

such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9905, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied

with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 070322065-7114-02; I.D. 030607C]

RIN 0648-AV39

### Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 13

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements Amendment 13 to the Atlantic Sea Scallop Fishery Management Plan (Scallop FMP). Amendment 13 was developed by the New England Fishery Management Council (Council) to permanently re-activate the industry-funded observer program in the Scallop FMP through a scallop total allowable

catch (TAC) and days-at-sea (DAS) set-aside program that helps vessel owners defray the cost of carrying observers. The following observer program management measures are implemented by this rule: Requirements for becoming an approved observer service provider; observer certification and decertification criteria; and notification requirements for vessel owners and/or operators. This action also requires scallop vessel owners, operators, or vessel managers to procure certified fishery observers for specified scallop fishing trips from an approved observer service provider. Additionally, this action allows adjustments to the observer program to be done through framework action.

**DATES:** Effective June 12, 2007.

**ADDRESSES:** Copies of Amendment 13, the public hearing document, and the Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at <http://www.nefmc.org>. Amendment 13 is categorically excluded from the requirement to prepare an environmental assessment or an environmental impact statement. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298, and are also available via the internet at <http://www.nero.nmfs.gov>.

Written comments regarding the burden-hour estimate or other aspects of the collection-of-information requirement contained in this final rule should be submitted to the Regional Administrator at the address above and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, phone 978-281-9272, fax 978-281-9135.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Council adopted Amendment 13 to the Scallop FMP on February 7, 2007, and submitted it to NMFS on February 16, 2007, for review and approval. The Council developed Amendment 13 to permanently re-active the industry-funded scallop observer program implemented by NMFS via emergency

rule in 2006. Observer coverage in the scallop fishery is necessary to monitor the bycatch of finfish, including yellowtail flounder, skates, monkfish, cod, and other species. Monitoring of yellowtail flounder bycatch in the Scallop Access Areas within the year-round closed areas under the Northeast (NE) Multispecies FMP is of particular concern because the scallop fishery is constrained by a fishery-specific TAC of yellowtail flounder, an overfished species, which is part of the stock-wide yellowtail flounder TACs set by the NE Multispecies FMP to achieve specified mortality targets for the species. Observer coverage is also needed to monitor interactions of the scallop fishery with endangered and threatened sea turtles. A proposed rule for Amendment 13 was published on April 6, 2007 (72 FR 17076). The public comment period for the proposed rule ended on May 7, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. This rule implements management measures associated with the scallop observer program, which are described in detail below.

#### **Approved Management Measures**

In the proposed rule, NMFS requested comments on all proposed management measures. The approved management measures are discussed below; no measures in Amendment 13 were disapproved. Details concerning the development of these measures were presented in the preamble of the proposed rule and are not repeated here.

#### **Observer Service Provider Requirements**

Amendment 13 allows any entity to become an observer service provider if it meets the approval and responsibilities criteria. Potential observer service providers are required to submit an application containing detailed information such as contact information, description of past experience with placing individuals in remote field and/or marine environments, evidence of adequate insurance to cover injury, liability and accidental death for observers during employment, and proof of compensation for observers while employed that meet or exceed Department of Labor guidelines. Entities interested in being included on the list of NMFS-approved observer service providers are required to submit an application with the information described in the regulatory text of this action. Upon receipt of an application, NMFS will provide all potential observer service providers with an estimated number of observer

sea days for the fishing year.

Additionally, a planned schedule of observer deployments will be posted on this NOAA Web site: <http://www.nefsc.noaa.gov/femad/fsb/>. NMFS will notify candidate observer service providers of their approval or disapproval within 15 days of its receipt of their applications. If approved, the observer service provider's name will be added to the list of NMFS-approved observer service providers.

Observer service providers will be required to comply with all observer support, deployment logistics and limitations, communication, training, reporting, and conflict of interest requirements in the regulatory text of this action. Observer service providers will also be responsible for setting the daily cost of observer coverage on a vessel. NMFS will continue to be responsible for determining the reduced DAS accrual rate and TAC for the set-aside program to defray the cost of observer coverage through biennial specifications. This NMFS-approval process will maintain quality control of the data collected, but will not have potential conflicts with augmentation of appropriations law and policy.

Amendment 13 implements a few minor changes from the observer service provider requirements implemented by NMFS in 2006 via emergency rule. The cost of training/certifying scallop observers is borne by NMFS. To facilitate cost-effective training/certification, Amendment 13 requires a minimum class size of eight observers, which may be split among multiple observer service providers, to be enrolled in the scallop observer training class operated by the Northeast Fisheries Observer Program (NEFOP). Training classes with fewer than eight participants will be delayed until at least eight participants are enrolled. Amendment 13 also requires that an approved observer service provider maintain in its employ at least eight observers that had been certified through the scallop observer training class operated by NEFOP. The emergency rule required that an observer's first deployment shall be on a Scallop Access Area trip and that the resulting data be edited and approved by NMFS prior to any further deployments. Specifying details of new observer's first deployment was designed to provide the necessary oversight to ensure the collection of timely and accurate data. However, NEFOP has learned that requiring an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is sufficient for quality

control, and that requiring an observer's first deployment be on a Scallop Access Area trip may limit the availability of observers to provide coverage on scallop trips to open areas. Therefore, the requirement that an observer's first deployment and the resulting data be edited and approved by NMFS, prior to any further deployments, is implemented in this action, but the requirement that an observer's first deployment shall be on a Scallop Access Area trip is not.

#### **Observer Certification Requirements**

Amendment 13 requires that employees of observer service providers must meet the NMFS National Minimum Eligibility Standards available at <http://www.st.nmfs.gov/st4/nop/> and must pass the NEFOP training course and be physically and mentally capable of carrying out the responsibilities of an observer. NMFS has the authority to review observer certification and issue observer certification probation and/or decertification if warranted. One minor addition to the observer certification requirements implemented by emergency rule is that Amendment 13 requires that all observers hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certificate.

