

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****15 CFR Part 902****50 CFR Part 679**

[Docket No. 110831549–2587–02]

RIN 0648–BB42

**Groundfish Fisheries of the Exclusive Economic Zone Off Alaska and Pacific Halibut Fisheries; Observer Program**

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

**ACTION:** Final rule and notice of approval of an FMP amendment.

**SUMMARY:** NMFS publishes regulations to implement Amendment 86 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 76 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (Amendments 86/76). Amendments 86/76 add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants. The new funding and deployment system allows NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is necessary to resolve data quality and cost equity concerns with the Observer Program's existing funding and deployment structure. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the fishery management plans, and other applicable law.

**DATES:** Effective January 1, 2013.

**ADDRESSES:** Electronic copies of the March 2011 Environmental Assessment/Regulatory Impact Review/Initial Regulatory Impact Review (“the analysis”) and the Finding of No Significant Impact (FONSI) prepared for this action may be obtained from <http://www.regulations.gov>. These documents, the 2013 Observer Program Annual Deployment Plan, and other documents referenced in this final rule also are

available from the Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or by fax to 202–395–7285.

Inspections for U.S. Coast Guard Safety Decals may be scheduled through the U.S. Coast Guard Web site at <http://www.fishsafe.info/contactform.htm> or by contacting the Seventeenth Coast Guard District safety coordinator at <http://www.uscg.mil/d17/>, or by phone at 907–463–2810 or 907–463–2823.

**FOR FURTHER INFORMATION CONTACT:** Sally Bibb, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands (BSAI) and the Gulf of Alaska (GOA) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP) and the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP), respectively. These fishery management plans are collectively referred to as “the FMPs.” The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the Protocol Amending the Convention, signed in Washington, DC, on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

The Notice of Availability for Amendments 86/76 published in the **Federal Register** on March 14, 2012 (77 FR 15019), with a 60-day comment period that ended May 14, 2012. In compliance with section 313 of the

MSA, NMFS held a public hearing on the proposed rule in each of the affected states—Alaska, Oregon, and Washington—during the mandatory 60-day comment period for the proposed rule (77 FR 22753, April 17, 2012; 77 FR 29961, May 2, 2012). The Secretary of Commerce approved Amendments 86/76 on June 7, 2012. The proposed rule to implement Amendments 86/76 published in the **Federal Register** on April 18, 2012 (77 FR 23326). The 60-day comment period on the proposed rule ended June 18, 2012.

**North Pacific Groundfish Observer Program**

The Observer Program has an integral role in the management of North Pacific fisheries. The Observer Program was created with the implementation of the MSA in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. The Observer Program provides the regulatory framework for NMFS-certified observers (observers) to obtain information necessary for the conservation and management of the groundfish fisheries. The information collected by observers provides the best available scientific information for managing the fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA. Observers collect biological samples and information on total catch and interactions with protected species. Managers use data collected by observers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

Under the current structure, catcher vessels, catcher processors, and processing plant operators enter into direct contracts with observer providers to meet coverage requirements at § 679.50. Existing coverage requirements, based on vessel length and processing volume, are set at 30 percent or 100 percent, and vessels less than 60 ft. in length overall (LOA) and vessels fishing for halibut (halibut vessels) are exempt from observer coverage. Owners of smaller vessels pay observer costs that are disproportionately high relative to their earnings, and owners of vessels less than 60 ft. LOA and halibut vessels do not contribute to observer coverage costs. Furthermore, vessel and plant operators required to have 30-percent coverage determine when to carry

observers, which statistically biases the data collected.

### Need for and Objectives of This Action

This action addresses longstanding concerns about statistical bias of observer-collected data and cost inequality among fishery participants with the Observer Program's current funding and deployment structure. The Council's problem statement, reproduced below, identifies the need for this action:

The Observer Program is widely recognized as a successful and essential program for management of the North Pacific groundfish fisheries. However, the Observer Program faces a number of longstanding problems that result primarily from its current structure. The existing program design is driven by coverage levels based on vessel size that, for the most part, have been established in regulation since 1990 and do not include observer requirements for either the less than 60 ft. groundfish sector or the commercial halibut sector. The quality and utility of observer data suffer because coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries. In addition, the existing program does not allow fishery managers to control when and where observers are deployed. This results in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data. The current program is also one in which many smaller vessels face observer costs that are disproportionately high relative to their gross earnings. Furthermore, the complicated and rigid coverage rules have led to observer availability and coverage compliance problems. The current funding mechanism and program structure do not provide the flexibility to solve many of these problems, nor do they allow the program to effectively respond to evolving and dynamic fisheries management objectives.

This action will replace the existing service delivery model for the partial coverage category of the Observer Program. Under the previous service delivery model, vessels and processors contracted directly with observer providers to meet coverage levels specified in Federal regulations and paid observer providers for observer services. With the new service delivery model, NMFS contracts with observer providers and determines when and where observers are deployed, based on a scientifically sound sampling design. Vessels and processors included in the restructured program will pay a fee (ex-vessel value based or daily fee) to NMFS to fund the deployment of observers in the sectors covered by the new program. In addition, the restructured program will include vessel sectors (the less than 60 ft. LOA groundfish sector and halibut

sector) that are not currently subject to any observer requirements.

### Summary of the Final Action

This action will reduce bias in observer data, authorize the collection of observer data in sectors that do not currently have any observer coverage requirements, allow fishery managers to provide observer coverage to respond to the management needs and circumstances of individual fisheries, and assess a broad-based fee which reflects the value a vessel or processor extracts from the fishery.

First, this final action expands the Observer Program to include groundfish vessels less than 60 ft. LOA and halibut vessels that have not been previously required to carry an observer.

Second, this final action restructures the observer deployment system by establishing two observer coverage categories: Partial and full. All groundfish and halibut vessels and processors will be included in one of these two categories.

NMFS requires fishing sectors in the full coverage category to have all operations observed. The full coverage category includes catcher/processors, motherships, and catcher vessels participating in a catch share program with a transferrable prohibited species catch (PSC) limit. Owners of vessels or processors in the full coverage category must arrange and pay for required observer coverage from a permitted observer provider. This final rule does not change the observer deployment or funding system for operations in the full coverage category.

The partial observer coverage category includes fishing sectors (vessels and processors) that will not be required to have an observer at all times. The partial coverage category includes catcher vessels, shoreside processors, and stationary floating processors when not participating in a catch share program with a transferrable PSC limit. Small catcher/processors that meet certain criteria will also be in the partial coverage category. NMFS will assign vessels in the partial coverage category to one of two distinct observer coverage selection pools: The trip selection or vessel selection pool.

Each year, NMFS will develop an annual deployment plan that will describe how NMFS plans to deploy observers to vessels in the partial observer coverage category in the upcoming year. The annual deployment plan will describe the sampling design NMFS uses to generate unbiased estimates of total and retained catch, and catch composition in the groundfish and halibut fisheries. The annual

deployment plan also will describe how NMFS will deploy observers to shoreside processing plants or stationary floating processors in the partial coverage category. Adjustments to the annual deployment plan would be made each year after a scientific evaluation of data collected under the restructured Observer Program to evaluate the impact of changes in observer deployment and identify areas where improvements are needed to collect the data necessary to conserve and manage the groundfish and halibut fisheries. Any adverse economic impacts and safety-related issues will also be considered through the annual deployment plan process, particularly with respect to expanding coverage to small vessels (less than 40 ft LOA). NMFS will post the annual deployment plan on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>).

This final rule establishes the Observer Declare and Deploy System (ODDS) as an Internet-based interface that provides information about observer deployment on vessels in the partial coverage category and facilitates communication among the owner or operator of a vessel in the partial observer coverage category, NMFS, and NMFS' contracted observer provider. The ODDS Web site is <https://odds.afsc.noaa.gov>. For those unable to use the Internet, access to ODDS also will be available by calling the NOAA Data Technician Office at 1-800-304-4846 (option # 1) or 907-586-7163.

Owners and operators of vessels in the trip selection pool will enter information about upcoming fishing trips into ODDS and receive information about whether a trip has been selected for observer coverage. Owners and operators of vessels in the vessel selection pool will be notified by letter from NMFS if they have been selected for observer coverage for a particular time period. Only those vessels selected for observer coverage will use ODDS to provide additional information to NMFS about whether they intend to fish in the selected time period and whether they can physically carry an observer on board the vessel.

ODDS was called the "Deployment System" in the preamble to the proposed rule. The preamble to the proposed rule also described the duration of coverage for vessels in the vessel selection pool as 3 months. In response to recommendations from the Council, the 2013 Observer Program Annual Deployment Plan has been adjusted and the duration of coverage in the vessel selection pool will be 2 months for the initial year of the program.

Third, this final rule creates a new observer funding system applicable to all vessels and shoreside processors in the partial observer coverage category. By creating two observer coverage categories with separate funding systems, this action addresses cost inequities with the existing Observer Program without imposing higher costs on operations that already pay for full observer coverage. Moreover, the potential implementation of future management programs with increased monitoring needs will not reduce the funds available to provide observer coverage for the fisheries as a whole.

A fee equal to 1.25 percent of the fishery ex-vessel value will be paid by partial coverage category participants to fund observer coverage in the partial coverage category. This fee is authorized by section 313 of the MSA. Vessels and processors in the full coverage category will continue to arrange and pay for observer services from a permitted observer provider.

NMFS will use Federal start-up funds in the first year of implementation (2013) to transition from the existing industry-funded/direct contract model to one where NMFS contracts with observer providers to deploy observers in partial coverage category sectors. In subsequent years, NMFS will use the observer fee proceeds collected from partial coverage category participants to pay for observer coverage in these sectors.

The proposed rule for this action (77 FR 23326; April 18, 2012) contains a thorough discussion of the history of the Observer Program, the restructured Observer Program, and details of requirements and provisions of the full and partial coverage categories. Those details are not repeated in this final rule unless relevant to a specific public comment. Changes from the proposed rule are detailed in the section "Changes from the Proposed Rule."

#### Comments and Responses

Approximately 25 people, representing fishery participants and organizations, attended the public hearings. Eight people provided oral comments on the proposed regulations at the public hearings. These eight people represented the Association for Professional Observers, the Yukon-Delta Fisheries Association, fishing companies, processing companies, and a tour operator. In addition, during the public comment periods on the notice of availability and proposed rule, NMFS received 35 letters. The letters were from a wide range of fishery participants including participants that have carried observers and participants new to the

Observer Program. NMFS also received letters from observers, observer organizations, and observer providers. NMFS also received letters from conservation organizations and interested members of the public. Eighty-five unique comments were received in the hearings and letters of comment. These comments, including those from the public hearings, are summarized and responded to below.

#### General Program Comments

*Comment 1:* The Observer Program is an indispensable component in the successful management of Federal groundfish fisheries off Alaska, though we recognize that some portions of the existing program need adjustment. Thus, we support the approach in Amendments 86/76. This approach is fair and equitable and should facilitate the level of catch data and other information necessary to ensure responsible management and the long-term sustainability of the groundfish resources. The proposed amendments will improve upon a program that is already recognized as one of the most comprehensive and successful observer programs in the world.

*Response:* NMFS acknowledges this comment.

*Comment 2:* We applaud the restructured Observer Program that shares the costs of observer-collected catch and bycatch data, and observer deployment across all fisheries and vessel classes. This action will make the program equitable for all fishery participants and provide more statistically robust data.

*Response:* NMFS acknowledges this comment.

*Comment 3:* The restructured Observer Program is overdue and necessary for all sectors. We support the intent of the restructured Observer Program to remove bias and gather data from the currently unobserved fleet. We urge NMFS to implement a program that is not unreasonably burdensome, and does not substantially increase costs or interfere with existing business practices. It is imperative that the program respond quickly to the issues that will arise in covering an additional 1,200 vessels that will be included in the new program.

*Response:* NMFS acknowledges this comment.

*Comment 4:* On behalf of 300 individuals participating in fisheries in Prince William Sound and the GOA, most of whom operate vessels less than 60 ft. LOA, we oppose the proposed rule to restructure the Observer Program. We support the intent of the proposed rule. However, the proposed rule does not

provide clear information on how the Observer Program will apply to small vessels.

*Response:* The preamble to the proposed rule contained a detailed explanation of how the Observer Program will apply to small vessels, specifically those vessels under 60 ft. LOA. The proposed rule details the instructions for small vessels to follow in order to find out whether and when they will be required to have an observer on board. Each year, the annual deployment plan will describe how observer coverage requirements will apply to small vessels. Small vessels are specifically addressed in the 2013 Observer Program Annual Deployment Plan. For 2013, small fixed gear vessels less than 40 ft LOA are in the "no selection" pool which means that they will not be selected for observer coverage. Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less than 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

Information on the requirements that apply to small vessels is included in the Final Regulatory Flexibility Analysis (FRFA) in this final rule. NMFS has also posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) as a plain language guide to assist small entities, including the small vessels referred to by the commenter, in complying with this rule. In addition, NMFS will conduct outreach via direct mailing and community meetings to continue to communicate as widely as possible how the requirements of the restructured Observer Program apply to small vessels. For more information on NMFS's outreach activities, please see the section below called "Outreach."

*Comment 5:* The restructured Observer Program is a waste of money and should not be implemented since there are other methods to collect information on bycatch. Halibut vessels are required to retain all rockfish, so there is a record of rockfish bycatch in the Individual Fishing Quota (IFQ) fleet. Halibut IFQ skippers should be required to document bycatch in their logbooks.

*Response:* NMFS disagrees. Observer coverage is necessary in the halibut

fisheries off Alaska to collect unbiased and representative data on catch and bycatch in the halibut fisheries. The current standard used by NMFS to best obtain unbiased fishery dependent information is to deploy human observers to observe fishing operations. Human observers can collect data (e.g., obtain biological samples and reliably identify species of fish) in an independent manner that currently cannot be collected through other means. NMFS agrees that collecting information through logbooks for vessels not currently required to maintain logbooks may be helpful additional information for NMFS, but such a requirement is outside the scope of this action, and does not directly address the purpose and need for this action.

*Comment 6:* To address all potential sources of bias in observer-collected data, NMFS needs to control the deployment of observers in both the partial and full coverage categories to completely eliminate the potential conflict of interest between vessel owners/operators and observer providers.

*Response:* NMFS acknowledges that, despite modifications to the Observer Program through this final rule, sources of bias or uncertainty in observer data will still exist as there are potentially many contributing factors. However, a central component to the purpose and need for this action is to correct one source of potential bias by giving NMFS control over the deployment of observers in the partial coverage category.

The deployment of observers in the full coverage category does not have this same potential bias concern because all fishing trips are observed. In the full coverage category, vessels still choose which of the four currently certified and active observer providers to work with and those providers are prohibited from responding to industry requests for specific observers. NMFS believes that the active observer providers in Alaska are in compliance with this requirement based on available information. Thus, NMFS does not agree that further modifications are needed so that NMFS controls the deployment of observers in the full coverage category.

*Comment 7:* The charter halibut fleet is unobserved and does not contribute to the cost of managing the fishery. The charter fleet should be monitored with electronic monitoring (EM) to understand the level of halibut mortality associated with charter fishing operations and should be required to pay observer fees.

*Response:* The Council did not identify the extension of observer fees, observer coverage, or EM to the charter halibut fleet in the purpose and need for the observer restructuring action; therefore, it was not included in the alternatives analyzed. The Council and NMFS will continue to review the data needed to conserve and manage the fisheries under its authority and, if appropriate, may consider developing and analyzing alternatives that would include the charter halibut fleet in the Observer Program.

*Comment 8:* NMFS should disapprove or delay implementation of the provisions authorizing deployment of observers on vessels in the vessel selection pool until a more detailed deployment plan is made available for full public comment and an EM alternative is sufficiently developed to allow implementation of an integrated EM program. However, NMFS should implement the fee collection and trip selection pool provisions of the proposed rule at this time.

*Response:* NMFS disagrees. Bifurcating implementation of this final rule is not warranted or necessary to achieve the goals of the commenter. First, this final rule does not preclude public comments on the annual deployment plan. The 2013 Observer Program Annual Deployment Plan is being developed concurrently with this final rule and was available for public comment prior to the publication of this final rule. For example, public comments during the development of the 2013 Observer Program Annual Deployment Plan led NMFS to not require observer coverage for vessels less than 40 ft. LOA in 2013, thereby delaying observer coverage on those vessels in the vessel selection pool. However, all vessels in the vessel selection pool, regardless of size, will contribute to the fee assessment upon implementation of this final rule.

Second, NMFS is providing for the limited use of EM equipment during 2013. In the future, NMFS can integrate EM into the Observer Program. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries. For a more complete discussion of EM, please see the subheading below called "Electronic Monitoring."

*Comment 9:* The analysis fails to address Section 303 of the MSA which requires that each FMP describe the fishery, including "the cost likely to be incurred in management" and the "actual and potential revenues from the fishery."

*Response:* This section of the MSA refers to requirement for FMPs, and the FMPs do include sections that describe both the fishery revenues (Section 4.3.2) and the costs of management (Section 6.2.1) for the respective groundfish fisheries, as a whole. These sections are periodically updated, generally in conjunction with the programmatic reconsideration of the FMPs, and are intended to provide a programmatic perspective on the groundfish fisheries. An annual report of fisheries revenues is also prescribed in the FMPs, which is included in the Economic Status of the Groundfish Fisheries Off Alaska. This information is a component of the annual Stock Assessment and Fishery Evaluation report (available on the Alaska Fisheries Science Center's Web site at <http://www.afsc.noaa.gov/REFM/stocks/assessments.htm>).

*Comment 10:* NMFS needs to consider, as a reasonable alternative, 100 percent observer coverage for trawl fisheries as the best available scientific tool to minimize bycatch and bycatch mortality. If the purpose of restructuring the Observer Program is to address problems in the quality of data collected from trawl vessels in the 30-percent coverage category, NMFS should substantially increase observer coverage for the trawl fleet. The goal should not be even coverage across the whole fishing fleet, but to be able to collect more information from fisheries of concern.

This is necessary to comply with National Standards 2 and 9 of the MSA, as well as requirements of the National Environmental Policy Act (NEPA) to consider significant environmental impacts of a proposed action.

*Response:* The purpose of restructuring the Observer Program is to reduce bias in observer data, authorize the collection of observer data in sectors that do not currently have any observer coverage requirements, allow fishery managers to provide observer coverage to respond to the management needs and circumstances of individual fisheries, and assess a broad-based fee that reflects the value a vessel or processor extracts from the fishery.

The Council and NMFS did consider applying 100 percent observer coverage to the trawl fisheries, and rejected that alternative for the reasons described here and in Section 3.2 of the analysis. Under the restructured Observer Program, vessels will either be in the partial coverage or full coverage category. The Council and NMFS decide which vessels or sectors belong in the full coverage category based primarily on NMFS' inseason management needs, requirements for monitoring and

enforcing limited access privilege programs (LAPPs), or Congressional mandates (described in Section 3.2.7.2 of the analysis, and page 23329 of the preamble to the proposed rule). Based on this information, the Council and NMFS placed trawl catcher vessels that are not fishing with transferable quotas and PSC limits in the partial coverage category. Note that observer coverage levels for the partial coverage category are flexible and not codified in regulation. NMFS can adjust coverage levels for specific sectors as needed, and within budgetary constraints, to best meet the needs of science and management.

NMFS disagrees that 100 percent observer coverage for trawl fisheries is necessary to comply with National Standard 2. National Standard 2 requires that conservation and management measures be based upon the best available scientific information. The analysis that supports this action used the best scientific information available to design the restructured Observer Program.

NMFS also disagrees that 100 percent observer coverage is necessary to obtain unbiased catch and bycatch estimates, and has designed a sampling plan for the partial coverage category to improve the reliability of data collection from vessels within this category (see Section 3.2 of the analysis for additional detail). Each year, NMFS will use the best available scientific information in the annual deployment plan to determine the amount of observer coverage in the partial coverage category. The annual deployment plan process provides flexibility to adjust scientific sampling methods from one year to the next as new information is acquired and management needs change. This flexibility is crucial for employing the best available science for data collection and greatly improves NMFS's ability to collect unbiased information on bycatch. The 2013 Observer Program Annual Deployment Plan, prepared for the initial year of the restructured Observer Program, describes how NMFS will deploy observers on all types of fishing operations. The deployment plan process is described in detail in the proposed rule (77 FR 23330; April 18, 2012), Section 3.2 of the analysis, and the 2013 Observer Program Annual Deployment Plan. These changes in observer deployment are intended to reduce possible sampling bias and thereby represent an important step to provide the best available scientific information to managers. Additionally, by maintaining sampling probabilities equal within the vessel and trip selection pools, over time, observer

coverage levels in a given sector will be proportional to the relative magnitude of the fishing effort in that sector.

National Standard 9 requires that management and conservation measures, to the extent practicable, minimize bycatch or bycatch mortality. NMFS disagrees that increased observer coverage, as suggested by the commenter, will, in and of itself, minimize bycatch. The implementation of the restructured Observer Program should reduce bias and improve the statistical reliability of observer data. Better total catch accounting will improve bycatch data and contribute to conservation efforts, such as limiting bycatch to PSC limits. These environmental benefits are evaluated in the analysis (Sections 3.2.6, 4.3, and 6.1).

*Comment 11:* The environmental assessment (EA) prepared for the proposed rule fails to comply with the requirements of NEPA because (1) beneficial environmental impacts from increased observer coverage are not evaluated, (2) uncertainty in bycatch estimates is not evaluated, and (3) the public does not have meaningful opportunity to comment on aspects of the program that are delegated to the annual deployment plan review process. NMFS needs to establish a clear process that ensures public comment on the annual deployment plan. The proposed approach to have the plan presented to the Council in October of each year limits opportunity for meaningful public participation and does not provide sufficient time to adequately consider and comment on the deployment plan.

*Response:* NMFS disagrees that the EA fails to comply with the requirements of NEPA. The EA evaluates the environmental benefits of increased observer coverage and an improved scientific sampling design in Section 4.3.1. The EA evaluates the uncertainty in the bycatch estimates and how the restructured Observer Program reduces this uncertainty in Section 3.2. Uncertainty in the bycatch estimates will also be evaluated in the annual deployment plans, as explained in the 2013 Observer Program Annual Deployment Plan. Additionally, the aspects of the program deferred to the annual deployment plan were analyzed in Section 3.2 of the analysis, and the public had the opportunity to comment on that analysis during its development through the Council and rulemaking processes for this action.

The public does have a meaningful opportunity to comment on the annual deployment plans. NMFS has established a schedule for release,

review, and discussion of the annual deployment plan that will provide the public with numerous opportunities to provide input to the Council and NMFS on the deployment plan. NMFS will release the annual deployment plan by September 1 of each year so that it is available for public review prior to the Plan Teams' meetings. Each year, the public will also have the opportunity to comment on the annual deployment plan when the Council reviews the annual report and annual deployment plan at its annual October meeting. The 2013 Observer Program Annual Deployment Plan was released for public comment in September 2012 and reviewed by the Council at its October 2012 meeting. Starting in 2013, the public will also have the opportunity to comment when NMFS presents an analysis of the deployment plan and issues raised at the June Council meeting. In addition, the public may comment directly to NMFS in writing on the deployment plan or any other aspect of NMFS' responsibilities or projects at any time.

