

MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke
Executive Director



DATE: January 4, 1990

SUBJECT: Domestic Observer Program

ACTION REQUIRED

Receive status report on observer program. Provide guidance to NMFS as necessary.

BACKGROUND

On November 1, the Secretary approved the Council's framework approach to an observer program which is designed to provide the Council with flexibility in deployment of observers among fisheries and vessel/processor categories as management needs change. The framework calls for the annual development of an observer plan which would specify the details and requirements of the observer program for the year. For 1990, the Council requested NMFS to prepare the observer plan.

You received a status report on the plan and a copy of the Notice of Proposed Rulemaking during the December Council meeting. The Council provided comments to the Secretary on several points described in the proposed rulemaking. Your comments and the NMFS response are provided 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 eliminated the 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: Vessels less than 125' that are capable of taking an observer should have their 30% coverage accounted semi-annually rather than quarterly. There was Council discussion that quarterly accounting might make the program overly burdensome on the smaller vessels which have shorter trips and seasons.

Response: Quarterly observer coverage is maintained. 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.

Comment 3: 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 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 4: Duplicative observer coverage. Industry raised concerns about requiring observers at shore plants and also on the vessels that deliver to that same shore plant. It was suggested that observers at shorebased 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% observer coverage is required. Actual coverage on vessels will likely be 30% or less. Less than complete information will be the result. Exacerbating the problem of partial data, is the policy that requires vessels less than 60' in overall length to carry observers only when required by the Regional Director. Many of these vessels will be delivering catches to shorebased processing facilities. Observers at shore plants will be able to partially fill the 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 shorebased plants will be able to document bycatch of prohibited species, which will result in more accurate total mortality estimates.

The Notice of Final Rulemaking was filed in the Federal Register on January 5. Other changes made to the observer plan since the Notice of Proposed Rulemaking include:

- Vessels less than 60' in length (**formally 50'**) must carry observers only if requested by the Regional Director.
- 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 (**the monthly provision is new**).
- Managers of shoreside facilities that annually receive between 1,000 mt and 9,999 mt, round weight of groundfish, must have an observer at the facility for 30% of the days of any month in which they receive a total of 500 mt or more of groundfish for that month (**the monthly provision is new**).
- 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 (**formerly this processing category was exempt**).

None of the above changes are absolute. Should the Regional Director have a valid reason to modify the deployment plan, he has that authority. A copy of the Notice of Final Rulemaking is provided for your information as item C-2(a). The final notice includes a more detailed presentation of the differences between the proposed and final rule.

A status report on the implementation and progress to date of the observer program is available.

Billing Code: 3510-22

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No.]

[RIN 0648-]

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: [Insert date of filing with the Office of the Federal Register].

ADDRESS: 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.

FOR FURTHER INFORMATION CONTACT: Robert Maier, Fishery Biologist, Alaska Fisheries Science Center, Seattle, NMFS at 206-526-4195 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 Parts 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 act as agents of NMFS in providing 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 contained in this notice as well. Major elements 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) specification 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 on board domestic vessels will be required to successfully complete a 2-1/2 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-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 act as agents of NMFS to 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 as an agent of NMFS 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. 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 operations 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) a life raft 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:

(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.

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 observers. No limit is placed on the number of contractors which could participate in the observer program and a vessel owner or manager of a shoreside processing facility could choose to work with whichever contractors chosen. As agents of NMFS, 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 place and maintain 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.

Observer Qualifications

Observers placed aboard domestic vessels or at shoreside facilities by the 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-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 2 1/2 week certification training provided by the AFSC prior to deployment.

Prior to deployment, each observer must receive a NMFS certificate 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, while not direct employees of the U.S. Government, are nonetheless, acting as agents or representatives of the government, and as such must abide by the standards of conduct listed in Title 15 CFR Subtitle A, Part O 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 should 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 may be grounds for decertification.

- (3) Observers should 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 action or activities include, but are not limited to:
 - (a) excessive drinking of alcoholic beverages;
 - (b) use or distribution of illegal drugs; and
 - (c) physical or emotional involvement with vessel or processing plant personnel.

Behavior which is contrary to these standards or to the intent of these standards would be considered to be 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 or 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 certified NMFS 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 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 certified observer contractor:

- (1) may not be an individual, partnership, or corporation with a personal or financial interest in the observed fishery or vessels, other than the provision of observers;
- (2) shall assign observers to vessels without regard to requests from vessel owners or operators for a specific individual.

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.
- 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 or vessels observers are being provided to.
 - (2) A certified contractor has failed to satisfactorily provide the observer services specified by this program to members of the fishing industry.

