


MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke 
Executive Director

DATE: June 13, 1990

SUBJECT: Domestic Observer Program

ACTION REQUIRED

Review NMFS discussion paper on 1990 observer program. Consider changes for 1991.

BACKGROUND

In April the Council received a status report on the implementation of the federal observer program and revised logbook/data reporting system. An important component of the domestic observer program is the Observer Plan which, for any given year, describes the responsibilities of NMFS, the observer contractor, observers, fishermen and processors. A copy of the final rule which implemented the 1990 Observer Plan is provided for reference as item C-2(a).

When approving the observer program in June 1989, the Council discussed the likelihood of refining it as experience was gained. You have previously received copies of public comments identifying problem areas that may need improvement. In April the Council requested that NMFS prepare a discussion paper for this meeting which addresses concerns of the Council and the public. The discussion paper is provided in your supplemental folder and an oral presentation is available.

The Council needs to provide guidance to NMFS with regard to the 1991 Observer Plan. A regulatory amendment will be needed and Council direction to NMFS at this meeting will allow time to implement the changes by January 1, 1991.

752A; at Cookeville, Tennessee, by adding Channel 297A and removing Channel 254A at Spencer, Tennessee; by adding Channel 300A and removing Channel 253A; at Burkesville, Kentucky; and by adding Russell Springs, Kentucky, Channel 224A.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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47 CFR Part 73

[MM Docket No. 89-324; RM-6774]

Radio Broadcasting Services; Ebenezer, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 280A to Ebenezer, Mississippi, in response to a petition filed by JimBar Enterprises. The coordinates for Channel 280A are 32-54-13 and 90-10-18 at a site 10.6 kilometers (6.6 miles) southwest of the community.

DATES: Effective March 22, 1990; The window period for filing applications for Channel 280A at Ebenezer will open on March 23, 1990, and close on April 23, 1990.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-324, adopted January 18, 1990, and released February 5, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Ebenezer, Channel 280A.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-3159 Filed 2-9-90; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-0015]

RIN 0648-AD04

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

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA announces approval of regulations to implement the Observer Plan provided for by Amendments 13 and 18 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska (FMPs), respectively. This action is necessary to implement specific provisions of the mandatory domestic observer program. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

EFFECTIVE DATE: February 7, 1990.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) that was prepared for Amendment 13 and 18 may be obtained by writing to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the Observer Plan are available by writing to the above address or to the Observer Program Office, Alaska Fisheries Science Center, 7600 Sand Point Way NE, Building 4, Seattle, Washington 98115. Copies are also available through the NMFS Computer Bulletin Board in Juneau, phone: 907-586-7609.

FOR FURTHER INFORMATION CONTACT: Robert Maier, Fishery Biologist, Alaska Fisheries Science Center, Seattle, NMFS at 206-526-4185 or Janet Smoker, Fishery Management Biologist, Alaska Region, Juneau, NMFS at 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary of Commerce (Secretary) according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 620.

The Secretary approved Amendments 13 and 18 under section 304(b) of the Magnuson Act. Those amendments contained certain management measures as listed in the final rule published at 54 FR 50386 (December 6, 1989). One of the listed measures authorized a comprehensive domestic observer program. An Observer Plan to implement provisions of this program has been prepared by the Secretary in consultation with the Council. Regulations were proposed to implement the Observer Plan (54 FR 51042, December 12, 1989) and comments were invited through December 21, 1989. Forty letters of comments were received. They are summarized and responded to in the "Response to Comments" section, below.

The Secretary, after reviewing comments received, including those submitted by the Council during its December 5-8, 1989 meeting, has determined that final regulations implementing the Observer Program are necessary for fishery conservation and management, and are consistent with the Magnuson Act and other applicable law.

Based on comments received, and expressed Council intent for the observer program, the contents of the Observer Plan have been updated. Main features of the Observer Plan are described below, including the responsibilities that will be imposed on NMFS, vessel operators, managers of shoreside processing facilities, and NMFS-certified contractors who will provide observers to groundfish fishing vessels and shoreside processors. This notice also describes observer qualifications, standards of observer conduct, conflict of interest standards for observers and contractors, and reasons, for revoking contractor or

observer certifications. Implementation aspects of the Observer Plan are described as follows:

Responsibilities of NMFS—The NMFS is responsible for (1) the overall program administration, (2) training or certification of observers, (3) contractor certification, (4) debriefing of observers, (5) coordination of observer coverage for the subject fisheries, (6) monitoring of logistics, and (7) management of the data collected by the observers. Each of the aspects of NMFS responsibilities is further described as follows:

1. Program administration.

Administration includes establishment of general program policy, specification of observer duties and qualifications, sampling methods, data format, and policy with respect to observer safety. It also includes specifications of contractor certifications and overseeing NMFS personnel and budgets.

2. Observer training and certification.

Observers who meet the basic educational and experience qualifications stated in the Observer Plan and who are hired by certified contractors to be placed onboard domestic vessels will be required to successfully complete a 2½ week training certification program conducted by NMFS, or its designated agent, prior to being deployed on board a domestic vessel or at a shoreside processing facility. Individuals who have successfully completed either a foreign or domestic groundfish observer deployment in a program administered by NMFS will be required to attend only a two to four day briefing. Certification training will be provided, at a minimum, on a scheduled quarterly basis and more frequently if required. The training of observers is critical to the overall success of the observer program and the quality of information collected. Because observers will collect fisheries information for Federal management of the Alaska groundfish fisheries, training must be consistent and must respond to changing management and data collection needs. The observer certification may be revoked if the observer fails to perform assigned duties satisfactorily, or does not adhere to standards of conduct prescribed by NMFS.

3. Contractor certification. The NMFS must certify contractors prior to their providing observers to the industry to assure that the contractors do not have a financial or personal conflict of interest with the fishing vessel or shoreside processing facility owners, and to assure that the contractors understand their responsibilities. NMFS will review technical proposals submitted by prospective contractors

that describe task performance to ensure that they are able to adequately provide the required services under the mandatory observer program. The costs of providing observers will not be considered in the evaluation. Firms submitting proposals judged adequate to provide services and which do not have a financial or personal conflict of interest will be included in a list of certified contractors from which industry members can obtain their required observers. A contractor could lose certification if the contractor is found to have a financial or personal conflict of interest with either vessel or shoreside processor owners or the contractor is deficient in the performance of the duties prescribed by NMFS.

4. Observer debriefing. Debriefing observers will be done by staff of the NMFS observer program located at debriefing sites. Debriefing sites will be at Dutch Harbor and Kodiak, Alaska, and such other major fishing ports as deemed necessary by NMFS, and at the Alaska Fisheries Science Center (AFSC) in Seattle, Washington. Observers will be debriefed between deployments to make information available for editing, assimilation, and analysis.

5. Coordination of observer coverage and logistics. NMFS will coordinate observer coverage with certified contractors to ensure scientifically adequate sampling and to ensure receipt of information from the observers.

6. Data management. NMFS is responsible for the entry, editing, and database management of the data collected by observers.