#### *Safety*

*Comment 12:* A discretionary provision in section 303(b)(8) of the MSA allows FMPs to require that observers be carried on board fishing vessels, unless the facilities of the vessel are "so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized." Most of the small vessels in the fixed gear fleet do not have operable toilets, an extra bunk, or hot water, and may not meet these criteria.

Placing an observer on a small vessel creates safety issues that were not sufficiently addressed in the analysis. Longstanding safety concerns include: (1) Limited deck space on small vessels; (2) hazards created by tight groundline; (3) the observer displacing traditional positions at the rail to assist the roller man; (4) distractions caused by an observer placed in front of the roller man; (5) increased pitch and roll on small vessels leading to seasickness and risk to observers and crew; (6) limited available space in life rafts; and (7) increasing the risk that vessels will fish in marginal conditions in order to avoid losing observer coverage.

*Response:* NMFS disagrees that the presence of an observer presents an additional risk to the safe operation of small vessels or that the analysis did not adequately address safety concerns associated with this action. This final rule at § 679.51(e)(1) maintains existing regulations that all vessels subject to the requirement to carry an observer maintain safe conditions on the vessel.

This requirement is intended to ensure that safety issues, such as those raised by the commenter, are addressed by the vessel operator. In addition, NMFS trains observers to work safely at sea, and the training addresses the issues noted in this comment.

Section 6.1 of the analysis addressed consistency with National Standard 10 (section 301(a)(10) of the MSA) in general terms. National Standard 10 requires that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea. Section 3.2.7.3 of the analysis considered safety issues and specifically addressed the types of factors that would be considered in determining whether to deploy an observer on a vessel in the vessel selection pool (defined in the 2013 Observer Program Annual Deployment Plan as fixed gear vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA). Vessels in the vessel selection pool are the participants in the fixed gear fleet referred to by the commenter. The analysis determined that the more flexible contracting model allows NMFS to adequately consider safety issues when deploying observers on vessels that may be difficult or dangerous to work on, recognizing that there are cases in which a vessel's deck layout or operations may cause safety and logistical concerns due to lack of suitable workspace. The analysis lists the key factors NMFS would consider in determining whether to place an observer on a vessel in the vessel selection pool. Key factors include, but are not limited to, the amount of available deckspace, the size of the crew, the weather at the time of deployment, and the adequacy of berthing space.

There are many ways in which a vessel can adapt to safely accommodate an observer. However, if a vessel operator believes that the vessel is unsafe to carry an observer, he or she may identify their reasons and request that NMFS release them from carrying an observer. Requests for release from observer coverage would prompt a vessel inspection by NMFS to assess the safety and/or logistical concerns. For a more complete discussion of releasing a vessel from observer coverage, please see the subheading below called "Release from Observer Coverage."

NMFS acknowledges that there is an increased risk to observers due to increased observer days at sea in Alaska and that sea-going vessels engaged in fishing have inherent known workplace risks. Recognizing that some risks to observers may be exacerbated on smaller vessels, NMFS is requiring the

observer provider to place only experienced observers on vessels in the vessel selection pool. Specifically, section C.2.2.2.1 of the "Solicitation Request for Proposal AB133F-12-RP-0020" states that "\* \* \* observers deployed to vessels in the vessel selection pool must have prior experience as an observer in the Groundfish Observer Program and must be in good standing with the Groundfish Observer Program; this requirement doesn't apply to observers going to vessels in the trip selection pool." A copy of the entire solicitation is available online at [https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&_cview=1)

*Comment 13:* Vessels less than 60 ft. LOA were exempted from previous human observer programs, in part because of safety concerns.

*Response:* NMFS disagrees. The 1990 Observer Plan first established the length-based category of vessels which would not be requested to carry an observer (*i.e.*, vessels less than 60 ft. LOA). Limiting observer coverage to vessels 60 ft. LOA or greater was based on a determination that the information that would be received from observers on these vessels would not justify the costs imposed on vessel operators or the costs that would be imposed on NMFS. This determination was based on an assessment of the costs of deploying an observer using the only available observer procurement method at that time, which required vessels to contract directly with observer providers to meet coverage levels fixed in regulation. The analysis developed for, and the proposed rules to implement, Amendment 18 to the GOA FMP (54 FR 50386; December 6, 1989) and Amendment 13 to the BSAI FMP (55 FR 4839; February 12, 1990) that first established length-based observer requirements specifically assumed that, at a minimum, all vessels greater than 50 ft. LOA would be able to accommodate an observer.

*Comment 14:* Various sections of the MSA require consideration of safety (*e.g.*, National Standard 10, section 303, section 313). The placement of observers on board vessels causes safety issues by replacing experienced crew members and by interfering with vessel operations and thereby violating National Standard 10. The National Standard 10 guidelines (§ 600.355) identify ways to reduce adverse safety impacts, including "[a]voiding management measures that require hazardous at-sea inspections or enforcement if other comparable

enforcement could be accomplished as effectively" (50 CFR 600.355(e)(5)).

*Response:* NMFS disagrees. National Standard 10 states that conservation and management measures shall, to the extent practicable, promote the safety of human life at sea (Section 303(a)(10) of the MSA). Neither National Standard 10 nor the guidelines preclude the placement of observers, and NMFS does not agree that the placement of observers on board vessels causes safety issues, as there are many ways in which a vessel can adapt to safely accommodate an observer.

Vessels that carry observers are required to have a valid U.S. Coast Guard (USCG) Commercial Fishing Vessel Safety Decal, which ensures the vessel is current and in compliance with USCG safety equipment requirements. Compliance with the safety requirements is not a new requirement of this rule, as all vessels, with few exceptions, must comply with the USCG requirements, regardless of whether they carry an observer (see Section 3.2.8 of the analysis). Observers inspect the vessel when they board to ensure that the required safety equipment is in place, and they will not remain on board a vessel where the decal is absent or the equipment is no longer present or current.

During and after a trip on a vessel, observers will report safety concerns to NMFS and the USCG and will document any marine casualties that have occurred, following the USCG definition of marine casualty. NMFS' experience through observer programs has been that the presence of an observer has improved safety awareness within the observed fleets, increased the issuance of USCG safety inspections, improved reporting of marine casualties, and rarely, but importantly, brought manifestly unsafe vessel conditions to the attention of USCG personnel who were authorized to take corrective action. Additionally, observers board vessels with their own safety gear, including a currently inspected survival suit and personal locator beacon.

*Comment 15:* The proposed rule may reduce safety if vessels in the trip selection pool are prompted to fish marginal or un-safe weather to avoid losing their observer for that trip to another vessel. This impact on safety is contrary to previous Council actions and National Standard 10 of the MSA.

*Response:* The selection for observer coverage does not compel an operator to fish in bad weather. NMFS expects that vessel operators will continue to make prudent decisions regarding fishing in weather regardless of the observer coverage requirement.

NMFS recognizes that weather may delay fishing trips and factored that into the design of the deployment system balanced with the knowledge that some operators will attempt to avoid meeting the required coverage. For vessels in the trip selection pool, if the operator has complied with the notification requirements at § 679.51(a)(1), this final rule at § 679.51(a)(1)(ii)(C)(4) provides a 48-hour window for delaying a trip from scheduled departure. If a departure must be delayed beyond 48 hours, that trip could be cancelled in coordination with the observer provider and an observer will be required on that vessel's next trip.

*Comment 16:* Small boat operations in the GOA and BSAI are constrained by weather. During the spring and fall, halibut vessels often wait in port for 7 to 10 days for good weather and often leave on short notice to take advantage of favorable weather. Failure to take advantage of a weather window can be costly. Additionally, flights to remote ports in Alaska are routinely canceled and delayed due to poor weather conditions. As such, deploying observers on vessels in the vessel selection pool will be extremely problematic and may cause costly interruptions to fishing operations. The proposed rule is silent relative to accommodating the small boat fleet on this issue.

*Response:* NMFS recognizes that weather delays in fishing do occur, and the Council and NMFS considered this in the design of the program and in the proposed and final rule. NMFS expects that small boat operations will be more susceptible to weather delays, and that there will be a subsequent cost to the overall program as a result. NMFS also agrees that flights to ports in Alaska can be challenging due to weather. This challenge is most acute in remote areas. However, NMFS does need data from remote areas and small vessels and will attempt to observe remote locations when a vessel or trip operating out of a remote area is selected.

The proposed rule and final rule establish a process to address small vessel weather delays. Vessels in the vessel selection pool that are selected for observer coverage will coordinate with the observer provider to ensure that observers are available when and where vessels are departing for fishing. The process of coordinating directly with the observer provider will enable flexibility for vessels and observer providers to work together regarding weather delays. This process is similar to the process that vessels in the full coverage category currently undergo with observer providers. Based on that

experience, NMFS does not anticipate costly interruptions to fishing operations or releases from observer requirements due to weather delays. If no observer is available, the observer provider will coordinate with NMFS Fisheries Monitoring and Analysis Division. NMFS Fisheries Monitoring and Analysis Division may release the vessel from the observer coverage requirement for that trip under § 679.51(a)(1)(iii) of this final rule.

#### *Standardized Bycatch Reporting*

*Comment 17:* Amendments 86/76, the proposed rule, and the analysis are not consistent with the requirements of section 303(a)(11) of the MSA that the FMPs establish a standardized bycatch reporting methodology.

*Response:* NMFS disagrees. The standardized reporting methodology is unaffected by this action and is outside the scope of this rulemaking. MSA section 303(a)(11) requires that an FMP establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Bycatch in the BSAI and GOA groundfish fisheries is estimated through the Catch Accounting System (CAS), which is described in Section 3.2.4.2 of the BSAI FMP and the GOA FMP. The CAS is the NMFS Alaska Region's standardized bycatch reporting methodology. The methods NMFS uses to estimate bycatch through the CAS are further described in "Cahalan, J., J. Mondragon, and J. Gasper. 2010. Catch Sampling and Estimation in the Federal Groundfish Fisheries Off Alaska. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-205, 42 p." This publication is available on the NMFS Alaska Region's Web site (<http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-205.pdf>).

In addition, NMFS' estimates of bycatch in the groundfish fisheries managed under the FMPs are reported on the NMFS Alaska Region's Web site (<http://www.alaskafisheries.noaa.gov/sustainablefisheries/catchstats.htm>) and in periodic reports such as: "National Marine Fisheries Service. 2011. U.S. National Bycatch Report. W. A. Karp, L. L. Desfosse, S. G. Brooke, Editors. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-F/SPO-117E, 508 p." (This publication is available online: [http://www.nmfs.noaa.gov/by\\_catch/bycatch\\_nationalreport.htm](http://www.nmfs.noaa.gov/by_catch/bycatch_nationalreport.htm)).

As described in the FMPs, the CAS uses observer data and data submitted by the fishing industry to estimate prohibited species catch and at-sea discards, which are two components of bycatch. The use of observer data is further described in Section 3.2.4.1 of

the BSAI FMP and the GOA FMP, which were amended by Amendments 86/76 to reflect restructuring of the observer program. The purpose of Amendments 86/76 is to improve the quality of data collected by observers in the groundfish and halibut fisheries off Alaska. Observer data are the primary source of information used by NMFS to estimate bycatch. Therefore, Amendments 86/76 and this final rule improve NMFS' ability to estimate bycatch, strengthen the standardized bycatch reporting methodology, and support the intent of section 303(a)(11) of the MSA.

*Comment 18:* A poorly designed standardized bycatch reporting methodology could result in significant environmental harm by failing to identify bycatch issues and the implications for at-risk populations such as halibut and Chinook salmon. The proposed rule does not adequately address these concerns, and the potential for significant environmental harm must be considered in an Environmental Impact Statement (EIS) rather than an EA.

*Response:* NMFS agrees that the standardized bycatch reporting methodology is integral to identifying bycatch issues and implications of groundfish fisheries for at-risk populations and has spent considerable effort in developing the methodology. However, as explained in the response to Comment 17, the standardized bycatch reporting methodology for the groundfish fisheries off Alaska is a separate matter from this observer restructuring action. Amendments 86/76, as implemented by this final rule, reduce bias and improve the quality of data collected by observers in the groundfish and halibut fisheries off Alaska. NMFS will use these data in the standardized bycatch reporting methodology to improve bycatch estimates.

NMFS prepared a FONSI (see **ADDRESSES**) for restructuring the Observer Program that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment. Based on this FONSI, an environmental assessment is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted.

*Comment 19:* Bycatch reporting methodologies under National Standard 9 of the MSA require a detailed analysis of data collection needs from different fisheries. However, the analysis exhibits a "one-sized-fits-all approach" to bycatch reporting and does not demonstrate that NMFS took a hard look at specific fishery sectors. NMFS should



provide further supporting analysis to discuss and compare data gaps and uncertainties from each fishery, define specific research objectives, and then assess what monitoring methods are most appropriate. If NMFS had adequately analyzed and prepared a bycatch assessment methodology, the inescapable conclusion would be that an EM program would best achieve data collection objectives for the small boat fixed gear fleet. The failure to consider fishery-specific needs is a major flaw of the proposed rule and its supporting analysis.

*Response:* NMFS disagrees. NMFS has conducted a detailed analysis of bycatch reporting methodologies, as described in response to Comment 17. The restructured Observer Program will improve the data collected and the analysis prepared for this action considers the fishery-specific data collection needs. Further consideration of fishery-specific data collection needs will also be addressed each year in the annual deployment plan.

NMFS disagrees that EM in its current form would best achieve data collection objectives for the small boat fixed gear fleet. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries. For a more complete discussion of EM, please see the subheading below titled "Electronic Monitoring."

*Comment 20:* Develop and implement a method to obtain statistically reliable catch and bycatch estimates, particularly the bias in catch and bycatch estimates that would result from not observing the exempted vessels and gear types (*i.e.*, those using jig gear or those less than 40 ft. LOA using pot or hook-and-line gear).

*Response:* The scope of this action is limited to the funding and deployment of observers. The methods through which these data are used to make estimates are not part of Amendments 86/76 or this final rule. Therefore, this action does not prescribe how NMFS uses observer information to estimate bycatch, such as the use of specific statistical estimators, as discussed in the response to Comment 17.

However, NMFS agrees that it is important to understand bias associated with not selecting particular types of vessels in the partial coverage stratum. Chapter 3 and Appendix 10 of the analysis, and the 2013 Observer Program Annual Deployment Plan, describe the rationale for designating vessels in the partial coverage category that will not be observed in the initial year(s) of the program (vessels less than

40 ft LOA). The designations would likely change over time and bias would be one of the elements that NMFS will likely evaluate to make these decisions in the future. The analysis also provides a detailed description of bias in Chapter 3 and Appendix 8, and describes how NMFS will deploy observers to improve the data on fishing operation. These changes in observer deployment are intended to reduce possible sampling bias and thereby represent an important step to provide the best available scientific information to managers.

#### *Annual Deployment Plan*

*Comment 21:* The Council should have an opportunity to review and encourage consideration of its priorities for observer coverage through the annual deployment plan. The Council should not be constrained to only influencing the observer coverage through subsequent rulemaking as implied in the proposed rule preamble.

*Response:* As described in the Council's motion and the preamble to the proposed rule, each year NMFS will prepare a report that reviews the progress of the Observer Program, describes the financial aspects of the program, and includes a plan for observer coverage rates for the partial coverage category for the upcoming year (the annual deployment plan). The Council will review the annual deployment plan, monitor the program's progress, provide input to the annual deployment plan, and recommend appropriate adjustments to the program that would be implemented through rulemaking. The Council may also request that the Observer Advisory Committee (OAC), Groundfish and Crab Plan Teams, and Scientific and Statistical Committee review and comment on the annual deployment plan.

NMFS will release the annual deployment plan by September 1 of each year so that it is available prior to the September meetings of the Groundfish and Crab Plan Teams. NMFS will then present the annual deployment plan to the Council at its October meeting. Starting in 2013, NMFS also will prepare an annual report that analyzes the prior year's annual deployment plan and present that report at the June Council meeting. The time between June and October will allow the Council, public, and NMFS the opportunity to evaluate deployment methods for the upcoming year using information from the prior year's deployment.

Some aspects of observer deployment can be adjusted through the annual deployment plan, including the

assignment of vessels to the selection pools or the allocation strategy used to deploy observers in the partial coverage category. To adjust the annual deployment plan, NMFS will analyze the scientific data collected and identify areas where improvements are needed to (1) collect the data necessary to manage the groundfish and halibut fisheries, (2) maintain the scientific goals of unbiased data collection, and (3) accomplish the most effective and efficient use of the funds collected through the observer fee. In addition, the Council may provide NMFS input on the priority of particular data collection goals and NMFS will consider adjustments to observer deployment that achieve those goals.

Some adjustments to observer coverage will require regulatory amendments. For example, moving vessels or processors from the partial coverage category to the full coverage category, or vice versa, will require a regulatory amendment because the assignment of vessels to the full coverage category is specified in regulation based on criteria developed by the Council. The assignment of vessels or processors to a particular coverage category has economic impacts on the vessel owner or processor industry members, on the amount of fees available to fund the partial coverage category, and on the contract NMFS has established for observer deployment. The rulemaking process allows for these impacts to be analyzed and for the public to comment prior to implementation of a change in coverage categories.

*Comment 22:* We support the approach described in the proposed rule for vetting the annual deployment plan. The Council would have an opportunity to provide input on the annual report and the annual deployment plan, but would not formally approve or disapprove it.

*Response:* NMFS acknowledges this comment.

*Comment 23:* NMFS should establish observer coverage performance standards based on (1) precision targets for protected species catch estimates, which are no lower than a coefficient of variation (CV) of 30 percent; and (2) desired strata variances (CVs), rather than uniform coverage prescriptions that are driven by NMFS' budget. Budget constraints may limit NMFS' ability to meet its performance standards, but NMFS should be mindful of those standards and establish a prioritization process to achieve them even when funding is limited.

*Response:* NMFS agrees that performance standards, such as the



acceptable amount of error (precision), represent an important and necessary step towards a fully optimized deployment of observers and is an appropriate goal. However, performance standards are not part of this final rule and are not required to implement a restructured Observer Program or achieve the purpose and need for this action.

However, NMFS will be able to use the information collected through this restructured Observer Program to develop performance standards after examining the data resulting from observer deployment under this final rule. As specified in Section 3.2.10 of the analysis, there are three obstacles towards implementing a fully optimized Observer Program: A lack of prior data, the definition of adequately ranked (weighted) performance standards, and the prioritization of objectives. The analysis also recognized the fact that the level of sampling necessary to generate a desired level of precision in an estimate varied widely depending on (among other things) the rarity of the item in question. Until NMFS has defined performance standards, NMFS plans to assign observers with equal probability to vessels or trips within a pool. This gives NMFS the ability to estimate the “observer deployment” effect, increase the accuracy of catch estimates, and increase the effectiveness of observer deployment and catch estimation processes. Please see the 2013 Observer Program Annual Deployment Plan for more information on this issue (see **ADDRESSES**).

*Comment 24:* The Council recently passed a motion to require 100 percent observer coverage to improve estimates of Tanner crab (*Chionoecetes bairdi*) bycatch in two areas of the GOA. Although the GOA catcher vessel trawl fleet is in the partial observer coverage category, NMFS must develop a method to have higher observer coverage in these areas.

*Response:* In October 2010 and April 2012, the Council recommended Amendment 89 to the GOA FMP. NMFS is preparing the notice of availability and proposed rule for that action. If approved, Amendment 89 would close an area northeast of Kodiak Island to nonpelagic trawl gear and require gear modifications for nonpelagic trawl gear to reduce bycatch of Tanner crab in the GOA.

The Council’s October 2010 motion on Amendment 89 also included a recommendation to increase observer coverage to 100 percent for vessels using pot and nonpelagic trawl gear in areas of the Central GOA identified as important Tanner crab habitat. The

Council did not know at the time it passed its final motions on Amendment 89 and this action which of the Council’s recommendations might be approved and implemented first. The Council included the increased observer coverage requirements in Amendment 89 in case a restructured Observer Program was not approved.

The Council did not include 100 percent observer coverage requirements for special management areas in its recommendations for restructuring the Observer Program, recognizing that NMFS would make decisions about the deployment of observers in the partial coverage category through the annual deployment plan.

Therefore, this final rule does not establish observer coverage requirements for special management areas, like the areas identified in Amendment 89, and it does not direct that these areas be established in the annual deployment plan. Rather, this final rule provides NMFS with the ability to use a deployment plan to address deployment bias and therefore improve the underlying data used for estimating bycatch and discards of all species in the groundfish and halibut fisheries. Addressing this source of bias will improve the accuracy of data used to estimate Tanner crab bycatch in the GOA groundfish fisheries as a whole. In the future, the Council can request an analysis of the data used to estimate Tanner crab bycatch in the GOA groundfish fisheries. Based on that analysis, the Council could recommend adjustments to the deployment plan to improve these estimates.

*Comment 25:* Gathering the best available scientific information to manage all North Pacific fisheries should be the goal of the annual deployment plan based on the available funds. Monitoring objectives should be the nexus for the annual deployment plan and not a means of hassling a particular gear type or particular fishery within a geographic area due to the latest political advocacy or media rhetoric. The ability to change the deployment plan annually allows for adjustments based on observer data needs if warranted.

*Response:* NMFS acknowledges this comment.

#### *Deploying Observers on Vessels in the Partial Coverage Category*

*Comment 26:* We support the proposed approach that NMFS would auto-enter all partial coverage category vessels that are designated on an Federal Fisheries Permit (FFP) and all catcher vessels that are not designated on an FFP but that land sablefish IFQ or

halibut IFQ or halibut Community Development Quota (CDQ) in a fishing year into ODDS. Since the vast majority of fishery participants are the same each year, the auto-selection removes the burden that everyone must register each year and narrows the registration focus to new participants only. The other positive for this approach is that NMFS will notify, in writing, operators of vessels that are auto entered into ODDS for the upcoming fishing year to indicate the applicable selection pool for his or her vessel (trip or vessel) and instructions for communicating with the Observer Program for the upcoming year. Because NMFS is selecting the participants and communicating directly with those selected, this is a great method for outreach to fishing vessels.

*Response:* NMFS acknowledges this comment. Note that, in the proposed rule, NMFS called this system the “Observer Declaration and Deployment System (Deployment System).” In this final rule, NMFS has changed the name of the system to the “Observer Declare and Deploy System (ODDS).”

Also, note that NMFS is removing the requirement for new participants to register themselves in ODDS in this final rule; see also response to Comment 27.

*Comment 27:* It is not feasible to require a vessel owner who has not previously fished halibut or sablefish IFQ to enter his or her information into ODDS at least 30 days prior to embarking on a fishing trip. Under the proposed regulations, a vessel operator would be constrained to using a vessel already entered into ODDS if his or her vessel breaks down close to the end of the halibut season and he or she has remaining quota to harvest.

*Response:* NMFS agrees and removes the proposed requirements at § 679.51(a)(1)(ii)(B) and (C), and § 679.7(g)(7) from this final rule. The proposed regulations at § 679.51(a)(1)(ii)(B) and (C) would have required holders of FFPs issued after December 1 and operators of vessels fishing for IFQ or CDQ on vessels that had not landed groundfish or halibut in the previous year to enter their vessel information into ODDS within 30 days of issuance of a new FFP or within 30 days of embarking on his or her first fishing trip of the year. The proposed regulations at § 679.7(g)(7) would have prohibited a person from embarking on a fishing trip without registering with ODDS.

