

within the buffer zone that is taking them away from the safety zone.

(2) If weather and/or sea conditions as described in the Letter of Authorization preclude adequate aerial surveillance, detonation must be delayed until conditions improve sufficiently for aerial surveillance to be undertaken.

(3) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next detonation.

§ 216.164 Prohibitions.

Notwithstanding takings authorized by § 216.161(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified in this subpart.

§ 216.165 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the appropriate Regional Director at least 2 weeks prior to activities involving the detonation of explosives in order to satisfy paragraph (f) of this section.

(b) The holder of the Letter of Authorization must designate qualified on-site individuals, as specified in the Letter of Authorization, to record the effects of explosives detonation on marine mammals that inhabit the Atlantic Ocean test area.

(c) The Atlantic Ocean test area must be surveyed by marine mammal biologists and other trained individuals, and the marine mammal populations monitored, approximately 3 weeks prior to detonation, 48–72 hours prior to a scheduled detonation, on the day of detonation, and for a period of time specified in the Letter of Authorization after each detonation. Monitoring shall include, but not necessarily be limited to, aerial and acoustic surveillance sufficient to ensure that no marine mammals are within the designated safety zone nor are likely to enter the designated safety zone prior to or at the time of detonation.

(d) Under the direction of a certified marine mammal veterinarian,

examination and recovery of any dead or injured marine mammals will be conducted. Necropsies will be performed and tissue samples taken from any dead animals. After completion of the necropsy, animals not retained for shoreside examination will be tagged and returned to the sea. The occurrence of live marine mammals will also be documented.

(e) Activities related to the monitoring described in paragraphs (c) and (d) of this section, or in the Letter of Authorization issued under § 216.106, including the retention of marine mammals, may be conducted without the need for a separate scientific research permit. The use of retained marine mammals for scientific research other than shoreside examination must be authorized pursuant to subpart D of this part.

(f) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on any ship or aircraft involved in marine mammal reconnaissance, or monitoring either prior to, during, or after explosives detonation in order to monitor the impact on marine mammals.

(g) A final report must be submitted to the Director, Office of Protected Resources, no later than 120 days after completion of shock testing the USS SEAWOLF. This report must contain the following information:

(1) Date and time of all detonations conducted under the Letter of Authorization.

(2) A description of all pre-detonation and post-detonation activities related to mitigating and monitoring the effects of explosives detonation on marine mammal populations.

(3) Results of the monitoring program, including numbers by species/stock of any marine mammals noted injured or killed as a result of the detonation and numbers that may have been harassed due to presence within the designated safety zone.

(4) Results of coordination with coastal marine mammal/sea turtle stranding networks.

§ 216.166 Modifications to the Letter of Authorization.

(a) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.161(b), or that significantly and detrimentally alters the scheduling of explosives detonation within the area specified in § 216.161(a), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. A notice will be published in the Federal Register subsequent to the action.

§§ 216.167–216.169 [Reserved]

[FR Doc. 96–19659 Filed 8–1–96; 8:45 am]

BILLING CODE 3510–22–W

50 CFR Part 679

[Docket No. 960717195–6195–01; I.D. 070196E]

RIN 0648–AI95

Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Fisheries Research Plan; Interim Groundfish Observer Program

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 that would implement Amendment 47 to the Fishery Management Plan for Groundfish of the Gulf of Alaska, Amendment 47 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Groundfish FMPs), and Amendment 6 to the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands Area (Crab FMP). This action also would repeal regulations implementing the North Pacific Fisheries Research Plan (Research Plan). This action is necessary to respond to the North Pacific Fishery Management Council's (Council) recommendation to repeal the Research Plan and implement Amendments 47 and 47 to the Groundfish FMPs to establish mandatory groundfish observer coverage requirements through 1997. Amendment 6 to the Crab FMP would remove reference to the Research Plan. This action is intended to establish an Interim Groundfish Observer Program until a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs,

and observer compensation and working conditions is recommended by the Council and implemented by NMFS.

DATES: Comments must be received by September 16, 1996.

ADDRESSES: Comments should be sent to Ronald J. Berg, 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 W. 9th Street, Juneau, AK.

Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed Interim Groundfish Observer Program may be obtained from the North Pacific Fishery Management Council, Suite 306, 605 West 4th Avenue, Anchorage, AK 99501-2252; telephone: 907-271-2809. Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503, Attn: NOAA Desk Officer.

Copies of the Observer Plan and information regarding observer qualifications, observer training/briefing requirements, and NMFS' selection criteria for observer contractors are available from the Observer Program Office, Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206-526-4197.

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 management area (BSAI) in the exclusive economic zone are managed by NMFS under the Groundfish FMPs. The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*; Magnuson 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 are codified at 50 CFR part 620. Regulations that implement the Research Plan appear at 50 CFR part 679. The Crab FMP delegates management of the crab resources in the BSAI to the State of Alaska (State) with Federal oversight. Regulations necessary to carry out the Crab FMP appear at 50 CFR part 679.

A data collection program to obtain information necessary for conservation and management of the groundfish fisheries was authorized by regulations implementing Amendments 18 and 13 to the Groundfish FMPs (54 FR 50386, December 6, 1989). One of the measures in Amendments 18 and 13 authorized a comprehensive U.S. fishery observer program. NMFS, in consultation with the Council, prepared and implemented an Observer Plan to implement provisions of that program (55 FR 4839; February 12, 1990; 56 FR 30874, July 8, 1991; 59 FR 22133, April 29, 1994). The Alaska Board of Fisheries implemented a Shellfish Onboard Observer Program for the king and Tanner crab fisheries off Alaska in April 1988 (5 AAC 39.645).

A final rule implementing the Research Plan was published in the Federal Register (59 FR 46126, September 6, 1994), under the authority of section 313 of the Magnuson Act, as amended by section 404 of the High Seas Driftnet Fisheries Enforcement Act, Public Law 102-582. The Research Plan requires that observers be stationed on certain fishing vessels and U.S. fish processors participating in the BSAI groundfish, GOA groundfish, and BSAI king and Tanner crab fisheries. These requirements may be extended to the halibut fishery off Alaska. Observers are deployed for the purpose of collecting data necessary for the conservation, management, and scientific understanding of fisheries under the Council's authority. The Research Plan also established a system of fees to pay for the costs of implementing the Research Plan. Minor additions and/or changes to the regulations implementing the Research Plan were published in the Federal Register on January 9, 1995 (60 FR 2344); July 5, 1995 (60 FR 34904); and August 16, 1995 (60 FR 42470).

Full implementation of the Research Plan was delayed until 1997 (60 FR 66755; December 26, 1995) after the Council requested additional time to reconsider certain elements of the Research Plan that it had previously adopted. This action maintained 1995 observer coverage requirements through 1996 and retained effectiveness of the following sections of the Observer Plan: (1) Standards of observer conduct; and (2) description, specifications, and work statement for certified observer contractors, including conflict of interest standards for NMFS-certified observers and contractors and conditions for contractor and observer certification revocation.

At its December 1995 meeting, the Council requested that NMFS repeal the Research Plan and pursue an alternative to the Research Plan that would revert

back to direct payment for observer services rather than a fee-based program. The proposed repeal of the Research Plan is explained further in an interim final rule published in the Federal Register on March 28, 1996 (61 FR 13782), and in a notice of availability published in the Federal Register on July 12, 1996 (61 FR 36702).