Responsibilities of vessel operators and managers of shoreside processing facilities. The vessel operators and managers of shoreside processing facilities are responsible for costs of deploying observers on board vessels or at shoreside processing facilities including but not limited to bunk, meals and transportation. They are also responsible for coordinating with NMFS-certified contractors to assure that observer coverage meets requirements contained in regulations. Any vessel operator or manager of a shoreside processing facility who is required to accommodate an observer is responsible for obtaining a NMFS-certified observer from any of the certified observer contractors. The vessel operator or manager of a shoreside processing facility will pay the cost of the observer directly to the contractor.

Prior to the vessel beginning fishing, the observer must notify the AFSC, through the contractor, that he/she is on board the vessel and prepared to

perform his/her duties as an observer. Prior to receiving groundfish and commencement of processing operation by a shoreside processing facility, an observer must notify the contractor that he/she is on site and prepared to perform his/her duties.

A vessel operator must maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

- (a) Adequate fire fighting equipment;
- (b) One or more life rafts capable of holding all persons on board; and
- (c) Any other equipment required by regulations pertaining to safe operation of the vessel.

A manager of a shoreside processing facility must:

Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility.

Responsibilities of certified observer contractors. Contractors must be certified by NMFS. Firms holding a contract with NMFS to provide observer services will be included in the list of certified observer contractors. No limit is placed on the number of contractors which can participate in the observer program and a vessel owner or manager of a shoreside processing facility can choose to work with whichever contractors they select. Contractors are responsible for the following tasks:

1. Recruiting, evaluating, and hiring of qualified candidates to serve as observers.

2. Ensuring that prospective observers have obtained the required NMFS certification.

3. Providing observer salaries, benefits, and personnel services.

4. Providing workmen's compensation and insurance to cover and protect observers injured in the performance of their duties.

5. Providing all deployment logistics to make observers available and to place the observers on board the fishing vessels or at shoreside processing facilities.

6. Providing substitute observers in the event an observer has to be removed from, or leaves, a vessel or a shoreside processing facility.

7. Arranging observer debriefings at specified debriefing ports.

8. Assuring that all observer catch messages and other required

transmissions between the observer and NMFS are delivered to NMFS within a time specified by the Regional Director.

9. Assuring that all trip data, reports, and specimens collected by observers are delivered to NMFS within five working days of the completion of each observer trip.

10. Assuring that all gear and equipment issued to observers by NMFS is returned to a storage place designated by NMFS within five working days of the completion of the observer trip.

For purposes of the Paperwork Reduction Act only, both the contractors and the observers, while not direct employees of the United States government, are nonetheless, acting as agents or representatives of the government.

Observer Qualifications

Observers placed onboard domestic vessels or at shoreside facilities by a contractor must be certified by NMFS to serve as an observer under this program. To be certified by NMFS, an observer should have a bachelor's degree in fisheries or wildlife biology or related field of biology and natural resource management. If sufficient numbers of qualified and acceptable applicants with the above educational background are not available, individuals with senior standing within one of those programs listed above or individuals with an Associate in Arts (A.A.) degree in fisheries or wildlife science or technology may be substituted. If sufficient numbers of individuals with any of the above qualifications are not available, the contractor may seek approval from NMFS to hire individuals with other relevant experience or training.

Prior experience as an observer through a program administered by the NMFS Observer Program of the AFSC is not required. Individuals who have satisfactorily served as an observer for a program administered by the Observer Program of the AFSC during the past 24 months must attend a two to four day certification briefing provided by NMFS prior to deployment. Individuals who have not served as an observer or who last satisfactorily served as an observer prior to the past 24 months must attend and successfully complete a 2½ week certification training provided by the AFSC prior to deployment.

Prior to deployment, each observer must receive a NMFS certification acknowledging successful completion of the NMFS training program. Each observer must agree to provide all data collected to NMFS. Each observer must agree to adhere to the NMFS standards of conduct for observers.

Standards of Observer Conduct

Observers must abide by the standards of conduct listed in title 15 CFR Subtitle A, part 0 of the Department of Commerce Regulations and the following:

General standards of behavior:

In addition to the standards given above, the observer must avoid any behavior which could adversely affect the confidence of the public in the integrity of the program. Observers are thus expected to conduct themselves in a manner which will reflect favorably upon the program. This means acting in an honest, professional, business-like manner in all situations. Specific guidelines follow:

(1) Observers must diligently perform their assigned duties.

(2) Observers must accurately record their sampling data, write complete reports, and report honestly any suspected violations that are observed. Falsification of observer data will be grounds for decertification.

(3) Observers must keep all collected data and observations made onboard the vessel or in the processing plant, confidential according to the Federal guidelines on confidentiality.

(4) 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. These actions or activities include, but are not limited to:

(a) Excessive drinking of alcoholic beverages (however, if the vessel or shoreside facility maintains a stricter alcoholic beverage policy for its employees, then the observers must comply with said policy);

(b) Use or distribution of illegal drugs; and

(c) Physical or emotional involvement with vessel or shoreside processing plant personnel.

Behavior which is contrary to these standards or to the intent of these standards are grounds for the decertification of the offending observer.

Conflict of Interest Standards for NMFS Certified Observers and Contractors

Contractors certified by NMFS to provide observer services to the fishing industry, and observers certified by NMFS to perform observer duties, cannot have either a financial or personal interest in the vessels or shorebased facilities they are employed to observe. A direct financial interest is defined as payment or compensation received directly from the owner or operator of the vessel or shorebased

facility being observed that results from a property interest of business relationship in that vessel or shorebased facility. A personal interest is defined as an interest or involvement held by the contractor or observer, or the contractor's or observer's immediate family or parent, from which the contractor or observer, or the contractor's or observer's immediate family or parent, receives a benefit. The provision for remuneration of certified observers does not constitute a conflict of interest.

(a) Conflict of interest standards for certified observers.

A NMFS-certified observer:

(1) Must be employed by an independent contracting agent certified by NMFS to provide observer services to the industry;

(2) May not have a financial interest in the observed fishery;

(3) May not have a personal interest in the vessel or shoreside facility to which he or she is assigned;

(4) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions, or judgement.

(b) Conflict of interest standards for certified observer contractors.

A NMFS-certified observer contractor:

(1) May not be an individual, partnership, or corporation with a personal or financial interest in the observed fishery, shoreside facilities or vessels, other than the provision of observers;

(2) Shall assign observers to vessels or shoreside facilities without regard to requests from vessel owners or operators for a specific individual;

(3) May not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the observer contractor's personal or financial interests, under circumstances in which the gift is intended to influence the performance of official duties, actions or agreements.

Reasons to Revoke Contractor or Observer Certification

A. The NMFS certification of an observer can be revoked by NMFS for the following reasons:

(1) A certified observer fails to satisfactorily perform the duties of an observer as prescribed by NMFS.

(2) A certified observer fails to abide by the standards of conduct described by NMFS.

(3) A certified observer is shown to have a conflict of interest with respect to the fishery, shoreside facility, or vessel to which he/she is assigned.

B. The NMFS certification of a contractor to provide observer services to industry can be revoked by NMFS for the following reasons:

(1) A certified contractor is shown to have a conflict of interest with respect to the fishery, shoreside facilities or vessels to which observers are being provided.