NMFS expects new entrants each year to be a relatively small group. In addition, the goal of the proposed rule was to have information about new

entrants in the partial observer coverage category entered into ODDS so that these vessels are considered for observer coverage as soon as possible. NMFS can identify these new entrants relatively quickly by monitoring the issuance of new FFPs and landings throughout the year and entering vessel information into ODDS as soon as the new entrants are identified. With these revisions to the final rule, NMFS will be making the initial registration of all vessels into ODDS based on information on FFPs or activity of vessels fishing for IFQ or CDQ, and no vessel owner or operator will be required to complete the initial registration of their vessel in ODDS. In addition, by NMFS undertaking the initial registration task, it may result in faster and more efficient entry of a new entrant's vessel information into ODDS.

Once NMFS enters a new entrant into ODDS, NMFS will send the new entrant a letter with the vessel's assigned selection pool. For a vessel in the trip selection pool, the letter will provide instructions for registering fishing trips in ODDS. For a vessel in the vessel selection pool, the letter will notify the new entrant if the vessel has been selected for observer coverage.

*Comment 28:* NMFS should monitor how permit holders designate their vessels in ODDS since permit holders will take measures to avoid being in the full coverage category. NMFS should include information on any avoidance measures that are detected in the annual report.

*Response:* NMFS does not anticipate significant problems with permit holders incorrectly designating catcher/processors as catcher vessels on their FFPs to avoid observer coverage. NMFS can verify vessel operational information through data collected about catch and production and from other permits, such as License Limitation Program (LLP) permits and IFQ permits. NMFS will prepare and present the annual report for the Council on the performance of the restructured Observer Program in June of each year. The report will include any documented incidents of vessel operators taking actions to avoid observer coverage requirements.

*Comment 29:* Placing observers on vessels in the partial coverage category at the proposed rate will be logistically impossible and more expensive than the funding will cover.

*Response:* NMFS has not proposed a specific rate in this final rule at which the fishing fleet in the partial coverage category will be covered. As explained in Section 3.2 of the analysis, NMFS will deploy observers in the partial coverage category at a rate that available

funding will allow. Each year, NMFS will determine the deployment rate for observers in this category in the annual deployment plan. NMFS expects that the observation of the fleet will be expensive and logistically challenging, but possible. The Observer Program has nearly three decades of experience deploying observers in remote locations throughout Alaska.

This final rule establishes several provisions that allow NMFS to accommodate specific logistical challenges that are likely to occur, as explained in the section below called "Release From Observer Coverage." Costs of deploying observers are discussed in the section below called "Observer Fees and Costs."

*Comment 30:* Observers should be stationed in strategic communities throughout Alaska. This approach would greatly reduce program costs by eliminating unnecessary and expensive travel from deployment centers.

*Response:* NMFS will make every effort to have observers available for trips selected for observer coverage and to work with vessel operators to minimize the disruption to vessel activities. NMFS agrees that strategic placement of observers in particular ports in advance of known fishing effort will more efficiently deploy observers with available funds.

*Comment 31:* It is not a good use of limited funds to place an observer in small, remote processing plants that take low volumes of groundfish and infrequent deliveries.

*Response:* As described in the 2013 Observer Program Annual Deployment Plan and the contract with the observer provider, NMFS determined that the priority for observer coverage in shoreside processing plants in the partial coverage category in 2013 is to collect genetic samples from salmon bycatch in pollock deliveries to plants in Kodiak. NMFS and the contracted observer provider will coordinate with the Kodiak plants about this observer coverage. NMFS does not intend to place observers in any other shoreside processing plant in the partial observer coverage category in 2013. In future years, NMFS, in consultation with the Council, will assess the priorities for observer coverage and available funds to determine if observers should be deployed to other processing plants in the partial coverage category.

*Comment 32:* To maximize efficiency and reduce costs for deploying observers, NMFS should allow observers to observe vessels in the partial and full coverage categories without having to be debriefed between

assignments in the different coverage categories.

*Response:* NMFS disagrees. Section 3.2 of the analysis identified the potential for conflicts in interactions between the rules implemented to manage observers in the full coverage category and the contracts employed to manage observers in the partial coverage category. NMFS intends to ensure the financial integrity of the partial and full coverage categories by managing them separately so that such that costs are not transferred inappropriately between the two. Therefore, section C.3.3.14 of the "Solicitation Request for Proposal AB133F-12-RP-0020" states that "[t]he Contractor must not: \* \* \*. (d) assign an observer to vessels in the partial-coverage and full-coverage sectors within the same deployment." This provision of the contract will avoid a broad suite of potential conflicting overlaps between the two coverage categories as described in Section 3.2 of the analysis, while maintaining flexibility for observers and industry between deployments. A copy of the entire solicitation is available online at [https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&\\_cview=1](https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&_cview=1).

#### *Vessel and Trip Selection Pools*

*Comment 33:* NMFS proposes that vessels in the vessel selection pool, which have never carried observers, will initially be required to carry an observer for all trips in a 3-month period. Vessels in the trip selection pool that have a history of successfully accommodating human observers have a less burdensome coverage level. NMFS notes that the vessel selection pool was developed to reduce the volume of trip notifications received by ODDS. No further explanation is given for the more burdensome observer coverage requirements for operations in the vessel selection pool. This is evidence that NMFS has not considered how operators of small vessels will notify NMFS of their trips or the cost effectiveness of deploying human observers on these vessels.

*Response:* NMFS disagrees that the observer coverage requirements are more burdensome for vessels in the vessel selection pool. Section 3.2.7.2 in the analysis outlines the rationale for distinguishing between trip selection, vessel selection, and no selection. NMFS notes that most small fixed gear vessels are in the "no selection" pool in the initial year of the restructured program, as detailed in the 2013 Observer Program Annual Deployment

Plan. Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less than 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

Vessels in the vessel selection pool are selected for observer coverage for all trips that occur during a specific time period. Therefore, these vessels are relieved from the potential of being selected for observer coverage on a trip by trip basis. The preamble to the proposed rule described the duration of coverage for vessels in the vessel selection pool as 3 months. The initial duration of coverage was informed by industry members who commented through the Council's OAC that the duration needed to be long enough to prevent operators from avoiding coverage by simply not fishing for the period selected. However, comments on the proposed rule, the Council's OAC feedback, and Council recommendations on the 2013 Observer Program Annual Deployment Plan indicated that in the initial year of the program this duration of coverage could be burdensome for vessels that have never had observer coverage. In response, NMFS has adjusted the duration of coverage in the vessel selection pool to 2 months. Note that the duration of coverage is set through the annual deployment plan process and is not part of the implementing regulations. Therefore, no changes were necessary in the final rule.

In the vessel selection pool, NMFS will notify by letter owners and operators of vessels that have been selected for observer coverage for all groundfish and halibut trips during a specified period of time. This design allows more time for coordination between the vessel owner or operator and the observer provider to ensure that an observer is available for all trips in the time period selected for observer coverage. NMFS built flexibility into the process for vessels selected for coverage in the vessel selection pool by providing instructions through ODDS for operators to coordinate with observer providers for required observer coverage rather than having the details of this process specified in regulation. This approach is similar to the process currently used for observer deployment in the full

coverage category, where vessel operators coordinate directly with observer providers to obtain observers to meet their required coverage requirements without regulatory notification time frames.

Operators in the vessel selection pool that are not selected for observer coverage will not be required to notify NMFS prior to each trip. In other words, for the initial year, the operators not selected will know they can fish for 2 months without an observer or notification requirements. Operators in the trip selection pool, on the other hand, are required to notify NMFS of each trip and they may be selected for observer coverage for any trip.

*Comment 34:* The proposed rule lacks information about the responsibilities of operators in the vessel selection pool to obtain an observer, which indicates that NMFS has not adequately considered the operational aspects of placing observers on the currently unobserved fleet.

*Response:* The proposed rule described the responsibilities for operators of the vessel selection pool, specifically that (1) NMFS would notify vessel owners or operators by mail if they were selected for observer coverage, (2) ODDS would provide instructions for operators of vessels selected for observer coverage to contact a NMFS-contracted observer provider to discuss logistics for obtaining observer coverage, and (3) regulations at § 679.51(a)(1)(ii)(B) require the owner or operator of a vessel selected for observer coverage to follow all instructions set forth by ODDS. Owners and operators of vessels in the trip selection pool are responsible for logging each trip individually and are notified through ODDS if a trip is selected for observer coverage. More detail is included in the regulations for specific steps and time limits associated with logging fishing trips.

As described in the response to Comment 33, NMFS will notify by letter owners and operators of vessels in the vessel selection pool that have been selected for observer coverage and provide instructions for contacting the observer provider. This process allows more time for coordination between the vessel owner or operator and the observer provider to ensure that an observer is available for all trips in the time period selected for observer coverage.

*Comment 35:* The regulations governing observer providers at § 679.52(b)(6) allow the provider to lodge an observer on the vessel prior to the vessel's initial departure from port and for 24 hours after return if at least

one member of the vessel's crew is aboard. It is not clear how this regulation applies to vessels in the vessel selection pool or if NMFS' observer provider is authorized to require that the vessel operator remain aboard the vessel with the observer. Council discussion indicated that the observer provider would provide accommodation for observers before and after observed fishing trips.

*Response:* Regulations at § 679.52 of this final rule apply to observer providers for vessels requiring full coverage. This section includes § 679.52(b)(6)(iv), which requires that "[d]uring all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard." NMFS has included a similar provision in its contract with the observer provider providing observers to vessels in the partial observer coverage category. Section C.3.3.4 of the "Solicitation Request for Proposal AB133F-12-RP-0020" states that the "Contractor is responsible for all travel arrangements and expenses, appropriate lodging, and all expenses associated with deploying Observers to assigned vessels." Further, the solicitation states that the "Contractor can house an Observer on a vessel to which he or she is assigned prior to departure or disembarkation for a period not to exceed twenty-four hours. During all periods an observer is housed on a vessel, the Contractor must ensure that the vessel operator or at least one crew member is aboard." This contract provision does not give the contractor the authority to require a vessel operator to house an observer on board a vessel. It only provides the conditions that must be met if an observer provider and vessel operator choose to house an observer on board a vessel. A copy of the entire solicitation is available online at <https://www.fbo.gov/index?s=opportunity&mode=form&id=dc897646db9de61f36682e5d32140c76&tab=core&cview=1>.

*Comment 36:* Small vessels can reasonably take observers and should be required to do so.

*Response:* NMFS acknowledges this comment.

*Comment 37:* The presence of an observer on a small vessel will bring about changes on vessel operations. The small boat fleet has minimal accommodations for skipper and crew. Where vessels are family operations, the presence of an observer will be intrusive. In consequence, vessel operators are likely to take shorter trips, fish closer to town, operate in marginal weather, and make other operational

changes to mitigate the observer's impact. These operational changes have been identified in public testimony provided to the Council during the development of Amendments 86/76.

Vessels with observers on board will not operate in ways typical of other, similar, vessels that are not carrying observers, and thus observer reports will provide a biased picture of overall fleet activity, and will affect the statistical reliability of the data. This should be discussed in the analysis.

*Response:* NMFS acknowledges that the presence of an observer can be intrusive on any vessel and would not place an observer on board without a need for information necessary to support fisheries management. NMFS cannot control a vessel operator's behavior while a vessel is observed, but NMFS can monitor and evaluate the observed vessel and fleet activity to assess whether observations are representative of the fleet.

NMFS considered this potential "observer effect" in the analysis (Section 3.2.7.1 and Appendix 8) and in the 2013 Observer Program Annual Deployment Plan. In the 2013 Observer Program Annual Deployment Plan, NMFS selected the initial 3-month coverage period in the vessel selection pool as a way to mitigate the potential for the "observer effect." In essence, the period of observation is long enough such that abnormal fishing when observed would not be practical.

A second solution to the potential "observer effect" noted by other commenters is to require 100 percent observer coverage on all vessels. NMFS disagrees. One hundred percent observer coverage on all vessels is not necessary to achieve the fishery management needs and would be costly and highly intrusive for small vessels.

*Comment 38:* NMFS should consider expanding the vessel selection pool to larger vessels to ease logistical issues with trip selection. This would result in fewer vessels being monitored for longer periods.

*Response:* NMFS will determine the size categories for the vessel selection and trip selection pools in the annual deployment plan process. For the 2013 Observer Program Annual Deployment Plan, NMFS analyzed landings data and identified groups of vessels with trips with similar total weights that could be identified by characteristics known before a trip begins. In addition, the vessel size categories took into consideration the nature of fishing trips undertaken by smaller vessels, which would place logistical constraints on observer deployment. NMFS plans to evaluate each year's coverage and make

changes as necessary to best meet information needs. NMFS will make adjustments to which vessels are in which selection pool each year through the annual deployment plan.

*Comment 39:* Operators need the ability to register more than one trip at a time, especially as many trips can be less than a day in duration.

*Response:* NMFS agrees and has designed ODDS to allow up to three trips to be logged in the system, and up to six trips can be logged if they all will occur within a 72 hour period. NMFS demonstrated this system to industry members during the June 2012 Council meeting. Participants acknowledged that the system was able to effectively handle multiple trips. NMFS will monitor ODDS during the first year of implementation and can adjust the system in response to user comments.

*Comment 40:* This final rule should provide a method for catcher vessels that deliver exclusively to tender vessels to obtain observers for trips selected for observer coverage. Over 70 percent of the Western GOA trawl pollock and fixed gear Pacific cod landings are delivered to tenders. Fishery participants need to be able to obtain an observer for required coverage without having to transit back to Sand Point or King Cove, Alaska, while vessels are in a race for fish; otherwise, NMFS will create a set of winners and losers based on whether a vessel is selected to carry an observer. One solution would be to adopt a common practice used in Kodiak where observers are transported to and from the fishing grounds by tenders to be deployed on fishing vessels.

*Response:* NMFS agrees that requiring catcher vessels that deliver to tender vessels to return to port to obtain an observer would significantly impact the vessels' operations. Thus, NMFS modified the final rule in response to this comment to permit catcher vessels in the trip selection pool to remain on the fishing grounds while delivering to tender vessels. This modification is not required for vessels in the vessel selection pool because those vessels will be required to carry an observer on all trips for the required duration. Regulations at § 679.51(a)(1)(ii)(C)(5) require that vessels selected for observer coverage in the trip selection pool carry an observer for the duration of the fishing trip. NMFS amended the definition of a "fishing trip" at § 679.2 to add a definition specific to catcher vessels delivering to tender vessels. NMFS also revised the regulations at § 679.51(a)(1) to include a new paragraph that requires a catcher vessel to make at least one delivery to a tender

vessel to be subject to the fishing trip definition for catcher vessels delivering to tender vessels. Under this final rule, a fishing trip period would be defined as the period from the time the vessel departs from port until the vessel returns to port and requires that the catcher vessel make at least one delivery to a tender during the fishing trip.

*Comment 41:* For the trip selection pool, ODDS needs to allow for changes to registered trip departures and times.

*Response:* Trip departure information cannot be amended directly in ODDS for trips that have been selected for observer coverage. If the trip departure times need to be changed, the vessel owner or operator must contact the observer provider by email or phone, using the contact information provided in ODDS. This is necessary because the observer provider will start to make arrangements to get an observer to the vessel when they ODDS notifies then that the trip has been selected for observer coverage. Thus, changes or cancellation of a trip that has been selected for coverage must be coordinated directly with the observer provider to avoid unnecessary work and expense for all parties.

*Comment 42:* Many combination troll and longline vessels harvest halibut near the end of a salmon trip. These trips are efficient and distribute longline effort away from coastal communities. If these vessels are required to carry an observer for the extent of the salmon trip, or to return to port to obtain an observer for the halibut portion of the trip, fleet costs will be increased substantially. Local depletion and conflict with the charter fleet will intensify. These costs are not evaluated in the analysis or mitigated in the proposed rule.

*Response:* This issue was discussed during the development of the analysis, at the OAC, and at the Council. NMFS notes that many of the vessels at issue are less than 40 ft. LOA; these vessels will not be required to have an observer in the first year of the program under the 2013 Observer Program Annual Deployment Plan. In the 2013 Observer Program Annual Deployment Plan, fixed gear vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA will be in the vessel selection pool, and they may be selected for observer coverage for a 3-month period. If selected for coverage, the vessel owner or operator must notify the observer provider prior to each trip for which the vessel will be used to participate in fisheries in the partial observer coverage category (directed fishing for groundfish in federally managed or parallel fisheries

or fishing for sablefish IFQ or halibut IFQ or CDQ) in that period.

NMFS expects that, as under the status quo, some trips will have low catch and/or bycatch and some will have high catch and/or bycatch. While it may not be the most efficient use of an observer to sample on these trips, it is necessary to include all trips in the pool to provide a representative sample. The sample design can only be based on variables that are known before a trip starts (*i.e.*, whether a person decides to set gear for halibut mid-trip cannot be known before the trip begins).

#### *Release From Observer Coverage*

*Comment 43:* In the proposed rule, NMFS described a customized coordination process for vessels in the vessel selection pool including the ability for operators in the vessel selection pool to indicate whether an observer could be accommodated on his or her vessel. The proposed rule includes an option for the Observer Program to release the vessel from the observer requirement if warranted. A similar option should be extended to all vessels in the trip selection pool that are new to the Observer Program.

*Response:* The final rule at § 679.51(a)(1)(iii) allows the Observer Program to release a selected trip or a selected vessel from observer coverage on a case by case basis. This provision is unchanged from the proposed rule.

*Comment 44:* NMFS should have a defined process to release vessels from the requirement to carry an observer when observers are not available. My crew and I once sat out a fishery due to the inability to get an observer. In advance of the fishery we invested a lot of time and money gearing up for the fishery. We contacted three observer companies about our intent to fish prior to publication of the final rule authorizing the fishery. When the rule published, we notified the observer companies and none were able to provide us with a qualified observer. We chose not to violate the law and sat tied up at the dock though we had a license and the season was open.

*Response:* The NMFS Fisheries Monitoring and Analysis Division has discretion to release a selected trip from observer coverage. If observers are unavailable for any trip where observer coverage is required, the observer provider will coordinate with NMFS to request the release of the trip from the observer coverage requirement.

*Comment 45:* The proposed rule says that vessel owners may petition NMFS for release from the observer coverage requirement, but it does not explain how the waiver process would

accommodate different issues that might arise. The proposed rule does not indicate whether the waiver would be issued at the discretion of NMFS staff or the observer provider. NMFS, rather than the observer provider, should decide whether to release a selected vessel from the obligation to carry an observer. It is unclear what demands the release process will place on the vessel operator, or how much time it would take.

*Response:* The final rule at § 679.51(a)(1)(iii) authorizes the NMFS Fisheries Monitoring and Analysis Division to release a selected trip or a selected vessel from observer coverage on a case-by-case basis. NMFS would release a vessel from the required coverage only where an issue clearly warrants release. NMFS will document the decision to release vessels from the required coverage to ensure consistency in the exercise of its discretion. NMFS will coordinate with any vessel operator who indicates they are unable to accommodate an observer to schedule a visit to the vessel to evaluate the operators claim. The NMFS Fisheries Monitoring and Analysis Division has expertise in evaluating whether a vessel is safe for an observer and whether an observer could work effectively on the vessel. NMFS expects most vessel operators will be able to comply with the observer requirements. NMFS recognizes that many participants in the currently unobserved fleet may not want to take an observer, but that is not a valid reason for releasing vessels from required coverage. NMFS will report on the conditions the agency found warranted release from observer coverage and the number of releases it issued in its annual report to the Council. This information can help guide the Council and NMFS to modify regulations in a subsequent action, if warranted.

*Comment 46:* NMFS's proposal to release vessels that are not suited to carrying an observer from monitoring requirements is not a solution to generating the data NMFS needs. NMFS will not be able to meet the monitoring goals of the halibut and sablefish fixed gear sector because the majority of the vessels will need to be released from the requirement to carry an observer. EM is the solution and releasing vessels is not an appropriate alternative.

*Response:* NMFS agrees that releasing vessels from observer requirements is not a means to generate the data that NMFS needs for fisheries management and that excessive use of the authority to release vessels could compromise data integrity.

NMFS expects that vessels selected for observer coverage will adapt and accommodate an observer when required. Many of the vessels in the halibut and sablefish IFQ sector are of a comparable size and configuration to other fixed gear vessels that currently carry observers. In addition, NMFS has considerable experience in other regions of the United States placing observers on small vessels. The National Observer program Web site at <http://www.st.nmfs.noaa.gov/st4/nop/> provides links to regional observer programs with examples of small boat fleets that have been successfully and routinely observed. NMFS's experience is that most vessels are able to accommodate an observer when required.

For NMFS's response to the EM portion of the comment and a more complete discussion of EM, please see the section below called "Electronic Monitoring."

*Comment 47:* While the proposed trip selection design is statistically robust, we have concerns that individual fishing operations may be affected if observers cannot be acquired in a timely manner for faster paced fisheries such as GOA pollock and GOA and BSAI Pacific cod. Vessels still compete in a "race for fish" for a portion of the available quota in these open-access groundfish fisheries. The pollock and Pacific cod fisheries are extremely faced paced and can be completed in a matter of days. Any slow down due to observer deployments will impact a vessel's ability to maximize profits during these short pulse fisheries.

The suggestion in the proposed rule that a vessel can be released from a selected observer trip when an observer provider is unable to deploy an observer to the vessel within a day of the intended fishing trip departure is totally unacceptable. A vessel should be released from observer coverage requirements if an observer is not available by the time the vessel is ready to redeploy to the fishing grounds in fisheries where participants are racing for a portion of the quotas.

We recommend a different deployment system than the proposed trip call-in method for the trawl sector. NMFS should identify the number of participants in these short pulse fisheries and acquire, in advance, the appropriate number of observers for the target observed rate.

*Response:* It will be incumbent upon the observer provider to anticipate the level of observer effort required to monitor these fast-paced fisheries and to have a sufficient pool of observers available in the key ports for rapid deployment. The ability for vessel

owners or operators to register multiple trips with ODDS will allow the observer provider to know, with ample notification, the trips for which a vessel will be required to carry an observer to ensure that an observer is available when the vessel is ready to embark. NMFS anticipates that the observer provider and vessel operator will be in continuous communication so that observer deployments can be as efficient and seamless as possible.

*Comment 48:* Lack of a USCG Safety Decal or required safety equipment should not be an excuse to release a selected vessel from observer coverage.

*Response:* NMFS will not consider the lack of a USCG Safety Decal or the required safety equipment as valid criteria to release a vessel from coverage. Vessels selected for coverage are responsible for obtaining the USCG Safety Decal in advance of the required coverage and for maintaining the safety equipment during the observer deployments (see § 679.51(e)(1) of this final rule). Observers will not be placed on vessels that do not have a valid USCG Safety Decal. The inability of NMFS to place an observer on a vessel selected for observer coverage due to the lack of a valid USCG Safety Decal will not release the vessel owner and operator from the observer coverage requirement.

*Comment 49:* Vessels that are released from carrying an observer should be required to carry a backup monitoring system such as vessel monitoring systems (VMS) or cameras.

*Response:* This action restructures the funding and deployment system for the Observer Program. NMFS and the Council would need to pursue a separate rulemaking action to require VMS or cameras on vessels that cannot accommodate an observer. Alternate monitoring technologies may provide useful information for fisheries management and NMFS will work with the industry to further develop the potential for video monitoring to be a required monitoring element at a future time. For a more complete discussion of EM, please see the section below called "Electronic Monitoring."