#### **Removal/Decertification Requirements**

Amendment 13 specifies criteria and protocols for removal of an observer service provider from the list of NMFS-approved observer service providers and the probation and decertification of an observer.

#### **Vessel Requirements**

Amendment 13 specifies general requirements for scallop vessels, notification procedures, and requirements of the vessel if it is selected to carry an observer. Vessels are responsible for paying the cost of an observer, regardless of whether the vessel lands or sells scallops on that trip, and regardless of the availability of set-aside TAC or reduced DAS accrual rate.

The emergency rule required that vessels contact NMFS prior to the 25th day of the month preceding the month in which it intends to fish. This requirement was designed by NMFS to provide NEFOP with an estimate of fishing effort to expect in the following month, so that observer coverage needs could be met. However, NEFOP has found that it does not need this provision to meet coverage needs; therefore, that notification requirement is not implemented in Amendment 13.

### *Future Adjustments to the Observer Program*

Lastly, Amendment 13 provides for a framework mechanism to implement future adjustments to the scallop observer program. Under the Scallop FMP, and in accordance with the Administrative Procedure Act, the framework process allows for rulemaking to amend observer requirements without the need to also amend the FMP. Currently, adjustments to the observer program must be made through an amendment to the Scallop FMP. Providing for a framework mechanism in the Scallop FMP to make adjustments to measures implemented for the observer program will allow the Council more flexibility to develop improvements to the observer program.

### **Comments and Responses**

NMFS received two comment letters on Amendment 13.

*Comment 1:* The first comment expressed concern about the lack of Federal support for observer coverage of the scallop fishery. The commenter stated that the Scallop FMP requirement that industry pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. Instead, the commenter proposed that NMFS use Federal funds to pay for observer coverage in open area trips, to the extent that such funding is available.

*Response:* The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were established after being considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only establishes the mechanism to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action.

*Comment 2:* The second comment cautioned that a conflict of interest can

result from industry-funded observer programs, leading to inaccurate and biased data. The commenter proposed camera surveillance as a better means to collect data.

*Response:* NMFS concurs with the commenter that conflict of interest is an important issue to consider when developing an industry-funded observer program. Therefore, to minimize the likelihood that an observer would develop ties to a vessel owner/operator and/or feel pressured by a vessel owner/operator to misreport, Amendment 13 prohibits observer service providers from consecutively deploying the same observer on the same vessel and from deploying an observer on the same vessel more than twice a month. The Council did not consider electronic monitoring for the scallop fishery in Amendment 13, but as technology develops, electronic monitoring may be considered in a future action.

### **Changes From the Proposed Rule**

In § 648.14, paragraph (h)(17) is revised to include the correct cross-reference.

In § 648.14, paragraph (i)(15) is added to clarify the prohibition to be consistent with paragraph (h)(17).

### **Classification**

The Administrator, Northeast Region, NMFS, determined that FMP Amendment 13 is necessary for the conservation and management of the Atlantic sea scallop fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable laws.

NMFS approved Amendment 13 on May XX, 2007. A copy of the Amendment is available from the Council and NMFS (see **ADDRESSES**). This final rule has been determined to be not significant for purposes of Executive Order 12866.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for Amendment 13. Because Amendment 13 maintains a mechanism for an industry-funded observer program that has been in place since last year, delaying the effective date of Amendment 13 would be more disruptive and would cause more economic and resource conservation concerns than waiving the delay in effective date.

Amendment 13 permanently implements, with minor modifications, the industry-funded scallop observer program implemented by NMFS through an emergency rule in 2006. Observer coverage in the scallop fishery is necessary to monitor groundfish

bycatch, particularly yellowtail flounder bycatch in the Scallop Access Areas. It is also needed to monitor interactions between the scallop fishery and sea turtles, especially in the Mid-Atlantic during June through October. The emergency rule that implemented the industry-funded scallop observer program in 2006 expires on June 11, 2007, and the Scallop Access Areas open on June 15, 2007.

To prepare for the opening of the Scallop Access Areas, NMFS recently completed a three-week training course for 20 observers for the industry-funded scallop program. The cost of this training was approximately \$112,640 (approximately \$5,632 per observer) and included lodging, meals, travel, salary, leasing training vessels, safety training, and security clearances. If there is a delay in effective date of Amendment 13 and these observers are not able to work, they will likely move on to other jobs and additional observers would need to be found and trained. Because trained observers are valuable and difficult to replace, it would take a minimum of three months to locate and train additional observers. Additionally, there would be a loss of income, potentially severe, for observer service providers who employ industry-funded observers for the scallop fishery, if there is a delay in effective date in Amendment 13 resulting in a lapse of an industry-funded observer program.

NMFS's current and anticipated funding only provides for minimal observer coverage in the scallop fishery. Delaying the implementation of Amendment 13, and its provision for an industry-funded observer coverage in the scallop fishery, would likely result in less than sufficient observer coverage levels for monitoring the yellowtail flounder bycatch in Scallop Access Areas when they open on June 15, 2007. Scallop Access Areas have restrictive yellowtail flounder bycatch TACs that require close monitoring to achieve specified mortality targets. Observer data are used to calculate yellowtail flounder catch rates in these areas and catch rates are extrapolated to unobserved trips. Observer coverage is essential in order to project TAC attainment and close the Scallop Access Areas. Closing Scallop Access Areas after the yellowtail flounder bycatch TACs for Scallop Access Areas are exceeded could result in exceeding mortality targets for an overfished stock, thereby slowing rebuilding of an overfished stock, and potentially conflicting with requirements of National Standard 1 of the Magnuson-Stevens Act to rebuild overfished stocks within a specified time period.