(2) A certified contractor has failed to satisfactorily perform the responsibilities of certified observer contractors prescribed in the observer plan.

Implementation Policy

(a) *Observer program start up and enforcement.* Full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice. NOAA recognizes, however, that some vessel operators and managers of shorebased processing facilities may experience start-up problems. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

(b) *Vessel participation.* Operators of all domestic fishing and processing vessels equal to or longer than 125 feet length overall will be required to carry an observer during all days expended during fishing trips.

For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaska port or leaves the EEZ and contiguous territorial sea.

Length overall (LOA) means horizontal length from stem to stern (see definition at §§ 672.2 and 675.2 of the regulations).

Operators of all domestic fishing and processing vessels that are 60 feet LOA and longer but less than 125 feet LOA and which fish more than 10 days during any calendar quarter (January-March, April-June, July-September, and October-December) must carry an observer for at least 30 percent of the days expended during fishing trips undertaken during that calendar quarter.

Vessels less than 60 feet in LOA must carry observers only if required by the Regional Director.

Compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught

incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

(c) *Shoreside processor participation.* Managers of shoreside facilities that annually receive 10,000 mt. round weight, or more of groundfish must have an observer at the facility on each day it receives groundfish during those months in which they receive a total of 1,000 mt or more of groundfish for the month.

Managers of shoreside facilities that annually receive between 1,000 mt and 10,000 mt. round weight, of groundfish must have an observer at the facility for 30 percent of the days of any month in which they receive a total of 500 mt or more of groundfish for that month.

Managers of shoreside processing facilities that annually receive less than 1,000 mt. round weight, of groundfish must have an observer if required by the Regional Director.

(d) *Exemption within the waters largely regulated by the State of Alaska.* With respect to observers on vessels, the Observer Plan does not apply in the following waters where groundfish are managed entirely by the Alaska Department of Fish and Game:

Clarence Strait and Chatham Strait—Waters shoreward of a line connecting the following points in the order listed: intersection of 55°25'20" N. latitude and 132°41'32" W. longitude; Cape Muzon Light; northernmost tip of Eagle Point on Dall Island; southernmost tip of Point Arboleda; northernmost tip of Point San Rogue; southernmost tip of Cape Ullitka; northernmost tip of Cape Lynch; southernmost tip of Helm Point; westernmost tip of Hazy Island; Cape Ommaney Light, just north of 57°30'00" in Peril Strait; westernmost tip of Column Point; northernmost tip of Soapstone Point; southernmost tip of Cap Spencer; Yakobi Rock; and Yakobi Island.

Prince William Sound—Waters shoreward of lines connecting the following points in the order listed: Point Whitshed; Point Bentlinck; Cape Hinchbrook; Zaikof Point; Cape Cleare; and Cape Puget.

Secretarial authorization for the mandatory domestic observer program set forth in Amendments 13 and 18 was based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. He implements, therefore, specific provisions of the Observer Plan. As additional information is obtained through the observer program, the Secretary will work with the industry to develop and refine the domestic Observer Plan to meet the needs of both

fishery management agencies and the fishing industry.

Secretarial policy requiring 100 percent observer coverage of vessels with an overall length equal to or greater than 125 feet long remains unchanged from the proposed rule and draft Observer Plan. In 1989, 69 vessels were in this size category. Assuming 142 fishing days per vessel, which was the rate in 1989, 9,798 observer days could be required for this segment of the fleet in 1990 at a cost of \$2,449,500 based on a cost estimate of \$250 per observer day.

Secretarial policy, which establishes a new minimum length of up to 60 feet for vessels that will not be required to carry an observer, varies from that stated in the proposed rule and draft Observer Plan. Those documents proposed that operators of vessels under 50 feet would not be required to carry an observer, unless they are required to do so by the Regional Director. Comments received (see "Response to Comments Received" section, below) indicated that benefits of placing observers on vessels in the 50-60 feet size category is not appropriate, because these vessels catch such small amounts of groundfish that the cost would not be justified. The Secretary analyzed vessels between 51 and 59 feet with respect to amounts that they harvested in 1989. Vessels in this size category numbered 196 and harvested 13,542 mt of groundfish, or 10 percent of the total harvest by domestic annual processing (DAP) vessels.

Many of these vessels are "limit seiners"—vessels that have a keel length of 50 feet but an length overall of 58 feet. They are used primarily to purse seine for salmon, but are also used to a small extent to catch sablefish and rockfish with hook-and-line gear. The Secretary has determined that the benefits gained by placing observers on these relatively small, albeit numerous vessels, do not justify the costs that would be imposed on them. Conversely, vessels between 60 and up to 125 feet length overall can more easily accommodate an observer and harvest a significant amount of groundfish. In 1989, 217 vessels in this size category harvested 253,587 mt of groundfish, or 19 percent of the total harvest of 1.3 million mt delivered to U.S. processors. The Secretary has determined that the significant harvest by these vessels and the information obtained from these operations justify the observer costs.

Secretarial policy for shoreside processing facilities varies from that stated in the draft Observer Plan. The final Observer Plan now requires shoreside processing facilities that receive 10,000 mt or more of groundfish

annually to have an observer for only during those months in which the total amount of groundfish received is 1,000 mt or more. The number of occurrences (months) in which these facilities received landings of 1,000 mt or more per month was 53. Assuming 30 days per month, 1,590 observer days would be required for this category of processing facility in 1990 at a cost of \$397,500 based on \$250 per day.

The Observer Plan also requires shoreside processing facilities that receive at least 1,000 mt but less than 10,000 mt of groundfish annually to have an observer for only 30 percent of the days during those months in which the total amount of groundfish received is 500 mt or more. The Secretary determined that the amounts of groundfish received during some months are small in the aggregate and the benefits gained by having observers do not justify the costs. Based on 1989 landings, 13 facilities had total landings of at least 1,000 mt but less than 10,000 mt. The number of occurrence (months) in which these facilities received landings of 500 mt or more per month was 63. Assuming 30 days per month, and 30 percent coverage, 623 observer days would be required for this category of processing facility in 1990 at a cost of \$155,750 based on \$250 per day.

Differences Between the Final Rule and the Proposed Rule

1. A definition of overall length is added in §§ 672.2 and 675.2 to define lengths of vessels that participate in the observer program.

2. Paragraph (f) *Exemption*, in § 672.27 and § 675.25 is deleted, and any references in the proposed rule to paragraph (f) are deleted. These paragraphs in the proposed rule had listed one exemption that might be allowed to excuse a vessel operator or manager of a shoreside processing facility from complying with the Observer Plan. Based on Council comments, the Secretary has determined that no exemptions will be allowed. The Council, as well as the Secretary, believes that the management of the public fishery resources can only be accomplished through the attainment of observer information and that allowing fishing or processing to occur without opportunity for representative sampling is contrary to the public interest.