#### *Allowances for Catcher/Processors*

*Comment 50:* NMFS should modify the exceptions for small catcher/processors or vessels that operate as both catcher vessels and catcher/processors to be in the partial observer coverage category because the cost of full coverage for these small catcher/processors is a relatively high proportion of their income. Specific suggestions include (1) eliminate or extend the qualifying period for catcher/

processors less than 60 ft. LOA to elect their observer coverage category in § 679.51(a)(2)(v); (2) increase the processing limit in § 679.51(a)(2)(iv)(B) from 1 metric ton (mt) per day to 1,000 mt per year or to 4.5 mt per day (1,600 mt per year); or (3) eliminate the 100 percent observer coverage requirement for catcher/processors carrying a maximum crew of 7.

*Response:* NMFS acknowledges that the costs of observer coverage will increase for all catcher/processors that currently are required to carry observers less than 100 percent of their fishing days but that will be required to carry an observer 100 percent of their fishing days under the final rule. As described in the proposed rule, full coverage for all catcher/processors was recommended by NMFS and supported by the Council to improve the accuracy of accounting for catch by these vessels. Full coverage will allow NMFS to collect independently verifiable estimates of both retained catch and bycatch from each catcher/processor in the full coverage category instead of using industry reports to estimate retained catch by catcher/processors.

The Council was aware of the increased cost of this provision of the final rule when it recommended the restructured observer program, and information about these costs is discussed in the analysis. Specifically, Appendix 7 provides a summary of the estimated costs of the preferred alternative (Alternative 3) by vessel category. These estimated costs do not necessarily reflect the actual cost increases to individual operations. Actual costs will vary depending on the number of observer days currently required versus those that will be required for these vessels under the full coverage category in the restructured Observer Program.

In recognition of the relatively high cost of full coverage for smaller catcher/processors and the limited amount of catch and bycatch by these vessels, the final rule includes three allowances for catcher/processors to be included in the partial observer coverage category rather than the full coverage category. First, under § 679.51(a)(2)(v), catcher/processors less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010, may make a one-time election as to whether the vessel will be in the full coverage or partial coverage category. Second, also under § 679.51(a)(2)(v), any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of

operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the full coverage or partial coverage category. Third, under § 679.51(a)(2)(iv)(B), a catcher/processor that processes no more than one metric ton round weight of groundfish on any day (up to a maximum of 365 mt per year) may choose to be in the partial coverage category in the upcoming year.

The first two exceptions allow a one-time choice of observer coverage category. The Council developed these two exceptions to provide an allowance to small catcher/processors that had already been operating in the groundfish and halibut fisheries off Alaska to select to be in the partial coverage category. The allowance was recommended in recognition of the relatively high cost of full coverage for the small catcher/processors and the relatively low amounts of catch taken by these operations. This exception is provided to vessel owners with a history of operations in the fishery to limit the number of small catcher/processors that are allowed to select to be in the partial coverage category and to limit this exception to vessels that were purchased or converted before the Council's final action in 2010.

The third exception will be available for any catcher/processor that meets the threshold in any future year. NMFS added this exception to recognize an existing provision of the LLP (§ 679.4(k)(3)(ii)(D)) that allows vessels less than or equal to 60 ft. LOA that process no more than 1 mt of round weight equivalent license limitation groundfish or crab on any day to be defined as a catcher vessel under the LLP. NMFS discussed this proposed provision with the Council and the OAC prior to publication of the proposed rule and there was no objection to the provision.

Consideration of additional exceptions to the requirement for catcher/processors were not presented to the Council when it recommended Amendments 76/86 and were not considered in the analysis supporting this final rule. Proposed modifications to coverage requirements for catcher/processors should be addressed to the Council and, if the Council so recommends, be analyzed and subject to public comment and rulemaking.

*Comment 51:* The proposed rule at § 679.51(a)(2)(iv)(B) that allows catcher/processors that process no more than one metric ton round weight of groundfish on any day of a calendar year (up to a maximum of 365 mt in a calendar year) to be in the partial observer coverage category in the

following year will result in unnecessary regulatory discards. Vessel owners will discard catch to stay within the limit that allows them to be in the partial observer coverage category.

*Response:* NMFS acknowledges that there is potential for vessels trying to meet the criteria for this allowance to discard catch. This allowance was created to provide catcher/processors with limited catch to be in the partial observer coverage to help control the costs of observer coverage for these vessels. Unfortunately, whenever a threshold is created that provides economic incentives to stay within the threshold, regulatory discards may occur. Although it is difficult to predict the number of vessels that may operate within the one metric ton processing limit, NMFS expects that only a few vessels will be qualified for this allowance and that the amount of regulatory discards will be limited. However, these vessels will be subject to partial observer coverage. NMFS will monitor the catch from these vessels and assess the impacts of this allowance. This information will be presented in the annual reports to the Council about the performance of the restructured Observer Program. The Council could choose to recommend an amendment to the Observer Program to address this concern.

*Comment 52:* The regulations should allow American Fisheries Act (AFA) eligible catcher vessels participating in the Bering Sea cod fishery to select annually whether to participate in the full coverage category for all of their groundfish fisheries. The Bering Sea cod fishery for AFA eligible catcher vessels fits within the Council's intent for the fisheries that should be included in the full coverage category because they participate in a voluntary Intercooperative Agreement allocating cod and halibut PSC on an individual catcher vessel basis.

As proposed, these catcher vessels are in the full coverage category while directed fishing for pollock in the Bering Sea, but in the partial observer coverage category for all of their other groundfish fishing. Many vessels that currently are in the 30 percent coverage category have voluntarily taken 100 percent observer coverage during the BSAI cod fishery so that observer data from a vessel can be used to estimate its halibut bycatch. The ability of these vessels to maintain 100 percent observer coverage is necessary to continue to improve on the conservation of halibut bycatch by this fleet through their Intercooperative Agreement.

*Response:* NMFS acknowledges this comment, but such a revision to the

proposed rule is beyond the scope of this action. As noted by the commenters, NMFS recommended and the Council agreed that catcher vessels should be in the full coverage category while they are fishing under a catch share program that has prohibited species catch limits. However, the analysis did not address proposals to include any other requirements for full coverage for catcher vessels or an allowance for voluntary participation in the full coverage category. Such additions to the full coverage category should be made through an amendment to regulations after further consideration of the purpose and need for such an action, consideration of alternatives, and an analysis of the impacts. The assignment of vessels to a particular coverage category has economic impacts on the vessel owner, on the amount of fees available to fund the partial coverage category, and on the contract NMFS has established for observer deployment. The rulemaking process allows for these impacts to be analyzed and for the public to comment prior to implementation of a change in coverage categories.

#### *Exemptions From Observer Coverage*

*Comment 53:* The regulations should set a poundage threshold, such as 3,000 lbs, under which a vessel is exempt from observer coverage.

*Response:* NMFS interprets this comment to recommend that vessels that land less than a certain amount of fish per year be exempt from the requirement to carry an observer. The Council did not recommend exemptions to observer coverage for specific vessel size classes or annual landings. However, some decisions about which vessels in the partial observer coverage category are excluded from observer deployment can be made through the annual deployment plan. NMFS analyzed landings information to arrive at minimum vessel length for inclusion in the vessel selection pool for the initial year of the program. Through its analysis, NMFS concluded that vessels less than 40 ft. LOA was the break point below which the amount of harvest per trip differed from the amount of harvest per trip for vessels longer than 40 ft. LOA. NMFS concluded that extending observer coverage to vessels less than 40 ft. LOA would not be necessary during the first year(s) of implementation to provide adequate fishery data. NMFS also would not place observers on catcher vessels using jig gear in the first year of the restructured program due to the low weight of fish harvested annually by this gear type relative to other gear types. Based on the relative

proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less than 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

NMFS and the Council can consider additional options for exclusions from observer coverage under future annual deployment plans. However, any such exclusions would be made after analysis of the impacts of specific exclusions from observer coverage on the data necessary to conserve and manage the groundfish and halibut fisheries.

*Comment 54:* NMFS should permanently exempt vessels less than 36 ft. LOA from the requirement to carry an observer. The restructured Observer Program is unacceptably onerous, expensive, and dangerous for the small vessel fleet. There is no space for an additional person, or their survival gear and personal kit, to work or sleep on these vessels. As well, most of these vessels do not have a bathroom.

As the operator of a 33-ft. hook-and-line vessel, we cannot afford another tax to our bottom line. Moreover, the halibut quota has been reduced such that our vessel makes one trip per year. Thus, it would not be economically or statistically valuable to monitor our vessel with an observer or video monitoring. NMFS should use observation skiffs to monitor this fleet if a permanent exemption is not possible.

*Response:* This final rule does not exempt any groundfish or halibut vessels from observer requirements based on vessel length. NMFS and the Council make observer deployment decisions through the annual deployment plan process. For 2013, NMFS will not require vessels less than 40 ft. LOA to take observers. Therefore, a 33-ft. hook-and-line vessel will not be required to carry an observer in the first year of the program, but could be required to carry one in subsequent years. Note that while vessels less than 40 ft. LOA will not be required to take observers in 2013, all vessels, regardless of size, will be assessed fees.

Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less than 40 ft LOA in the near future. NMFS would only expand coverage to



vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process and after careful consideration of economic impacts and safety-related issues as well as public comments.

NMFS agrees that space issues are exacerbated as vessel size decreases. If it is determined through the process that observer coverage should be expanded to small vessels, NMFS expects that vessels required to carry an observer will adapt to this requirement and ensure that the observer is adequately accommodated. NMFS has experience observing small vessels in other regions of the United States. The National Observer Program Web site (<http://www.st.nmfs.noaa.gov/st4/nop/>) provides links to regional observer programs with examples of small boat fleets that have been successfully and routinely observed. NMFS' experience is that vessels have adapted to an observer requirement in a variety of ways. Some have built additional accommodations, some have cleared off equipment from existing accommodations to make them available, and some have elected to leave crew ashore. NMFS also has experience where vessels have removed accommodations in an attempt to gain an exemption from observer coverage. Observers are trained to adapt to the conditions of the vessels which, at times, includes adapting to non-functional restrooms. Placing observers on smaller vessels requires accommodation by both vessel operators and observers.

#### *Observer Fees and Costs*

*Comment 55:* The government is burdening us with the most expensive observer program possible.

*Response:* NMFS acknowledges that observation is costly, but it is a necessary cost in an effective fisheries management program. Chapter 2 of the analysis (see **ADDRESSES**) provides information on the costs associated with each of the alternatives considered. The restructured Observer Program is a well-reasoned approach providing a full coverage component paid directly by industry combined with a partial coverage component paid by fees assessed on partial coverage participants in an equitable manner. Section 313 of the MSA specifically limits the maximum amount of fees that may be assessed on industry participants at 2 percent of the ex-vessel value of the fish harvested by vessels subject to partial coverage. This final rule establishes a

fee of 1.25 percent of the ex-vessel value of the fish harvested by vessels subject to partial coverage, which is below the maximum permissible. As noted in Chapter 2 of the analysis, the fee percentage established by this final rule was developed after weighing the potential costs on industry participants with the need to provide reliable and useful data.

NMFS sought to reduce the costs of providing observers by creating a competitive and open bid process for observer providers to encourage efficient pricing for observer services. This process is described in Section 3.1 of the analysis and in the 2013 Annual Deployment Plan (see **ADDRESSES**). Federal contributions fund agency costs necessary to manage the restructured Observer Program. Therefore, NMFS has reduced costs for participants in the partial coverage category to the extent possible.

*Comment 56:* The misleading assumptions in the economic analysis cause it to be inadequate. NMFS should update the economic analysis to address uncertainties about relying on halibut fisheries to supply half the funding for observer coverage in the partial coverage category. The value of the halibut IFQ fishery has changed since the analysis was prepared due to large declines in the halibut resource, and this undermines NMFS' ability to adequately fund the program.

*Response:* The analysis provides historical data as a basis for analyzing and comparing the impacts of the alternatives and does not need to be updated to implement this final rule (see Chapter 2 of the analysis). The assumptions used in the economic analysis were developed through the analytical process, and reviewed and approved by the Council's Scientific and Statistical Committee.

The Council accepted that variability will occur in the fee and cost components of the program and established a process to incorporate the best available scientific information on an annual basis to determine the observer coverage. Each year, the best available scientific information will be used to develop the annual deployment plan. Updates to the projected fee collection, observer costs, and number of observer days that can be obtained with the budget will be presented to the Council in the annual deployment plan or annual report.

This final rule at § 679.55 establishes the fixed fee percentage, the method for annually determining the ex-vessel value of groundfish and halibut landings, and the process for fee collection.

The analysis recognized that ex-vessel values will vary, and the Council considered variability in annual ex-vessel gross revenues when recommending Amendments 86/76. This final rule at § 679.55(d)(3)(A) establishes a three-year rolling average annual ex-vessel price to even out annual price changes in the groundfish and halibut fisheries.

This final rule at § 679.55(e) establishes a methodology to determine the ex-vessel prices for the halibut fishery that is similar to the methodology employed for the Halibut IFQ cost recovery fee at § 679.45. Data gathered through this methodology were determined to be the best available for the fee collection component of this program.

The number of observer days in the budget for an upcoming year is determined not just by the annual ex-vessel prices, but also the cost per observer day. This cost is determined by NMFS' contract with the observer provider and will be included in each year's annual deployment plan. The analysis also notes that the estimated costs per observer day used in the analysis will also vary over time.

If NMFS and the Council determine that the fees collected pursuant to this final rule do not provide sufficient funding for an adequate number of observer days to collect data to monitor and enforce regulations imposed on these fisheries, the Council will review the fee percentage. Consideration of fee adjustment would result from information provided in the annual reports.

*Comment 57:* The proposed action is not consistent with section 313 of the MSA, which authorizes the Council to prepare a "fisheries research plan" that can require observers on board fishing vessels, including vessels participating in the North Pacific halibut fishery. Specifically, the proposed action is not consistent with the requirements that the fisheries research plan must be fair and equitable and take into consideration the operating requirements of the fisheries and the safety of observers and fishermen.

Halibut and sablefish IFQ vessels harvest 12 percent of the groundfish in the GOA. The proposed rule would implement a fee collection system levying 67 percent of program costs on halibut and sablefish IFQ fishermen which is not "fair and equitable" to this fleet, unless an adequate portion of the funds collected from the fee are dedicated to integrating EM with the Observer Program.

*Response:* NMFS disagrees. Under the previous pay-as-you-go system or daily

fee system, some smaller vessel operators faced observer costs that were disproportionately high relative to their revenue. Section 5.9 of the analysis explains that the Council was very concerned with minimizing impacts to small entities from including small vessels and halibut vessels in the observer program for the first time. The structure of the new fee system minimizes the impacts to small entities compared to the previous pay-as-you-go or daily fee systems.

The intent of the new fee system is to fund coverage equitably and distribute coverage as needed to meet the information needs of NMFS and the Council for the fishery conservation and management. Section 313 of the MSA requires that the system of fees established to support a fisheries research plan to deploy observers in the North Pacific fisheries must be fair and equitable to all participants in the fisheries and may be expressed as a percentage of the unprocessed ex-vessel value of the fish and shellfish.

The ex-vessel based fee is fair and equitable because it is based on a standard measure of the value of the fishery resource harvested or processed by the participants and it applies regardless of whether a vessel or processor is required to carry an observer. Section 2.9.2.2.5 of the analysis notes that an ex-vessel value fee is the most equitable method of funding observer coverage because it is based on the value of the resource each operation brings to market. An ex-vessel value fee is commensurate both to each operation's ability to pay and the benefits received from the fishery. The ex-vessel value of the catch is expected to fluctuate, as are the catch quotas.

While the MSA authorizes the Council to vary the fee by fishery, management area, or observer coverage level, the Council recommended that a fixed fee percentage of 1.25 percent of ex-vessel value of landings was the most fair and equitable method to distribute the observer fee across the vessels and processors subject to the fee. Section 2.9.2.1 describes how the new fee system accomplishes one primary objective of Observer Program restructuring, that user fees not be directly linked to actual coverage levels when levels are less than 100 percent. Consistent with fee program principles described in Section 2.9.2.2 of the analysis, fees collected from any particular fishery would not be spent monitoring that particular fishery.

NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut

fisheries. For a more complete discussion of using observer fees to develop EM, please see the section below called "Electronic Monitoring."

*Comment 58:* The observer fee should be based on gross revenues rather than ex-vessel value of landed catch. Specifically, the observer fees should start at 1.25 percent for vessels with low gross revenues and increased to a maximum of 2.5 percent for vessels with high gross revenues.

*Response:* Section 313(b)(2)(E) of the MSA requires that the observer fee "be expressed as a fixed amount reflecting actual observer costs as described in subparagraph (A) or a percentage, not to exceed 2 percent, of the unprocessed ex-vessel value of the fish and shellfish harvested \* \* \*." While the MSA does not require that the observer fee be based on ex-vessel value of the catch, it does require that if it is expressed as a percentage, that it not exceed 2 percent of the ex-vessel value of the catch. The Council had the option to vary the fee by fishery, management area, or observer coverage level. It considered an option for a lower fee percent for smaller vessels. However, it chose to initially apply a single fee percentage of 1.25 percent of ex-vessel value to all landings subject to the observer fee. The rationale for an equivalent fee across all industry sectors was to be equitable to all participants impacted by the fee assessment. The Council will review the observer fee in the future and may decide to recommend modifying the fee percentage through subsequent notice-and-comment rulemaking to adjust the fee percentage or how it is applied.

*Comment 59:* Halibut and sablefish fisherman already pay the IFQ cost recovery fee. Adding another fee to our fleet for observer coverage is unacceptable.

*Response:* The MSA authorizes NMFS to collect two distinct fees from participants in the fixed gear halibut and sablefish fisheries. The IFQ cost recovery fee and the observer fee support different management and information needs of NMFS and are not duplicative. For example, NMFS assesses a cost recovery fee for the Central GOA Rockfish Program and requires 100 percent observer coverage for catcher vessels participating in that program, and 200 percent observer coverage for catcher/processors to ensure adequate data collection in that LAPP (see the final rule for the Central GOA Rockfish Program (76 FR 81248; December 27, 2011)).

The management fee referred to by the commenter is the IFQ cost recovery fee required under MSA section 304(d)(2)(A) to recover the actual costs

directly related to the management, data collection, and enforcement of the IFQ Program. Furthermore, MSA section 304(d)(2)(C)(i) notes that fees collected under this paragraph shall be in addition to any other fees charged under the MSA.

The new fee implemented with this final rule is authorized by MSA section 313. The fee may be assessed at up to 2 percent of the ex-vessel value of the unprocessed fish harvested under the jurisdiction of the Council, including the North Pacific halibut fishery. This fee is to be used to pay the combined costs of stationing observers, or EM equipment, on board fishing vessels and U.S. fish processors and inputting collected data. Through the fees, owners and operators compensate the Federal Government for the costs associated with managing fishery resources. Section 2.10.3 of the analysis described the potential effects of Observer Program fees on participants in the Halibut and Sablefish IFQ Program.

*Comment 60:* The owner of a 48 ft. longline/troll combination vessel stated that he supports paying observer fees to improve the Observer Program if EM, the only viable option for his fleet, is included in the final rule.

*Response:* Consistent with the proposed rule and the Council's recommendations for restructuring the Observer Program, the observer fee will be assessed on all halibut IFQ landings. Vessels in this fleet will be subject to observer coverage as determined by the annual deployment plan. For a complete discussion of EM, please see the section below called "Electronic Monitoring."

*Comment 61:* Use a 3-year average price for groundfish to smooth out short term price fluctuations.

*Response:* This final rule at § 679.55(d)(3)(A) specifies that the groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear. This provision is unchanged from the proposed rule.

*Comment 62:* NMFS did not analyze the economic and social costs of deploying human observers in the small boat fleet or of carrying observers for vessel operators in the vessel selection pool (e.g., feeding an observer, insurance, displacing a crew member, or disrupting the character of family operations). These additional costs will lead to operations leaving the fishery, halibut and sablefish IFQ consolidation, and elimination of crew jobs.

NMFS also did not assess the impacts on fishery revenues of deploying human observers in the small boat fleet. The economies of Alaskan fishing

communities will be hurt as the fleet contracts, and revenues to state and Federal governments would be reduced.

*Response:* The analysis prepared for this action assesses the economic and social cost of deploying human observers in the small boat fleet and its impact on revenues in the fishery. Sections 2.10.6 and 2.10.7 of the analysis evaluate impacts on fishery costs and revenues. NMFS acknowledges in Section 2.10.7 of the analysis that there may be negative impacts to specific fishing operations, crew members, communities, and state and Federal revenues, as described in the comment. In addition, the analysis notes that in some instances, harvesters' trip costs may increase, which may affect the ability of marginally profitable operations to remain in the fishery. Additionally, the number of crew positions could be reduced, and family operations may be disrupted, due to compliance with observer coverage requirements. This may also contribute to the likelihood that some operations will choose to leave the fishery. These changes may affect communities, specifically as some communities are negatively impacted by the potential redistribution of harvesting effort. While these issues are generally discussed, the analysis also notes that these costs or concerns will affect some members of industry and not others, and information is not available to determine the impacts of each situation. As a result, quantitative estimates of the impacts were not generated, and it is unlikely that quantitative data will be available in the future to estimate the value of changes in the character of family fishing operations that may occur as a result of carrying an observer.

These concerns were presented to the Council, in the analysis and in public testimony, and the Council recommended removing vessels less than 40 ft. LOA from the vessel selection pool, at least for the first year of the program, under the 2013 Observer Program Annual Deployment Plan. The preamble to the proposed rule provides the specific rationale for limiting observer deployment to vessels less than 40 ft. LOA (77 FR 23336; April 18, 2012). Based on the relative proportion of catch and fishing trips conducted by vessels less than 40 ft LOA, NMFS is not likely to deploy observers on vessels less than 40 ft LOA in the near future. NMFS would only expand coverage to vessels less than 40 ft. LOA if data collection needs warrant the deploying observers on those vessels. NMFS would make this decision in conjunction with the Council through the annual deployment plan process

and after careful consideration of economic impacts and safety-related issues as well as public comments.

Through the annual deployment plan process, industry participants can provide feedback directly to NMFS, the OAC, and the Council concerning the effects of observer coverage on their operations. These comments can be considered, as they were in the 2013 Annual Deployment Plan, when recommending coverage on specific vessel sizes in an annual deployment plan.

Note that observers will be insured by their employer, as required in regulation for full coverage vessels and in the contract between NMFS and the observer provider for the partial coverage category. Observers are also covered by the Federal Employees Compensation Act, as identified in the analysis. This insurance coverage does not prevent any observer or observer provider from filing a suit for injuries that occur on a vessel. Thus, industry members may choose to protect themselves from lawsuits by obtaining additional liability insurance.

#### Outreach

*Comment 63:* NMFS should conduct as much outreach as possible to the fishing and processing sectors that will be affected by the restructured Observer Program. As noted in the proposed rule, a total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shorebased processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by the proposed action. Extensive outreach is needed to build awareness and understanding among the regulated community of the new requirements.