Additionally, observer coverage to monitor interactions between the scallop fishery and sea turtles is particularly important during June through October. Sea turtles are known to occur in areas where the scallop fishery operates during this period and sea turtle takes in scallop trawl and dredge gear have been observed during these months. Delaying the implementation of Amendment 13 would also likely result in less than sufficient observer coverage to document interactions between the scallop fishery and sea turtles in June, and perhaps July. Even though compliance with the Endangered Species Act (ESA) does not require observer coverage in the Mid-Atlantic scallop fishery because of mandatory gear modifications, observer coverage of the scallop fishery continues to provide important information to advance knowledge of how, where, and to what extent ESA-listed sea turtles interact with dredge and trawl gear used in the scallop fishery.

Lastly, the management effects of having minimal observer coverage in the scallop fishery during June, and possibly July could result in negative economic impacts on the scallop industry for the 2007 fishing year. Scallop harvest from Scallop Access Areas is a substantial source of income for the scallop fleet. Should these areas close earlier than necessary because of less reliable data on yellowtail flounder bycatch, the fleet would experience reduced fishing opportunities and reduced harvest.

For these reasons, there is good cause to waive the 30-day delay in effectiveness for Amendment 13. The need for this waiver is due to the timing of the amendment's submission by the Council to NMFS. Amendment 13 was adopted by the Council on February 7, 2007, and was submitted to NMFS for review and approval on February 16, 2007. The notice of availability for the amendment published on March 19, 2007, and its required 60-day comment period closed on May 18, 2007. The proposed rule for Amendment 13 published on April 6, 2007, and its 30-day comment period closed on May 7, 2007.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA, a summary of the significant issues raised by public comment in response to the IRFA, NMFS responses to those comments, and the corresponding economic analyses prepared for Amendment 13. The contents of these incorporated documents are not repeated in detail here. A copy of Amendment 13 and the

IRFA are available upon request (see **ADDRESSES**).

#### *Statement of Need for This Action*

The objective of this action is to re-activate the industry-funded observer program for the scallop fishery. Observer coverage is necessary in the scallop fishery to monitor bycatch of finfish and interactions with endangered and threatened species. The need for this action is to provide a mechanism to approve observer service providers so that the set-aside program can be utilized to help defray costs of carrying the necessary level of observers in the scallop fishery. A complete description of the reasons why this action is being implemented, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule (72 FR 17076, April 6, 2007) and is not repeated here.

#### *A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

As discussed in the preamble, an industry representative commented that the Scallop FMP requirement for industry to pay for observer coverage was intended to provide observer coverage for trips into Scallop Access Areas, but not observer coverage on trips into open areas. The commenter acknowledged that the Scallop FMP's set-aside program generally does have a positive economic effect. However, the commenter cautioned that using the set-aside to pay for observer coverage may become burdensome for the industry if the abundance or price of scallops declines, especially for observer coverage in open areas. The Scallop FMP requirement for industry to pay for observer coverage and the level of set-aside available to help defray the cost of observer coverage are not addressed in Amendment 13. However, they were considered in prior scallop actions, particularly Amendment 10, the action that established the current set-aside program in July 2004. Amendment 13 only implements administrative tools to allow the set-aside to be used; it does not adjust the set-aside program. If this action is implemented, future adjustments to the set-aside program, including adjustments evaluating the commenter's concerns, could be implemented by framework action. No changes to the proposed rule were made as a result of this comment.

#### *Description of Small Entities to Which This Action Will Apply*

The vessels in the scallop fishery could all be considered small business entities because all of them grossed less than \$4 million, according to the dealer data, for 2004 to 2006. This action will affect vessels with limited access and general category scallop permits. According to the recent permit data, there were 318 vessels that obtained full-time limited access permits in 2006, including 55 small-dredge and 14 scallop trawl permits. In the same year, there were also 32 part-time and 1 occasional limited access permit in the scallop fishery. In addition, 2,501 permits were issued to vessels in the open access general category and over 500 of these vessels landed scallops during the last 2 years. These numbers could change as the fishing year progresses. There are no large entities participating in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate economic impacts on small entities.

#### *Description of Reporting, Recordkeeping, and Other Compliance Requirements*

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. This final rule maintains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), previously approved under control number 0648-0546 in conjunction with the emergency action.

#### *Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

#### *Approved Action*

Previous scallop regulatory actions established provisions that impose some cost on vessels that participate in the scallop fishery by requiring vessels to carry and pay for observers on some trips. Compliance costs associated with the observer coverage can be minimized through the set-aside (*i.e.*, TAC and DAS, depending on fishing area) that will provide compensation to vessel owners that have paid for observers.

This action re-activates the mechanism that allows vessels to offset the costs of observer coverage and harvesting additional scallops from the set-aside. The net impacts of the observer program on vessels that participate in the scallop fishery will depend on scallop prices, trip costs, observer costs, and the TAC or reduced DAS accrual rate provided by NMFS. The analyses presented in Amendment 13 showed that, in some circumstances, observer coverage could reduce crew and vessel income by extending the trip and increasing the trip costs, especially for vessels with a lower catch rate per DAS. But in most cases, overall costs due to the observer coverage will be minimized, and may even yield positive economic benefits, due to the compensation that would be provided by NMFS.

The average total revenue for a general category vessel was \$139,755 for the first 11 months of the 2006 fishing year, \$249,167 for fishing year 2005, and \$260,942 for fishing year 2004. Assuming that the cost of an observer would be \$800 per day-at-sea (or \$33.30 per hour, slightly higher than the \$775 paid by vessels during the 2006 fishing year), average observer costs per general category vessel were estimated to be about \$1,440 per trip in 2006. A cost of \$1,400 per vessel for the year, assuming that each vessel carries an observer on only one trip, would amount to about 1 percent of total revenue. Similarly, the average total revenue of a limited access vessel was \$803,873 for the first 11 months of the 2006 fishing year, \$1,072,991 for fishing year 2005, and \$988,401 for fishing year 2004. Average observer costs per limited access vessel were \$6,560 per trip in 2006. Again, assuming that each vessel carries an observer on only one trip, observer cost would amount to less than 1 percent of the total revenue. (These are the amounts paid to the observer provider and do not include compensation through TAC or DAS set-asides.) Because of the set-aside, compliance costs to scallop vessels are expected to be considerably less than these amounts, under most circumstances. However, as described previously, if there is no set-aside, or no remaining set-aside, to help pay for the observer coverage, the vessels would be responsible for paying the observer, regardless of whether the vessel lands or sells scallops on that trip. This has been the process since the set-aside program was implemented in 1999, but NMFS usually distributes the set-aside such that the majority, if not all trips with an observer aboard, are at least partially compensated.