Difference Between Implementation Policy in the Proposed Observer Plan and the Final Observer Plan

The proposed Observer Plan did not include policy with respect to start-up problems in complying with the Observer Plan by vessel operators and

managers of shorebased processing facilities who are required to have 100 percent observer coverage. The final Observer Plan includes start-up policy. While full compliance with the Observer Plan by vessel operators and managers of shorebased processing facilities is required on the effective date of this notice, good faith efforts by operators and managers to obtain observers as soon as possible will be considered when enforcing compliance with the Observer Plan.

In the proposed Observer Plan, the Secretary preliminarily determined that vessels shorter than 50 feet in length would not be required to comply with the Observer Plan. In response to comments received, the Secretary has determined that vessels under 60 feet will not be required to comply unless specifically required to do so by the Regional Director. Vessels 60 feet length overall and longer, however, must be required to comply with the Observer Plan. Reasons for these changes are provided above.

The final Observer Plan also specifies that vessels 60 feet or longer but less than 125 feet that conduct actual fishing operations for only 10 days of any calendar quarter will not be required to carry an observer. If during any calendar quarter they fish for more than 10 days, then they will be required to carry an observer for at least 30 percent of their fishing trips during those calendar quarters.

In the proposed Observer Plan, the Secretary preliminarily determined that shoreside processing facilities that receive 10,000 mt or more of groundfish during the fishing year must have an observer on site for each day they receive groundfish. In response to comments received, the Secretary has determined that an observer must be present at such processing facilities each day those facilities receive groundfish during those months when total groundfish receipts are 1,000 mt or more. This change accommodates those shorebased processing facilities that receive large amounts of groundfish over a short period of time and then receive only small amounts during periods when other fisheries (e.g., salmon fisheries) dominate the operations. Rather than employing an observer with little to do during most months, managers of shorebased processing facilities can plan for those months in which they will receive 1,000 mt or more during a month and employ an observer for just those months.

Further, rather than requiring those facilities that receive between 1,000 mt but less than 10,000 mt annually to have an observer during 30 percent of the

days they receive groundfish, the Secretary has determined that this coverage will apply only for those months when the total amount of groundfish received is 500 mt or more. Again, managers of shorebased processing facilities can plan for those months in which they will receive 500 mt or more during a month and employ an observer for just those months.

The Observer Plan now exempts vessel compliance in certain areas that lie in the Southeast Alaska archipelago and in Prince William Sound. Fisheries in these areas are managed entirely by the Alaska Department of Fish and Game.

The proposed Observer Plan was silent with respect to compliance of vessel operators making landings of groundfish that were caught in other fisheries. The Observer Plan now makes clear that compliance with the Observer Plan does not apply to operators of vessels making landings of groundfish caught incidentally in non-groundfish fisheries (e.g., fisheries for Pacific halibut, salmon, and crab).

The Observer Plan also excludes operators of catcher vessels from having to carry an observer in mothership operations in which catcher vessels transport the codend part of a trawl through the water to a mothership in such a manner that no sorting of catch is possible. An observer would be on a mothership and would be able to record all required information. In this type of operation, an observer on a catcher vessel would serve little purpose.

The preamble to the final rule now includes more information that is also part of the Observer Plan. Additional information is found under the following subheadings: Observer Qualifications; Standards of Observer Conduct; Conflict of Interest Standards for NMFS Certified Observers and Contractors; and Reasons to Revoke Contractor or Observer Certification. This information was part of the Observer Plan that was provided by the Regional Director to the public during the December 6-21, 1989 public comment period.

Response to Comments Received

Forty letters of comments were received during the comment period. Most comments were supportive of the observer program, but some contained recommendations for changes resulting from different industry perspectives. Most of the comments focused on the following issues: small boats cannot carry observers without incurring unfair costs; the 30 percent observer coverage requirement is too high; observer coverage should be calculated semi-

annually rather than quarterly; observers at shore-based processing facilities are redundant if vessels delivering to them also have observers; no relationship exists between vessel length and catch; and the Federal government should pay for the observer program. Comments are summarized and responded to below.

Comment 1. No exemptions should be allowed for operators of vessels and managers of shorebased processing facilities that are required to comply with the Observer Program.

Response: The final rule has excluded provision for exemptions.

Circumstances will arise that warrant an exemption, but provision for exemptions without defining exactly those circumstances would result in confusion as to whether an exemption might be granted. Some participants might take advantage of an exemption provision and jeopardize the intent of the observer program. Individual circumstances will be considered on a case-by-case basis when making citations or when assessing penalties.

Comment 2. Observer coverage should be based on actual production, either historical or theoretical, rather than on vessel length, because a relationship between vessel length and production does not exist.

Response: While the relationship between production and vessel length is not linear for each gear type, examination of catch data shows that, overall, larger vessels harvest more groundfish than do smaller vessels. For purposes of the observer program, vessel length was a parameter that could best be defined for purposes of industry planning. Another parameter such as production might be used if justified by experience gained from the observer program.

Comment 3. Vessels in the 50-124 foot category should be covered semi-annually rather than quarterly.

Response: Information obtained from the segments of the observed fleet must be representative if NMFS is to use it to manage those fleet segments. To be truly representative, it should be collected according to statistically valid means. Ideally, the information ought to be collected in a completely randomized manner. Because such collections are not feasible, information must be collected over as short a time period as possible to be reasonably representative. If observer coverage is semi-annual rather than quarterly, the frequency of the information collected will be reduced. It will, therefore, be less representative, and less useful for management purposes. Quarterly observer coverage will be required.

Comment 4. Thirty percent coverage on a large number of vessels (e.g., 352 vessels) is unnecessary and should therefore be changed to 20 percent.

Response: As high a percent coverage as possible is necessary to obtain representative information for management purposes. Biological data is often variable and samples from too small a number of vessels would not be representative. Even though the total number of vessels is high, segments of the fleet use diverse gear types and participate in different fisheries in geographically separate locations. In the Gulf of Alaska, for example, as few as two or three trawl vessels may be fishing for rockfish at any one time, and they may be miles apart. To be representative, therefore, 30 percent coverage is required. This level of coverage may be reduced if experience gained indicates that a reduction is warranted without jeopardizing the program.

Comment 5. The vessel size category system for assigning observers does not take into account a vessel's ability to pay costs nor does it fairly distribute the costs.

Response: The composition of the groundfish fleet is diverse with respect to fishing power, earnings, and potential to afford observer coverage. The Secretary of Commerce does not have access to information on vessel net earnings to determine which vessels are unequally impacted by the Observer Plan. A tax on groundfish landings or production to obtain revenue with which to Federally fund observer coverage is likely a fair way to distribute costs. The Secretary is not authorized, however, under the Magnuson Act to levy taxes. After a year's experience with the observer program, new ways to more fairly distribute costs may become evident.

Comment 6. Observer coverage on catcher vessels is not necessary, because information can be collected from log books or by shoreside observers.

Response: The information that will be available from catcher vessels will be extremely useful in fishery management. Many of these vessels participate in fisheries in different areas, both geographically as well as bathymetrically than do catcher/processor vessels. Although information about retained catch from catcher vessels might be sampled by shorebased observers, information on discarded groundfish or prohibited species could not be collected other than by observers at sea. Even with the use of Federal logbooks, this information must be validated by at-sea observers. However,

as previously stated, the Observer Plan does exclude catcher vessels in mothership operations in which the codend part of a trawl is transported through the water to the mothership in such a manner that no sorting of catch is possible.