*Response:* NMFS agrees that outreach to the fishing industry will be helpful in implementing the restructured Observer Program. NMFS has already conducted outreach meetings or public hearings in Kodiak AK, Sitka AK, Petersburg AK, Sand Point AK, Juneau, AK, Homer AK, Seattle WA, and Newport OR, in the process of developing this action with the Council, and to solicit comments on the proposed rule (77 FR 22753, April 17, 2012; 77 FR 29961, May 2, 2012). NMFS continued outreach efforts to industry participants and fishing communities prior to publication of the final rule through direct mailings to vessel owners in the partial observer coverage category. In addition, with the publication of the final rule, NMFS will conduct additional meetings in fishing communities to explain the program requirements, demonstrate ODDS, and answer questions. NMFS outreach is in

addition to outreach by the Council and the activities of the OAC.

*Comment 64:* NMFS should reach out to observers to explain how the restructured Observer Program will impact their work environment. This outreach should occur outside of the four-day briefings to ensure a smooth transition to the new program.

*Response:* This action does not change the basic duties of observers when they are on board vessels. It does, however, expand the observer program to new, previously unobserved vessels. NMFS plans to address those work related issues either in existing training sessions or in trainings specifically required under the contract with the selected observer provider.

#### Observer Issues

*Comment 65:* Adequate pay and professional treatment of observers from observer providers and NMFS is critical to the success of this program. NMFS should find a mechanism to link the agency with the welfare and professional standards of its observers.

*Response:* Adequacy of observer pay is outside the scope of this action. Observers pay will be established in both the partial and full coverage categories by the observer providers, subject to other Federal and state laws, and in negotiation with their observer employees and unions, if applicable.

Professional treatment of observers and professional behavior by observers is important to maintain high standards in the observer workforce. NMFS has established educational standards for all observers in the workforce and provides initial and recurrent job training to them. NOAA's Office of Law Enforcement provides support for a harassment free workplace for observers when deployed in Alaska. Observer provider companies have policies related to professional behavior and mechanisms for counseling, when appropriate, and/or progressive discipline for infractions of their policies. This action does not change the standards for professional treatment of observers.

*Comment 66:* NMFS needs to be diligent about addressing observer harassment in previously unobserved fleets.

*Response:* NMFS agrees that harassment of observers is not acceptable and will not be tolerated. Existing regulations at § 679.7(g) expressly prohibit observer harassment. These regulations are applicable to previously unobserved vessels that will now be required to carry observers. Harassment prevention is a top priority for NOAA's Office of Law Enforcement

as observers are essential to NMFS management efforts, but are in a vulnerable position by being placed as the lone NMFS representative on fishing vessels. NMFS has been placing observers on fishing vessels in Alaskan waters for over 30 years. NMFS' experience is that most observers are treated well by vessel owners and crew. However, exceptions occur and NMFS has law enforcement capacity to respond to reports of harassment and will continue to keep this as a priority. NMFS is also planning outreach efforts to newly observed fleets to ensure the participants are informed of the rules, including prohibitions against observer harassment.

*Comment 67:* Standards of behavior that apply to observers fulfilling duties for operations in the full coverage category should be mandatory for observers assigned to vessels in the partial coverage category. This is necessary to protect the confidentiality of the data collected.

*Response:* The regulations outline the standards of behavior that govern observers in the full coverage category. NMFS incorporated these standards into the contract that will govern the observers in the partial coverage category. All observers will continue to be required to protect the confidentiality of the data collected.

#### *Electronic Monitoring*

*Comment 68:* NMFS failed to comply with the requirements of the Regulatory Flexibility Act to analyze an alternative of EM, which would have minimized the impact of the alternatives on small entities.

*Response:* The Regulatory Flexibility Act (RFA) requires NMFS to prepare an initial regulatory flexibility analysis (IRFA) to describe the economic impact of the proposed rule on small entities, such as fishing vessel operations. The IRFA is required to include, among other things, "a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact of the proposed rule on small entities." The Council considered and fully analyzed alternatives, including the one that would have had the least cost on currently unobserved vessels, which was to make no changes in the current observer program. This alternative would have continued to require no observer coverage on vessels less than 60 ft. LOA or on the halibut fleet. This alternative does not meet the purpose and need for this action because it would not provide observer information

from those vessels. Compliance with the RFA also requires preparation of a Final Regulatory Flexibility Analysis, which is included in the Classification section of this final rule.

NMFS disagrees that EM in its current form is a reasonable alternative to a human observer that would accomplish the objectives for this action. NMFS is committed to continuing to develop EM in an effort to advance technological tools available to collect data about the groundfish and halibut fisheries.

NMFS also notes that, under some circumstances, EM may not minimize costs to the industry. Current operational EM systems are in place in Alaska to meet specific objectives. However, the degree of burden existing EM systems can place on vessels can be considerable. For example, NMFS requires EM systems on many trawl catcher/processor vessels in Alaska where the system is designed to support compliance monitoring of crew sorting catch before it is sampled by the observer (see regulations at § 679.28(i) and (j)). These EM systems serve as an aid to the observers on board, and can be used to document problems should follow-up enforcement action be necessary.

In situations where EM is currently required, it places a burden on industry to ensure the EM systems are in place and continuously functional. If an EM system on board a trawl vessel fails, the system must either be repaired on board or the vessel must modify their operations to prohibit specific crew activities that sort catch, or the vessel must return to port to have the system repaired. Trawl vessels that fish without required EM are in violation of regulations and are subject to enforcement action. In these cases, industry carries the full cost of the EM systems and their maintenance.

*Comment 69:* An electronic monitoring program is not included in the alternatives compared in the analysis, though it is noted that EM may be an option under a separate, future process. The Council approved a motion in June 2010 requesting that EM be developed and implemented as a tool for fulfilling observer coverage requirements in the restructured program. The analysis fails to consider how an at-sea monitoring program integrated with shore side observers, human observers on survey vessels, and EM can resolve the limitations of the existing Observer Program. Because other countries are using EM to collect at-sea monitoring data in fisheries similar to the halibut and groundfish fisheries off Alaska, NMFS' failure to include EM as an alternative for

monitoring the vessel selection pool results in an unreasonable range of alternatives under NEPA.

*Response:* The Council explicitly chose to not include EM as an alternative or option in Section 2.5 of the analysis prepared to support this action. The scope of this analysis, consistent with Council's problem statement, addresses specific problems with the existing Observer Program (1) there are no observer requirements for either the less than 60 ft. LOA groundfish sector or the commercial halibut sector, (2) coverage levels and deployment patterns cannot be effectively tailored to respond to current and future management needs and circumstances of individual fisheries, (3) fishery managers cannot control when and where observers are deployed, (4) many smaller vessels face observer costs that are disproportionately high relative to their gross earnings, and (5) complicated and rigid rules have led to observer availability and compliance problems. Consequently, the analysis examined alternative fee structures for various regions (BSAI or GOA) and fishing sectors to remedy the problems identified in the problem statement.

The Council did provide guidance on the use of EM in June 2010, based on public testimony concerning the limited ability for some smaller vessels to carry an observer. Recognizing that section 313 of the MSA allows fees to be used for EM systems, the Council decided to actively explore EM as a potential alternative to human observers for specified types of vessels with the intent of having it available in the first year of implementation of the restructured Observer Program. The Council recognized that EM could be an alternative to a human observer only at such time as NMFS has the capability to deploy EM and effectively use the resulting data to meet sampling objectives. Section 2.5 of the analysis stated that implementing an EM system for specific fisheries would likely require new Federal regulations, and would be addressed in a separate, subsequent analysis. Thus, this final rule does not implement an EM program as an alternative to human observers. The final rule includes an option for a vessel to indicate its willingness to carry EM equipment to help NMFS collect data. NMFS will continue to work to develop an EM program that is supported by performance standards and regulations over the longer term.

*Comment 70:* National Standard 7 requires that conservation and management measures shall, where practicable, minimize costs. If there is

an alternative that accomplishes the same purposes for which an observer would otherwise be placed aboard a vessel and that alternative minimizes costs, then NMFS must either select that alternative or provide a substantive rationale for why that alternative was not selected. In the proposed rule, NMFS identifies that EM could reduce the economic burden of the restructured Observer Program on small entities. By failing to provide EM as an alternative to observers in the proposed rule, NMFS violates National Standard 7.

*Response:* This action complies with National Standard 7 in that no other viable alternative minimizes costs while accomplishing the action's purpose. Although the Initial Regulatory Flexibility Analysis for Amendments 86/76 stated that EM "could serve to reduce economic impacts on small entities by providing an alternative to carrying a human observer," EM in its current form is not a reasonable alternative to a human observer, for reasons described in more detail in the response to Comment 71. Therefore, EM was not included in the alternatives analyzed by the Council for this action.

*Comment 71:* NMFS should reinstate the language in the draft proposed regulations, reviewed and approved by the Council in October 2011, which would have required vessels selected for observer coverage in the vessel selection pool to have either an observer or EM system on board, with the final determination to be made by NMFS. In the proposed rule, § 679.51(a)(1)(ii)(F)(2) was modified relative to the draft regulations to allow NMFS discretionary authority to provide EM equipment to a vessel owner or operator upon releasing the owner or operator from the requirement to carry an observer. Under the proposed regulations, there is no longer an obligation or an incentive for the vessel owner or operator to accept or use the EM equipment. This is a significant deviation from the Council's intent with respect to the implementation of this provision of the Observer Program. The development of EM has been an important element of this program for several years, both as an immediate priority for vessels greater than or equal to 40 ft. LOA and less than 57.5 ft. LOA that fish halibut and sablefish individual fishing quotas, as well as an independent tool in the long-run in the research plan.

The use of EM is an important alternative to observers on smaller vessels that, because of logistical and economic challenges with accommodating an observer on board, may otherwise be released from observer coverage. NMFS should allow

a vessel selected for coverage in the vessel selection pool that would otherwise be required to take an observer, to use an EM system instead (at NMFS' discretion). NMFS should include language in the final rule that would meet the Council's intent and avoid concerns identified by NMFS after the proposed rule was reviewed and approved by the Council.

*Response:* NMFS agrees that EM is an important alternative for vessels that are physically impractical for human observation. NMFS also agrees that the Council's intent has been to implement an EM system in the first year of implementation of the restructured Observer Program. However, the Council and NMFS have recognized that NMFS must have the capability to deploy EM and effectively use the resulting data to meet sampling objectives before an EM system can be available as an alternative to a human observer. NMFS agrees the initial draft regulations reviewed by the Council in October 2011, would have allowed vessels selected for observer coverage in the vessel selection pool to have either a human observer or EM equipment on board for the duration of the selection. As explained in the preamble to the proposed rule as published in the **Federal Register** on April 18, 2012 (77 FR 23326), NMFS reviewed the initial draft rule and determined the rule should not require EM since NMFS has not yet developed performance standards or technical specifications for EM. Therefore, and as explained in the preamble to the proposed rule, NMFS proposed that the only observer requirement for a vessel selected for coverage would be that an observer be on board for the duration required.

NMFS agrees that there may be scenarios where monitoring via video may provide helpful information to NMFS. However, NMFS has identified limitations with the existing EM technology and, at this point, has determined that the EM technology available is not an equivalent substitute to a human observer. These limitations have been discussed at the OAC over several years and are documented in OAC minutes that have been presented to the Council. For example, EM does not provide the biological information that human observers collect. Species identification can be difficult with EM and there are longer time lags until data are available for management relative to data collected by observers (e.g., observers summarize their results and transmit them to NMFS as needed, often daily). Electronic monitoring system reliability and susceptibility to tampering are other issues that need to

be resolved. While pilot work is underway to resolve some of these issues, NMFS expects that the establishment of a comprehensive electronic data generating system supported by enforceable regulations could require several years.

In October 2011, the Council recommended that the initial phase of an EM program focus on halibut and sablefish hook-and-line vessels from 40 ft. LOA to 57.5 ft. LOA. Despite the limitations noted above, NMFS agrees that EM may be a helpful tool for gathering data to generate estimates of at-sea discards on previously unobserved vessels, particularly in the hook-and-line IFQ fisheries. Thus, as described in the response to Comment 71, NMFS is developing the capacity to deploy EM equipment on some vessels at the outset of the restructured Observer Program.

NMFS is working to implement EM for use on hook-and-line vessels less than 57.5 ft. LOA on a voluntary basis, as well as to incorporate EM as an integrated component of the Observer Program over the longer-term where technically and economically feasible. Lessons learned from prior fishery EM projects demonstrate the need to match the sampling objective with the system capabilities. The first-look at discards on small hook-and-line vessels where there is not a need for rapid data transmission is a good starting point. In 2013, NMFS will deploy EM equipment on those small hook-and-line vessels in the vessel selection pool that have indicated a willingness to carry EM equipment. NMFS recognizes the importance of industry support for an EM program. NMFS intends to continue to work collaboratively with industry and the Council to develop an EM program with detailed specifications and apply it where it meets information needs for effective fisheries management.

In response to this comment, NMFS has revised the process for deploying EM equipment on vessels. In the 2013 Observer Program Annual Deployment Plan, NMFS may select small hook-and-line vessels from the pool of vessels fishing out of key ports, such as Kodiak, Homer, Sitka, and Petersburg, if the owner has indicated a willingness to carry EM equipment. Industry members conducting initial EM feasibility work recommended focusing EM efforts out of a few key ports. Any vessel operator who has indicated a willingness to carry EM equipment out of a key port may be selected for EM. However, given the developing state of EM and NMFS' current EM capacity, not all operators who indicate a willingness to carry EM

equipment will be provided EM equipment. NMFS expects that vessels selected for EM will work cooperatively with NMFS, as many members of the fleet view EM as the preferred tool for information gathering. Those vessels that are selected to carry EM equipment and that cooperate with NMFS and assist in meeting data quality standards will be eligible to carry EM equipment. At any time, vessel operators may retract their stated willingness to carry EM equipment. Conversely, NMFS may determine at any time that a vessel is not suited for carrying EM equipment.

*Comment 72:* We oppose the restructured Observer Program until EM is provided as the preferred option for collecting at-sea catch and bycatch data on fixed gear halibut and sablefish vessels. We support the goals of the restructured Observer Program and are willing to pay a fair share of the future observer coverage costs. We are willing to provide at-sea data, but need a system that works for the fixed gear fleet. EM should be the preferred monitoring option for the fixed gear halibut and sablefish fleet starting in 2013.

*Response:* The current standard within NMFS for obtaining unbiased fishery dependent information from fisheries is to deploy human observers to observe fishing operations and sample the catches brought on board. Observers provide many types of information to NMFS including catch and effort, catch composition in numbers and weights of species, biological samples, length frequency data, interactions with protected species, and information on compliance with regulations such as streamer line deployment. The observer information allows NMFS to meet multiple agency objectives. At this time, EM may assist NMFS in meeting some but not all of these objectives. See response to Comment 71 for more information about the limitations of EM in its current state. While EM has limitations, NMFS recognizes the potential for EM development. The use of this technology in observation has been addressed by the Council with input from the OAC. The OAC requested that NMFS continue to develop EM with a focus on small boat hook-and-line fisheries where NMFS has no current in-season management responsibility. For 2013, NMFS has dedicated \$200,000 for continued development of EM in Alaskan fisheries management and expects to deploy EM systems on cooperating vessels in 2013, the first year of the program.

*Comment 73:* The pilot project conducted by industry in collaboration with NMFS from 2010 through 2012

demonstrates that there is substantial information available to NMFS to fully evaluate an effective EM alternative, develop necessary performance standards, resolve any outstanding issues with video data extraction, and include EM as an integrated alternative under the restructured Observer Program.

*Response:* NMFS has worked with the Alaska Longline Fisherman's Association (ALFA) in its National Fish and Wildlife Foundation funded pilot work on EM. ALFA was able to demonstrate and gain experience with the practical aspects of deploying EM camera systems. They have demonstrated the ability to deploy these systems on the small boat Alaskan fleet, and they have resolved some reliability issues experienced by NMFS in past EM studies. However, the existing systems continue to have known limitations relative to NMFS' information needs. For example, none of the EM systems currently deployed in the North Pacific are able to collect biological data at-sea that are essential for assessing the biological condition of fishery resources.

*Comment 74:* NMFS should resolve issues to fully utilize EM on vessels of any length due to safety, economic, and logistical concerns with deploying observers on fishing vessels. Fishermen work under perilous conditions but they have the choice about which vessels, fisheries, and weather conditions they will work in. Observers do not get that choice. An observer was lost at-sea off the coast of Washington in 2012. Some vessels less than 60 ft. LOA may be able to safely accommodate observers, however the conditions are highly variable among vessels. The Council did not adequately address the safety of human lives in designing this restructured Observer Program. Safety issues associated with the action may be alleviated through EM.

*Response:* While NMFS disagrees that there are significant safety concerns with the proposed action, the agency acknowledges the inherent risk involved in the at-sea monitoring of fisheries by observers. An observer was lost off the coast of Washington in 2012, and two were lost in the domestic Observer Program in Alaska, one in 1990 in a vessel sinking, and one in 2008 in a fall and drowning while boarding a vessel alone at night. NMFS agrees that EM in lieu of an observer would reduce all risk to observers. However, EM in its current state does not provide the same reliable suite of timely fisheries dependent information which NMFS needs for fisheries management. Therefore, EM is

not an acceptable substitute for fisheries observers at this time.

*Comment 75:* EM must be available as a voluntary choice for any vessel selected for coverage.

*Response:* NMFS and the Council did not envision that industry members would choose the type of observation on their vessels. NMFS has fishery dependent information needs from the commercial fisheries and this rule establishes the infrastructure to fund, and the requirement to take, an observer. After reviewing draft proposed regulatory language in October 2011, the Council reiterated its intent that NMFS determine which vessels may be afforded the opportunity to take EM. The preamble to the proposed rule makes it clear that EM may not be available to all vessels who request EM. Under this final rule, owners of vessels in the vessel selection pool will be given the opportunity to express their interest in taking EM. However, given the developing state of EM and NMFS' current EM capacity, not all operators who indicate a willingness to carry EM equipment will be provided EM equipment.

*Comment 76:* The present EM technology is not a perfect fit for monitoring all vessels. However, with effort, cooperation, and funding the technology could be developed within a year to cover hook-and-line vessels. Fisheries with the need for real time management data may not be immediately suitable for EM but it is an obtainable goal for the hook-and-line sector. The proposed rule discussed general implementation of EM in the vessel selection pool, however a definitive timeline for executing EM is the only sufficient approach to ensure that NMFS develops this crucial management technology. In addition, because EM must be part of the Observer Program for the program to be successful, NMFS should build enough flexibility into the final rule so that the EM program can grow and develop through the annual deployment plan.

*Response:* NMFS is taking a thoughtful and methodical approach to developing EM in Alaska and nationally. EM must provide information that is useful to fishery management in a cost effective manner. In Alaska, NMFS has conducted studies comparing EM and observer information that revealed the limitations of the existing technology. For example, please see "Cahalan, J. A., B. M. Leaman, G. H. Williams, B. H. Mason, and W. A. Karp. 2010. Bycatch characterization in the Pacific halibut fishery: A field test of electronic monitoring technology. U.S. Dep. Commer., NOAA Tech. Memo.

NMFS-AFSC-213, 66 p.,” available on the Alaska Fisheries Science Center Web site (<http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-213.pdf>).

NMFS will be conducting additional work in Alaska in 2013 to advance the technology to make it more useful. Some objectives will never be met with EM (e.g., collecting biological samples at-sea, or identifying some species may not be reliable or cost-effective using video technology) so a combined approach of EM and observers may be the result. While NMFS is developing EM capacity in the initial year of the program, the agency will also provide a strategic planning document outlining ways that EM might be fully integrated into the Observer Program in the future and the steps that would be necessary to accomplish that. This document was requested by both the Council’s OAC and the Council. Establishing a fully integrated EM system that would replace many tasks of a human observer would require subsequent rule making, the timing of which cannot be determined at this time.

*Comment 77:* NMFS should develop an implementation plan for EM on groundfish vessels, including (1) a means for assessing both those protected species that are brought on board and those that are not, and (2) a means for analyzing the effectiveness of the EM at identifying the species, estimating the numbers, and characterizing the severity of injuries to protected species, whether they are or are not brought on board.

*Response:* Protected species offer particular challenges for EM because interactions can be rare, the interaction can occur at or on various parts of the vessel, the interaction may not break the surface of the water, and identifying the species and any injuries to it may be difficult. When events are rare, large samples of EM footage, and possibly all footage, would need to be reviewed to detect rare events. For example, the British Columbia (BC) model of “EM only” reviews a small portion of the retrieved video as a validation check on required logbooks. Neither the logbooks nor the video check may be helpful to assess rare protected species interactions in the BC model. Of equal concern is where the interaction occurs. In hook-and-line operations, most video systems are focused on the line retrieval. If the interaction is outside the field of view of the camera, it will go undetected. It is possible to install wide angle cameras to increase the field of view, but it is unknown if wide angle cameras will provide the quality of images necessary to detect the interaction and identify the species

encountered. Further work is needed to assess the ability of cameras to detect and identify protected resource interactions with fishing vessels. NMFS will consider protected resource interactions as one of the objectives to consider for EM observation.

*Comment 78:* If EM is effective for monitoring small vessels, then cameras should be used to monitor all halibut vessels, including catcher/processors with existing 30 percent observer coverage requirements. This would reduce the cost and burden for vessel owners relative to carrying observers.

*Response:* NMFS disagrees. The rationale for requiring full observer coverage on catcher/processors is outlined in the preamble to the proposed rule (77 FR 23329; April 18, 2012). This final rule includes three allowances for small catcher/processors to elect to be in the partial observer coverage category. Please see the section above called “Allowances for Catcher/Processors” for more information. Outside of these allowances, NMFS did not consider establishing a length threshold to distinguish between full and partial coverage categories.

*Comment 79:* If funding is limited for observers in the partial coverage category, it would be appropriate to maximize observer coverage on vessels using trawl gear and defer implementation of the program for most fixed gear vessels until EM is available to meet additional data collection needs from those fisheries.

*Response:* NMFS disagrees. Funding will always be limiting in the partial coverage sector for some objectives. Focusing observer coverage on trawl vessels in the partial coverage category would fail to meet the purpose and need of this action to obtain data from fisheries that are not otherwise available. Focusing observer coverage on trawl vessels would directly counter the clear intent of the Council to extend observer coverage to previously unobserved portions of the fleet, and reduce bias in those portions of the fleet that are subject to partial coverage under the previous Observer Program.

It is not clear if EM can meet most NMFS’ objectives, or if it can do so in a cost effective manner. Currently, EM does not provide the information required to accurately assess discards at-sea or protected species interactions in a timely fashion, or have the ability to collect biological data. Deferring implementation of this final rule for the fixed gear fishery would not meet the purpose and need established for this action. Specifically, adopting the commenter’s recommendation would not allow fishery managers to control

when and where observers are deployed and would result in potential sources of bias that could jeopardize the statistical reliability of catch and bycatch data.

*Comment 80:* NMFS should dedicate a portion of the observer fees collected from the halibut and sablefish fleet to fund the development and implementation of EM. Some commenters asserted that 15 percent of the fees should be dedicated to the implementation of EM.

*Response:* NMFS is authorized to use observer fees collected under the authority of section 313 of the MSA for stationing observers and EM systems on board fishing vessels and U.S. fish processors. Observer fees across all fisheries will be pooled in one account and allocation of the fees between observers and EM will depend on the ability of observers or EM to meet information needs, and the respective cost of each. The amount dedicated may vary by year and could be less than or greater than the 15 percent allocation suggested by some commenters. NMFS may also add Federal appropriations to fund observers or EM and has done so with a fiscal year 2012 contribution of \$4,200,000 for observers and \$200,000 for EM development in Alaska. Development of EM in other NMFS regions also will help inform efforts in Alaska.

