

727-570-5312, fax 727-570-5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder, (ph. 301-713-1401, fax 301-713-0376, e-mail Barbara.Schroeder@noaa.gov).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone (228) 762-4591 or fax (228) 769-8699.

#### SUPPLEMENTARY INFORMATION:

Prohibitions to taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on May 12, 2000, along the South Carolina coast documented 14 leatherback turtles over a total survey trackline of approximately 39.7 nm (73.6 km). The survey trackline was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Bull's Island (32°55' N. lat., 080°39' W. long.) and terminating approximately 1 nm (1.9 km) off of Winyah Bay (33°13' N. lat., 080°11' W. long.). A replicate survey conducted on May 16, 2000 sighted 12 leatherbacks in 46 nm (85.2 km) of trackline. This survey was flown in a northeasterly direction commencing approximately 1 nm (1.9 km) offshore of Isle of Palms (32°46' N. lat., 080°46' W. long.) and terminating approximately 1 nm (1.9 km) offshore of North Island (33°15' N. lat., 080°11' W. long.). Fishing effort

appeared heavy at the time of the survey. One hundred and sixteen vessels (77 underway shrimp trawlers) were observed during the survey of the South Carolina coast.

The Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 34° N. lat., within the Leatherback Conservation Zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget (OMB) control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

#### Classification

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

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency

from implementing the necessary action in a timely manner to protect the endangered leatherback. Notice and opportunity to comment on the leatherback closure procedures was provided through the rulemaking establishing the closure procedures (60 FR 25663, May 12, 1995).

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this rule for 30 days. It would be contrary to the public interest to delay this action because such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making the rule effective May 19, 2000 through June 2, 2000. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727) 570-5312 for updated area closure information. As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et. seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see ADDRESSES).

Dated: May 19, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries,  
National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 991108298-0145-02; I.D. 092199C]

RIN 0648-AL88

#### Fisheries of the Exclusive Economic Zone Off Alaska; At-Sea Scales; Community Development Quota Program

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend portions of the regulations

implementing the equipment and operational requirements in the Community Development Quota (CDQ) fisheries for catch weight measurement, observer sampling stations, and observer transmission of data. After the first year of requiring scales and observer sampling stations on specified vessels participating in the CDQ fisheries, NMFS has identified aspects of the requirements that need further refinement and correction for effective implementation. This action is intended to effect those refinements.

**DATES:** Effective June 26, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) prepared for this action may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907-586-7228. A copy of the September 9, 1997, environmental assessment prepared for the Multispecies Community Development Quota (MS CDQ) Program can be obtained from the same address.

Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Lori Gravel, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Alan Kinsolving, 907-586-7228 or alan.kinsolving@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS manages Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area according to 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). The North Pacific Fishery Management Council (Council) prepared the FMPs under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs at 50 CFR part 679 and subpart H of 50 CFR part 600 govern fishing by U.S. vessels. Equipment and operational requirements for catch weight measurement appear at 50 CFR 679.28

and equipment and operational requirements for transmission of observer data appear at 50 CFR 679.50.

This final rule makes numerous minor revisions to §§ 679.28 and 679.32. NMFS published a proposed rule to implement these revisions in the **Federal Register** on December 2, 1999 (64 FR 67555). The preamble to the proposed rule contains a full description of the revisions and their justification, which is not repeated here. The proposed rule also provided the public with a 30-day review and comment period. NMFS received no comments on the proposed rule. Although some editorial changes were made to the regulatory text in this final rule, no substantive changes were made from the proposed regulatory text. Though this action results in some substantive regulatory revisions, most changes are technical edits needed to clarify existing regulations. The substantive changes that alter existing regulations will:

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 maintaining a scale inspection report on board the vessel;
3. Relax the annual certification requirements for the test weights that must accompany an approved observer platform scale;
4. Allow scale manufacturers to use a computer-generated check number instead of a physical seal to protect adjustable scale components from fraudulent tampering;
5. Relax the requirements for the daily printout of haul information for a vessel that must weigh all catch;
6. Modify the requirements for visibility of the display on a total-catch weighing scale;
7. Require operators of 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;
8. Define "tally area" and "collection point" for longline catcher/processors and specify requirements for their dimensions, location, and construction;
9. Define the phrase "clear and unobstructed passage," as used in the current regulations;
10. Make the minimum work space requirements for the observer sampling station more flexible by giving a minimum area criterion in lieu of specific minimum station length and width requirements;
11. Require that observer sampling station scales be mounted with the

platform (i.e., the weighing surface) no more than 0.7 meter above the floor;

12. Require that trawl catcher/processors provide at least 1 meter of belt space downstream from the total-catch weighing scale for the observer's use when processing samples; and

13. Require that catcher/processors and motherships obtain, install, and maintain NMFS-provided data-entry software if participating in CDQ fisheries.

**Compliance Guide for Small Entities**

The Small Business Regulatory Enforcement Fairness Act of 1996 requires that NMFS prepare a compliance guide that explains how small entities must comply with the regulations implemented in this final rule. This action revises the requirements for observer sampling stations, at-sea scales, and transmission of observer data. This action affects all small entities that are required to install and maintain NMFS-approved scales or observer sampling stations. Affected entities must comply with the regulations concerning at-sea scales and observer sampling stations at § 679.28 and the regulations concerning the transmission of observer data in the CDQ program at § 679.32.

Because this rule makes changes to the at-sea scales and observer sampling station programs, it is possible that a sampling station or scale that was acceptable when inspected in 1999 will not be acceptable now. NMFS recommends that small entities required to provide NMFS-approved scales or observer sampling stations contact Alan Kinsolving (see **ADDRESSES**) prior to their next required scale or observer sampling station inspection to ensure that necessary modifications are made.

**Classification**

The Administrator, Alaska Region, NMFS (Regional Administrator), determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska.

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 Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA that have been approved by OMB. The OMB control numbers and estimated response times for these requirements are: the submission of

scale inspection reports is approved under 0648-0330 at 15 minutes per response; the retention of scale weight reports is approved under 0648-0330 at 3 minutes per response; the inspection of an observer sampling station is approved under 0648-0269 at 2 hours per response; and the electronic transmittal of observer data is approved under 0648-0307 at 10 minutes per response.

The estimates of response times given here include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS (see ADDRESSES) and to OMB (see ADDRESSES).

NMFS prepared an FRFA for this final rule that describes the impact this action will have on small entities. A copy of this analysis is available from NMFS. No comments were received on the initial regulatory flexibility analysis prepared for this action. The Summary and Conclusions section of the FRFA states:

This action revises and clarifies 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; to improve the clarity and consistency of the implementing regulations; and to reduce unnecessary regulatory burdens. It is being promulgated under the authority of the Magnuson-Stevens Act. This action will directly affect the 13 freezer longliners currently equipped with scales or observer sampling stations that may be small entities. 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. This action will impose no new reporting or recordkeeping requirements nor will it duplicate, overlap, or conflict with existing Federal rules. NMFS estimates that this action will cost the owners of directly affected freezer longliners less than \$8,500 distributed among the 13 vessels and in no case cost any one vessel more than \$1,700. This represents less than .06 percent of the average per-vessel gross revenues for the affected vessels. In addition to the preferred alternative, the analysis considered two other alternatives: a "no action" alternative that would not revise the existing regulations; and a "partial implementation" alternative that would implement some of the proposed revisions. These alternatives were rejected because they would fail to make the changes necessary for successful management of these

programs. NMFS cannot quantify measures to minimize economic impacts on small entities with this type of rulemaking, which is being implemented to ensure that the NMFS-certified observer on board a vessel is able to collect data in a reliable and unbiased manner within a safe working environment. However, the preferred alternatives selected were crafted to minimize costs to the industry and still achieve safety goals.

A copy of the RIR/FRFA can be obtained from NMFS (see ADDRESSES).