One alternative long-term observer program being considered by the Council to supersede the Research Plan would require NMFS to contract with a third party to serve as a liaison between persons requiring observer services and companies providing those services. NMFS met with the Council's newly named Observer Advisory Committee (OAC) in March 1996 to review the proposed Research Plan alternatives. The OAC highlighted to the Council at its April 1996 meeting that even though observer compensation and certain other costs were not currently quantifiable, the third-party alternative would be more expensive than the observer program prior to the Research Plan. At its April 1996 meeting, the Council reviewed a draft analysis of alternatives to the Research Plan and determined that additional cost comparisons of these alternatives must be completed before it adopts an alternative to the Research Plan. The Council is scheduled to receive more information on a long-term replacement to the Research Plan at its September 1996 meeting.

Existing observer coverage requirements under Amendment 1 to the Research Plan are scheduled to expire on December 31, 1996. At its April 1996 meeting, the Council adopted an Interim Groundfish Observer Program that would supersede the Research Plan and authorize mandatory groundfish observer coverage requirements through 1997. The Interim Groundfish Observer Program would extend 1996 groundfish observer coverage requirements as well as vessel and processor responsibilities relating to the observer program. Proposed changes to the groundfish observer program are described below. The Interim Groundfish Observer Program would remain effective through December 31, 1997, unless superseded by a long-term program that addresses concerns about observer data integrity, equitable distribution of observer coverage costs, observer compensation and working conditions, and other concerns raised by the Council's OAC. Under this action, observer coverage requirements for the BSAI king and Tanner crab fisheries would no longer be specified in Federal regulations. Observer coverage requirements for the crab fisheries

would revert back to a category 3 measure in the Crab FMP and would be specified by the Alaska Board of Fisheries.

Elements of the Proposed Interim Groundfish Observer Program

1. Observer coverage requirements would apply to vessels issued a Federal fisheries permit and processors issued a Federal processor permit. Fishing operations by these vessels and processors in Federal and state waters would be subject to Federal observer coverage requirements. This applicability of the Observer Program would be unchanged from the applicability of the domestic observer program implemented prior to the Research Plan.

2. Current observer coverage requirements for groundfish vessels and shoreside processors receiving groundfish would remain unchanged and are set out in this proposed rule at § 679.50 (c) and (d). Participants in the groundfish fisheries would continue to be responsible for making their own arrangements with certified observer contractors and paying for required observer coverage.

3. The Director, Alaska Region, NMFS, (Regional Director) could make inseason adjustments in observer coverage requirements similar to the Research Plan. Any inseason adjustment would be based on specified findings and implemented using the procedure for inseason adjustments at § 679.25(c). Similar to the Research Plan, any inseason adjustment to observer coverage requirements would be published in the Federal Register at least 10 calendar days prior to the effective date. Regulations implementing the Regional Director's ability to make inseason adjustments in observer coverage requirements are set out in this proposed rule at § 679.50(e).

4. Vessel and shoreside processor responsibilities would remain unchanged. These regulations are set out in this proposed rule at § 679.50(f).

5. The interim program would expand regulations governing the Observer Program to include criteria and procedures for observer and observer contractor certification, suspension, and decertification. Previously, these criteria and procedures were included in the Observer Plan. Certification, suspension, and decertification criteria and procedures now are included in this proposed rule at § 679.50(h), (i), and (j). The proposed criteria and procedures are essentially unchanged from the provisions under the Observer Plan, except that:

a. Observer contractors certified by NMFS prior to January 1, 1997, would receive a 1-year certification extension that expires December 31, 1997. The currently certified observer contractors would not have time to go through a new certification process, nor would NMFS have adequate time to carry out the administrative procedures necessary for their recertification prior to implementation of the Observer Program on January 1, 1997. Any certified observer contractor could be decertified according to the decertification procedures that are set out in this proposed rule.

b. Observers and observer contractors cannot have a direct financial interest or a conflict of interest in any commercial fishery in State or Federal waters off Alaska. The conflict of interest standards in the Observer Plan were more narrowly applied to the observed fishery.

c. Observer qualifications have been revised as follows and would be available from the Observer Program Office (see **ADDRESSES**):

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 and must also have successfully completed at least one undergraduate course each in math and statistics (minimum of 5 semester hours total). 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 successfully complete any screening test(s) administered by NMFS. These tests would measure basic math, 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 would 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 math, statistics, and computer skills requirements reflect the increased responsibilities of observers and are similar to the observer qualifications under the Research Plan, had it been fully implemented. The observer qualifications are presented here to provide an opportunity for public comment.

d. Training/briefing requirements for certification have been revised as follows and would be available from the Observer Program Office (See **ADDRESSES**):

A. Observers who have completed a deployment must be recertified prior to another deployment. Individuals whose last deployment was within 12 months must complete a 2-day briefing and individuals whose last deployment was 12 to 24 months ago must complete a 4-day briefing. If 2 years have passed since the completion of an individual's last deployment, he or she must complete the full training course.

B. If an observer remains undeployed from 1 to 3 months after completion of training, the individual must complete a 2-day briefing. If the individual is not deployed from 3 to 6 months after training, a 4-day briefing must be completed. If more than 6 months have passed since the completion of training, the individual must retake the full training course.

C. Briefings (2- or 4-day) expire after 1 month. Individuals may be required to complete a 4-day briefing or the full training course if deemed necessary by the Observer Program Office.

These recertification requirements are identical to those under the Research Plan, had it been implemented and are presented here to provide an opportunity for public comment.

e. Selection criteria for observer contractors would be used by NMFS to gauge the adequacy of the applicant to provide observer services. These criteria are unchanged from the Observer Plan and would be available from the Observer Program Office (See **ADDRESSES**). They are presented here to provide an opportunity for public comment. Applicants for observer contractor certification would be evaluated by NMFS using the following criteria:

A. Ability to supply required observer services:

i. Methods to be used to recruit, evaluate, and select qualified applicants to serve as observers.

ii. Methods to be used in establishing, organizing and performing all logistics associated with the deployment of observers.

iii. Methods to be used in scheduling observers for certification training or briefing, observer deployments, assignments to vessels and shoreside facilities so that observer coverage and sampling requirements are met.

iv. Provisions for communications with observers, vessels, shoreside facilities, and NMFS to provide and exchange required information on scheduling, weekly logistics reports, emergencies, and instructions for observers, vessels, and shoreside facilities.

v. Methods to be used in monitoring observer performance, observer work between vessels and upon return from sea or duty station, NMFS debriefing upon completion of each deployment and final preparation and submission of reports and data.

B. Expertise and capability of applicant's organization:

i. Technical competence of staff based on resumes of key personnel that show their abilities, education, training, and experience in relation to their proposed assignments and areas of responsibilities on a particular project.

ii. Organizational structure including number of personnel to be assigned, in categories of professional, technical, and clerical positions, to each phase of the project including provisions for the backup of each key staff member during planned and unplanned absences.

C. Expressed understanding of the purpose of the Observer Program, the role of the observer contractor, and the important aspects of this type of project that lead to successful performance of work.

D. Summaries of similar work recently completed, including description of work and contact person and telephone number of client.

f. Observer contractors must provide a certificate of insurance that verifies compliance with the insurance coverage recommendations of the Council's Insurance Technical Committee. This coverage must include the following provisions:

A. Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

B. Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

C. States Worker's Compensation as required.

D. Contractual General Liability.

g. Observer contractors would be required to submit information to NMFS

that would be used to: Coordinate and conduct effective and efficient scheduling of observers for training, briefing, and debriefing sessions, maintain an observer deployment database, and monitor the requirements of a certified observer contractor. This information would include:

A. A list of prospective observers to be hired upon approval by NMFS and observer training/briefing registration.

B. Projected observer assignments.

C. Observer deployment/logistics reports.

D. Observer debriefing registration.

E. Notification that prospective observers have passed a physical examination during the 12 months prior to deployment.

F. A copy of each type of signed and valid contract an observer contractor has with vessels and shoreside processors requiring observer services and with observers. Copies of signed and valid contracts with specific entities requiring observer services or with specific observers also may be requested.

G. Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems.

Observers' social security numbers are requested with the training/briefing registration to provide a unique numerical identifier for each observer. This information has been requested in the past and observers' social security numbers are included in the existing Observer Program database. Regulations for the information collection are set out in this proposed rule at § 679.50(i)(2)(xiv).

7. Criteria for the suspension and/or decertification of observers or observer contractors include the following appeals process whereby documentary evidence, disputes, and petitions may be submitted:

a. Within 30 days of receipt of a suspension or decertification notice, observers and observer contractors may provide written documentary evidence and argument in opposition to the notice. They are also afforded the opportunity to submit additional evidence that was previously unavailable and in some instances, may appear in person and present witnesses.

b. Observers and observer contractors also may petition for review of a suspension or decertification decision within 30 days after the date the decision was served.

These criteria are unchanged from the Observer Plan. Regulations for this information collection are set out in this proposed rule at § 679.50(k) (6), (7), and (8).

8. Observer contractors would be restricted in how they could assign observers to vessels or shoreside processors in the following ways:

a. Observers must not be deployed on the same vessel for more than 90 days in a 12-month period;

b. A deployment to a vessel or a shoreside processing facility cannot exceed 90 days without approval from the Observer Program Office (See **ADDRESSES**.); and

c. A deployment cannot include assignments to more than four vessels and/or shoreside processors. NMFS began instituting these policies in 1990 to reduce the likelihood of conflicts of interest and to ensure that debriefings occurred more frequently, so that NMFS could process the observers' collected fisheries data.

9. A revision to regulations at § 679.7(g)(2) would clarify NMFS' intent that fish sorting of any kind prior to observer sampling procedures is prohibited. Concerns exist that mechanical and/or physical sorting could be occurring. For example, modifications to the angle and speed of incline belts in processing lines and bin openings that restrict the flow of fish act effectively to sort fish prior to observer sampling procedures. NMFS specifically requests comments on what, if any, impact this clarification could have on vessel or processor operations.

10. A prohibition at § 679.7(f)(14) would be removed to maintain consistency with the proposed removal of Research Plan regulations at part 679. Section 679.7(f)(14) prohibits permitted registered buyers required to obtain a Federal processor permit from transferring or receiving sablefish harvested in Federal waters or halibut, unless the person possesses a valid Federal processor permit. The intent of this prohibition was to reinforce the requirement that all Research Plan processors pay their fees in a timely manner and would thus be eligible for a Federal processor permit. This prohibition is no longer necessary because Research Plan fee collections have been terminated.

Three elements of the proposed Interim Groundfish Observer Program would not be codified in regulation: (1) Observer qualifications, (2) observer training/briefing requirements, and (3) NMFS' selection criteria for observer contractors. These elements are available upon request. Although they would not be codified, they are viewed as a part of the rule and are presented in the preamble specifically to provide opportunity for public comment. Prior to proposing future changes to these three elements, NMFS would publish a

notice in the Federal Register describing the proposed change(s) and providing an opportunity for public comment.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendments this rule would implement are consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

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

NMFS prepared an IRFA as part of the regulatory impact review, which describes the impact this proposed rule would have on small entities, if adopted. Based on that analysis, it was determined that this proposed rule could, if issued in final, have a significant economic impact on a substantial number of small entities. Observer costs 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. For individual vessels, the impact would increase as the percentage of observer costs relative to total exvessel value of catch increases. In 1995, about 400 vessels carried observers; of these vessels about 280 were catcher vessels. About one half of the catcher vessels equal to or greater than 60-ft (18.3-meters (m)) length overall (LOA) but less than 125-ft (38.1-m) LOA paid observer costs that were equal to or less than 1 percent of the exvessel value of catch. About 20 percent of vessels incurred observer costs that ranged from 2 to almost 8 percent of the exvessel value of catch. This represents cost increases from Research Plan costs that were limited to 2 percent of the exvessel value of catch. For motherships and shoreside processors, the impact also would increase as the percentage of observer costs relative to total exvessel value of processed catch increases. In 1995, about 26 motherships and shoreside processors carried observers. About 35 percent of these processors incurred observer costs that ranged from 1 to 7 percent of the exvessel value of catch received and processed from catcher vessels. This represents cost increases from the processor's portion of Research

Plan costs that were limited to 1 percent of the exvessel value of catch. The Research Plan represents an alternative to this proposed rule which could minimize the economic impact on some small entities. But for reasons already explained elsewhere (this preamble; 61 FR 13782, March 28, 1996; and 61 FR 36702, July 12, 1996), this proposed rule would repeal the Research Plan. Copies of the EA/RIR/IRFA can be obtained from NMFS (see ADDRESSES).

This proposed rule contains a new collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection of information has been submitted to OMB for approval. The new information requirement consists of certification applications for new observer contractors, reports submitted by observer contractors to NMFS that would be used by NMFS to facilitate Observer Program Office operations and to monitor the ongoing requirements of a certified observer contractor, and appeals of suspension and/or decertification from observers and observer contractors. The annual public reporting burden for this collection of information is estimated to be: 60 hours per certification application (a contractor would apply every 3 years); 3 minutes per certificate of insurance; 7 minutes per training/briefing registration; 2 minutes per notification of observer physical examination; 2 hours per physical examination; 7 minutes per projected observer assignment; 7 minutes per weekly deployment/logistics report; 7 minutes per debriefing registration; 15 minutes per copies of five contracts; 2 hours per report of observer harassment, observer safety concerns, or observer performance problems; 80 hours per suspension/decertification appeal by an observer contractor (projected to occur only once in 5 years); and 4 hours per suspension/decertification appeal by an observer, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This proposed rule contains requirements for electronic transmission of observer data by vessels and shoreside processors receiving pollock harvested in the catcher vessel operational area. This information collection already was approved by OMB (OMB control number 0648-0307). Send comments regarding burden estimates or any other aspect of the data requirements, including suggestions for reducing the burdens, to NMFS and OMB (see ADDRESSES).

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.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: July 29, 1996.

Charles Karnella,

*Acting, Program Management Officer,
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.* and 1801 *et seq.*

2. In § 679.1, paragraph (f) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(f) *Groundfish Observer Program.* Regulations in this part govern elements of the Groundfish Observer Program for the BSAI groundfish and GOA groundfish fisheries under the Council's authority (see subpart E of this part).

* * * * *

3. In § 679.2, the following definitions are removed: "Bimonthly", "Exvessel price", "Fee percentage", "Research Plan", "Research Plan fisheries", "Retained catch", and "Standard exvessel price".

a. In § 679.2, the following definitions are added: "Briefing", "Debriefing", "Deployment", "Direct financial interest", "North Pacific fishery", "Observer contractor", and "Observer Program Office".

b. In § 679.2, the following definitions are revised: "Buying station", paragraph (3) of "Catcher/processor", paragraph (1) of "Catcher vessel", "Fishing day", paragraph (3) of "Fishing trip", paragraph (2) or "Mothership", "Observed or observed data", "Observer", "Processor", "Round weight or round-weight equivalent", and "Shoreside processor".