Economic impacts on scallop vessels, under several scenarios for both limited access and general category vessels, were analyzed in the IRFA for Amendment 13. Scenarios are based on set variables (*i.e.*, trip costs, cost of observer, and the compensation (either TAC or DAS) provided by NMFS for carrying an observer) and fluctuating variables (*i.e.*, landings per unit effort, price of scallops). While TAC compensation is provided by NMFS, vessels must incur additional costs to harvest the compensation TAC. Economic impacts on vessels in the scallop fleet are analyzed in the IRFA by considering set variables, fluctuating variables, and whether or not a vessel carries an observer for a trip. Although the IRFA in Amendment 13 analyzes several scenarios, the results are summarized as follows:

For limited access vessels, fluctuating variables in the assumptions include: Landings per unit effort (LPUE) ranging from 1,800 lb (816.5 kg) per DAS to 800 lb (362.9 kg) per DAS and scallop price ranging from \$7.60 per lb to \$6.00 per lb. Given the highest LPUE and highest price, a vessel's income could be expected to increase by about \$9,280 with an observer onboard (from \$61,560 without an observer, to \$70,840 with an observer). A vessel's crew income could be expected to increase by about \$10,722 with an observer (from \$63,540 without an observer, to \$72,282 with an observer). The increase in income when carrying an observer is due to the compensation for carrying an observer, either additional pounds (400 lb (181.4 kg) per day) or DAS (0.15 reduced accrual rate in open areas). With an LPUE of 800 lb (362.9 kg) per DAS and a price of \$7.60 per lb, a vessel's income could be expected to decline by about \$32 with an observer onboard (from \$24,624 without an observer to \$24,592 with an observer). A vessel's crew income could be expected to decline by about \$1,619 with an observer (from \$19,566 without an observer, to \$17,947 with an observer). These decreases in income result from extended trip lengths to catch the additional pounds to pay for an observer.

General category vessels are subject to the industry-funded observer provisions only when fishing in Scallop Access Areas and are compensated with additional pounds per trip. With a compensation of 400 lb (181.4 kg) per day, a vessel would cover observer costs of \$1,600 by fishing 2 days and landing 1,200 lb (544.3 kg) of scallops (400 lb (181.4 kg) for the trip and 800 lb (362.9 kg) as compensation). At a price of \$6.00 per lb, the vessel would generate \$7,200 revenue from scallops, and would

increase total crew income by \$1,410 and vessel income by \$1,440. At a scallop price of \$7.60 per lb, vessels and crews could be expected to increase revenues even at a lower compensation rate. By fishing more days, a vessel could experience even more gains in revenue. For example, by fishing 3.5 days and receiving 1,600 lb (725.7 kg) in compensation, total scallop revenue could increase to \$15,200 at a price of \$7.60 per lb, increasing both crew and vessel income by over \$4,000. These positive impacts on vessels are due to the fact that general category vessels are not allowed to land more than 400 lb (181.4 kg) on regular trips and, even at a price of \$6.00 per lb, a compensation amount of 400 lb (181.4 kg) could bring \$2,400 in revenue, exceeding the cost of the observer and trip costs. However, if compensation pounds were set too low, or if prices decline below \$6.00 per lb, the economic gains from compensation for carrying an observer could decline.

Observer coverage would improve information that could be used to reduce the amount of finfish bycatch and the level of sea turtle takes in the scallop fishery. This could eliminate the need for more conservative management measures in the future that may potentially have adverse impacts on the scallop industry. For these reasons and the reasons described above, the benefits of the observer program are expected to exceed costs of this program and have positive economic impacts on vessels participating in the scallop fishery.

The mechanism to allow adjustment of the observer program through framework action could be used to reduce the differential impacts of this program on some vessels, such as by implementing different TAC amounts and DAS accrual rates for smaller vessels. The adjustments through framework could also provide more flexibility to the program in determining the amount of set-aside or the way the observer costs are shared among the vessels in the scallop fleet.

Participation by potential observer service providers is voluntary and, since no Federal action is requiring participation, further assessment of the potential impacts on these entities is not required. No significant quantifiable impacts on scallop prices and change in benefits to the consumers are expected from this action, since the observer program is not expected to impact scallop landings in a significant way.

#### Non-Selected Alternatives

This action permanently re-activates the industry-funded observer program in the Scallop FMP through a set-aside

program that helps vessel owners defray the cost of carrying observers. The alternatives to this action do not provide for an industry-funded observer program. Under the no action alternative, the emergency rule would expire and no regulations would be implemented allowing for funding in addition to that provided by NMFS under its existing observer program. However, as discussed previously, NMFS's current and anticipated funding would only provide for minimal observer coverage in the scallop fishery. Therefore, under the no action alternative, observer coverage levels would likely be less than sufficient for monitoring the yellowtail flounder bycatch TAC in Scallop Access Areas and interactions between the scallop fishery and sea turtles in the Mid-Atlantic during June through October. Due to implications of having minimal observer coverage (e.g., earlier closures based on less reliable bycatch estimates), no action would likely result in negative economic impacts (e.g., reduced fishing opportunity, reduced harvest) for the scallop industry in both the short and long-term. Without an industry-funded observer program, adequate observer coverage for the scallop fishery could only occur if provided wholly by NMFS. However, because of resource constraints, it is not realistically possible for NMFS to wholly fund an adequate level of observer coverage for the scallop fishery.