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

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 19, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.28, the section heading is revised; introductory text to paragraphs (b)(2)(iii), (b)(3), (b)(3)(ii)(B), (b)(5), and (d)(8), is revised; and paragraphs (b)(2)(vii), (b)(3)(ii)(A), (b)(5)(i), (b)(6), (d)(2), (d)(3), (d)(5) through (d)(7), and (d)(8)(i)(G) are revised to read as follows:

§ 679.28 Equipment and operational requirements.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iii) Who may perform scale inspections? Scales must be inspected by either a NMFS staff scale inspector or a scale inspector employed by a weights and measures agency designated by NMFS to perform scale inspections on its behalf. A list of authorized scale inspectors is available from the Regional Administrator upon request. Scale inspections are paid for by NMFS.

\* \* \* \* \*

(vii) Scale inspection report. (A) A scale is approved for use when the scale inspector completes and signs a scale inspection report verifying that the scale meets all of the requirements specified in this paragraph (b)(2) and appendix A to this part.

(B) The scale inspector must provide the original inspection report to the vessel owner and a copy to NMFS.

(C) The vessel owner must either:

(1) Maintain a copy of the report on board when use of the scale is required and make the report available to the observer, NMFS personnel, or an authorized officer, upon request, or;

(2) Display a valid NMFS-sticker on each approved scale.

(D) When in use, an approved scale must also meet the requirements described in paragraphs (b)(3) through (b)(6) of this section.

(3) At-sea scale tests. To verify that the scale meets the MPEs specified in this paragraph (b)(3), the vessel operator must test each scale or scale system used to weigh total catch one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

\* \* \* \* \*

(ii) \* \* \* (A) The MPE for platform and hanging scales is plus or minus 0.5 percent of the known weight of the test material.

(B) Test weights. Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection. The amount of test weights that must be provided by the vessel owner is specified in paragraphs (b)(3)(ii)(B)(1) and (b)(3)(ii)(B)(2) of this section.

\* \* \* \* \*

(5) Printed reports from the scale (not applicable to observer sampling scales). The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made and be made available to observers, NMFS personnel, or an authorized officer. In addition, printed reports must be retained by the vessel owner for 3 years after the end of the year during which the printouts were made.

(i) Reports of catch weight and cumulative weight. Reports must be printed at least once every 24 hours when use of the scale is required. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the

perceived weight of water, mud, debris, or other materials. Scale printouts must show:

- (A) The vessel name and Federal fisheries or processor permit number;
- (B) The haul or set number as recorded in the processor's DCPL (see § 679.5);
- (C) The total weight of the haul or set;
- (D) The total cumulative weight of all fish or other material weighed on the scale.

\* \* \* \* \*

(6) *Scale installation requirements.* The scale display must be readable from where the observer collects unsorted catch.

\* \* \* \* \*

(d) \* \* \*

(2) *Location—(i) Motherships and catcher/processors or catcher vessels using trawl gear.* The observer sampling station must be located within 4 m of the location from which the observer collects unsorted catch. Clear, unobstructed passage must be provided between the observer sampling station and the location where the observer collects unsorted catch. When standing where unsorted catch is sampled, the observer must be able to see that no fish have been removed between the bin and the scale used to weigh total catch.

(ii) *Vessels using nontrawl gear.* The observer sampling station must be located within 5 m of the collection area, described at § 679.28(d)(7)(ii)(B), unless any location within this distance is unsafe for the observer. Clear, unobstructed passage must be provided between the observer sampling station and the collection area. Access must be provided to the tally station, described at § 679.28(d)(7)(ii)(A). NMFS may approve an alternative location if the vessel owner submits a written proposal describing the alternative location and the reasons why a location within 5 m of where fish are brought on board the vessel is unsafe, and the proposed observer sampling station meets all other applicable requirements of this section.

(iii) *What is clear, unobstructed passage?* 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 be at least 1.8 m high. Doorways or companionways must be free of obstacles.

(3) *Minimum work space.* The observer must have a working area for sampling of at least 4.5 square meters. This working area includes the observer's sampling table. The observer must be able to stand upright and have

a work area at least 0.9 m deep in the area in front of the table and scale.