§ 679.2 Definitions.

* * * * *

Briefing means a short (usually 2-4 day) training session that observers must complete to fulfill certification requirements.

Buying station means a person or vessel that receives unprocessed groundfish from a vessel for delivery at a different location to a shoreside processor or mothership and that does not process those fish.

* * * * *

Catcher/processor * * *

(3) With respect to subpart E of this part, a processor vessel that is used for, or equipped to be used for, catching fish and processing that fish.

Catcher vessel * * *

(1) With respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and that does not process fish on board.

* * * * *

Debriefing means the post-deployment process that includes a one-on-one interview with NMFS staff, a NMFS preliminary data review, observer completion of all data corrections noted, observer preparation of affidavits and reports, and completion of tasks related to biological specimens or special projects.

Deployment means the period between an observer's arrival at the point of embarkation and the date the observer disembarks for travel to debriefing.

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer or observer contractor duties.

* * * * *

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 are retained. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

* * * * *

Fishing trip * * *

(3) With respect to subpart E of this part, one of the following time periods:

(i) For a vessel used to process groundfish or a catcher vessel used to deliver groundfish to a mothership, a weekly reporting period during which one or more fishing days occur.

(ii) For a catcher vessel used to deliver groundfish to other than a mothership, the time period during which one or more fishing days occur 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.

* * * * *

Mothership * * *

(2) With respect to subpart E of this part, a processor vessel that receives and processes groundfish from other vessels and is not used for, or equipped to be used for, catching groundfish.

* * * * *

North Pacific fishery means any commercial fishery in State or Federal waters off Alaska.

Observed or observed data refers to data collected by observers (see § 679.21(f)(7) and subpart E of this part).

Observer means any individual that is awarded NMFS certification to serve as an observer under this part, is employed by an observer contractor for the purpose of providing observer services to vessels or shoreside processors under this part, and is acting within the scope of his/her employment.

Observer contractor means any person that is awarded NMFS certification to provide observer services to vessels and shoreside processors under subpart E and who contracts with observers to provide these services.

Observer Program Office means the administrative office of the Groundfish Observer Program located at Alaska Fisheries Science Center, Building 4, 7600 Sand Point Way Northeast, Seattle, WA 98115, telephone: 206-526-4197.

* * * * *

Processor means any shoreside processor, catcher/processor, mothership, any person who receives groundfish from fishermen for commercial purposes, any fisherman who transfers groundfish outside of the United States, and any fisherman who sells fish directly to a restaurant or to an individual for use as bait or personal consumption.

* * * * *

Round weight or round-weight equivalent, for purposes of this part, means the weight of groundfish calculated by dividing the weight of the primary product made from that groundfish by the PRR for that primary product as listed in Table 3 of this part, or, if not listed, the weight of groundfish calculated by dividing the weight of a primary product by the standard PRR as determined using the best available evidence on a case-by-case basis.

* * * * *

Shoreside processor means any person or vessel that receives unprocessed groundfish, except catcher/processors, motherships, buying stations, restaurants, or persons

receiving groundfish for personal consumption or bait.

* * * * *

4. In § 679.4, paragraph (g) is removed and paragraphs (f)(1)(i), (f)(1)(ii), and (f)(2)(ii) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(f) *Federal Processor permit*—(1) *General*—(i) *Applicability*. In addition to the permit and licensing requirements in paragraphs (b) and (d) of this section, and except as provided in paragraph (f)(1)(ii) of this section, a processor of groundfish must have a Federal processor permit issued by the Regional Director.

(ii) *Exception*. Any fisherman who transfers groundfish outside the United States, or any fisherman who sells groundfish directly to a restaurant or to an individual for use as bait or for personal consumption is not required to have a Federal processor permit.

(2) * * *

(ii) The fishery or fisheries for which the permit is requested.

* * * * *

5. In § 679.5, paragraph (a)(2) is revised to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(a) * * *

(2) *Applicability, Federal processor permit*. Any processor that retains groundfish is responsible for complying with the applicable recordkeeping and reporting requirements of this section.

* * * * *

6. In § 679.7, paragraph (b)(1) is removed, paragraphs (b)(2) through (b)(4) are redesignated as paragraphs (b)(1) through (b)(3), respectively, paragraph (f)(14) is removed, paragraph (f)(15) is redesignated as paragraph (f)(14), paragraphs (g)(5) through (g)(7) are removed, paragraphs (g)(3) and (g)(4) are redesignated as paragraphs (g)(4) and (g)(5), respectively, a new paragraph (g)(3) is added, paragraphs (g)(8) and (g)(9) are redesignated as paragraphs (g)(6) and (g)(7), respectively, and paragraphs (a)(3), (g)(2), and newly redesignated paragraph (g)(7) are revised to read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(3) *Groundfish Observer Program*.

Fish for groundfish except in compliance with the terms of the Groundfish Observer Program as provided by subpart E of this part.

* * * * *

(g) * * *

(2) Interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer. * * *

(7) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

* * * * *

7. In § 679.21, paragraph (c)(3) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(c) * * *

(3) *Exemption.* Motherships and shoreside processors that are not required to obtain observer coverage during a month under § 679.50 (c) and (d) are not required to retain salmon.

* * * * *

8. Subpart E is revised to read as follows:

Subpart E—Groundfish Observer Program

Sec.

679.50 Groundfish Observer Program

Subpart E—Groundfish Observer Program

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

(a) *General.* Operators of vessels possessing a Federal fisheries permit under § 679.4(b)(1) and processors that possess a Federal processor permit under § 679.4(f)(1), must comply with this section. The owner of a fishing vessel subject to this part or a processor subject to this part must ensure that the operator or manager complies with this section and is jointly and severally liable for such compliance.

(b) *Purpose.* The purpose of the Groundfish Observer Program is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for management, compliance monitoring, and research of groundfish fisheries and for the conservation of marine resources or their environment.

(c) *Observer requirements for vessels.*

(1) Observer coverage is required as follows:

(i) A mothership of any length that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel each day it receives or processes groundfish during that month.

(ii) A mothership of any length that processes from 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer aboard the vessel at least 30 percent of the days it receives or processes groundfish during that month.

(iii) Each mothership that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on August 15 under § 679.23(e)(2) is required to have a second observer aboard, in addition to the observer required under paragraphs (c)(1) (i) and (ii) of this section, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(iv) A catcher/processor or catcher vessel 125 ft (38.1 m) LOA or longer must carry an observer during 100 percent of its fishing days except for a vessel fishing for groundfish with pot gear as provided in paragraph (c)(1)(vii) of this section.

(v) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA, but less than 125 ft (38.1 m) LOA, 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 in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(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 at all times 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.

(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 in that calendar quarter and at all times during at least one fishing trip in

a calendar quarter for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(2) *Groundfish fishery categories requiring separate coverage—(i) Pollock fishery.* Directed fishing for groundfish that results in a retained catch of pollock, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(ii) *Pacific cod fishery.* Directed fishing for groundfish that results in a retained catch of Pacific cod, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iii) *Sablefish fishery.* Directed fishing for groundfish that results in a retained catch of sablefish, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(iv) *Rockfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of rockfish of the genera *Sebastes* and *Sebastolobus*, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(v) *Flatfish fishery.* Directed fishing for groundfish that results in a retained aggregate catch of all flatfish species, except Pacific halibut, during any fishing trip, that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

(vi) *Other species fishery.* Directed fishing for groundfish that results in a retained catch of groundfish, during any fishing trip, that does not qualify as a pollock, Pacific cod, sablefish, rockfish, or flatfish fishery as defined under paragraphs (c)(2) (i) through (v) of this section.