The set-aside program is already an established provision in the scallop regulations and the measures in this final rule only establish a mechanism to enable the set-asides to be utilized by the industry as compensation for having paid for observer coverage. Measures to modify and improve the set-aside program are outside the scope of Amendment 13. During the Council's public hearing on Amendment 13 and public comment on the proposed rule, the scallop industry expressed concern that the proposed action would not provide a complete solution to the economic impacts associated with having to pay for observers under the existing set-aside program. The scallop industry also acknowledged that there were no other alternatives, besides the proposed and no action alternatives, that could be considered in Amendment 13. Based on this public input, this action also establishes a mechanism to allow future modifications to the observer program to be implemented by framework action. Providing for a framework mechanism in the Scallop FMP to make adjustments to the

observer program would allow more flexibility to address industry's concerns with the program. Because of the administrative nature of this action, there were no other reasonable alternatives.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator, Northeast Region (see **ADDRESSES**).

This final rule maintains collection-of-information requirements subject to the PRA, previously approved under control number 0648-0546 in conjunction with the emergency action. These requirements apply to entities interested in becoming NMFS-approved observer service providers and to those observer service providers approved by NMFS and providing observer services to the scallop fishery. Public reporting burden for these collections of information are estimated to average as follows:

1. Application for approval of observer service provider—10 hr per response;
2. Applicant response to denial of application for approval of observer service provider—10 hr per response;
3. Observer service provider request for observer training—30 min per response;
4. Observer deployment report—10 min per response;
5. Observer availability report—10 min per response;
6. Safety refusal report—30 min per response;
7. Submission of raw observer data—5 min per response;
8. Observer debriefing—2 hr per response;
9. Biological samples—5 min per response;
10. Rebuttal of pending removal from list of approved observer service providers—8 hr per response;

11. Vessel request to observer service provider for procurement of a certified observer—25 min per response; and

12. Vessel request for waiver of observer coverage requirement—5 min per response.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 8, 2007.

**William T. Hogarth,**

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

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

#### **PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.10, paragraph (b)(4) is revised to read as follows:

#### **§ 648.10 DAS and VMS notification requirements.**

\* \* \* \* \*

(b) \* \* \*

(4) *Atlantic sea scallop vessel VMS notification requirements.* Less than 1 hr prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

\* \* \* \* \*

■ 3. In § 648.11, paragraph (a) is revised, and paragraphs (g), (h), and (i) are added to read as follows:

**§ 648.11 At-sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry an NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specified in paragraph (g) of this section.

(1) For the purpose of deploying at-sea observers, sea scallop vessel owners are required to notify NMFS of scallop trips as specified in paragraph (g) of this section. Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit, or reduced accrual rate of DAS.

(2) [Reserved]

\* \* \* \* \*

(g) *Atlantic sea scallop observer program*—(1) *General*. Unless otherwise specified, owners, operators, and/or managers of vessels issued a Federal scallop permit under § 648.4(a)(2), and specified in paragraph (b) of this section, must comply with this section and are jointly and severally responsible for their vessel's compliance with this section. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional notification requirements specified in paragraph (g)(2) of this section. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraph (g)(2) of this section. When NMFS notifies the vessel owner, operator, and/or manager of any requirement to carry an observer on a specified trip in either an Access Area or Open Area as specified in paragraph (g)(3) of this section, the vessel may not

fish for, take, retain, possess, or land any scallops without carrying an observer. Vessels may only embark on a scallop trip in open areas or Access Areas without an observer if the vessel owner, operator, and/or manager has been notified that the vessel has received a waiver of the observer requirement for that trip pursuant to paragraphs (g)(3) and (g)(4)(ii) of this section.

(2) *Vessel notification procedures*. For the purpose of determining if an observer will be deployed on a vessel for a specific trip, the owner, operator, or manager of a vessel issued a limited access permit fishing in open areas or in the Sea Scallop Access Area program specified in § 648.60, or the owner, operator, or manager of a vessel issued a general category scallop permit and fishing in the Sea Scallop Access Area program specified in § 648.60, is required to comply with the following notification requirement. For each scallop trip, the vessel owner, operator, and/or manager shall notify NMFS by telephone, using the phone number provided by the Regional Administrator in the Small Entity Compliance Guide, and provide the following information: Vessel name and permit number; contact name and number; date and time of departure; port of departure; area to be fished (either open areas or the specific Sea Scallop Access Area); and whether fishing as a scallop dredge, scallop trawl, or general category vessel.

(3) *Selection of scallop fishing trips for observer coverage*. Based on predetermined coverage levels for various sectors of the scallop fishery that are provided by NMFS in writing to all observer service providers approved pursuant to paragraph (h) of this section, NMFS shall notify the vessel owner, operator, or vessel manager whether the vessel must carry an observer, or if a waiver has been granted, for the specified trip within 24 hr of the vessel owner's, operator's, or vessel manager's notification of the prospective trip, as specified in paragraph (g)(2) of this section. Any request to carry an observer may be waived by NMFS. All waivers for observer coverage shall be issued to the vessel by VMS so as to have on-board verification of the waiver.

(4) *Procurement of observer services by scallop vessels*. (i) An owner of a scallop vessel required to carry an observer under paragraph (g)(3) of this section must arrange for carrying an observer certified through the observer training class operated by the Northeast Fisheries Observer Program (hereinafter NMFS/NEFOP certified) from an observer service provider approved by

NMFS under paragraph (h) of this section. A list of approved observer service providers shall be posted on the NOAA/NEFOP Web site at <http://www.nefsc.noaa.gov/femad/fjsb/>. The owner, operator, or vessel manager of a vessel selected to carry an observer must contact the observer service provider and must provide at least 72-hr notice in advance of the fishing trip for the provider to arrange for observer deployment for the specified trip.

