether the system had been recalibrated. NMFS is concerned that the bin sensors could be recalibrated, and then changed back to the original calibration without the knowledge of the observer. Although NMFS believes that bin sensors could accurately estimate the height of fish in a bin, NMFS is not satisfied that observers have the capability or the time to monitor the system to assure accurate information about the volume of fish in enclosed and inaccessible bins.

Comment 11: An opening in the top or overhead of a bin through which a tape measure could be lowered into the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: NMFS believes that reliable estimates of the volume of fish in a fish bin must be determined from averaging the height of fish in a bin from several locations in the bin. A single reading at the center of the bin may not provide accurate information if the fish are unevenly distributed throughout the bin.

Comment 12: A narrow vertical window extending the full height of one wall of the bin with marks on the outside of the bin should be considered as an alternative method for determining the average height of fish in bins that are not visually accessible.

Response: This suggestion would provide the observer with a height reading at only one location in the bin which, for reasons discussed above, is not sufficient to determine the average height of fish in the bin.

Comment 13: The use of scales to weigh groundfish harvests is a costly alternative.

Response: NMFS recognizes that a marine scale capable of accurately weighing groundfish harvests will cost between \$30,000 and \$50,000 per scale. This does not include the cost of installation and maintenance. This rule allows processors to choose either modification of their bins to accommodate volumetric estimates or scales to weigh groundfish harvests in the CDQ fisheries.

Comment 14: It is not feasible for processor vessel operators to weigh each species or species group of fish separately.

Response: This rule does not require weight by species or species group for management of the CDQ pollock fisheries.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable laws.

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

The AA has determined that this rule could have a significant economic impact on a substantial number of small entities. A copy of the FRFA is available (see ADDRESSES).

This rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.) that have been approved by the Office of Management and Budget under control number 0648-0269. The public's reporting burden for each requirement is indicated in the following description and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The new reporting requirements are: (1) CDQ-managing organizations must arrange for processors to transmit copies of daily observer catch messages to them in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocations have been exceeded (5 minutes per message); (2) scale printouts of each CDQ delivery must be maintained in the processing operation for the duration of the fishing year, or for as long after a fishing year that the products from fish harvested during that year are retained in the processing operation (8 minutes per delivery day); (3) the volumes of bins aboard processing vessels must be certified in writing by an independent registered engineer (8 hours); and shoreside processors must notify the observers of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading (2 minutes). Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this burden, to NMFS (see ADDRESSES) and to the Office of Management and Budget, Attn: Desk Officer, NOAA (Paperwork Reduction Project 0648-0269), Washington, DC 20503.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 1994. Charles Karnella, Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 675 is amended as follows:

PART 675--GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

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

2. In Sec. 675.27, paragraph (e)(4) is revised and a new paragraph (h) is added to read as follows:

Sec. 675.27 Western Alaska Community Development Quota Program (applicable through December 31, 1995).

* * * * *

(e) * * *

(4) It is the responsibility of the CDQ-managing organization to cease fishing operations once its respective CDQ pollock allocation has been reached. Total pollock harvests for each CDP will be determined by observer estimates of total catch and catch composition as reported on the daily observer catch message. The CDQ-managing organization must arrange for processors to transmit a copy of the observer daily catch message to it in a manner that allows the CDQ-managing organization to inform processors to cease fishing operations before the CDQ allocation has been exceeded. CDQ-managing organization representatives must also inform NMFS within 24 hours after the CDQ has been reached and fishing has ceased. If NMFS determines that the observer, the processor, or the CDQ-managing organization failed to follow the procedures described in paragraph (h) of this section for estimating the total harvest of pollock, or violated any other regulation in this part, NMFS reserves the right to estimate the total pollock harvest based on the best available data.

* * * * *

(h) Estimation of total harvest in the CDQ fisheries--

(1) Observer coverage. Vessel operators and processors participating in CDQ fisheries must comply with the following requirements for observer coverage:

(i) Each shoreside processing operation participating in the CDQ fisheries must have one NMFS-certified observer present at all times while groundfish harvested under a CDQ are being received or processed. The Regional Director is authorized to require more than one observer for a shoreside processing operation if:

(A) The CDQ delivery schedule requires an observer to be on duty more than 12 hours in a 24-hour period;

(B) Simultaneous deliveries of CDQ harvests by more than one vessel cannot be monitored by a single observer; or

(C) One observer is not capable of adequately monitoring CDQ deliveries;

(ii) Each processor vessel participating in the CDQ fisheries must have two NMFS-certified observers aboard the vessel at all times while groundfish harvested under a CDQ are being harvested, processed, or received from another vessel;

(iii) Each catcher vessel delivering groundfish harvested under a CDQ, other than a catcher vessel delivering only unsorted codends to a processor or another vessel, must have a NMFS-certified observer on the vessel at all times while the vessel is participating in the CDQ fisheries, regardless of the vessel length. Observer coverage requirements for catcher vessels

participating in the CDQ fisheries are in addition to any observer coverage requirements in Sec. 675.25.