*Comment 81:* NMFS should use Federal tax dollars instead of observer fees to fund the development and implementation of EM.

*Response:* See response to Comment 81.

*Comment 82:* EM is a very promising technology that has obvious applications in the partial coverage category. However, it is appropriate that NMFS is not proposing to replace observers with EM at this time. More information is needed about how EM will collect the data that currently is collected by observers.

*Response:* NMFS acknowledges this comment.

*Comment 83:* NMFS should expand the proposed definition of EM to include other technologies that could be used on vessels that are incapable of carrying an observer. Electronic options to observers such as VMS, electronic logbooks, and various electronic data loggers have proven to be effective monitoring tools in other fisheries and are often less expensive, more readily available, and easier to maintain than camera-based systems. Data from such alternative systems could also assist the agency in its efforts to develop or refine observer deployment strategies to ensure that observer sampling in the



partial coverage category is representative of total effort.

*Response:* While NMFS did not propose a definition for “electronic monitoring” in the proposed rule, NMFS specifically referred to “electronic video monitoring” in the preamble to the proposed rule, which was intended to imply that “electronic monitoring” was synonymous with video monitoring. However, NMFS agrees that EM is a broad topic and a range of electronic tools exist that can be used to meet monitoring objectives. These tools range from simple position recording, to electronic logbooks, to camera systems integrated with other vessel sensors. The right combination of electronic and human observation tools will depend on the information needs of NMFS in any particular application balanced by costs. NMFS is investing in EM systems in 2013 and is considering a range of technologies.

*Comment 84:* VMS should be required on all vessels so that (a) NMFS knows where the entire fleet is fishing, not just the observed vessels; (b) vessel position is known enabling rescuers to better respond in the event of a vessel emergency; and (c) NOAA Office of Law Enforcement can cross-reference vessel position with observer reports.

*Response:* NMFS disagrees that VMS requirements should be added to this final rule. VMS requirements were not part of the restructured Observer Program recommended by the Council and are not necessary to meet the purpose of the restructured Observer Program. NMFS requires VMS on a number of vessels, and the Council and NMFS may consider expansion of VMS requirements in a future action.

*Comment 85:* The proposed rule defines “observer” as a human meeting certain qualifications; EM is completely missing from the definition. As a result, effective integration of EM will require additional Council action, analysis, and amendment of the Observer Program.

*Response:* NMFS acknowledges this comment.

### Changes From the Proposed Rule

This final rule includes changes to particular sections of the regulatory text and amendatory instructions published in the proposed rule. These changes fall into four categories: (1) Changes to the proposed regulations in response to public comment, (2) revisions needed to accommodate changes made to 50 CFR part 679 by a rule published after the proposed rule for Amendments 86/76 was published, (3) additions of existing regulatory text inadvertently excluded in the proposed rule, and (4) minor

editorial revisions and minor revisions to amendatory instructions.

NMFS reviewed the regulatory changes proposed by public comment and determined that the following 2 changes are a logical outgrowth from the proposed rule and, while relatively minor, these changes improve the functioning of the restructured Observer Program. Additional detail on why NMFS has made each change from proposed to final rule is provided in the response to the applicable comment. This final rule includes the following 2 changes to the proposed regulations in response to public comment:

1. For reasons explained in the response to Comment 40, NMFS amended the final rule to expand the “fishing trip” definition at § 679.2 to include a definition specific to catcher vessels delivering to tender vessels. A fishing trip for a catcher vessel delivering to a tender will start when the vessel departs from a port until that vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located. The provision specifying return to a port where a processor with a valid FPP is located is added to ensure that, if the vessel is observed, the vessel operator returns that observer to a port from which transportation is available. NMFS also revised § 679.51(a)(1) to include a new paragraph that requires a catcher vessel to make at least one delivery to a tender vessel to be subject to the fishing trip definition for catcher vessels delivering to tender vessels.

2. For reasons explained in the response to Comment 27, NMFS removed the proposed requirements at § 679.51(a)(1)(ii)(B) and (C) and § 679.7(g)(7) from this final rule. These deletions remove proposed regulations that would have required holders of FFPs issued after December 1 and operators of vessels fishing for IFQ or CDQ on vessels that had not landed groundfish or halibut in the previous year to enter their vessel information into ODDS within 30 days of issuance of a new FFP or within 30 days of embarking on his or her first fishing trip of the year. Removing § 679.51(a)(1)(ii)(B) and (C) required renumbering of § 679.51(a)(1)(ii) and correction of cross references to this paragraph in § 679.7(g)(7) and subpart E.

This final rule includes minor organizational changes that incorporate the Freezer Longline Monitoring and Enforcement (FLL M&E) final rule (77 FR 59053, September 26, 2012). The FLL M&E final rule modified equipment, operational, and observer coverage requirements for vessels named on an LLP license with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both the Bering Sea and Aleutian Islands. The FLL M&E final rule revised §§ 679.5, 679.7, 679.28, 679.32, and 679.50 and added a new § 679.100. The FLL M&E final rule was published after the Observer Program proposed rule. This Observer

Program final rule restructures the Observer Program regulations and therefore must re-number applicable paragraphs from the FFL M&E final rule. If these changes were not made in this final rule, then the regulations would be inconsistent with the FFL M&E final rule, which would undermine the intent of that final rule and would be confusing to the regulated public. The revisions made in this Observer Program final rule to incorporate regulations implemented under the FLL M&E final rule are as follows:

1. Paragraph (a)(2)(vi)(E) is added to § 679.51. This paragraph includes the new observer coverage requirements for the longline catcher/processor subsector, which include a vessel option to carry two observers, or add flow scales and carry one observer. Text also is added to § 679.51(a)(2)(vi)(A)(3) to reflect the requirement, implemented in the FLL M&E final rule, that these same observer coverage requirements apply while these vessels are groundfish CDQ fishing.

2. In § 679.53(a)(5)(v)(C), the number of sets is changed from 60 to 30 to reflect the reduction in the minimum number of sets required for lead level 2 certification that was implemented by the FLL M&E final rule.

3. The proposed redesignation of § 679.32(c)(3)(ii)(G) is removed because this paragraph was removed by the FLL M&E final rule.

4. Associated cross references are revised.

This final rule adds the following regulatory text that currently exists in part 679 but was inadvertently omitted in the proposed rule. These omissions were not described in the proposed rule preamble because they were inadvertently omitted. NMFS received no comments on the omitted regulations, indicating that the public did not notice that the proposed rule proposed to remove these paragraphs of regulatory text. Therefore, regulated entities should expect that the inadvertently omitted paragraphs remain in Federal regulations. Failure to correct these omissions would remove regulations that NMFS intends, and the public expects, to remain in effect. Failure to correct these omissions would undermine the effectiveness of the Observer Program and create confusion for the regulated entities. In addition, if these omitted regulatory provisions are not included at this time, this final rule will be incorrect and NMFS would have to publish a correction notice. The revisions made in this Observer Program final rule to replace inadvertently omitted regulatory text are as follows:

1. § 679.5 (l)(7)(i)(E) was inadvertently omitted from the proposed revisions to § 679.5(l)(7)(i). This existing regulation defines the reporting period of the IFQ Buyer Report. No changes were proposed to this

paragraph in the proposed rule for Amendments 86/76.

2. Requirements that currently exist at § 679.50(c)(6)(i)(A) and (c)(7)(i)(C) state that at least one of the two observers required on Amendment 80 vessels, non-AFA trawl catcher/processors, and catcher/processors participating in the Rockfish Program be certified as a lead level 2 observer. These requirements for a lead level 2 observer in these fisheries were inadvertently excluded in the proposed rule. The proposed rule for Amendments 86/76 indicated that these requirements were intended to be included in the proposed rule. Specifically, on page 23329 of the proposed rule NMFS stated that “[t]he proposed rule would not modify observer coverage, experience, or workload requirements at 50 CFR part 679.50 for \* \* \* Amendment 80 vessels and non-AFA trawl catcher/processors, and Rockfish Program vessels.” This is also consistent with Section 2.10.3 of the analysis that notes that these vessels continue to be subject to existing management requirements, these include the need for at least one lead level 2 observer. Therefore, in this final rule, NMFS adds the lead level 2 requirements in newly renumbered §§ 679.51(a)(2)(vi)(C) and (D).

3. In § 679.51, paragraphs (e)(1)(iv) through (e)(2)(iii)(B)(2), which are in current regulations as § 679.50(g)(1)(iv) through (g)(2)(iii)(B)(2), were inadvertently omitted from the renumbering of § 679.51 in the proposed rule. These paragraphs address responsibilities of vessel operators and shoreside processor or a stationary floating processor operators required to carry observers or maintain observer coverage. The proposed rule for Amendments 86/76 indicated that these requirements were intended to be included in the proposed rule. Specifically, on page 23345 of the proposed rule, NMFS stated that “Regulations that are substantively unchanged by this proposed rule include responsibilities for vessels and shoreside and stationary floating processors required to carry an observer or maintain observer coverage\* \* \*.” Page 23345 of the preamble to the proposed rule also stated that “many of the existing regulations in subpart E to 50 CFR 679 (subpart E) would not be modified by this proposed rule. However, revisions and additions under this proposed rule would result in the renumbering of all sections at Subpart E. As such, subpart E as it would be revised by this proposed rule is presented in its entirety in the regulatory text section. However, NMFS does not propose to amend regulations that are not within the scope of this proposed rule.” This correction is consistent with the clear intent of the proposed rule, and corrects an error made when renumbering of Subpart E.

4. In § 679.52, paragraph (b)(5), which is in current regulations as § 679.50(i)(2)(v), was inadvertently omitted from the proposed rule. NMFS added paragraph (b)(5) to the final rule, renumbered paragraphs (b)(6) to (b)(13), and corrected associated cross references. This paragraph addresses the requirement for observer providers to respond to industry requests for observers.

5. This final rule corrects the removal of § 679.50(g)(2)(iv) from the Code of Federal Regulations (CFR) sometime between the

October 2006 and October 2007 editions. This paragraph requires the manager of a shoreside processor or stationary floating processor to “[a]llow observers free and unobstructed access to the shoreside processor’s or stationary floating processor’s holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.” These requirements were implemented in 1990 (55 FR 4839; February 12, 1990). The paragraph appears in the October 2006 edition of the CFR. However, in the October 2007 edition of the CFR, § 679.50(g)(2)(iv) no longer appears. No final rules implemented between October 2006 and October 2007 removed or revised this paragraph. Therefore, NMFS reinstates this paragraph to the CFR in this final rule as § 679.51(e)(2)(iv).

This final rule includes the following minor editorial revisions and revisions to amendatory instructions:

1. The proposed rule at § 679.51(a)(1)(ii) defined a system for the registration and notification of observer deployment and called this system the “Observer Declaration and Deployment System (Deployment System).” In this final rule, NMFS has changed the name of the system to the “Observer Declare and Deploy System (ODDS).”

2. The amendatory instructions in the proposed rule would have incorrectly removed paragraph (3) of the definition of mothership. This final rule has the correct amendatory instructions to remove and reserve paragraph (2) of the definition of “Mothership.”

3. The amendatory instruction in the proposed rule for § 679.32(c)(3)(i)(A) proposed removing only the introductory text, but it should have proposed removing the entire paragraph. This paragraph contained operational requirements for catcher vessels without observers while groundfish CDQ fishing. As reflected in the proposed rule, the observer coverage requirements for these vessels is in new § 679.51, and the retention requirements are in new § 679.32(c)(3)(i)(A) and (D).

4. The correction to NMFS’ Web site address in § 679.32(e) in the proposed rule is not included in the final rule because the Web site address has been revised.

Finally, regulations at 15 CFR 902.1(b) are amended to display the control number assigned by the Director of the Office of Management and Budget (OMB) for the collection-of-information imposed by this rule. Section 3507(c)(B)(i) of the Paperwork Reduction Act requires that agencies inventory and display a current control number assigned by the Director, OMB, for each agency information collection. 15 CFR 902.1(b) identifies the location of NOAA regulations for which OMB approval numbers have been issued.

## Classification

The Administrator, Alaska Region, NMFS determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the MSA, the Northern Pacific Halibut Act of 1982, and other applicable laws.

### Executive Order 12866

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

### Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis (FRFA) addresses the requirements of section 604(a) of the Regulatory Flexibility Act. An initial regulatory flexibility analysis (IRFA) was prepared and summarized in the Classification section of the preamble to the proposed rule (**ADDRESSES**). Pursuant to Section 604(a), A FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;
2. A summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, 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;
3. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
4. A description of the projected reporting, recordkeeping and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. A 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.

The “universe” of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear

type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

#### **Need for and Objectives of This Final Action**

The need for, and objectives of, this action are described in an earlier section of the preamble titled "Need for and Objectives of the Action," and this description is not repeated here.

#### **Summary of Significant Issues Raised During Public Comment**

The proposed rule was published on April 18, 2012 (77 FR 23326), and was accompanied by an IRFA prepared pursuant to Section 603 of the Regulatory Flexibility Act. The comment period on the proposed rule ended on June 18, 2012. In addition, pursuant to section 313 of the MSA, NMFS conducted public hearings on the proposed rule in Oregon, Washington, and Alaska during the public comment period on the proposed rule.

NMFS received 85 unique comments on the proposed rule and the analysis. The comments and NMFS' responses are summarized earlier in this final rule. Comments with reference to the impact of the proposed action on directly regulated small entities, or to the IRFA, cover the following topics: (a) Integrating small entities into the program (Comment 4); (b) safety concerns for small vessels (Comments 12 through 16); (c) using electronic monitoring as an alternative because of cost, safety, or other benefits to small entities, or to comply with the Regulatory Flexibility Act (Comments 19, 68, 70 through 73, 76, and 78); (d) releasing or exempting vessels from observer coverage (Comments 43 through 45, 47, 53, and 54); (e) applying reduced observer coverage requirements to small catcher/processors (Comments 50, and 51); (f) analyzing and modifying the action to reduce costs for small entities (Comments 37, 40, 42, and 62); (g) relating the size of the observer recovery fee to vessel gross revenues (Comment 58); and (h) considering the impact of vessel selection pool observer coverage requirements on small vessels (Comments 33 through 35). None of these comments required NMFS make changes from the proposed to the final rule.

NMFS is addressing the majority of the concerns expressed by small entities

through outreach and communication about the restructured Observer Program. Additionally, NMFS addressed many of the concerns expressed in public comments in the 2013 Observer Program Annual Deployment Plan. Specifically, through the annual deployment plan process, NMFS removed small fixed gear vessels from the vessel selection pool and reduced the amount of time a vessel in the vessel selection pool will be required carry an observer from 3 months to 2 months. NMFS made these changes in direct response to concerns by small entities.

This final rule includes changes to the regulatory text and amendatory instructions published in the proposed rule. These changes fall into four categories: (1) Changes to the proposed regulations in response to public comment, (2) revisions needed to accommodate changes made to 50 CFR part 679 by a rule published after the proposed rule for Amendments 86/76 was published, (3) additions of existing regulatory text inadvertently not included in the proposed rule, and (4) minor editorial revisions and minor revisions to amendatory instructions. These changes are described in detail in the section of this preamble titled "Changes from the Proposed Rule" which immediately precedes this classifications section; that description is not repeated here.

#### **Number and Description of Directly Regulated Small Entities**

For purposes of an FRFA, the U.S. Small Business Administration has established size criteria for all major industry sectors in the United States, including fish harvesting and fish processing businesses. A business "involved in fish harvesting" is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates), and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation (including affiliates) and employs 500 or fewer persons, on a full-time, part-time, temporary, or other basis, at all its affiliated operations, worldwide. A more detailed explanation of the size criteria may be found in the IRFA prepared for this action (**ADDRESSES**).

This final action would directly regulate entities that harvest or process groundfish and halibut in Federal waters of the BSAI and GOA and vessels holding an FFP and harvesting groundfish in State waters that are accounted for under a Federal TAC.

This specifically includes landings of (1) groundfish in the parallel fisheries in State waters, as that term is defined at § 679.2, (2) groundfish incidental to harvest in State Guideline Harvest Level fisheries (Pacific cod, pollock, sablefish), and (3) groundfish incidental to harvest of halibut or sablefish IFQ in State waters. The six CDQ groups in the BSAI will also be directly regulated by this action. Refer to the RIR for detailed descriptions of each fishing sector by area, gear type, and program (see **ADDRESSES**).

A total of 1,775 entities (including catcher vessels, catcher/processors, motherships, shoreside processors, stationary floating processors, and CDQ groups) are estimated to be directly regulated by this final action. Of the directly regulated entities, 80 are estimated to be large. The table below (Table 1) summarizes all of the potentially directly regulated small entities, by sector, under this final action. Table 1 uses data from 2008, the same year used to assess the impact on directly regulated entities in the IRFA. Table 1 likely overestimates the number of directly regulated small entities. NMFS does not have access to data on ownership and other forms of affiliation for most segments of the fishing industry operating off Alaska. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered. A more detailed description on the information and methods used to estimate the number of small entities is also provided in the IRFA prepared for the proposed rule and is not repeated here (see **ADDRESSES**).

Table 1. Estimated number of small entities potentially directly regulated by this final action based on 2008 landings data. The total number of entities is additive such that a vessel or processor cannot appear in more than one category.

Sector	Estimated number of small entities
Halibut & sablefish IFQ <sup>1</sup> .....	1,411
Groundfish catcher vessels <sup>2</sup> .....	125
Groundfish catcher/processors <sup>2</sup> .....	6
Motherships <sup>3</sup> .....	1
Shoreside processors & stationary floating processors .....	146
CDQ groups .....	6

<sup>1</sup> Includes any vessel that fished halibut IFQ, sablefish IFQ, or halibut CDQ. An estimated 761 of these vessels also fished groundfish.

<sup>2</sup> Groundfish catcher vessel and catcher/processor data represent an estimate of the number of vessels that fished groundfish and did not fish halibut or sablefish IFQ.

<sup>3</sup> Catcher/processors that acted as a catcher/processor and a mothership during 2008 are included in the catcher/processor category. The mothership category includes vessels that only operated as a mothership in 2008.

### Recordkeeping and Reporting Requirements

This final rule requires operators of vessels subject to the trip selection pool in the partial observer coverage category to register with ODDS at least 72 hours prior to embarking on a fishing trip to fish for halibut or directed fish for groundfish (see regulations at § 679.51(a)). Operators of vessels in the vessel selection pool are required to coordinate with NMFS' observer provider as described in the instructions provided by the ODDS to arrange for observer coverage when the vessel is selected for coverage. No new reporting requirements apply to operators of vessels in the full observer coverage category or operators of shoreside processors and stationary floating processors to obtain required observer coverage.

Landings information submitted by managers of shoreside processors and stationary floating processors under existing recordkeeping and reporting regulations are used to assess the observer fee liability for each landing. Managers of shoreside processors and stationary floating processors can access reports generated by NMFS' web-based application for a statement of the observer fee liability associated with each landing.

This final rule modifies § 679.5 to add a reporting requirement for IFQ Registered Buyers. Registered buyers who purchase CDQ halibut are required to report annually, the monthly total weight of CDQ halibut landed and purchased by the Registered Buyer, the monthly total price paid for CDQ halibut purchased by the Registered Buyer, and the monthly total amount paid for any retro-payments of CDQ halibut. Existing recordkeeping and reporting requirements for IFQ Registered Buyers continue to apply.

This final rule modifies reporting requirements applicable to IFQ Registered Buyers at § 679.5(l)(7)(i). This final rule requires that the IFQ Register Buyer submit the information instructed on the report form, instead of listing all of the data fields at § 679.5(l)(7)(i)(C)(1). This final rule revises regulations at § 679.5(l)(7)(i) to instruct a Registered Buyer to submit his or her completed report to the address provided on the report form. This final action removes the mailing address listed in regulation at § 679.5(l)(7)(i)(D) to allow for current

address information to be provided on the form, rather than in regulation.

This final rule requires that all vessels selected for observer coverage pass a USCG Commercial Fishing Vessel Safety Examination and document that process with a U.S. Coast Guard Safety Decal prior to an observer boarding the vessel. A partial exemption may be allowed for vessels less than 26 ft. LOA in remote locations. This inspection is a new requirement for vessels less than 60 ft. LOA. These requirements are detailed in U.S. Coast Guard Regulations at 33 CFR Chapter I and 46 CFR Chapter I.

No professional skills are necessary for the vessel or trip selection requirement or for scheduling the safety inspection. Limited professional skills would be necessary for preparation and submittal of the ex-vessel fees to NMFS, as NMFS would invoice the processor with the total amount.

### Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

The Council considered five alternatives for this action, one no-action and four action alternatives, and two options that could apply to the action alternatives. A complete description of these alternatives and the impacts of these alternatives is provided in the analysis prepared for this final action and is briefly summarized here (see ADDRESSES). Alternative 1 is the status quo; Alternative 2 restructured observer coverage for vessels and processors in the GOA, and for vessels less than 60 ft. LOA and those fishing halibut IFQ in the BSAI; Alternative 3 restructured observer coverage for those vessels and processors that were required to have less than 100 percent observer coverage, and retained the existing management system for those vessels and processors required to have 100 percent or greater coverage; Alternative 4 restructured coverage requirements for all vessel and processor operations, required a daily fee for those operations required to have 100 percent or greater coverage, and an ex-vessel value fee for those operations required to have less than 100 percent coverage; Alternative 5 restructured coverage for all vessels and processors, and established an ex-vessel fee to fund the program.

The Council also considered two options under the four action alternatives to establish fees. The first option considered establishing a 1.25 percent ex-vessel fee on vessel revenues to fund the program, the second option would have established a 1.25 percent ex-vessel fee, but provide that smaller vessels would be subject to a lesser fee.

The preferred alternative, Alternative 3, was determined to best meet the purpose and need for the proposed action, and the objectives of the restructured program outlined in the problem statement. Alternative 3 modifies observer deployment for all operations currently receiving less than 100 percent observer coverage, including vessels participating in the less than 60 ft. LOA groundfish sector and the halibut sector. The analysis clearly identifies those sectors as the sectors with the most acute data quality concerns, lack of adequate data, and disproportionate costs for observer coverage relative to other fishing sectors. By comparison, Alternative 2 only restructures the observer program for the GOA groundfish and halibut fisheries and the vessels in the less than 60 ft. groundfish sector and halibut sector in the BSAI. Under this alternative, the 30 percent coverage requirements would still apply for vessels operating in the BSAI that are currently subject to the 30 percent requirement. Thus, Alternative 2 does not capture all of the sectors that have less than 100 percent observer coverage requirements as is the case under Alternative 3. Alternative 4 is similar to Alternative 3, except that it increases costs to vessel operators, relative to Alternatives 2 and 3 by requiring they pay a daily fee to NMFS, instead of observer providers. The analysis indicates that Alternative 4 does not provide additional observer coverage compared to Alternative 3 for this additional cost. Alternative 5 does not appear to provide sufficient revenue to meet the same level of observer coverage that is estimated to be provided under Alternative 3.