Comment 7. The Secretary must give authority to local officials to exempt vessels from carrying an observer if the vessels are unable to do so.

Response: For purposes of conveying policy, no vessels will be exempt from carrying an observer. As a practical matter, circumstances will arise in which a vessel operator or manager of a shorebased processing facility has not been able to acquire or keep the services of an observer. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the Observer Plan.

Comment 8. Vessel operators should not be required to submit fishing plans prior to the start of a season.

Response: Vessel operators are not required to submit fishing plans. Vessel operators have the responsibility of working through the certified contractor to obtain sufficient observer coverage to satisfy the 30 percent coverage of their fishing effort.

Comment 9. Observers at shore-based facilities would have nothing to record, because sorting groundfish and prohibited species occurs at sea, and, therefore, the requirement that shoreplants have observers should be eliminated.

Response: Observers on vessels will not be able to observe vessel operations 24 hours a day, even on large vessels where 100 percent observer coverage is required. Actual coverage on vessels will likely be 30 percent or less. Less than complete information will be the result. Exacerbating the problem of partial data is policy that requires vessels less than 60 feet in overall length to carry observers only when required by the Regional Director. Many of these vessels will be delivering catches to shore-based processing facilities. Observers at shore-based processing facilities will be able to partially fill this gap by being on hand to obtain information from landed catch. Even though prohibited species are required to be discarded at sea, experience has shown that some remain with the landed catches. Observers at shore-based facilities will be able to better document bycatch of prohibited species, which will result in more accurate total mortality estimates.

Comment 10. Costs should be borne by NOAA through a product value tax.

Response: The Secretary is not authorized under the Magnuson Act to tax products.

Comment 11. If shoreside observers are required, coverage should be based on monthly production to account for those shore-based facilities that produce large and small groundfish amounts seasonally, and thus avoid observer deployment during periods of small groundfish production.

Response: The Secretary has revised implementation policy such that shoreside processing facilities that process 10,000 mt or more of groundfish will need to have an observer only during the days in those months when total groundfish received is 1,000 mt or more for that month. Also, shoreside processing facilities that process 1,000 mt or more but less than 10,000 mt annually must have an observer for just 30 percent of the days during months when they receive 500 mt or more of groundfish.

Comment 12. If more cost effective, a NMFS staff person responsible for debriefing observers ought to fly to Kodiak rather than require several observers to fly to Seattle.

Response: The Secretary intends that observers be debriefed as close to the fishing grounds as possible. The Secretary also intends that the observer program be as cost effective as possible. Depending on circumstances, a debriefer will be sent to the observers rather than requiring observers to be sent to the debriefer.

Comment 13. The industry seeks assurance that information obtained from the observer program be kept confidential.

Response: Information collected by observers in the course of biological sampling is administratively confidential. This type of information may be released, but only with the consent of the vessel operator or manager of a shorebased processing facility. Information obtained by observers from the fishery industry, e.g., logbook and other information that reveals the business and identity of the vessel operator or name of a processing facility, is statutorily confidential. The Secretary may not release statutorily confidential information obtained from the fishing industry pursuant to the Magnuson Act. NOAA directives require the safekeeping of these data by Federal employees. Unauthorized release of statutorily confidential data is a Federal offense.

Comment 14. Will an observer be provided a survival suit or is that the responsibility of the vessel operator? Will a vessel operator need to provide for a larger life raft to accommodate an

observer? Do vessels fishing inside of 3 miles need to carry an observer?

Response: Observers will be provided their own survival suits. Vessel operators must provide life rafts large enough to accommodate safely the entire crew and the observer. All vessels that have a Federal permit to fish for groundfish must comply with the observer program, with the exception of specified waters in Clarence Strait and Chatham Strait as well as Prince William Sound. See implementation policy, above for definitions of these internal waters.

Comment 15. A vessel operator must have the option to accept or reject a particular observer. A cadre of observers should be stationed in each major port, because too much time would be required to bring an observer from Seattle.

Response: This type of concern must be resolved between the vessel operator or manager of a shore-based facility, and the contractor. The Secretary is only concerned that vessel operators and managers of shoreside processing facilities comply with the Observer Plan.

Comment 16. Although vessels under a particular size and shoreside processing facilities that produce a minimum amount of groundfish annually do not have to accommodate an observer, provision should be made that even these entities must be covered in certain situations when required.

Response: Implementation policy dictates that, although vessels under 60 feet in length and shoreside processing facilities that receive less than 1,000 mt of groundfish a year normally will not have to accommodate an observer, the Regional Director reserves regulatory flexibility such that even these entities may have to accommodate an observer if required.

Comment 17. Observer coverage of medium size vessels should be based on 30 percent of their trips rather than on 30 percent of effort, because such coverage would be easier to document.

Response: Observer coverage based on trips would not be equitable. A vessel operator could comply by carrying an observer on a short trip and then make two long trips without an observer. Conversely, another vessel operator could make three long trips and carry an observer on just one of those trips. The burden would shift disproportionately to the vessel operator making the long trips. Observer coverage will be based on 30 percent of the days fished during fishing trips. For purposes of the Observer Plan, a trip is considered to start on the day when fishing gear is first deployed and end on the day the vessel returns to an Alaskan

port or leaves the Alaska EEZ or territorial sea. Under this interpretation, transit time from ports such as Seattle cannot be used to gain credit for observer days.

Also, lost fishing time prior to fishing cannot be counted. Conceivably, a vessel operator could expend time without actually fishing to gain credit for observer days, discharge the observer, and then continue fishing with no observers on board. Once fishing has commenced, however, lost fishing time due to unforeseen circumstances (e.g., weather or mechanical breakdowns) will be counted toward observer days until the vessel arrives at an Alaskan port or departs the EEZ or the territorial sea. Transit time to ports outside the EEZ or the territorial sea (e.g. Seattle or the "donut hole") will not count toward observer days. With the use of Federally required fishing log books, a vessel operator will be able to know the number of days that he has already fished. He will also be expected to be able to estimate the number of days he intends to fish in the future. Once a trip has started, lost fishing time for unforeseen circumstances (e.g., engine breakdowns, bad weather, etc.) will be counted in favor of the vessel operator. That is, the number of days the observer is on board is counted toward the 30 percent coverage even though fishing has been curtailed due to unforeseen circumstances beyond the vessel operator's control.

Comment 18. Observers should not collect information that would be used for compliance purposes.

Response: Observers are not enforcement agents. Nonetheless, information they collect during their role in collecting information about total fishing mortality of groundfish and prohibited species will be submitted to NMFS for purposes of monitoring quotas and verifying compliance with regulations.

Comment 19. Observers should be trained in Alaska. Experience gained through fishing should count with respect to fulfilling observer qualifications.

Response: An observer's ability to professionally fulfill his responsibilities is independent of where he is trained. Training, therefore, will not be restricted to just Alaska sites. Although actual fishing experience is useful, the aspects of carrying out responsibilities with respect to biological sampling necessitates formal training in biological sciences.