(3) *Assignment of vessels to fisheries.* At the end of any fishing trip, a vessel's retained catch of groundfish species or species groups for which a TAC has been specified under § 679.20, in round weight or round-weight equivalent, will determine to which fishery category listed under paragraph (c)(2) of this section the vessel is assigned.

(i) *Catcher/processors.* A catcher/processor will be assigned to a fishery category based on the retained groundfish catch composition reported

on the vessel's weekly production report submitted to the Regional Director under § 679.5(i).

(ii) *Catcher vessel delivery in Federal waters.* A catcher vessel that delivers to a mothership in Federal waters will be assigned to a fishery category based on the retained groundfish catch composition reported on the weekly production report submitted to the Regional Director for that week by the mothership under § 679.5(i).

(iii) *Catcher vessel delivery in Alaska State waters.* A catcher vessel that delivers groundfish to a shoreside processor or to a mothership processor vessel in Alaska State waters will be assigned to a fishery category based on the retained groundfish catch composition reported on one or more ADF&G fish tickets as required under Alaska Statutes at A.S. 16.05.690.

(d) *Observer requirements for shoreside processors.* Observer coverage is required as follows:

(1) A shoreside processor that processes 1,000 mt or more in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility each day it receives or processes groundfish during that month.

(2) A shoreside processor that processes 500 mt to 1,000 mt in round weight or round-weight equivalent of groundfish during a calendar month is required to have an observer present at the facility at least 30 percent of the days it receives or processes groundfish during that month.

(3) Each shoreside processor that offloads pollock at more than one location on the same dock and has distinct and separate equipment at each location to process those pollock and that receives pollock harvested by catcher vessels in the catcher vessel operational area during the second pollock season that starts on August 15, under § 679.23(e), is required to have an observer, in addition to the observer required under paragraphs (d) (1) and (2) of this section, at each location where pollock is offloaded, for each day of the second pollock season until the chum salmon savings area is closed under § 679.21(e)(7)(vi), or October 15, whichever occurs first.

(e) *Inseason adjustments in observer coverage requirements.* (1) The Regional Director may adjust the observer coverage requirements set out under paragraphs (c) and (d) of this section at any time to improve the accuracy, reliability, and availability of observer data, so long as the standards of the Magnuson Act and other applicable Federal regulations are met, and the

changes are based on one or more of the following:

(i) *Adjustment.* A finding that fishing methods, times, or areas, or catch or bycatch composition for a specific fishery or fleet component have significantly changed, or are likely to change significantly.

(ii) A finding that such modifications are necessary to improve data availability or quality in order to meet specific fishery management objectives.

(2) *Procedure.* The procedure for an inseason adjustment of observer coverage requirements will comply with § 679.25(c). No change to observer coverage requirements may be implemented under this paragraph (e) until NMFS has published changes in observer coverage requirements in the Federal Register, with the reasons for the changes and any special instructions to vessels or shoreside processors required to carry observers, at least 10 calendar days prior to their effective date.

(f) *Responsibilities—(1) Vessel responsibilities.* An operator of a vessel required to carry one or more observers must provide the following:

(i) *Accommodations and food.* Provide, at no cost to observers or the United States, accommodations and food on the vessel for the observer or observers that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(ii) *Safe conditions.* (A) Maintain safe conditions on the vessel for the protection of observers by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have onboard:

(1) A valid Commercial Fishing Vessel Safety Decal issued within the past 2 years that certifies compliance with regulations found in Titles 33 CFR Chapter I and 46 CFR Chapter I;

(2) A certificate of compliance issued pursuant to 46 CFR 28.710; or

(3) A valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Ensuring that each mothership that receives pollock harvested in the catcher vessel operational area during the pollock season that starts on August 15, under § 679.23(e), is equipped with

INMARSAT Standard A satellite communication capabilities, cc:Mail remote, and the data entry software provided by the Regional Director for use by the observer. The operator of each mothership shall also make available for the observers' use the following equipment compatible therewith and having the ability to operate the NMFS-supplied data entry software program: A personal computer with a 486 or better processing chip, a DOS 3.0, or better operating system with 10 megabytes free hard disk storage, and 8 megabytes RAM.

(C) Ensuring that the communication equipment that is on motherships as specified at paragraph (f)(1)(iii)(B) of this section, and that is used by observers to transmit data, is fully functional and operational.

(iv) *Vessel position.* Allow observers access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) *Access.* Allow observers free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) *Prior notification.* Notify observers at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observers specifically request not to be notified.

(vii) *Records.* Allow observers to inspect and copy the vessel's DFL, DCPL, product transfer forms, any other logbook or document required by regulations, printouts or tallies of scale weights, scale calibration records, bin sensor readouts, and production records.

(viii) *Assistance.* Provide all other reasonable assistance to enable observers to carry out their duties, including, but not limited to:

(A) Measuring decks, codends, and holding bins.

(B) Providing the observers with a safe work area adjacent to the sample collection site.

(C) Collecting bycatch when requested by the observers.

(D) Collecting and carrying baskets of fish when requested by observers.

(E) Allowing observers to determine the sex of fish when this procedure will not decrease the value of a significant portion of the catch.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea via small boat or raft are carried out during

daylight hours, under safe conditions, and with the agreement of observers involved.

(B) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(C) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(D) Provide an experienced crew member to assist observers in the small boat or raft in which any transfer is made.

(2) *Shoreside processor responsibilities.* A manager of a shoreside processor must do the following:

(i) *Safe conditions.* Maintain safe conditions at the shoreside processing facility for the protection of observers by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

(ii) *Operations information.* Notify the observers, as requested, of the planned facility operations and expected receipt of groundfish prior to receipt of those fish.

(iii) *Transmission of data.* Facilitate transmission of observer data by:

(A) Allowing observers to use the shoreside processor's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observers or the United States.

(B) Ensuring that each shoreside processor that is required to have observer coverage under paragraph (d)(3) of this section and that receives pollock harvested in the catcher vessel operational area during the pollock season that starts on August 15, under § 679.23(e), makes available to the observer the following equipment or equipment compatible therewith: A personal computer with a minimum of a 486 processing chip with at least a 9600-baud modem and a telephone line. The personal computer must be equipped with a mouse, Windows version 3.1, or a program having the ability to operate the NMFS-supplied data entry software program, 10 megabytes free hard disk storage, 8 megabytes RAM, and data entry software provided by the Regional Director for use by the observers.

(C) Ensuring that the communication equipment that is in the shoreside processor as specified at paragraph (f)(2)(iii)(B) of this section, and that is used by observers to transmit data is fully functional and operational.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside

processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(v) *Document access.* Allow observers to inspect and copy the shoreside processor's DCPL, product transfer forms, any other logbook or document required by regulations; printouts or tallies of scale weights; scale calibration records; bin sensor readouts; and production records.

(vi) *Assistance.* Provide all other reasonable assistance to enable the observer to carry out his or her duties, including, but not limited to:

(A) Assisting the observer in moving and weighing totes of fish.

(B) Cooperating with product recovery tests.

(C) Providing a secure place to store baskets of sampling gear.

(g) *Procurement of observer services.* Owners of vessels or shoreside processors required to carry observers under paragraphs (c) and (d) of this section must arrange for observer services from an observer contractor or contractors. A list of observer contractors is available upon request from the Observer Program Office.