(2) Equipment and operational requirements. (i) Each shoreside processing operation participating in the CDQ fisheries must comply with the following requirements:

(A) Groundfish harvested in the CDQ fisheries must be recorded and weighed on a scale certified by the State of Alaska. Such a scale must measure catch weights at all times to at least 95-percent accuracy, as determined by a NMFS-certified observer or authorized officer. The scale and scale display must be visible simultaneously by the observer;

(B) Observers must be provided access to the scale used to weigh groundfish landings;

(C) Printouts of scale measurements of each CDQ delivery must be made available to observers and be maintained in the shoreside processing operation for the duration of the fishing year, or for as long after a fishing year as product from fish harvested during that year are retained in the shoreside processing operation; and

(D) The manager of each shoreside processing operation must notify the observer(s) of the offloading schedule of each CDQ groundfish delivery at least 1 hour prior to offloading to provide the observer an opportunity to monitor the weighing of the entire delivery.

(ii) Each processor vessel participating in the CDQ fisheries must either estimate the total weight of its groundfish catch by the volumetric procedures specified in paragraph (h)(2)(ii)(A) of this section or must weigh its catch in accordance with the procedures under (h)(2)(ii)(B) of this section.

(A) Volumetric measurements of total catch. (1) Each processor vessel estimating its catch by volumetric measurement must have one or more receiving bins in which all fish catches are placed to determine total catch weight prior to sorting operations.

(2) The volume of each bin must be accurately measured, and the bin must be permanently marked and numbered in 10-cm increments on all internal sides of the bin. Marked increments, except those on the wall containing the viewing port or window, must be readable from the outside of the bin at all times. Bins must be lighted in a manner that allows marked increments to be read from the outside of the bin by a NMFS-certified observer or authorized officer.

(3) The location of bin markings, as certified, must be described in writing. Tables certified under paragraph (h)(2)(ii)(A)(2) of this section indicating the volume of each certified bin in cubic meters for each 10-cm increment marked on the sides of the bins, must be submitted to the NMFS Observer Program prior to harvesting or receiving groundfish and must be maintained aboard the vessel and made available to NMFS-certified observers at all times. All bin certification documents must be dated and signed by the certifier. The bin volume and marked and numbered increments must be certified by a registered engineer with no financial interest in fishing, fish processing, or fish tender vessels, or by a qualified organization that has been designated by the U.S. Coast Guard Commandant, or an authorized representative thereof, for the purpose of classing or examining commercial fishing industry vessels under the provisions of 46 CFR 28.76. Bin volumes and marked and numbered increments must be recertified each time a bin is structurally or physically changed.

(4) Vessel operators must notify observers prior to any removal or addition of fish from each bin used for volumetric measurements of catch in such a manner that allows an observer to take bin volume measurements prior to fish being removed from or added to the bin. Once a volumetric measurement has

been taken, additional fish may not be added to the bin until at least half the original volume has been removed. Fish may not be removed from or added to a bin used for volumetric measurements of catch until an observer indicates that bin volume measurements have been completed and any samples of catch required by the observer have been taken.

(5) Fish from separate hauls or deliveries from separate harvesting vessels may not be mixed in any bin used for volumetric measurements of catch.

(B) Scale weight measurements of total catch.

(1) Any scale used on a processor vessel to weigh groundfish harvested in the CDQ fisheries must measure catch weights to at least 95-percent accuracy at all times as determined by a NMFS-certified observer or authorized officer. The scale must be equipped with a functional motion compensation device to account for vessel acceleration, roll, pitch and vibration movement. The scale and scale display must be visible by the observer simultaneously.

(2) Printouts of scale measurements of each haul weight must be made available to the observer and be maintained on board the vessel for the duration of the fishing year or for as long after a fishing year as products from fish harvested during that year are retained aboard a vessel.

(3) The catch from each haul must be kept separate, such that the scale weight can be obtained separately for each haul.