(ii) An owner, operator, or vessel manager of a vessel that cannot procure a certified observer within 72 hr of the advance notification to the provider due to the unavailability of an observer, may request a waiver from NMFS from the requirement for observer coverage for that trip, but only if the owner, operator, or vessel manager has contacted all of the available observer service providers to secure observer coverage and no observer is available. NMFS shall issue such a waiver within 24 hr, if the conditions of this paragraph (g)(4)(ii) are met.

(5) Owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit or reduced DAS accrual rate. The owners, operators, and/or managers of vessels that carry an observer may be compensated with a reduced DAS accrual rate for open area trips or additional scallop catch per day in access areas in order to help defray the cost of the observer, under the program specified in §§ 648.53 and 648.60. Observer service providers are responsible for setting the daily rate for observer coverage on a vessel. NMFS shall determine any reduced DAS accrual rate and the amount of additional pounds of scallops per day fished in an access area for the applicable fishing year based on the economic conditions of the scallop fishery, as determined by best available information. Vessel owners and observer service providers shall be notified by Small Entity Compliance Guide of any DAS accrual rate and additional pounds of scallops determined by the Regional Administrator. The Regional Administrator may adjust the DAS accrual rate and additional pounds of scallops, if necessary, based on economic conditions of the scallop fishery. Vessel owners and observer providers shall be notified of any such adjustments through a letter.



(6) When the available DAS or TAC set-aside for observer coverage is exhausted, vessels shall still be required to carry an observer as specified in this section, and shall be responsible for paying for the cost of the observer, but shall not be authorized to harvest additional pounds or fish at a reduced DAS accrual rate.

(h) *Observer service provider approval and responsibilities*—(1) *General*. An entity seeking to provide observer services to the Atlantic sea scallop fishery must apply for and obtain approval from NMFS following submission of a complete application to The Observer Program Branch Chief, 25 Bernard St Jean Drive, East Falmouth, MA 02536. A list of approved observer service providers shall be distributed to scallop vessel owners and shall be posted on NMFS's Web page, as specified in paragraph (g)(4) of this section.

(2) [Reserved]

(3) *Contents of application*. An application to become an approved observer service provider shall contain the following:

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence, and the current physical location, business mailing address, business telephone and fax numbers, and business e-mail address for each office.

(iii) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, that they are free from a conflict of interest as described under paragraph (h)(6) of this section.

(iv) A statement, signed under penalty of perjury, from each owner or owners, board members, and officers, if a corporation, describing any criminal convictions, Federal contracts they have had, and the performance rating they received on the contract, and previous decertification action while working as an observer or observer service provider.

(v) A description of any prior experience the applicant may have in placing individuals in remote field and/or marine work environments. This

includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(vi) A description of the applicant's ability to carry out the responsibilities and duties of a scallop fishery observer services provider as set out under paragraph (h)(5) of this section, and the arrangements to be used.

(vii) Evidence of holding adequate insurance to cover injury, liability, and accidental death for observers during their period of employment (including during training). Workers' Compensation and Maritime Employer's Liability insurance must be provided to cover the observer, vessel owner, and observer provider. The minimum coverage required is \$5 million. Observer service providers shall provide copies of the insurance policies to observers to display to the vessel owner, operator, or vessel manager, when requested.

(viii) Proof that its observers, either contracted or employed by the service provider, are compensated with salaries that meet or exceed the Department of Labor (DOL) guidelines for observers. Observers shall be compensated as Fair Labor Standards Act (FLSA) non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.

(ix) The names of its fully equipped, NMFS/NEFOP certified observers (with resumes) on staff or a list of its training candidates (with resumes) and a request for a NMFS/NEFOP Sea Scallop Observer Training class. The NEFOP training has a minimum class size of eight individuals; which may be split among multiple vendors requesting training. Requests for training classes with fewer than eight individuals will not be processed until further requests make up the full training class size.

(x) An Emergency Action Plan (EAP) describing its response to an "at sea" emergency with an observer, including, but not limited to, personal injury, death, harassment, or intimidation.

(4) *Application evaluation*. (i) NMFS shall review and evaluate each application submitted under paragraphs (h)(2) and (h)(3) of this section. Issuance of approval as an observer provider shall be based on completeness of the application, and a determination by NMFS of the applicant's ability to perform the duties and responsibilities of a sea scallop fishery observer service provider as demonstrated in the application information. A decision to approve or deny an application shall be made by NMFS within 15 days of receipt of the application by NMFS.

(ii) If NMFS approves the application, the observer service provider's name will be added to the list of approved observer service providers found on NMFS's Web site specified in paragraph (g)(4) of this section and in any outreach information to the industry. Approved observer service providers shall be notified in writing and provided with any information pertinent to their participation in the sea scallop fishery observer program.

(iii) An application shall be denied if NMFS determines that the information provided in the application is not complete or NMFS concludes that the applicant does not have the ability to perform the duties and responsibilities of a sea scallop fishery observer service provider. NMFS shall notify the applicant in writing of any deficiencies in the application or information submitted in support of the application. An applicant who receives a denial of his or her application may present additional information, in writing, to rectify the deficiencies specified in the written denial, provided such information is submitted to NMFS within 30 days of the applicant's receipt of the denial notification from NMFS. In the absence of additional information, and after 30 days from an applicant's receipt of a denial, an observer provider is required to resubmit an application containing all of the information required under the application process specified in paragraph (h)(3) of this section to be re-considered for being added to the list as an approved observer service provider.

(5) *Responsibilities of observer service providers*. (i) An observer service provider must provide observers certified by NMFS/NEFOP pursuant to paragraph (i) of this section for deployment in the sea scallop fishery when contacted and contracted by the owner, operator, or vessel manager of a vessel fishing in the scallop fishery, unless the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel owner, operator, and/or manager, or refuses to deploy an observer on a requesting vessel for any of the reasons specified at paragraph (h)(5)(viii) of this section. An approved observer service provider must maintain in its employ a minimum of eight NMFS/NEFOP certified observers in order to remain approved. Should a service provider's employed NMFS/NEFOP certified observers drop below eight, the provider must supply the appropriate number of candidates to the next available training class. Failure to do so shall be cause for suspension



of the provider's approved status, until rectified.