All of the action alternatives included assessing a fee and deploying observers on halibut vessels and vessels less than 60 ft. LOA in the GOA and the BSAI, which are likely to comprise the majority of the small entities affected by this rule. Impacts of this fee and observer coverage on small entities are described in Section 5 of the analysis (see ADDRESSES). During deliberations on the preferred alternative implemented by this final rule (Alternative 3), the Council was concerned with minimizing impacts to small entities, providing equity within the program, and increasing data quality, by including small vessels and halibut vessels in the Observer Program for the first time. No significant alternatives to this final action that meet the purpose and need and objectives for the action have been identified. This final rule and the 2013 Observer

Program Annual Deployment plan include several provisions that are intended to reduce economic impacts on small entities.

Observer deployment among vessels in the partial coverage category differs for the smallest vessels. In the initial year(s) of the restructured program, NMFS proposes that catcher vessels using jig gear and catcher vessels less than 40 ft. LOA using pot or hook-and-line gear would not be selected to carry an observer. NMFS estimates that all of these vessels are likely to be small entities. Catcher vessels greater than or equal to 40 ft. LOA but less than 57.5 ft. LOA using pot or hook-and-line gear would be in the vessel selection pool. Vessels in the vessel selection pool could be randomly selected to carry an observer for a specified period of time. Vessels in the "no selection" pool would be required to pay the fee for landings subject to the new program, though they would not incur other direct or indirect costs of carrying an observer to the same extent as operators of vessels with higher probability of selection.

This final rule includes a provision that limits observer coverage requirements, and associated costs, for some small catcher/processors. Under the preferred alternative implemented by this rule, all catcher/processors would be placed in the full coverage category and operate under the status quo system funding and deployment system. Thus, groundfish and halibut catcher/processors less than 60 ft. LOA that have not been subject to observer coverage requirements would now be required to have 100 percent coverage under direct contracts with observer providers. An exception to this requirement to allows operators of catcher/processor vessels less than 60 ft. LOA with a history of operations as a catcher/processor and catcher vessel in a single year, or any catcher/processor vessel with an average daily production of less than 5,000 pounds in the most recent full calendar year of operation prior to January 1, 2010, to make a one-time election to be in the partial observer coverage category with the ex-vessel revenue fee structure or the full observer coverage category with the status quo funding system. This limited exemption to the full coverage requirements could reduce costs on these catcher/processors, so long as they elect to be in the partial coverage category.

The Council selected a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system. Under the authority of section 313 of the MSA, the

Council could have recommended a maximum of a 2 percent fee on all vessels and processors subject to a fee under the Observer Program. The Council chose a fee of 1.25 percent of ex-vessel value to balance the costs of vessel and processors operations with the amount necessary to collect adequate data in the partial coverage category.

The Council considered, but did not adopt, an option that would establish an ex-vessel value fee equal to half of that selected under the preferred alternative to be assessed on all halibut IFQ landings and on groundfish landings from vessels less than 40 ft., less than 50 ft., or less than 60 ft. LOA. An estimated 61 groundfish catcher vessels less than 60 ft. LOA and almost the entire IFQ fleet (great than 1,400 vessels) would have been assessed a reduced fee under this option, based on 2008 data. However, the Council chose to apply the same fee percentage to all sectors in the partial observer coverage category, to develop a fair and equitable fee program across all sectors subject to the new funding and deployment system. Because the Council selected, and this final rule implements, a 1.25 percent ex-vessel fee for all vessels and processors subject to the new funding and deployment system, all small entities, regardless of the sector in which they participate, will benefit from a reduced fee relative to the maximum 2 percent fee that was under consideration.

With the exception of the provisions discussed above, there do not appear to be significant alternatives to the proposed action that accomplish the stated objectives, are consistent with applicable statutes, and that would minimize the economic impact of the proposed rule on small entities. The Council recognized that costs of observer coverage could be minimized or eliminated for small entities (indeed, entities of all sizes) through a Federal subsidy program for observer coverage in the North Pacific, similar to federally funded observer subsidy programs in other regions of the United States. However, because the Council cannot appropriate Federal funds, an alternative for full Federal funding of observer coverage in the North Pacific was not included by the Council.

#### *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.

NMFS has posted a small entity compliance guide on the NMFS Alaska Region Web site (<http://alaskafisheries.noaa.gov>) as a plain language guide to assist small entities in complying with this rule. Contact NMFS to request a hard copy of the guide (see **ADDRESSES**).

#### *Collection-of-Information Requirements*

This rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB. The collections are listed below by OMB control number.

##### **OMB Control No. 0648-0206**

Public reporting burden per response is estimated to average 21 minutes for Federal Processor Permit application; and 21 minutes for Federal Fisheries Permit application.

##### **OMB Control No. 0648-0272**

Public reporting burden per response is estimated to average 30 minutes for Registered Buyer Permit application.

##### **OMB Control No. 0648-0318**

Public reporting burden per response is estimated to average 30 minutes for Observer Fee and receipt of the observer fee liability generated with each landing; 2 hours for registration with the Observer Declare and Deploy System; 4 hours for appeals; 60 hours for Application for an observer provider permit; 30 minutes for Industry request for assistance in improving observer data quality issues; 60 hours for Application for an observer provider permit; 15 minutes for Update to provider information; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer candidate; 15 minutes for Observer candidates' college transcripts and disclosure statements, observer provider; 5 minutes for Notification of observer physical examination, Observer Providers; 7 minutes for Projected observer assignments; 7 minutes for Observer briefing registration; 40 hours for Observer Conduct and Behavior policy; 15 minutes for Copies of contracts; 30 minutes for Copies of invoices; 7 minutes for Observer deployment/logistics reports; 7 minutes for Observer debriefing registration; 12 minutes for Certificate of insurance; 2 hours for

Other reports concerning observer harassment, safety concerns, or other factors that may affect the completion of an observer's duties.

OMB Control No. 0648–0398

Public reporting burden per response is estimated to average 2 hours for Registered Buyer Ex-vessel Value and Volume Report (Buyer Report).

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA\_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

## List of Subjects

### 15 CFR Part 902

Reporting and recordkeeping requirements.

### 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 15, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

## TITLE 15—COMMERCE AND FOREIGN TRADE

### PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

- 1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

- 2. In § 902.1, in the table in paragraph (b), under the entry “50 CFR:”
- a. Add an entry in alphanumeric order for “679.7(a)(3)”;
- b. Add an entry in alphanumeric order for “679.7(g)”;
- c. Remove entry for “679.32(c) and (e)”;
- d. Add an entry in alphanumeric order for “679.32(c)(1) and (2)”;
- e. Add an entry in alphanumeric order for “679.32(c)(3)”;
- f. Revise entry for “679.32(d)”;
- g. Add an entry in alphanumeric order for “679.32(e)”;
- h. Remove entry for “679.50”;
- i. Add an entry in alphanumeric order for “679.50(a)”;
- j. Add entries for “679.51”; “679.52”; “679.53”; “679.54”; and “679.55.”

The additions and revisions read as follows:

#### § 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

\* \* \* \* \*

(b) \* \* \*

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
50 CFR:	
679.7(a)(3) .....	–0318
679.7(g) .....	–0318
679.32(c)(1) and (2) .....	–0318
679.32(c)(3) .....	–0269 and –0318
679.32(d) .....	–0269, –0318, and –0330
679.32(e) .....	–0269
679.50(a) .....	–0206, –0269, and –0272
679.51 .....	–0206, –0269, –0272, –0318, –0401, –0513, –0545, –0565
679.52 .....	–0318
679.53 .....	–0318
679.54 .....	–0318
679.55 .....	–0206, –0272, –0318

## TITLE 50—WILDLIFE AND FISHERIES

### PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; and Pub. L. 108–447.

- 4. In § 679.1, revise paragraph (f) to read as follows:

#### § 679.1 Purpose and scope.

\* \* \* \* \*

(f) *Groundfish and Halibut Observer Program.* Regulations in this part govern elements of the Groundfish and Halibut Observer Program.

\* \* \* \* \*

- 5. In § 679.2,

- a. Remove the definitions for “Fishing day” and “Legal proceedings”;
- b. Remove and reserve paragraph (2) of the definition for “Mothership”;
- c. Revise the definitions for “Catcher/processor (C/P),” “Decertification,” paragraph (3) of “Fishing Trip,” and “Observer”; and

■ d. Add a definition for “Parallel groundfish fishery” in alphabetical order to read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Catcher/processor (C/P)* means, with respect to groundfish recordkeeping and reporting and subpart E of this part, a vessel that is used for catching fish and processing that fish.

\* \* \* \* \*

*Decertification*, as used in § 679.53(c), means action taken by a decertifying official under § 679.53(c)(3) to revoke certification of an observer or observer provider. An observer or observer provider whose certification is so revoked is decertified.

\* \* \* \* \*

*Fishing Trip* means: \* \* \*

\* \* \* \* \*

(3) *Groundfish and Halibut Observer Program*. With respect to subpart E of this part, one of the following periods:

(i) For a catcher vessel delivering to a shoreside processor or stationary floating processor, the period of time that begins when a catcher vessel departs a port to harvest fish until the offload or transfer of all fish from that vessel.

(ii) For a catcher vessel delivering to a tender vessel, the period of time that begins when a catcher vessel departs from port to harvest fish until the vessel returns to a port in which a shoreside processor or stationary floating processor with a valid FPP is located.

\* \* \* \* \*

*Observer* means any

(1) Individual employed by a permitted observer provider or a NMFS observer provider for the purpose of serving in the capacity of an observer aboard vessels and at shoreside processors or stationary floating processors under this part; or

(2) NMFS employee deployed at the direction of the Regional Administrator or individual authorized by NMFS, aboard a vessel or at a shoreside processor or stationary floating processor for the purpose of serving in the capacity of an observer as required for vessels, shoreside processors, or stationary floating processors under § 679.51(a) or (b), or for other purposes of conservation and management of marine resources as specified by the Regional Administrator.

\* \* \* \* \*

*Parallel groundfish fishery*. With respect to subpart E of this part, parallel groundfish fishery means a fishery that occurs in waters of the State of Alaska (from 0 to 3 nm) adjacent to the BSAI or GOA management areas and opens

concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal Total Allowable Catch.

\* \* \* \* \*

■ 6. In § 679.4,

■ a. Redesignate paragraphs (d)(3)(iv) and (d)(3)(v) as paragraphs (d)(3)(v) and (d)(3)(vi), respectively;

■ b. Revise paragraph (d)(3)(iii), newly redesignated (d)(3)(v), and paragraphs (f)(1) and (f)(2); and

■ c. Add a new paragraph (d)(3)(iv) to read as follows:

**§ 679.4 Permits.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(iii) A Registered Buyer permit is issued on an annual cycle defined as March 1 through the end of February of the next calendar year, to persons that have a Registered Buyer application approved by the Regional Administrator.

(iv) For the Registered Buyer application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(v) A Registered Buyer permit is in effect from the first day of March in the year for which it is issued or from the date of issuance, whichever is later, through the end of the current annual cycle, unless it is revoked, suspended, surrendered in accordance with paragraph (a)(9) of this section, or modified under § 600.735 or § 600.740 of this chapter.

\* \* \* \* \*

(f) \* \* \*

(1) *Requirement*. No shoreside processor of the United States, stationary floating processor, or CQE floating processor described at paragraph (f)(2) of this section may receive or process groundfish harvested in the GOA or BSAI unless the owner obtains a Federal processor permit (FPP) issued under this part. An FPP is issued without charge.

(2) *FPP application*. To obtain, amend, or renew an FPP, the owner must complete an FPP application per the instructions at <http://alaskafisheries.noaa.gov/ram>.

(i) For the FPP application to be considered complete, all fees due to NMFS under § 679.55 at the time of application must be paid.

(ii) *Signature*. The owner or authorized representative of the owner of the shoreside processor, stationary floating processor, or CQE floating processor must sign and date the application, certifying that all information is true, correct, and

complete to the best of his/her knowledge and belief. If the application is completed by an authorized representative, proof of authorization must accompany the application.

\* \* \* \* \*

■ 7. In § 679.5, revise paragraph (l)(7)(i) to read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

\* \* \* \* \*

(l) \* \* \*

(7) \* \* \*

(i) *IFQ Registered Buyer Ex-vessel Volume and Value Report (IFQ Buyer Report)*—(A) *Applicability*. An IFQ Registered Buyer that operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut or CDQ landings of halibut must submit annually to NMFS a complete IFQ Buyer Report as described in this paragraph (1) and as provided by NMFS for each reporting period, as described at paragraph (l)(7)(i)(E) of this section, in which the Registered Buyer receives IFQ fish or CDQ halibut.

(B) *Due date*. A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish or CDQ halibut.

(C) *Information required*. A complete IFQ Buyer Report must include the following information as instructed on the report form at <http://alaskafisheries.noaa.gov/ram>:

(1) *IFQ Registered Buyer identification*.

(2) *Pounds purchased and values paid*. (i) The monthly total weights, represented in IFQ equivalent pounds by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(ii) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species or CDQ halibut, that were landed at the landing port location and purchased by the IFQ Registered Buyer;

(3) *Value paid for price adjustments*—(i) *Retro-payments*. The monthly total U.S. dollar amount of any retro-payments (correlated by IFQ species or CDQ halibut, landing month(s), and month of payment) made in the current year to IFQ, or to CDQ halibut permit holders for landings made during the previous calendar year;

(ii) *Electronic submittal*. Certification, including the NMFS ID and password of the IFQ Registered Buyer; or

(iii) *Non-electronic submittal*. Certification, including the printed name and signature of the individual



submitting the IFQ Buyer Report on behalf of the Registered Buyer, and date of signature.

(D) *Submittal*. If applicable, the Registered Buyer must complete an IFQ Buyer Report and submit by mail or FAX to NMFS at the address provided on the form, or electronically to NMFS online at <http://alaskafisheries.noaa.gov/ram>.

(E) *Reporting period*. The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

\* \* \* \* \*

■ 8. In § 679.7,

■ a. Redesignate paragraph (g)(7) as (g)(8);

■ b. Revise paragraph (a)(3) and paragraph (g) heading; and

■ c. Add a new paragraph (g)(7) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(a) \* \* \*

(3) *Groundfish and Halibut Observer Program*. (i) Fish or process groundfish except in compliance with the terms of the Groundfish and Halibut Observer Program as provided by subpart E of this part.

(ii) Except where observer services are provided by a NMFS employee or other individuals authorized by NMFS under § 679.51(c) or § 679.51(d)(1)(ii), deploy observers in the full observer coverage category at § 679.51(a)(2) and (b)(2) without an observer provider permit issued under § 679.52(a).

\* \* \* \* \*

(g) *Groundfish and Halibut Observer Program*. \* \* \*

\* \* \* \* \*

(7) Embark on a fishing trip to directed fish for groundfish or to fish for halibut with hook-and-line gear without carrying an observer if the fishing trip is selected for observer coverage per § 679.51(a)(1)(ii)(C)(2), or the vessel is selected for observer coverage per § 679.51(a)(1)(ii)(D).

\* \* \* \* \*

■ 9. In § 679.32,

■ a. Revise the section heading;

■ b. Remove paragraphs (c)(1) introductory text, (c)(3)(i)(A), and (c)(3)(ii)(A);

■ c. Redesignate paragraphs according to the following table;

Redesignate paragraph(s)	As paragraph(s)
(c)(1)(i) .....	(c)(1)(ii)(A).
(c)(1)(ii) .....	(c)(1)(ii)(B).
(c)(3)(i)(B) through (c)(3)(i)(F) .....	(c)(3)(i)(A) through (c)(3)(i)(E), respectively.
(c)(3)(ii)(B) through (c)(3)(ii)(F) .....	(c)(3)(ii)(A) through (c)(3)(ii)(E), respectively.

■ d. Revise newly redesignated paragraphs (c)(3)(i)(A) heading, (c)(3)(i)(A)(1), (c)(3)(i)(B)(1), (c)(3)(i)(C)(1), (c)(3)(i)(D), and (c)(3)(i)(E)(1);

■ e. Revise paragraphs (c)(2)(i)(A) and (d)(2)(i); and

■ f. Add paragraphs (c)(1)(i), (c)(1)(ii) heading and introductory text, and (d)(1)(iii) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) *Observer coverage*. Operators and owners of catcher vessels sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(1). Operators and owners of catcher/processors sablefish CDQ fishing must comply with observer coverage requirements at § 679.51(a)(2).

(ii) *Data sources used for CDQ catch accounting*. NMFS will use the following data sources to account for catch made by vessels sablefish CDQ fishing with fixed gear:

(2) \* \* \*

(i) \* \* \*

(A) Comply with observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) *Catcher vessels using trawl gear and delivering sorted catch to a processor*. \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(B) \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(C) \* \* \*

(1) Comply with the observer coverage requirements at § 679.51(a)(2).

\* \* \* \* \*

(D) *Observed catcher vessels using nontrawl gear*. Operators of vessels in this category must retain all CDQ species until they are delivered to a processor that meets the requirements of paragraph (d) of this section unless retention of groundfish CDQ species is not authorized under § 679.4, discard of the groundfish CDQ or PSQ species is required under subpart B of this part, or, in waters within the State of Alaska, discard is required by laws of the State of Alaska. All of the halibut PSQ must be counted and sampled for length or weight by the observer.

(E) \* \* \*

(1) Operators of catcher/processors using hook-and-line gear must comply with § 679.100. Operators of catcher/processors using pot gear must comply with observer coverage requirements at § 679.51(a)(2)(vi)(A)(4); and

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(iii) Comply with observer coverage requirements at § 679.51(b)(2).

(2) \* \* \*

(i) Comply with observer coverage requirements at § 679.51(b)(1).

\* \* \* \* \*

■ 10. Under part 679, revise subpart E heading to read as follows:

**Subpart E—Groundfish and Halibut Observer Program**

■ 11. Revise § 679.50 to read as follows:

**§ 679.50 Applicability.**

(a) *General*. (1) The operator of a vessel designated or required to be designated on a Federal fisheries permit (FFP) under § 679.4(b); the operator of a processor designated or required to be designated on a Federal processor permit (FPP) under § 679.4(f)(1) or a Registered Buyer permit under § 679.4(d)(3); and the operator of a vessel used to harvest IFQ halibut, CDQ halibut, or IFQ sablefish must comply with this subpart. The owner of a vessel or a shoreside processor must ensure that the operator or manager complies with this subpart.

(2) *Exceptions*. A catcher vessel that delivers only unsorted codends to a mothership is not subject to the requirements of this subpart.

(3) For purposes of this subpart, halibut means CDQ and IFQ halibut.

(b) [Reserved]

■ 12. A new § 679.51 is added to Subpart E to read as follows:

**§ 679.51 Observer requirements for vessels and plants.**

The table in paragraph (f) of this section provides a reference to the paragraphs in this section that contain observer coverage requirements for vessels, shoreside processors, and stationary floating processors participating in certain fishery programs. (a) *Observer requirements for vessels*—(1) *Groundfish and halibut fishery partial observer coverage category*—(i) *Vessel classes in partial coverage category*. Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels are in the partial observer coverage category when fishing for halibut with hook-and-line gear or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) A catcher vessel designated on an FFP under § 679.4(b)(1); or

(B) A catcher vessel when fishing for halibut with hook-and-line gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i), § 679.4(d)(2)(i), or § 679.4(e)(2), or for sablefish IFQ with hook-and-line or pot gear and while carrying a person named on a permit issued under § 679.4(d)(1)(i) or § 679.4(d)(2)(i).

(ii) *Registration and notification of observer deployment*. The Observer Declare and Deploy System (ODDS) is the communication platform for the partial observer coverage category by which NMFS receives information about fishing plans subject to randomized observer deployment. Vessel operators provide fishing plan and contact information to NMFS and receive instructions through ODDS for coordinating with an observer provider for any required observer coverage. Access to ODDS is available through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

(A) *Registration*. NMFS will enter information into ODDS about all partial coverage category vessels that are designated on an FFP and all catcher vessels that are not designated on an FFP but that landed sablefish IFQ or halibut IFQ or CDQ in the previous or current year. Owners or operators are not responsible for initial registration of their vessel in ODDS.

(B) *Notification*. Upon entry into ODDS, NMFS will notify the owner or operator as to whether his or her vessel is entered in either a “vessel” or “trip” selection pool. Owners and operators must comply with all further instructions set forth by ODDS.

(C) *Trip selection pool*. (1) A minimum of 72 hours prior to embarking on each fishing trip, the

operator of a vessel in the trip selection pool must register the anticipated trip with ODDS.

(2) When a fishing trip is registered with ODDS per paragraph (a)(1)(ii)(C)(1) of this section, the vessel operator will be notified by ODDS whether the trip is selected for observer coverage and a receipt number corresponding to this notification will be provided by ODDS. Trip registration is complete when the vessel operator receives a receipt number.

(3) An operator may embark on a fishing trip registered with ODDS:

(i) *Not selected trip*. At any time if ODDS indicates that the fishing trip is not selected for observer coverage.

(ii) *Selected trip*. When an observer is aboard the vessel if ODDS indicates that the fishing trip is selected for observer coverage.

(4) *Delayed trip*. A selected fishing trip not embarked upon within 48 hours of the time specified in the registration with ODDS is invalidated. The operator must register any new trip in accordance with paragraph (a)(1)(ii)(C)(1) of this section.

(5) *Observer coverage duration*. If selected, a vessel is required to carry an observer for the entire fishing trip.

(i) A fishing trip selected for observer coverage may not begin until all previously harvested fish has been offloaded and an observer is aboard the vessel.

(ii) An observer may not be transferred off a catcher vessel until the observer confirms that all fish from the observed fishing trip are offloaded.

(iii) A vessel must make a minimum of one delivery to a tender vessel to be subject to paragraph (3)(ii) of the fishing trip definition at § 679.2.

(D) *Vessel selection pool*. (1) A vessel selected for observer coverage is required to have an observer on board for all groundfish and halibut fishing trips specified at paragraph (a)(1)(i) of this section for the time period indicated by ODDS.

(2) At its discretion, NMFS may provide electronic monitoring equipment to a vessel owner or operator to use on a vessel. A vessel owner or operator must coordinate with NMFS to make the vessel available for evaluation and installation of electronic monitoring equipment if NMFS determines that electronic monitoring is appropriate.

(iii) *Release from observer coverage*. The Observer Program may release a selected trip per paragraph (a)(1)(ii)(C) of this section or a selected vessel per paragraph (a)(1)(ii)(D) of this section, from observer coverage on a case-by-case basis.

(2) *Groundfish and halibut fishery full observer coverage category*—(i) *Vessel classes in the full coverage category*.

The following classes of vessels are in the full observer coverage category when harvesting halibut or when harvesting, receiving, or processing groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

(A) Catcher/processors;  
(B) Motherships; and  
(C) Catcher vessels while:  
(1) Directed fishing for pollock in the BS;

(2) Using trawl gear or hook-and-line gear while groundfish CDQ fishing (see § 679.2); or

(3) Participating in the Rockfish Program.

(ii) *Observer coverage requirements*. Unless subject to the partial observer coverage category per paragraph (a)(1)(i) of this section, a vessel listed in paragraphs (a)(2)(i)(A) through (C) of this section must have at least one observer aboard the vessel at all times. Some fisheries require additional observer coverage in accordance with paragraph (a)(2)(vi) of this section.

(iii) *Observer workload*. The time required for an observer to complete sampling, data recording, and data communication duties per paragraph (a)(2) of this section may not exceed 12 consecutive hours in each 24-hour period.

(iv) *Catcher/processor classification*.

(A) For purposes of this subpart, a vessel is classified as a catcher/processor according to the operation designation on its FFP. A vessel designated as a catcher/processor at any time during the calendar year is classified as a catcher/processor for the remainder of the calendar year.