\* \* \* \* \*

(5) *Observer sampling scale.* The observer sampling station must include a NMFS-approved platform scale with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor. The scale must be approved by NMFS under paragraph (b) of this section and must meet the maximum permissible error requirement specified in paragraph (b)(3)(ii)(A) of this section when tested by the observer.

(6) *Other requirements.* The sampling station must include flooring that prevents slipping and drains well (grating or other material where appropriate), adequate lighting, and a hose that supplies fresh or sea water to the observer.

(7) *Requirements for sampling catch—(i) Motherships and catcher/processors using trawl gear.* The conveyor belt conveying unsorted catch must have a removable board to allow fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch so that the observer can use this scale to weigh large samples. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling a haul.

(ii) *Catcher/processors using non-trawl gear.* In addition to the sampling station, vessels using non-trawl gear must provide: (A) *Tally station.* A place where the observer can see the gear as it leaves the water and can count and identify fish. It must be within 5 m of where fish are brought aboard the vessel and in a location where the observer is not in danger of falling overboard or being injured during gear retrieval. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high, grating or other non-slip material, and adequate lighting.

(B) *Collection area.* A collection area is a place where the observer, or vessel crew under the observer's guidance, collects fish as they come off the line or are removed from pots. It must be located where the observer can see the gear when it leaves the water. Where exposed to wind or seas, it must be equipped with a railing at least 1.0 m high and grating or other non-slip material.

(8) *Inspection of the observer sampling station.* Each observer sampling station must be inspected and

approved by NMFS prior to its use for the first time and then one time each year within 12 months of the date of the most recent inspection with the following exceptions: If the observer sampling station is moved or if the space or equipment available to the observer is reduced or removed when use of the observer sampling station is required, the observer sampling station inspection report issued under this section is no longer valid, and the observer sampling station must be reinspected and approved by NMFS. Inspection of the observer sampling station is in addition to inspection of the at-sea scales by an authorized scale inspector required at paragraph (b)(2) of this section.

(i) \* \* \*

(G) For catcher/processors using trawl gear and motherships, a diagram drawn to scale showing the location(s) where all catch will be weighed, the location where observers will sample unsorted catch, and the location of the observer sampling station as described at paragraph (d) of this section.

\* \* \* \* \*

3. In § 679.32, paragraphs (c)(4)(iii) and (c)(4)(iv) are redesignated as paragraphs (c)(4)(iv) and (c)(4)(v) respectively, and a new paragraph (c)(4)(iii) is added to read as follows:

**§ 679.32 Groundfish and halibut CDQ catch monitoring.**

\* \* \* \* \*

(c) \* \* \*

(4) \* \* \*

(iii) Obtain the data entry software provided by the Regional Administrator ("ATLAS software") for use by the observer and ensure that observer data can be transmitted from the vessel to NMFS at any time while the vessel is receiving, catching or processing CDQ species.

\* \* \* \* \*

4. In appendix A to part 679, in section 2.3.1.8, paragraphs (a)(iv) and (a)(v), in section 3.3.1.7, paragraphs (a)(iv) and (a)(v), and in section 4.3.1.5, paragraph (iv) are removed; in section 2.3.1.8, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively; in section 3.3.1.7, paragraphs (a)(vi) through (a)(viii) are redesignated as paragraphs (a)(iv) through (a)(vi) respectively; in section 4.3.1.5, paragraph (a)(v) is redesignated as paragraph (a)(iv); and the definition of "security seals or means" in section 5.0 is revised to read as follows:

**APPENDIX A TO PART  
679 PERFORMANCE AND  
TECHNICAL REQUIREMENTS FOR  
SCALES USED TO WEIGH CATCH AT  
SEA IN THE GROUND FISH FISHERIES  
OFF ALASKA**

\* \* \* \* \*

*5. Definitions*

\* \* \* \* \*

*Security seals or means*—A physical seal such as a lead and wire seal that must be broken in order to change the operating or performance characteristics of the scale, or a number generated by the scale whenever a change is made to

an adjustable component. The number must be sequential and it must not be possible for the scale operator to alter it. The number must be displayed whenever the scale is turned on.

\* \* \* \* \*

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