Comment 20. Registered length is superior to length overall for purposes of determining participation.

Response: Registered length is no longer favored as a measure of vessel length. Different measurements (e.g., keel length, water line length) have been all referred to as registered length. Length overall is superior, because it is measurable and easiest to document.

Comment 21. Domestic fishermen are entitled to same exemption process as foreign and joint venture fishermen.

Response: The purpose of the observer program is to obtain information necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries. This information will be used to make informed decisions about conserving groundfish stocks or allocating among U.S. fishermen, who now dominate this groundfish fishery. Past history for providing exemptions for joint venture or foreign fishermen is not relevant.

Developing a rigorous system whereby U.S. vessel operators could gain an exemption would be administratively burdensome and not in the National interest, given the complexities of potentially valid reasons for exemptions. Nonetheless, NOAA will consider good faith efforts by operators and managers to maintain required observer coverage when enforcing compliance with the Observer Plan.

Comment 22. No more than one observer should be required on a vessel even if marine mammal observers are also required.

Response: Marine mammal observers are also considered to be natural resource observers. These observers will be used in special cases to collect information where the mandatory observer program is not able to respond. No more than one observer, whether a marine mammal observer or an industry observer, will be required.

Classification

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

The Council prepared an environmental assessment (EA) for Amendments 13 and 18. The Assistant Administrator found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) determined that this rule is not a "major

rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the EA/RIR/FRFA prepared by the Council for Amendments 13 and 18. A copy of the EA/RIR/FRFA may be obtained from the Regional Director at the address above.

The Under Secretary concluded that this rule would have significant effects on a substantial number of small entities. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Regional Director at the address above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under Section 307 of the Coastal Zone Management Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12812.

Other Matters

The Assistant Administrator for Fisheries finds for good cause that this rule should be made effective immediately. The industry has been well-advised that this program is intended to become effective as soon as possible after the beginning of 1990. The waiving of the cooling off period is not expected to be burdensome to the industry because NOAA recognizes some start-up problems may occur when the observer program is implemented. NOAA will consider good faith efforts by operators and managers to obtain observers as soon as possible when enforcing compliance with the observer plan. Observer data needed for inseason management decisions and for future management planning and decision-making must be obtained at the beginning of the fishing year. If this rule is delayed, information will be foregone for the length of the delay. This information pertains to (1) incidental catches of prohibited species, including crab and Pacific halibut, in the groundfish fisheries, (2) incidental catches of groundfish species in the target groundfish fisheries, and (3) interactions between the groundfish fisheries and marine mammals and birds. Some of the groundfish fisheries may last as little as three or four weeks after the fishing year starts on January 1, 1990. If observers are not deployed

during these fisheries, information will not be available to make informed management decisions in 1991. In addition, the Assistant Administrator mindful of the decline of Stellar sea populations in the waters of Alaska. The observer coverage required under this rule will provide important information concerning the effects of fishing for groundfish on these populations. In particular, immediate deployment of observers will provide timely and more complete information on interactions during the winter fisheries. Therefore, the Assistant Administrator has determined that it is impractical and contrary to the public interest to delay for 30 days the effective date, of this rulemaking under provisions of section 553(d)(3) of the Administrative Procedure Act.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping requirements.

Dated: February 8, 1990.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

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

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read, as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 672.2 is amended by adding the definition of "length overall" in alphabetical order as follow:

§ 672.2 Definitions.

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

3. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels sub

to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the council for purposes of providing data useful in management of the groundfish fishery.

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

(c) *General requirements.—(1) Compliance by vessels.* An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities.* (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;
(B) One or more life rafts capable of holding all persons on board; and
(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer 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 which may be used to hold,

process, weigh, or store fish or fish products at any time;

(vi) Notify the observer 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 observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) 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 the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

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

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or 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;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

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

4. The authority citation for part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. Section 675.2 is amended by adding the definition of "length overall" in alphabetical order as follow:

§ 675.2 Definitions.

* * * * *

Length overall of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders.

outboard motor brackets, and similar fittings or attachments.

6. Section 675.25 is revised to read as follows:

§ 675.25 Observers.

(a) *Observer Plan.* The operator of a fishing vessel subject to this part, and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the Observer Plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject to this part must ensure that the operator or manager complies with the Observer Plan and is jointly and severally liable for compliance with that plan. The Observer Plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

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

(c) *General requirements—(1)*

Compliance by vessels. An operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is required to do so by the Regional Director.

(2) *Compliance by shoreside processing facilities.* A manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is required to do so by the Regional Director.

(d) *Responsibilities—(1)* an operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

- (A) Adequate fire fighting equipment;
- (B) One or more life rafts capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel's communication equipment and personnel on request for the transmission and receipt of messages;

(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;

(v) Allow the observer 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 which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer 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 observer specifically requests not to be notified;

(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) 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 the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

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

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept and provide for an observer, at no cost to the observer or the United States, for purposes of complying with the Observer Plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish.

(iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy the shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) *Prohibited actions.* No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or 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;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

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AGENDA C-2
JUNE 1990
SUPPLEMENTAL

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WORLDTRADE UQ

TO: ALL MEMBERS OF THE NORTH PACIFIC FISHERY MANAGEMENT
COUNCIL;

ALL MEMBERS OF THE ADVISORY PANEL

Re: Domestic Observer Program

Concerns are being expressed by Industry, Observers, and Observer Contractors about the great length of time it takes to start and complete Observer debriefings at the end of each three-month deployment.

At the beginning of the Groundfish Observer Program prospective Contractors were told by NMFS that debriefing would require up to five days. While wise Contractors probably included five days pay for Observers during debriefing in their fee schedules, they have no means of recapturing additional payroll costs.

Debriefing is now taking much longer than expected due to inadequate staffing, and, perhaps, procedural problems. As of June 18, according to NMFS in Seattle, there are two persons on the debriefing staff. Thirteen Observers have submitted their completed paperwork for check by this staff. An additional five Observers are involved in the final data correction stage.

As we understand it, the debriefing procedure is as follows: an initial interview and cursory overview of data is scheduled, after which the Observer corrects or completes forms as needed and turns them in for final review. The revised forms go to the bottom of the stack. Debriefers go over the paperwork starting from the top of the stack, usually taking about one full day to review each Observer's data. When this detailed review is finished, the debriefer discusses it again with the Observer and gives it back for final corrections. This can take from a few hours to several days for the Observer to finish. From the Observer's viewpoint, after the initial interview and completion of paperwork, he waits until the debriefer has a chance to check the data in detail. Even the best preparation on the part of the Observer does not alleviate a long wait.

Observers are unhappy when they find they must be on call for up to two weeks (or longer in some cases) to finish debriefing, with pay for only five days. Some Observers have made other commitments for time beyond five days or a week, which creates problems for their Contractors and

for NMFS in completing debriefings. If an Observer fails to complete the debriefing procedure, his information is not used, and his effort is wasted, as is the money spent for his services.