(h) *Certification and decertification of observers.*—(1) *Certification of observers.*—(i) *Requirements.* NMFS will certify individuals who:

(A) Meet education and/or experience standards available from the Observer Program Office.

(B) Have successfully completed a NMFS-approved observer training and/or briefing as prescribed by NMFS and available from the Observer Program Office.

(C) Have not been suspended or decertified under paragraph (j) of this section.

(ii) *Term.* An observer's certification expires upon completion of a deployment. Observers can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Standards of observer conduct.*—(i) *Conflict of interest.*

(A) Observers:

(1) May not have a direct financial interest in a North Pacific fishery, other than the provision of observer services, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities.

(2) May not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of

monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(3) May not serve as observers on any vessel or at any shoreside facility owned or operated by a person who previously employed the observers.

(4) May not serve as observers during the 12 consecutive months immediately following the last day of the observer's employment as paid crew members or employees in a North Pacific fishery.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest under this paragraph (h)(2).

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must diligently perform their assigned duties.

(B) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations of regulations relevant to conservation of marine resources or their environment that are observed.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(1) Engaging in excessive drinking of alcoholic beverages;

(2) Engaging in the use or distribution of illegal drugs; or

(3) Becoming physically or emotionally involved with vessel or processing facility personnel.

(i) *Certification and decertification of observer contractors.*—(1) *Certification of observer contractors.*—(i) *Application.* An applicant seeking to become an observer contractor must submit an application to the Regional Director describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors certified prior to

January 1, 1997, are exempt from submitting an application.

(ii) *Selection.* The Regional Director may select one or more observer contractors based on the information submitted by applicants under paragraph (i)(1)(i) of this section and on other selection criteria that are available from the Observer Program Office.

(iii) *Term.* Observer contractors will be certified through December 31, 1997. Observer contractors can be decertified or suspended by NMFS under paragraph (j) of this section.

(2) *Responsibilities and duties of observer contractors* include but are not limited to the following:

(i) Recruiting, evaluating, and hiring of qualified candidates to serve as observers, including minorities and women.

(ii) Ensuring that only observers provide observer services.

(iii) Providing observer coverage as requested by vessels and processors to fulfill requirements under paragraphs (c) and (d) of this section.

(iv) Providing observers' salary, benefits and personnel services in a timely manner.

(v) Providing all logistics to place and maintain the observers aboard the fishing vessels or at the site of the processing facility. This includes all travel arrangements, lodging and per diem, and any other services required to place observers aboard vessels or at processing facilities. Placement of observers must occur according to the following:

(A) Observers must not be deployed on the same vessel for more than 90 days in a 12-month period.

(B) A deployment to a vessel or a shoreside processor cannot exceed 90 days without approval from the Observer Program Office.

(C) A deployment cannot include assignments to more than four vessels and/or shoreside processors.

(vi) Supplying alternate observers or prospective observers if one or more observers or prospective observers are rejected by NMFS, fail to successfully complete observer training or briefing, are injured and must be replaced, or resign prior to completion of duties.

(vii) Maintaining communications with observers at sea and shoreside facilities. Each observer contractor must make arrangements to have an employee responsible for observer activities on call 24 hours a day whenever they have observers at sea, stationed at shoreside facilities, in transit, or in port awaiting boarding, to handle emergencies involving observers, or problems concerning observer logistics.

(viii) In cooperation with vessel or processing facility owners, ensuring that all observers' in-season catch messages and other required transmissions between observers and NMFS are delivered to NMFS within a time specified by the Regional Director.

(ix) Ensuring that observers complete mid-deployment data reviews when required.

(x) Ensuring that observers complete debriefing as soon as possible after the completion of their deployment and at locations specified by the Regional Director.

(xi) Ensuring all data, reports, and biological samples from observer deployments are complete and submitted to NMFS at the time of the debriefing interview.

(xii) Ensuring that all sampling and safety gear are returned to the Observer Program Office and replacing any gear and equipment lost or damaged by observers according to NMFS requirements.

(xiii) Monitoring observers' performance to ensure satisfactory execution of duties by observers and observer conformance with NMFS' standards of observer conduct under paragraph (h)(2) of this section.

(xiv) Providing the following information to the Observer Program Office by electronic transmission (e-mail) or by fax at fax number 206-526-4066.

(A) Observer training and briefing registration. Observer training registration consisting of a list of individuals to be hired upon approval by NMFS and a copy of each person's academic transcripts and resume. The list must include the person's name and sex. The person's social security number is requested. Observer briefing registration consisting of a list of the observer's name and requested briefing class date. This information must be submitted to the Observer Program Office at least 5 working days prior to the beginning of a scheduled observer certification training or briefing session.

(B) Projected observer assignments that include the observer's name, vessel or shoreside processor assignment, vessel length and type, port of embarkation, target species, and area of fishing. This information must be submitted to the Observer Program Office prior to the completion of the training or briefing session.

(C) Observer deployment/logistics reports that include the observer's name, cruise number, current vessel or shoreside processor assignment and code, embarkation date, and estimated and actual disembarkation dates. This information must be submitted weekly

as directed by the Observer Program Office.

(D) Observer debriefing registration that includes the observer's name, cruise number, vessel or shoreside processor name(s), and requested debriefing date.

(E) Copies of "certificates of insurance" that name the NMFS Observer Program Task Leader as a "certificate holder". The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or cancelled:

(1) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(2) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(3) States Worker's Compensation as required.

(4) Contractual General Liability.

(F) Notification that, based upon a physical examination during the 12 months prior to an observer's deployment, examining physicians have certified that observers do not have any health problems or conditions that would jeopardize their safety or the safety of others while deployed, or prevent them from performing their duties satisfactorily, and that prior to examination, the certifying physician was made aware of the dangerous, remote and rigorous nature of the work. This information must be submitted prior to the completion of the training or briefing session.

(G) A copy of each type of signed and valid contract an observer contractor has with those entities requiring observer services under paragraphs (c) and (d) of this section and with observers. Copies of contracts with specific entities requiring observer services or with specific observers must be submitted to the Observer Program Office upon request.

(H) Reports of observer harassment, concerns about vessel or processor safety, or observer performance problems. These reports must be submitted within 24 hours of when the observer contractor becomes aware of the problem.

(3) *Conflict of interest.* (i) Observer contractors:

(A) Must not hold any direct financial interest in a North Pacific fishery, other than the provision of observer services, including, but not limited to, vessels or shoreside facilities involved in the catching or processing of the products of the fishery, concerns selling supplies or services to said vessels or shoreside

facilities, or concerns purchasing raw or processed products from said vessels or shoreside facilities.

(B) Must assign observers without regard to any preference by representatives of vessels and shoreside facilities based on observer race, gender, age, religion, or sexual orientation.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer contractors.

(j) *Decertification Process*—(1) *Applicability*. This paragraph (j) sets forth the procedures for suspension and decertification of observers and observer contractors under this section.

(2) *Policy*. (i) NMFS must certify responsible and qualified observers and observer contractors only. Suspension and decertification are discretionary actions that, taken in accordance with this section, are appropriate means to effectuate this policy.

(ii) The serious nature of suspension and decertification requires that these actions be taken only in the public interest for the promotion of fishery conservation and management and not for purposes of punishment. NMFS may impose suspension or decertification only for the causes and in accordance with the procedures set forth in this section.

(3) *Definitions*. (i) *Adequate evidence* means information sufficient to support the reasonable belief that a particular act or omission has occurred.

(ii) *Affiliates* means business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the decertification, suspension, or proposed decertification of an observer contractor that has the same or similar management, ownership, or principal employees as the observer contractor that was decertified, suspended, or proposed for decertification.