(ii) An observer service provider must provide to each of its observers:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments, and to any debriefing locations, if necessary;

(B) Lodging, per diem, and any other services necessary for observers assigned to a scallop vessel or to attend a NMFS/NEFOP Sea Scallop Observer Training class;

(C) The required observer equipment, in accordance with equipment requirements listed on NMFS's Web site specified in paragraph (g)(4) of this section under the Sea Scallop Program, prior to any deployment and/or prior to NMFS observer certification training; and

(D) Individually assigned communication equipment, in working order, such as a cell phone or pager, for all necessary communication. An observer service provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(iii) *Observer deployment logistics.* Each approved observer service provider must assign an available certified observer to a vessel upon request. Each approved observer service provider must provide for access by industry 24 hr per day, 7 days per week, to enable an owner, operator, or manager of a vessel to secure observer coverage when requested. The telephone system must be monitored a minimum of four times daily to ensure rapid response to industry requests. Observer service providers approved under paragraph (h) of this section are required to report observer deployments to NMFS daily for the purpose of determining whether the predetermined coverage levels are being achieved in the scallop fishery.

(iv) *Observer deployment limitations.* Unless alternative arrangements are approved by NMFS, an observer provider must not deploy any observer on the same vessel for two or more consecutive deployments, and not more than twice in any given month. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.

(v) *Communications with observers.* An observer service provider must have an employee responsible for observer activities on call 24 hr a day to handle

emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, stationed shoreside, in transit, or in port awaiting vessel assignment.

(vi) *Observer training requirements.* The following information must be submitted to NMFS to request a certified observer training class at least 30 days prior to the beginning of the proposed training class: Date of requested training; a list of observer candidates, with a minimum of eight individuals; observer candidate resumes; and a statement signed by the candidate, under penalty of perjury, that discloses the candidate's criminal convictions, if any. All observer trainees must complete a basic cardiopulmonary resuscitation/first aid course prior to the beginning of a NMFS/NEFOP Sea Scallop Observer Training class. NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS National Minimum Eligibility Standards for observers as described in paragraph (i)(1) of this section.

(vii) *Reports—(A) Observer deployment reports.* The observer service provider must report to NMFS/NEFOP when, where, to whom, and to what fishery (open or closed area) an observer has been deployed, within 24 hr of the observer's departure. The observer service provider must ensure that the observer reports back to NMFS its Observer Contract (OBSCON) data, as described in the certified observer training, within 12 hr of landing. OBSCON data are to be submitted electronically or by other means as specified by NMFS. The observer service provider shall provide the raw (unedited) data collected by the observer to NMFS within 72 hr of the trip landing.

(B) *Safety refusals.* The observer service provider must report to NMFS any trip for which the deployment of an observer has been refused due to safety issues, e.g., failure to hold a valid USCG Commercial Fishing Vessel Safety Examination Decal, or failure to meet the safety requirements of the observer's pre-trip vessel safety checklist, within 24 hr of the refusal.

(C) *Biological samples.* The observer service provider must ensure that biological samples, including whole marine mammals, sea turtles, and sea birds, are stored/handled properly and transported to NMFS within 7 days of landing.

(D) *Observer debriefing.* The observer service provider must ensure that the observer remains available to NMFS, either in-person or via phone, at NMFS's discretion, including NMFS

Office for Law Enforcement, for debriefing for at least 2 weeks following any observed trip. An observer that is at sea during the 2-week period must contact NMFS upon his or her return, if requested to do so by NMFS.

(E) *Observer availability report.* The observer service provider must report to NMFS any occurrence of inability to respond to an industry request for observer coverage due to the lack of available observers on staff by 5:00 p.m., Eastern Standard Time, of any day on which the provider is unable to respond to an industry request for observer coverage.

(F) *Other reports.* The observer provider must report possible observer harassment, discrimination, concerns about vessel safety or marine casualty, or observer illness or injury; and any information, allegations, or reports regarding observer conflict of interest or breach of the standards of behavior, to NMFS/NEFOP within 24 hr of the event or within 24 hr of learning of the event.

(viii) *Refusal to deploy an observer.—*(A) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider does not have an available observer within 72 hr of receiving a request for an observer from a vessel.

(B) An observer service provider may refuse to deploy an observer on a requesting scallop vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to the reasons described at § 600.746.

(C) The observer service provider may refuse to deploy an observer on a scallop vessel that is otherwise eligible to carry an observer for any other reason, including failure to pay for previous observer deployments, provided the observer service provider has received prior written confirmation from NMFS authorizing such refusal.

(6) *Limitations on conflict of interest.* An observer service provider:

(i) Must not have a direct or indirect interest in a fishery managed under Federal regulations, including, but not limited to, a fishing vessel, fish dealer, fishery advocacy group, and/or fishery research;

(ii) Must assign observers without regard to any preference by representatives of vessels, other than when an observer will be deployed; and

(iii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who conducts fishing or fishing related activities that are regulated by NMFS, or who has interests that may be

substantially affected by the performance or nonperformance of the official duties of observer providers.