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 at all times.

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.

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.

Vessels less than 60 feet in length must carry observers only when 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 500 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 for 30 percent of the days they receive groundfish.

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

(d) Exemption within the waters of the State of Alaska.

With respect to observers on vessels, the Observer Plan does not apply in the following waters of the State of Alaska 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 54°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 Ulitka; 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 Cape 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; from 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, 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 costs would not be justified. The Secretary analyzed vessels between 51 and 59 feet with respect to amounts that they harvested in 1988 and again in 1989. In 1988, 123 vessels in this size category harvested 13,233 mt of groundfish, or 0.6 percent of the harvest by total domestic annual processing (DAP) vessels and joint venture processing (JVP) 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 amounts of groundfish. In 1988, 229 vessels in this size category harvested 295,119 mt of groundfish, or 36 percent of the total harvest of 810,851 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.

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 §672.20 and §675.20 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 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 they fish for 10 days or more, however, 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 500 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 expect to 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 within internal waters of the State of Alaska 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.

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 service 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 shorebased 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 shorebased 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 it receives groundfish in those months when total groundfish received is 500 mt or more for that month.

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 closely 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 that 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. Protecting the confidentiality of statutorily confidential information obtained from the fishing industry is written into the Magnuson Fishery Conservation and Management Act. NOAA directives require the safekeeping of these data by Federal employees. Unauthorized release of 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 the safety 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 internal waters of the State of Alaska 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 shorebased 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 Alaska port or leaves the Alaska EEZ or territorial sea. Under this interpretation, transit time from ports such as Seattle can not 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 12612.

Other Matters

The Assistant Administrator for Fisheries finds for good cause that this rule should be made effective immediately. 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 is mindful of the decline of Stellar sea lion populations in the waters off Alaska. The observer coverage required under this rule will provide the 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 a delayed effectiveness period under the Administrative Procedure Act is impractical and contrary to the public interest. Interested persons, however, are invited to submit comments in writing to the address above for 15 days after the effective date of this regulation.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Fishing vessels, Reporting and recordkeeping

Dated:

For the reasons set out in the preamble, 50 CFR Parts 672 and 675 are proposed to be amended as follows:

PART 672 -- GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for Part 672 reads as follows:

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

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

§672.2 Definitions.

* * * * *

Overall length 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 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) A life raft 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 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:

(A) 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

(B) The catcher vessel's daily fishing 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.

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

3. The authority citation for Part 675 reads as follows:

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

4. Section 675.2 is revised 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.

* * * * *

5. 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) A life raft 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 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:

(A) 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

(B) The catcher vessel's daily fishing 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:

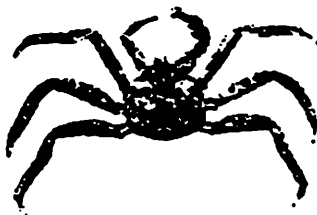
(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(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.

COMMERCIAL FISHERIES



NEWS RELEASE

ALASKA DEPARTMENT
OF FISH & GAME



JAN - 8

STATE OF ALASKA

Department of Fish and Game
Don W. Collinsworth, Commissioner

Ken Parker, Director
Division of Commercial Fisheries

Westward Region
211 Mission Road
Kodiak, AK 99615

Contact: William E. Nippes
Shellfish/Groundfish
Management Coordinator

IMMEDIATE RELEASE

Date: January 3, 1990

ATTENTION AT-SEA PROCESSORS

A waiver of the observer requirement for at-sea floating processors will continue to be granted in 1990 only for Dutch Harbor and Akutan under the following conditions:

1. This waiver applies to floating processors. Vessels catching and processing crab must apply in writing on an individual basis for a waiver to the Dutch Harbor Fish and Game office. Depending upon conditions, 72 hours may be required to obtain the waiver.
2. Floating processors operating under conditions of this waiver must notify the Dutch Harbor Fish and Game office prior to processing or moving from one location to another, preferably 24 hours in advance. Failure to do so will result in the processor being required to obtain an observer.
3. Processing is to occur only in the Unalaska Bay and Akutan Harbor area. The location of processing must be approved by the Department of Fish and Game at Dutch Harbor prior to processing.
4. Room and board is to be provided upon request of a Department sampler and will be reimbursed at established rates.

5. Transportation of Department samplers to and from processors will be provided by the processors upon request. Failure to provide such transportation will result in the processor being required to have an observer.

The Department has evaluated waivers given this past year for floating processors. Reasonable access to processors was unattainable in areas where waivers were issued except for Dutch Harbor and Akutan. Since access was not available in other locations, waivers will be issued only for Dutch Harbor and Akutan.