A further effect of long debriefing time is demoralization and dampening of enthusiasm for the program on the part of the Observer. We are concerned this will discourage and frustrate Observers who otherwise might be willing to undertake additional trips. We value experienced Observers, and do not want our efforts in recruitment of scientists negated.

Industry representatives are concerned about delayed vessel sailings because Observers were not immediately available. Some of this is due to delayed debriefing procedures which prevent efficient Observer turnaround. Every day's fishing denied a vessel is reckoned as many thousands of dollars in lost income.

The learning curve on this Observer program has been as difficult for NMFS as for the Industry and the Contractors. They do not have enough people to efficiently debrief Observers, especially when large numbers of Observers arrive at one time, such as at the end of the black cod season in the Gulf of Alaska.

The new NMFS debriefing office in Kodiak has been helpful in alleviating the backlog, and their proposed debriefer in Dutch Harbor will also help when the position becomes active. However, considering the cost of board and lodging in Kodiak and Dutch Harbor, we suggest it is absolutely necessary that NMFS systems be upgraded and NMFS personnel be increased to accomplish debriefing within a five-day period.

It is our understanding that, although debriefing is now done in Alaska, it is currently necessary for an Observer to return to Seattle for a briefing prior to his second deployment. It is certainly not cost-effective or time-effective, for an Observer who wants to return to work immediately, to be required to travel to Seattle for a few hours' briefing session.

We also suggest that it is in the best interests of the Observer program to have training, briefing and debriefing facilities in Anchorage, as well as in Seattle. Logistically, Anchorage is the transportation hub for the Alaskan fishing grounds. It would make sense for NMFS to set up facilities here to administer the Domestic Observer Program, since the program targets vessels fishing in waters off Alaska.

Sincerely,



Roger I. Woods
President

1990 NMFS Domestic Groundfish Observer Program - Response to Questions Raised by the North Pacific Fishery Management Council

At the April meeting of the North Pacific Fishery Management Council, the National Marine Fisheries Service was requested to respond to a number of questions and issues which were raised by the Council and by public testimony concerning the domestic groundfish observer program. Some of these questions and issues need to be considered in the development of revisions to the program for 1991. Responses provided to the questions posed are based on the assumption that the program will continue to be industry funded. Questions and issues with regard to observer requirements for crab or halibut fisheries are not addressed.

Observer training and debriefing; establishment of program organization and operations (including observer field stations); resolution of daily problems experienced in the field by observers, by observer contractors and by operators of vessels and plants; procurement of supplies and equipment; and entry of data were issues focused on during the implementation period. Solutions to operational problems experienced are being implemented.

We are in the process of determining the first quarter compliance with observer requirements as we receive and enter logbook data.

Returned data have not yet been sufficiently evaluated to merit significant changes to the Observer Plan for 1991.

Substantive changes to requirements of the observer plan will require a notice and comment period in the FEDERAL REGISTER with full analyses, even though the changes are not actually codified. However, NMFS can issue an interpretive rule for the purpose of clarifying existing observer plan requirements. Interpretive rules do not require a public notice and comment period, although they will be published in the FEDERAL REGISTER to provide notice of the rule.

We are considering four substantive changes to the observer plan. The four changes being considered are:

- a. Deletion of the 1,000 t to 10,000 t and the 10,000 t annual triggers for shorebased processors but retention of the monthly triggers of 500 t required for 30% coverage and 1,000 t required for 100% coverage;
- b. Adoption of the same requirements for motherships and floating processing vessels as for shorebased processing facilities;
- c. requiring vessel operators participating in the groundfish fishery to agree to allow observed bycatch

rates of prohibited species to be released for public information on an individual vessel basis; and,

- d. revision of the definition of an observer trip to mean days during which fishing activity occurred.

For these proposed changes and any other changes considered substantive which the Council may request to be considered, the rule making process must begin by August, 1990, to allow the changes to become effective by January 1, 1991.

1. Review of observer coverage requirements. During 1990, a number of issues have surfaced with respect to the required levels of observer coverage. The need for 100% coverage of vessels equal to or greater than 125 feet in length which deliver unsorted catches of pollock taken when using pelagic nets to shoreside processing has been questioned. Minimal sorting of catch and bycatch takes place aboard the vessels which greatly restricts the work an observer can accomplish aboard the vessel. As a result, much of the observer sampling work is conducted shoreside at the processing plant as the catch is unloaded or processed. Having a 100% observer requirement on the vessels and at the plants receiving the catch may be a duplication of effort.

We are not yet able to make recommendations on the levels of observer coverage required for accurate sampling. The question of duplication of effort in the situation described above has to be evaluated in terms of the work which must be performed by observers at sea. There are duties which have to be performed by observers at sea, even if the catch is delivered unsorted. These duties include making estimates of the total catch taken in each individual haul and observing and recording interactions with marine mammals. If there is an incidental take of marine mammals, the biological data from these animals can only be collected at sea. Even though these vessels may not sort their catch prior to delivery, regulations require that they make an attempt to sort and discard prohibited species at sea. Consequently, an observer would have to be aboard to obtain a total measure of the bycatch. We will evaluate this issue and also consider any recommendations the Council wishes to make on this and levels of observer coverage in general.

2. Exemptions from observer coverage. The 1990 program provides no specific exemptions from observer coverage. Requests for exemptions have been handled on a case-by-case basis. In those situations where an observer was unavailable for reasons beyond the control of the vessel or plant owner, temporary waivers were granted until an observer became available. This approach has mostly worked, though at times it has been difficult for everyone involved. It is clear that there is no easy way around the observer requirement.

3. **Equity of cost and cost sharing.** The 1990 observer costs are placed on vessels and plants irrespective of their ability to pay. There is concern over resulting inequities. Vessels which cannot accommodate an observer but can share in the cost have asked if they could pool with other vessels to meet their observer coverage requirement.

Distributing program costs equitably is dependent upon either modification of the Magnuson Act or the Council changes its rules. Until either the Act is amended or the Council changes its rules, each vessel and plant will continue to incur the cost of meeting their observer coverage requirement. The proposal that vessels within the category requiring 30% coverage be allowed to pool and share costs so that vessels which cannot accommodate an observer can meet their coverage requirement could work. The total observer time needed to meet the cumulative coverage requirements of all the vessels within the pool would have to be achieved if this approach were taken. For example, a pool consisting of three vessels each planning to fish for one month would have a total pool coverage requirement of 30 observer days. The 30 observer days could all be spent aboard one or two of the three vessels within the pool and all three vessels would share equally in the total cost of the observer. The potential problem with this approach is the possibility of biasing of observer data by placing the observer on a vessel which fished in a manner unrepresentative of the operation of the group.

4. **Assignment of observers.** The 1990 program places the responsibility on the certified contractors for the assignment of observers to vessels or plants. This practice has been questioned since it may not match the most experienced observers with those assignments best filled by such individuals. There is also concern over possible conflicts of interest between observer contractors and their clients in the way observers are placed. As an alternative, it has been suggested that NMFS be responsible for all observer assignments since NMFS may have a better idea of the experience or ability of each observer within the total number of observers available and does not have a business interest or conflict of interest with the vessels or plants to which the observers are deployed. This alternative is similar to the way in which the assignments would be handled under a program which was federally funded or funded through fees paid into a federal fund.