(iii) *Civil judgment* means a judgment or finding of a civil offense by any court of competent jurisdiction.

(iv) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether

entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

(v) *Decertification*, as used in this paragraph (j) means action taken by a decertifying official under paragraph (j)(8) of this section to revoke indefinitely certification of observers or observer contractors under this section; an observer or observer contractor whose certification is so revoked is decertified.

(vi) *Decertifying official* means a designee authorized by the Regional Director to impose decertification.

(vii) *Indictment* means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense must be given the same effect as an indictment.

(viii) *Legal proceedings* means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

(ix) *NMFS investigator* means a designee authorized by the Regional Director to conduct investigations under this section.

(x) *Preponderance of the evidence* means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(xi) *Suspending official* means a designee authorized by the Regional Director to impose suspension.

(xii) *Suspension*, as used in this section, means action taken by a suspending official under this paragraph (j) to suspend certification of observers or observer contractors temporarily until a final decision is made with respect to decertification.

(4) *Public availability of suspension or decertification records*. Public availability of suspension or decertification records will depend upon the provisions of the Freedom of Information Act and other applicable law.

(5) *Effect and timing of suspension or decertification*. (i) Observers or observer contractors decertified or suspended must not provide services prescribed by this section to vessels and shoreside processors.

(ii) Suspension and decertification actions may be combined and imposed simultaneously.

(6) *Suspension*—(i) *General*. (A) The suspending official may, in the public interest, suspend observers or observer contractors for any of the causes in paragraph (j)(6)(ii) of this section, using the procedures in paragraph (j)(6)(iii) of this section.

(B) Suspension is a serious action to be imposed on the basis of adequate

evidence, pending the completion of investigation or legal proceedings, when NMFS determines that immediate action is necessary. In assessing the adequacy of the evidence, the suspending official should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(C) Suspension includes all divisions or other organizational elements of observer contractors, unless the suspension decision is limited by its terms to specific divisions or organizational elements. The suspending official may include any affiliates of observer contractors if they are specifically named and given written notice of the suspension and an opportunity to respond.

(ii) *Causes for suspension*. (A) The suspending official may suspend observers or observer contractors upon a determination, based upon adequate evidence, that observers or observer contractors committed any acts or omissions constituting a cause for decertification under paragraph (j)(7)(ii) of this section.

(B) Indictment for any of the causes for decertification in paragraphs (j)(7)(ii)(A)(1) or (j)(7)(ii)(B)(1) of this section constitutes adequate evidence for suspension.

(iii) *Procedures*.—(A) *Review*. The suspending official must review all available evidence and must promptly determine whether or not to proceed with suspension. The suspending official may refer the matter to the NMFS investigator for further investigation, or to the decertifying officer.

(B) *Notice of suspension*. When observers or observer contractors and any specifically named affiliates are suspended, they must be immediately advised personally or by certified mail, return receipt requested, at the last known residence or place of business:

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that observers or observer contractors have committed acts or omissions constituting grounds for suspension under paragraph (j)(6)(ii) of this section. Such acts or omissions may be described in terms sufficient to place observers or observer contractors on notice without disclosing NMFS' evidence.

(2) That the suspension is for a temporary period pending the completion of an investigation and such decertification proceedings as may ensue.

(3) Of the cause(s) relied upon under paragraph (j)(6)(ii) of this section for imposing suspension.

(4) Of the effect of the suspension.

(5) That, within 30 days after receipt of the notice, the observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the suspension, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(6) That additional proceedings to determine disputed material facts will be conducted unless:

(i) the action is based on an indictment; or

(ii) a determination is made, on the basis of NOAA General Counsel advice, that the substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(C) *Dispute*. In actions not based on an indictment, if NMFS determines that the observers' or observer contractors' submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of NOAA General Counsel advice, that substantial interests of the government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, the suspending official:

(1) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of suspension.

(2) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The suspending official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(D) *Suspending official's decision*. (1) The suspending official's decision must be based on all the information in the administrative record, including any submission made by observers or observer contractors on action based on an indictment:

(i) in which observers or observer contractors' submission does not raise a genuine dispute over material facts; or

(ii) in which additional proceedings to determine disputed material facts have

been denied on the basis of NOAA General Counsel advice.

(2) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The suspending official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(3) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part.

(4) The suspending official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(5) Prompt written notice of the suspending official's decision to affirm, modify or terminate the notice of suspension issued under this paragraph (j)(6) must be served 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.

(E) *Period of suspension*. (1) Suspension must be for a temporary period pending the completion of investigation and any ensuing legal proceedings or decertification proceedings, including any administrative review under paragraph (j)(8) of this section, unless sooner terminated by the suspending official or as provided under this paragraph (j). If suspension is in effect, the decertifying official will expedite any related decertification proceedings.

(2) If legal proceedings or decertification proceedings are not initiated within 12 months after the date of the suspension notice, the suspension must be terminated.

(F) *Scope of suspension for observer contractors*. The scope of suspension must be the same as that for decertification under paragraph (j)(7)(v) of this section, except that the procedures set out under paragraph (j)(6) of this section must be used in imposing suspension.

(7) *Decertification*—(i) *General*. (A) The decertifying official may, in the public interest, decertify observers or observer contractors for any of the causes in paragraph (j)(7)(ii) of this section using the procedures in paragraph (j)(7)(iii) of this section. The existence of a cause for decertification does not necessarily require that observers or observer contractors be decertified; the seriousness of the acts or omissions and any mitigating factors should be considered in making any

decertification decision. The existence or nonexistence of any mitigating factors is not necessarily determinative of an observers' or observer contractors' present fitness. Accordingly, if a cause for decertification exists, observers or observer contractors have the burden of demonstrating, to the satisfaction of the decertifying official, present fitness and that decertification is not necessary.

(B) Decertification of observer contractors includes all divisions or other organizational elements of the observer contractor, unless the decertification decision is limited by its terms to specific divisions or organizational elements. The decertifying official may, at his or her sole discretion, include any affiliates of observer contractors if they are specifically named and given written notice of the proposed decertification and an opportunity to respond under paragraph (j)(7)(iii)(C) of this section.

(ii) *Causes for decertification*—(A) *Observers*. (1) The decertifying official may decertify observers for a conviction of or civil judgment for the following:

(i) Commission of fraud or a criminal offense in connection with obtaining or attempting to obtain certification, or in performing the duties of observers as prescribed by NMFS;

(ii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(iii) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the present fitness of observers.

(2) The decertifying official may decertify observers, based upon a preponderance of the evidence, upon a determination that observers have:

(i) Failed to satisfactorily perform the duties of observers as prescribed by NMFS; or

(ii) Failed to abide by the standards of conduct for observers as prescribed under paragraph (h)(2) of this section.

(B) *Observer contractors*. (1) The decertifying official may decertify observer contractors for a conviction of or civil judgment for the following:

(i) Commission of fraud or a criminal offense in connection with obtaining or attempting to obtain certification, or in performing the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section;

(ii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or

(iii) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present fitness of observer contractors.

(2) The decertifying official may decertify observer contractors, based upon a preponderance of the evidence, upon a determination that observer contractors have:

(i) Failed to satisfactorily perform the responsibilities and duties of observer contractors as prescribed under paragraph (i)(2) of this section; or

(ii) A conflict of interest as set out under paragraph (i)(3) of this section.