(7) *Removal of observer service provider from the list of approved observer service providers.* An observer provider that fails to meet the requirements, conditions, and responsibilities specified in paragraphs (h)(5) and (h)(6) of this section shall be notified by NMFS, in writing, that it is subject to removal from the list of approved observer service providers. Such notification shall specify the reasons for the pending removal. An observer service provider that has received notification that it is subject to removal from the list of approved observer service providers may submit written information to rebut the reasons for removal from the list. Such rebuttal must be submitted within 30 days of notification received by the observer service provider that the observer service provider is subject to removal and must be accompanied by written evidence rebutting the basis for removal. NMFS shall review information rebutting the pending removal and shall notify the observer service provider within 15 days of receipt of the rebuttal whether or not the removal is warranted. If no response to a pending removal is received by NMFS within 30 days of the notification of removal, the observer service provider shall be automatically removed from the list of approved observer service providers. The decision to remove the observer service provider from the list, either after reviewing a rebuttal, or automatically if no timely rebuttal is submitted, shall be the final decision of the Department of Commerce. Removal from the list of approved observer service providers may not prevent such observer service provider from obtaining an approval in the future if a new application is submitted that demonstrates that the reasons for removal are remedied. Certified observers under contract with an observer service provider that has been removed from the list of approved service providers must complete their assigned duties for any scallop trips on which the observers are deployed at the time the observer service provider is removed from the list of approved observer service providers. An observer service provider removed from the list of approved observer service providers is responsible for providing NMFS with the information required in paragraph (h)(5)(vii) of this section following completion of the trip. NMFS may consider, but is not limited to, the following in determining if an observer

service provider may remain on the list of approved observer service providers:

- (i) Failure to meet the requirements, conditions, and responsibilities of observer service providers specified in paragraphs (h)(5) and (h)(6) of this section;
  - (ii) Evidence of conflict of interest as defined under paragraph (h)(6) of this section;
  - (iii) Evidence of criminal convictions related to:
    - (A) Embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; or
    - (B) The commission of any other crimes of dishonesty, as defined by state law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;
  - (iv) Unsatisfactory performance ratings on any Federal contracts held by the applicant; and
  - (v) Evidence of any history of decertification as either an observer or observer provider.
- (i) *Observer certification.* (1) To be certified, employees or sub-contractors operating as observers for observer service providers approved under paragraph (h) of this section must meet NMFS National Minimum Eligibility Standards for observers. NMFS National Minimum Eligibility Standards are available at the National Observer Program Web site: <http://www.st.nmfs.gov/st4/nop/>.
- (2) *Observer training.* In order to be deployed on any scallop vessel, a candidate observer must have passed a NMFS/NEFOP Sea Scallop Fisheries Observer Training course. If a candidate fails training, the candidate shall be notified in writing on or before the last day of training. The notification will indicate the reasons the candidate failed the training. A candidate that fails training shall not be able to enroll in a subsequent class. Observer training shall include an observer training trip, as part of the observer's training, aboard a scallop vessel with a trainer. A certified observer's first deployment and the resulting data shall be immediately edited, and approved, by NMFS prior to any further deployments of that observer.
- (3) *Observer requirements.* All observers must:
- (i) Have a valid NMFS/NEFOP fisheries observer certification pursuant to paragraph (i)(1) of this section;
  - (ii) Be physically and mentally capable of carrying out the responsibilities of an observer on board scallop vessels, pursuant to standards established by NMFS. Such standards

are available from NMFS Web site specified in paragraph (g)(4) of this section and shall be provided to each approved observer service provider;

(iii) Have successfully completed all NMFS-required training and briefings for observers before deployment, pursuant to paragraph (i)(2) of this section; and

(iv) Hold a current Red Cross (or equivalent) cardiopulmonary resuscitation/first aid certification.

(4) *Probation and decertification.* NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the Web site at: <http://www.nefsc.noaa.gov/femad/fsb/>.

(5) *Issuance of decertification.* Upon determination that decertification is warranted under paragraphs (i)(1) through (3) of this section, NMFS shall issue a written decision to the observer containing the decertification and to the approved observer service provider via certified mail at their most current address provided to NMFS. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of the Department of Commerce.

■ 4. In § 648.14, paragraph (h)(17) is revised and (i)(15) is added to read as follows:

#### § 648.14 Prohibitions.

\* \* \* \* \*

(h) \* \* \*

(17) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

\* \* \* \* \*

(i) \* \* \*

(15) Fail to comply with the notification requirements specified in § 648.11(g)(2) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

\* \* \* \* \*

■ 5. In § 648.51, paragraphs (c)(4) and (e)(3)(iii) are added to read as follows:

#### § 648.51 Gear and crew restrictions.

\* \* \* \* \*

(c) \* \* \*

(4) A certified at-sea observer is on board, as required by § 648.11(g).

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) A certified at-sea observer is on board, as required by § 648.11(g).

\* \* \* \* \*

■ 6. In § 648.55, paragraph (e)(31) is revised, and paragraph (e)(32) is added to read as follows:

\* \* \* \* \*

#### **§ 648.55 Framework adjustments to management measures.**

(e) \* \* \*

(31) Modifications to provisions associated with observer set-asides; observer coverage; observer deployment; observer service provider; and/or the observer certification regulations.

(32) Any other management measures currently included in the FMP.

\* \* \* \* \*

■ 7. In § 648.60, paragraph (a)(2) is revised to read as follows:

#### **§ 648.60 Sea scallop area access program requirements.**

(a) \* \* \*

(2) Vessels participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4) and vessel notification requirements specified in § 648.11(g) for observer deployment.

\* \* \* \* \*

[FR Doc. 07–2928 Filed 6–8–07; 2:52 pm]

BILLING CODE 3510–22–P

## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 070213033–7033–01]

RIN 0648–XA75

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area**

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area

(BSAI). This action is necessary to prevent exceeding the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), June 10, 2007, through 1200 hrs, A.l.t., July 1, 2007.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hogan, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 49 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the third seasonal allowance of the 2007 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been reached. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for

public comment because the most recent, relevant data only became available as of June 7, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: June 7, 2007.

**James P. Burgess,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 07–2927 Filed 6–8–07; 2:52 pm]

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## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 070209029–7118–02; I.D. 112906A]

RIN 0648–AU58

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend regulations implementing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to avoid expiration of these regulations on December 31, 2007, and ensure uninterrupted observer coverage in North Pacific groundfish fisheries. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs).

**DATES:** Effective on July 13, 2007.

**ADDRESSES:** Copies of the final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from the NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, and on the NMFS Alaska