Presently, it is not possible for NMFS to control observer assignments. Vessel/plant owners arrange for observers through the certified contractors and the cost per observer month varies between contractors. It would be unfair to place an observer that one owner paid a greater cost for on a vessel or in a plant which arranged for an observer at a lesser cost. Under the present system for obtaining industry funded observers through certified contractors, the cost variability between contractors could be resolved and NMFS control over observer assignments achieved by limiting the number of contractors certified to provide observers to one or possibly two firms or by NMFS

establishing a standard cost per observer month so that it was the same for all contractors. By either limiting the number of contractors (which essentially also standardizes cost) or standardizing the cost per observer month that could be charged, the competitive business portion of the relationship between the contractor and the vessel/plant owners would be removed. You would also be able to treat the pool of observers as one entity and move them among vessels and plants without concern over who paid for what observer and possibly do a better job matching an individual's abilities with a particular assignment.

There are potential problems with this idea, such as the legality of standardizing the cost per observer. Limiting the number of contractors may also lead to higher costs for observers since there would not be any competition among contractors. It should also be noted that the contractors should be able to do an acceptable job of assigning observers according to their qualifications and skills since they were recruited, evaluated, and hired the observers.

5. Contractor conflict of interest. There have been questions raised as to whether the conflict of interest standards applied to certified contractors within the program are strict enough. Within the current group of certified contractors, there are a number of contractors which provide other types of services to the fishing industry. It has been determined that the types of activities engaged in do not constitute a conflict of interest. We are satisfied with the current conflict of interest standards.

6. Data confidentiality. The data collected by observers are held confidential by NMFS. The certified contractors and observers are required as a condition of their certification to treat all data and information collected by observers as confidential. All data and reports are required to be turned in to NMFS and neither the observers or contractors are allowed to retain copies of the information. One of the comments made in April's public testimony was a request to have observers carry identification cards so that they could demonstrate upon entry into a plant or boarding of a vessel they are officially part of the program. Since the initiation of the program in January, observers have been given a letter of certification from NMFS upon successful completion of training. That letter should be available for inspection by a plant manager or vessel master upon request. In addition, a plant manager or vessel master should be able to check an individual's authorization with the contractor who provided the plant or vessel the observer.

7. Observer qualifications. We have been asked to review the program's requirements for observer qualifications. Currently, the program requires observers placed aboard domestic vessels or at shoreside facilities to be certified by NMFS to serve as an observer. To qualify to attend the NMFS observer training course, an observer should have a bachelor's degree in fisheries or wildlife biology or related field of biology and natural resource management. If sufficient numbers of qualified and

acceptable applicants with the above educational background are not available, individuals with senior standing within one of those programs listed above or individuals with an Associate in Arts (A.A.) degree in fisheries or wildlife science or technology may be substituted. If sufficient numbers of individuals with any of the above qualifications are not available, the Contractor may seek approval from NMFS to hire individuals with other relevant experience or training. An individual who meets the above requirements and is hired by a contractor must then successfully complete the NMFS observer training course.

We are satisfied with the current requirements and numbers of individuals available to meet them. The requirements also offer sufficient flexibility to include individuals with other relevant experience.

8. Observer training. Suggestions have been made that observer training should be improved in areas primarily related to vessel safety, seamanship and living aboard vessels (especially the smaller shoreside vessels). We agree that training needs to be improved in these areas. We have begun to upgrade training in these areas and have plans for future improvements. A member of our training staff and our program biologist stationed in Kodiak met with Ms. Mandy Merklein of Saltwater Inc. in Kodiak in May. Together they toured the plants and vessels in Kodiak to gain a better understanding of the difficulties of working aboard vessels and in processing plants and the safety concerns associated with that work. We plan to visit Dutch Harbor and possibly other ports this year to evaluate the work situation on vessels and in plants at other locations. We have supported Mr. Hank Pennington of the University of Alaska Sea Grant and his proposal to develop a safety training video and program which will address work and safety on domestic vessels. If that video is produced, it will be included as part of our training. We are also investigating the inclusion of additional training in the use and description of fishing gear. In August we will increase the length of the observer certification training course from 2.5 weeks to three weeks. The additional time will allow improved training in the areas of concern and additional time for training related to other observer duties.

9. Observer data quality and accuracy. One of the issues raised is the types of data collected by the observers and the workload which has been placed on observers. We have initiated a review of the sampling duties and workload assigned observers. The purpose of this review is to determine if there are specific sampling and data collection requirements which can be reduced and/or are there other types of data that should be collected which are not now being collected or which have low priority. The review should be completed in early July and changes resulting from that review should be implemented this fall.

A second issue raised is the adequacy of the sampling gear provided observers. Of particular concern were the types of sampling baskets and weighing scales being utilized. The program

encountered a number of problems with the procurement of supplies and equipment upon implementation of the program. The problems resulted from the delay in receipt of the authorization of funds to operate the program and government procurement regulations. As a result, we were unable to provide some of the same types desired. These problems are being resolved for sampling baskets and most other types of gear, however, we have not located suitable platform scales. We have tried a number of scales but are not satisfied that we have the proper solution. Once found, we will provide platform scales to observers working on shoreside delivery vessels.

10. Retention of experienced observers. Through June, the program had trained and certified 320 individuals. Approximately 75% of these individuals had prior experience. An increase in the proportion of experienced observers deployed would benefit the program by improving the quality of data collected, reducing the chance of injury or accident resulting from inexperienced people working at sea, reducing the chance of early dropout from the program and reducing the cost since experienced observers do not have to attend the full training course. Effort to date has been devoted to building a pool of trained observers to meet immediate observer needs. Throughout the first half of this year, experienced observers accounted for about 25% of the trips. As the new observers complete their assignments, we anticipate some increase in the return of observers who make additional trips.

Levels of salary which are commensurate with the work requirements of the job; the proper and fair treatment of the observers by their contractors, NMFS (including a realistic workload), and crew on board the vessels; proper recognition and appreciation of the work performed by observers; realistic length of field deployment; and improved career opportunities are factors that affect our ability to retain observers. Within the current program, there are improvements and actions which can be taken on that would improve the chances of retaining experienced observers. Even under the best of conditions, there will continue to be a high turnover rate. Contributing to this characteristic of the program, this turnover will be due to the large number of observers needed and the nature of the job itself.

DATE 8/7

TIME _____

AGENDA ITEM C-2

ROLL CALL TALLY

	<u>Yes</u>	<u>No</u>
ALVERSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
BLUM (or MERCHANT/PEDERSEN)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
COLLINSWORTH (or PARKER)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COTTER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2 DYSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>
HEGGE	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LAUBER	<input checked="" type="checkbox"/>	<input type="checkbox"/>
m MACE (FISHER)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
MITCHELL	<input type="checkbox"/>	<input checked="" type="checkbox"/>
PENNOYER (or BROOKS)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
PETERSON	<input checked="" type="checkbox"/>	<input type="checkbox"/>

MOTION _____
Dom Obs. - \$5 pts suggested by NMPS

(m) - maker of motion
 (2) second