(iii) *Procedures*—(A) *Investigation and referral*. NMFS personnel must promptly report to the NMFS investigator matters appropriate for further investigation. The NMFS investigator must investigate matters so referred and submit the investigative material to the decertifying official or, if appropriate, to the suspending official.

(B) *Review*. The decertifying official must review all available evidence and must promptly determine whether or not to proceed with decertification. The decertifying official may refer the matter to the NMFS investigator for further investigation or, if appropriate, to the suspending official.

(C) *Notice of proposed decertification*. If the decertifying official determines to proceed with decertification, he or she must serve a notice of proposed decertification upon observers or observer contractors and any specifically named affiliates, personally or by certified mail, return receipt requested, at the last known residence or place of business, advising:

(1) That decertification is being considered.

(2) Of the reasons for the proposed decertification in terms sufficient to put observers or observer contractors on notice of the conduct or transaction(s) upon which it is based.

(3) Of the cause(s) relied upon under paragraph (j)(7)(ii) of this section for proposing decertification.

(4) That, within 30 days after receipt of the notice, observers or observer contractors may submit, in writing, documentary evidence and argument in opposition to the proposed decertification, including any additional specific documentary evidence that raises a genuine dispute over the material facts.

(5) Of NMFS' procedures governing decertification decision making.

(6) Of the effect of the issuance of the notice of proposed decertification.

(7) Of the potential effect of an actual decertification.

(D) *Dispute*. In actions not based upon a conviction or civil judgment, if it is found that observers' or observer contractors' submission raises a genuine dispute over facts material to the proposed decertification, the decertifying official:

(1) Must afford observers or observer contractors an opportunity to submit additional documentary evidence upon a showing that such documentary evidence was unavailable during the 30-day period following receipt of the notice of proposed decertification.

(2) May, at his or her sole discretion, afford observers or observer contractors an opportunity to appear in person, present witnesses, and confront any person NMFS presents. The decertifying official must make an audio tape of the proceedings and make a copy available at cost to observers or observer contractors upon request, unless observers or observer contractors and NMFS, by mutual agreement, waive the requirement for an audio tape.

(E) *Decertifying official's decision*. (1) In actions based upon a conviction or judgment, or in which there is no genuine dispute over material facts, the decertifying official must make a decision on the basis of all the information in the administrative record, including any submission made by observers or observer contractors. The decision must be made after receipt of any timely information and argument submitted by observers or observer contractors.

(2) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact must be prepared. The decertifying official must base the decision on the facts as found, together with any information and argument submitted by observers or observer contractors and any other information in the administrative record.

(3) The decertifying official may refer matters involving disputed material facts to another official for findings of fact. The decertifying official may reject any such findings, in whole or in part.

(4) The decertifying official's decision must be made after the conclusion of the proceedings with respect to disputed facts.

(5) In any action in which the proposed decertification is not based upon a conviction or civil judgment, the cause for decertification may be established by a preponderance of the evidence.

(F) *Notice of decertifying official's decision*. (1) If the decertifying official decides to impose decertification, observers or observer contractors and any affiliates involved must be given

prompt notice personally or by certified mail, return receipt requested, at the last known residence or place of business. Such notice must:

(i) Refer to the notice of proposed decertification;

(ii) Specify the reasons for decertification; and

(iii) Advise that the decertification is effective immediately, unless the decertifying official determines that there is a compelling reason for maintaining certification for a specified period under conditions and restrictions necessary and appropriate to protect the public interest or promote fishery conservation and management and states the reasons in the notice.

(2) If decertification is not imposed, the decertifying official must promptly notify observers or observer contractors and any affiliates involved, by certified mail, return receipt requested, at the last known residence or place of business.

(iv) *Period of decertification*. (A) Decertification must be in force indefinitely or until rescinded.

(B) The decertifying official may rescind decertification, upon observers or observer contractors' request, supported by documentation, for reasons such as:

(1) Newly discovered material evidence;

(2) Reversal of the conviction or civil judgment upon which the decertification was based;

(3) Bona fide change in ownership or management;

(4) Elimination of other causes for which the decertification was imposed; or

(5) Other reasons the decertifying official deems appropriate.

(v) *Scope of decertification*. (A) The fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with observer contractors may be imputed to the observer contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of observer contractors, or with observer contractors' knowledge, approval, or acquiescence. Observer contractors' acceptance of the benefits derived from the conduct must be evidence of such knowledge, approval, or acquiescence.

(B) The fraudulent, criminal, or other seriously improper conduct of observer contractors may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with observer contractors who participated in, knew of, or had reason to know of the contractors' conduct.

(8) *Administrative review of suspension or decertification.* (i) Observers or observer contractors may petition for review of a suspension decision issued under paragraph (j)(6)(iii) of this section or a decertification decision issued under paragraph (j)(7)(iii) of this section within 30 days after the date the decision was served. The petition must be addressed to the appeals officer identified in the notice of suspension or decertification. Any petitioned suspension will remain in effect pending the appeals officer's written decision to affirm, modify or terminate the suspension.

(ii) Administrative review is discretionary. Petitions for discretionary review may be filed only upon one or more of the following grounds:

(A) A finding of material fact is clearly erroneous based upon the administrative record;

(B) A substantial and important question of policy or discretion is involved; or

(C) A prejudicial error has occurred.

(iii) If the appeals officer declines review based on the written petition, observers or observer contractors must be immediately advised of the decision to decline review personally or by certified mail, return receipt requested, at the last known residence or place of business.

(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 paragraph (j)(6) or (i)(7) 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.

(v) An appeals officer's decision imposing suspension or decertification or an unpetitioned suspending or decertifying official's decision is the final administrative decision of the U.S. Department of Commerce.

(k) *Release of observer data to the public—(1) Summary of weekly data.* The following information collected by observers for each catcher processor and catcher vessel during any weekly reporting period may be made available to the public:

(i) Vessel name and Federal permit number;

(ii) Number of chinook salmon and "other salmon" observed;

(iii) The ratio of total round weight of halibut or Pacific herring to the total round weight of groundfish in sampled catch;

(iv) The ratio of number of king crab or *C. bairdi* Tanner crab to the total round weight of groundfish in sampled hauls;

(v) The number of observed trawl hauls or fixed gear sets;

(vi) The number of trawl hauls that were basket sampled; and

(vii) The total weight of basket samples taken from sampled trawl hauls.

(2) *Haul-specific data.* (i) The information listed in paragraphs (k)(2)(i) (A) through (M) of this section and collected by observers from observed hauls onboard vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(A) Date.

(B) Time of day gear is deployed.

(C) Latitude and longitude at beginning of haul.

(D) Bottom depth.

(E) Fishing depth of trawl.

(F) The ratio of the number of chinook salmon to the total round weight of groundfish.

(G) The ratio of the number of other salmon to the total round weight of groundfish.

(H) The ratio of total round weight of halibut to the total round weight of groundfish.

(I) The ratio of total round weight of herring to the total round weight of groundfish.

(J) The ratio of the number of king crab to the total round weight of groundfish.

(K) The ratio of the number of *C. bairdi* Tanner crab to the total round weight of groundfish.

(L) Sea surface temperature (where available).

(M) Sea temperature at fishing depth of trawl (where available).

(ii) The identity of the vessels from which the data in paragraph (k)(2)(i) of this section are collected will not be released.

(3) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Director written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (k) (1) and (2) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

Nomenclature Amendments

PART 679—[AMENDED]

9. In part 679, remove "NMFS-certified" wherever it occurs.

[FR Doc. 96-19644 Filed 7-30-96; 9:38 am]

BILLING CODE 3510-22-P