(B) An owner or operator of a catcher/processor that processes no more than one metric ton round weight of groundfish on any day, may be included in the partial observer coverage category in lieu of the full coverage category for the following calendar year.

(v) *One-time election of observer coverage category*. The owner of a vessel less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in a single year from January 1, 2003, through January 1, 2010; or any catcher/processor with an average daily groundfish production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, to January 1, 2010, may make a one-time election as to whether the vessel will be in the partial observer coverage category at paragraph (a)(1) of this section, or the full observer coverage category at

paragraph (a)(2) of this section. The daily groundfish production average is based on the number of days the vessel operated each year from January 1, 2003, through January 1, 2010.

(A) *Notification of election.* The person named on the FFP for a vessel eligible for the one-time election must notify the Regional Administrator, NMFS, P.O. Box 21668, Juneau, AK 99802, of their election in writing, at least 30 days prior to embarking on his or her first fishing trip.

(B) *Default coverage category.* If an owner forgoes the opportunity for the one-time election, the vessel will be assigned to the partial or full observer coverage category per paragraphs (a)(1)(i) or (a)(2)(i) of this section.

(C) *Effective duration.* The one-time election is effective for:

(1) The duration that both the catcher/processor and catcher vessel designations are listed on the FFP for vessels less than 60 ft. LOA; or

(2) The duration the FFP is issued to the person named on the FFP at the time of the election for catcher/processors with an average daily production of less than 5,000 pounds round weight equivalent in the most recent full calendar year of operation from January 1, 2003, through January 1, 2010.

(vi) *Additional observer requirements—(A) CDQ fisheries.* The owner or operator of a vessel must comply with the following requirements each day that the vessel is used to catch, process, deliver, or receive CDQ groundfish.

(1) *Catcher/processors using trawl gear and directed fishing for pollock CDQ in the BSAI and motherships taking deliveries from catcher vessels directed fishing for pollock CDQ in the BSAI.* See paragraph (a)(2)(vi)(B)(2) of this section.

(2) *Catcher/processors using trawl gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(C) of this section.

(3) *Catcher/processors using hook-and-line gear and groundfish CDQ fishing.* See paragraph (a)(2)(vi)(E) of this section.

(4) *Catcher/processors using pot gear for groundfish CDQ fishing.* A catcher/processor using pot gear must have at least one lead level 2 observer aboard the vessel. More than one observer must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(5) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two level 2 observers aboard the mothership, at least one of whom must be certified as a lead level 2 observer. More than two observers

must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(B) *BSAI pollock fisheries—(1) Listed AFA catcher/processors and AFA motherships.* The owner or operator of a listed AFA catcher/processor or AFA mothership must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(2) *Pollock CDQ catcher/processors and motherships.* The owner or operator of a catcher/processor or mothership used to catch, process, or receive pollock CDQ must comply with the observer coverage requirements in paragraph (a)(2)(vi)(B)(1) of this section for each day that the vessel is used to catch, process, or receive pollock CDQ.

(3) *Unlisted AFA catcher/processors.* The owner or operator of an unlisted AFA catcher/processor must have aboard at least two observers for each day that the vessel is used to engage in directed fishing for pollock in the BSAI, or receive pollock harvested in the BSAI. At least one observer must be certified as a lead level 2 observer. When an unlisted AFA catcher/processor is not engaged in directed fishing for BSAI pollock and is not receiving pollock harvested in the BSAI, the observer coverage requirements at paragraph (a)(2)(ii) of this section apply.

(4) *AI directed pollock fishery catcher/processors and motherships.* A catcher/processor participating in the AI directed pollock fishery or a mothership processing pollock harvested in the AI directed pollock fishery must have aboard at least two observers, at least one of which must be certified as a lead level 2 observer, for each day that the vessel is used to catch, process, or receive groundfish. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(C) *Amendment 80 vessels and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI.* All Amendment 80 vessels using any gear but dredge gear while directed fishing for scallops and catcher/processors not listed in § 679.4(1)(2)(i) and using trawl gear in the BSAI must have aboard at least two observers for each day that the vessel is used to catch, process, or receive groundfish harvested in a federally managed or parallel groundfish fishery. At least one observer must be certified as a lead level 2 observer. More than

two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(D) *Catcher/processors participating in the Rockfish Program—(1) Rockfish cooperative.* A catcher/processor that is named on an LLP license that is assigned to a rockfish cooperative and is fishing under a CQ permit must have at least two observers aboard for each day that the vessel is used to catch or process fish in the Central GOA from May 1 through the earlier of November 15 or the effective date and time of an approved rockfish cooperative termination of fishing declaration. At least one observer must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(2) *Rockfish sideboard fishery for catcher/processors in a rockfish cooperative.* A catcher/processor that is subject to a sideboard limit as described under § 679.82(e) must have at least two observers aboard for each day that the vessel is used to harvest or process fish in the West Yakutat District, Central GOA, or Western GOA management areas from July 1 through July 31. At least one observer must be certified as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

(E) *Longline catcher/processor subsector.* The owner and operator of a catcher/processor subject to § 679.100(b) must comply with the following observer coverage requirements:

(1) *Increased observer coverage option.* If the vessel owner selects the increased observer coverage option under § 679.100(b)(1), at least two observers must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing. At least one of the observers must be certified as a lead level 2 observer. More than two observers are required if the observer workload restriction would otherwise preclude sampling as required.

(2) *Scales option.* If the vessel owner selects the scales option under § 679.100(b)(2), one lead level 2 observer must be aboard the vessel at all times when the vessel is operating in either the BSAI or GOA groundfish fisheries when directed fishing for Pacific cod is open in the BSAI, or while the vessel is groundfish CDQ fishing.

(b) *Observer requirements for shoreside processors and stationary*

*floating processors*—(1) *Shoreside processor and stationary floating processor partial observer coverage category.* (i) Unless otherwise specified in paragraph (b)(2) of this section, a shoreside processor or a stationary floating processor designated or required to be designated on an FPP under § 679.4(f)(1) is in the partial observer coverage category when receiving or processing groundfish harvested in federally managed or parallel groundfish fisheries, as defined at § 679.2.

(ii) *Coverage.* The manager of a shoreside processor or stationary floating processor must provide observers access to unsorted and sorted catch any time an observer is present at the facility.

(2) *Shoreside processor and stationary floating processor full observer coverage category.* An AFA inshore processor is in the full observer coverage category.

(i) *Coverage level.* An AFA inshore processor must provide an observer for each 12 consecutive-hour period of each calendar day during which the processor takes delivery of, or processes, groundfish harvested by a vessel engaged in a directed pollock fishery in the BS. An AFA inshore processor that, for more than 12 consecutive hours in a calendar day, takes delivery of or processes pollock harvested in the BS directed pollock fishery must provide two observers for each such day.

(ii) *Multiple processors.* An observer deployed to an AFA inshore processor may not be assigned to cover more than one processor during a calendar day in which the processor receives or processes pollock harvested in the BS directed pollock fishery.

(iii) *Observers transferring between vessels and processors.* An observer transferring from an AFA catcher vessel to an AFA inshore processor may not be assigned to cover the AFA inshore processor until at least 12 hours after offload and sampling of the catcher vessel's delivery is completed.

(c) *NMFS employee observers.* (1) Any vessel, shoreside processor, or stationary floating processor required to comply with observer coverage requirements under paragraphs (a) or (b) of this section or under § 679.7(f)(4) must use, upon written notification by the Regional Administrator, a NMFS employee to satisfy observer coverage requirements as specified in paragraphs (a) and (b) of this section or for other conservation and management purposes as specified by the Regional Administrator.

(2) Prior to deployment of a NMFS employee, the agency will provide written notification to the owner or

operator of a vessel, shoreside processor, or stationary floating processor whether observer coverage credit will be granted for that deployment.

(3) Vessel, shoreside processor, and stationary floating processor owners and operators, as well as observers and observer providers, may contact NMFS in writing to request assistance in improving observer data quality and resolving observer sampling issues. Requests may be submitted to: NMFS Observer Program Office, 7600 Sand Point Way NE., Seattle, WA 98115-0070 or transmitted by facsimile to 206-526-4066.

(d) *Procurement of observer services*—(1) *Full coverage category.* (i) The owner of a vessel, shoreside processor, or stationary floating processor required to have full observer coverage under paragraphs (a)(2) and (b)(2) of this section must arrange and pay for observer services from a permitted observer provider.

(ii) The owner of a vessel, shoreside processor, or stationary floating processor is required to arrange and pay for observer services directly from NMFS when the agency has determined and notified them under paragraph (c) of this section that the vessel, shoreside processor, or stationary floating processor shall use a NMFS employee or individual authorized by NMFS in lieu of, or in addition to, an observer provided through a permitted observer provider to satisfy requirements under paragraphs (a)(2) and (b)(2) of this section or for other conservation and management purposes.

(2) *Partial coverage category.* The owner of a vessel in the partial observer coverage category per paragraph (a)(1) of this section must comply with instructions provided by ODDS to procure observer coverage for the required duration.

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

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

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

(B) Have on board:

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

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

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

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

(A) *Observer use of equipment.*

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

(B) *Communication equipment requirements.* In the case of an operator of a catcher/processor, mothership, a catcher vessel 125 ft. LOA or longer (except for a vessel fishing for groundfish with pot gear), or a catcher vessel participating in the Rockfish Program:

(1) *Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(2) *NMFS-supplied software.* Ensuring that the catcher/processor, mothership, or catcher vessel specified in paragraph (e)(1) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(3) *Functional and operational equipment.* Ensuring that the communication equipment required in paragraph (e)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(1)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

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

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

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

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

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

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

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

(C) Collecting bycatch when requested by the observers.

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

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

(F) Collecting all seabirds that are incidentally taken on the observer-sampled portions of hauls using hook-and-line gear or as requested by an observer during non-sampled portions of hauls.

(ix) *Transfer at sea.* (A) Ensure that transfers of observers at sea are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

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

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

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

(2) *Shoreside processor and stationary floating processor responsibilities.* A manager of a shoreside processor or a stationary floating processor that is required to maintain observer coverage as specified under paragraph (d) of this section must:

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

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

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

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

(B) *Communication equipment requirements—(1) Observer access to computer.* Making a computer available for use by the observer. This computer must be connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(2) *NMFS-supplied software.* Ensuring that the shoreside or stationary floating processor specified in paragraph (e)(2) of this section has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software.

(3) *Functional and operational equipment.* Ensuring that the communication equipment required in

paragraph (e)(2)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (e)(2)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Access.* Allow observers free and unobstructed access to the shoreside processor's or stationary floating processor's holding bins, processing areas, freezer spaces, weight scales, warehouses, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

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

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

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

(B) Providing a secure place to store sampling gear.

(3) The owner of a vessel, shoreside processor, stationary floating processor, or buying station is responsible for compliance and must ensure that the operator or manager of a vessel, shoreside processor, or stationary floating processor required to maintain observer coverage under paragraphs (a) or (b) of this section complies with the requirements given in paragraphs (e)(1) and (e)(2) of this section.

(f) *Reference table for observer coverage requirements.*

Program	Catcher/Processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(1) Groundfish CDQ—Nontrawl Gear .....	(a)(2)(vi)(E) hook-and-line; (a)(2)(vi)(A)(4) pot.	(a)(2)(i)(C) hook-and-line; (a)(1)(i) pot.	(a)(2)(vi)(A)(5) .....	(b)(1)
(2) Groundfish CDQ—Trawl Gear .....	(a)(2)(vi)(A)(1) .....	(a)(2)(i)(C) .....	(a)(2)(vi)(A)(5) .....	(b)(1)
(3) Halibut—CDQ and IFQ .....	(a)(2)(i)(A) or (a)(2)(iv) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)
(4) Sablefish—CDQ and IFQ .....	(a)(2)(i)(A) or (a)(2)(iv) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)
(5) BS pollock—AFA and CDQ .....	(a)(2)(vi)(B)(1) and (2) .....	(a)(2)(i)(C) .....	(a)(2)(vi)(B)(1) and (2) .....	(b)(2)
(6) Aleutian Islands pollock .....	(a)(2)(vi)(B)(3) through (4) .....	(a)(1)(i)(A) .....	(a)(2)(vi)(B)(4) .....	(b)(1)
(7) Rockfish Program .....	(a)(2)(vi)(D) .....	(a)(2)(i)(C) .....	N/A .....	(b)(1)
(8) Amendment 80 vessels and Non-AFA trawl catcher/processors fishing in the BSAI.	(a)(2)(vi)(C) .....	N/A .....	N/A .....	N/A

Program	Catcher/Processors	Catcher vessels	Motherships	Shoreside and stationary floating processors
(9) Vessels and processors participating in all other BSAI and GOA groundfish fisheries.	(a)(2)(i) or (iv) .....	(a)(1)(i)(A) and (B) .....	(a)(2)(i)(B) .....	(b)(1)

■ 13. A new § 679.52 is added to subpart E to read as follows:

**§ 679.52 Observer provider permitting and responsibilities.**

(a) *Observer provider permit*—(1) *Permit.* The Regional Administrator may issue a permit authorizing a person's participation as an observer provider for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2). Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

(2) *New observer provider.* An applicant seeking an observer provider permit must submit a completed application by fax or mail to the Observer Program Office at the address listed at § 679.51(c)(3).

(3) *Contents of application.* An application for an observer provider permit shall consist of a narrative that contains 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 other employees. 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) *Contact information*—(A) *Owner(s) information.* The permanent mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(B) *Business information.* Current physical location, business mailing address, business telephone and fax numbers, and business email address for each office.

(C) *Authorized agent.* For an observer provider with ownership based outside the United States, identify an authorized agent and provide contact information for that agent including mailing address and phone and fax numbers where the agent can be contacted for official correspondence. An authorized agent means a person appointed and maintained within the United States

who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of an observer provider. Any diplomatic official accepting such an appointment as designated agent waives diplomatic or other immunity in connection with the process.

(iii) A statement signed under penalty of perjury from each owner, or owners, board members, and officers if a corporation, that they have no conflict of interest as described in paragraph (c) 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 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 an observer provider as set out under paragraph (b) of this section, and the arrangements to be used.

(4) *Application evaluation.* (i) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS employees, to review and evaluate an application submitted under paragraph (a) of this section. The review board will evaluate the completeness of the application, the application's consistency with needs and objectives of the observer program, or other relevant factors. If the applicant is a corporation, the review board also will evaluate the following criteria for each owner, or owners, board members, and officers:

(A) Absence of conflict of interest as defined under paragraph (c) of this section;

(B) Absence of criminal convictions related to:

(1) Embezzlement, theft, forgery, bribery, falsification or destruction of

records, making false statements or receiving stolen property, or

(2) The commission of any other crimes of dishonesty, as defined by Alaska State law or Federal law, that would seriously and directly affect the fitness of an applicant in providing observer services under this section;

(C) Satisfactory performance ratings on any Federal contracts held by the applicant; and

(D) Absence of any history of decertification as either an observer or observer provider;

(ii) [Reserved]

(5) *Agency determination on an application.* NMFS will send a written determination to the applicant. If an application is approved, NMFS will issue an observer provider permit to the applicant. If an application is denied, the reason for denial will be explained in the written determination.

(6) *Transferability.* An observer provider permit is not transferable. An observer provider that experiences a change in ownership that involves a new person must submit a new permit application and cannot continue to operate until a new permit is issued under this paragraph (a).

(7) *Expiration of observer provider permit.* (i) An observer provider permit will expire after a period of 12 continuous months during which no observers are deployed by the provider under this section to the North Pacific groundfish or halibut industry.

(ii) The Regional Administrator will provide a written initial administrative determination (IAD) of permit expiration to an observer provider if NMFS' deployment records indicate that the observer provider has not deployed an observer during a period of 12 continuous months. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. An observer provider that appeals an IAD will be issued an extension of the expiration date of the permit until after the final resolution of the appeal.

(8) *Sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(b) *Responsibilities of observer providers.* An observer provider that supplies observers for operations

requiring full observer coverage per § 679.51(a)(2) and (b)(2) must:

(1) *Provide qualified candidates to serve as observers.* (i) To be a qualified candidate an individual must have:

(A) A Bachelor's degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-prepared pamphlets and other information describing observer duties.

(iii) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior to the observer's deployment and that includes the following conditions for continued employment:

(A) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office at least every 7 days, unless otherwise specified by the Observer Program;

(B) That the observer completes in-person mid-deployment data reviews, unless:

(1) The observer is specifically exempted by the Observer Program, or

(2) The observer does not at any time during his or her deployment travel through a location where an Observer Program employee is available for an in-person data review and the observer completes a phone or fax mid-deployment data review as described in the observer manual; and

(C) The observer informs the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required in paragraph (b)(11)(iii) of this section that would prevent him or her from performing his or her assigned duties;

(2) *Ensure an observer completes duties in a timely manner.* An observer provider must ensure that an observer employed by that observer provider performs the following in a complete and timely manner:

(i) When an observer is scheduled for a final deployment debriefing under paragraph (b)(11)(v) of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(ii) Complete NMFS electronic vessel and/or processor surveys before performing other jobs or duties that are not part of NMFS groundfish observer requirements;

(iii) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and

(iv) Return all sampling and safety gear to the Observer Program Office.

(3) *Observer conduct.* (i) An observer provider must develop, maintain, and implement a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(ii) An observer provider shall provide a copy of its conduct and behavior policy:

(A) To observers, observer candidates; and

(B) By February 1 of each year to the Observer Program Office.

(4) *Assign observer to vessels and processors.* An observer provider must assign to vessels or shoreside or floating processors only observers:

(i) With valid North Pacific groundfish and halibut observer certifications and endorsements to provide observer services;

(ii) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (b)(11)(iii) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Who have successfully completed all NMFS required training and briefing before deployment.

(5) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested by vessels and processors to fulfill vessel and processor requirements

for observer coverage under § 679.51(a) and (b). An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

(6) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees, salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(7) *Provide observer deployment logistics.* (i) An observer provider must provide to each observer it employs:

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel and shoreside or stationary floating processor assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

(B) Lodging, per diem, and any other necessary services necessary to observers assigned to fishing vessels or shoreside processing or stationary floating processing facilities.

(ii) Except as provided in paragraph (b)(7)(iii) of this section, an observer provider must provide to each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor, or shoreside assignments while still under contract with an observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(iii) An observer under contract may be housed on a vessel to which the observer is assigned:

(A) Prior to the vessel's initial departure from port;

(B) For a period not to exceed 24 hours following completion of an offload for which the observer has duties and is scheduled to disembark; or

(C) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel



operator or at least one crew member is aboard.

(v) Each observer deployed to a shoreside processing facility must be provided with individually assigned communication equipment in working order, such as a cell phone or pager, for notification of upcoming deliveries or other necessary communication. Each observer assigned to a shoreside processing facility located more than 1 mile from the observer's local accommodations shall be provided with motorized transportation that will ensure the observer's arrival at the processing facility in a timely manner such that the observer can complete his or her assigned duties.

(8) *Limit observer deployment.* Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(i) Deploy an observer on the same vessel or at the same shoreside or stationary floating processor for more than 90 days in a 12-month period;

(ii) Deploy an observer for more than 90 days in a single deployment;

(iii) Include in a single deployment of an observer, assignments to more than four vessels, including groundfish and all other vessels, and/or shoreside processors; or

(iv) Move an observer from a vessel or stationary floating processor or shoreside processor before that observer has completed his or her sampling or data transmission duties.

(9) *Verify vessel USCG Safety Decal.* An observer provider must verify that a vessel has a valid USCG Safety Decal as required under § 679.51(e)(1)(ii)(B)(1) before the vessel with an observer aboard may depart. One of the following acceptable means of verification must be used to verify the decal validity:

(i) An employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(ii) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(10) *Provide 24 hours a day communications with observers.* An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving an observer or problems concerning observer logistics, whenever an observer is at sea, stationed at a shoreside processor or stationary floating processor, in transit, or in port awaiting vessel or processor (re)assignment.

(11) *Provide information to the Observer Program Office.* An observer provider must provide all the following information to the Observer Program Office by electronic transmission (email), fax, or other method specified by NMFS within the specified timeframes.

(i) *Registration materials.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer certification training or briefing session. Registration materials consist of the following:

(A) Observer training registration, including:

(1) Date of requested training;

(2) A list of observer candidates. The list must include each candidate's full name (*i.e.*, first, middle, and last names), date of birth, and gender;

(3) A copy of each candidate's academic transcripts and resume; and

(4) A statement signed by the candidate under penalty of perjury that discloses any criminal convictions of the candidate.

(B) Observer briefing registration, including:

(1) Date and type of requested briefing session and briefing location; and

(2) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(ii) *Statement of projected observer assignments.* Prior to the observer or observer candidate's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes the observer's name; vessel, shoreside processor, or stationary floating processor assignment, gear type, and vessel/processor code; port of embarkation; target species; and area of fishing.

(iii) *Physician's statement.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on the physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize their individual safety or the safety of others while the observer or observer candidate is deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician read the NMFS-prepared pamphlet provided to the candidate by the observer provider as specified in paragraph (b)(1)(ii) of

this section and was made aware of the duties of the observer as well as the dangerous, remote, and rigorous nature of the work. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(iv) *Observer deployment/logistics report.* A deployment/logistics report must be submitted by Wednesday, 4:30 p.m., Pacific local time, of each week with regard to each observer deployed by the observer provider during that week. The deployment/logistics report must include the observer's name, cruise number, current vessel, shoreside processor, or stationary floating processor assignment and vessel/processor code, embarkation date, and estimated or actual disembarkation dates. The report must include the location of any observer employed by the observer provider who is not assigned to a vessel, shoreside processor, or stationary floating processor.

(v) *Observer debriefing registration.* The observer provider must contact the Observer Program Office within 5 business days after the completion of an observer's deployment to schedule a date, time, and location for debriefing. Observer debriefing registration information must be provided at the time the debriefing is scheduled and must include the observer's name, cruise number, vessel, or shoreside or stationary floating processor assignment name(s) and code(s), and requested debriefing date.

(vi) *Certificates of insurance.* Copies of "certificates of insurance" that name the NMFS Observer Program leader as the "certificate holder" shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled and verify the following coverage provisions:

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

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

(C) States Worker's Compensation, as required; and

(D) Commercial General Liability.

(vii) *Observer provider contracts.*

Observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under § 679.51(a)(2) and (b)(2), by February 1 of each year. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. Said copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request for the contract at the address or fax number listed in § 679.51(c)(3). Signed and valid contracts include the contracts an observer provider has with:

(A) Vessels required to have observer coverage as specified at § 679.51(a)(2);

(B) Shoreside processors or stationary floating processors required to have observer coverage as specified at § 679.51(b)(2); and

(C) Observers.

(viii) *Observer provider invoices.* A certified observer provider must submit to the Observer Program Office a copy of all invoices for observer coverage required or provided pursuant to § 679.51(a)(2) and § 679.51(b)(2).

(A) A copy of the invoices must be received by the Observer Program Office within 45 days of the date on the invoice and must include all reconciled and final charges.

(B) Invoices must contain the following information:

(1) Name of each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant to which the invoice applies;

(2) Dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant. Dates billed that are not observer coverage days must be identified on the invoice;

(3) Rate charged in dollars per day (daily rate) for observer services;

(4) Total charge for observer services (number of days multiplied by daily rate);

(5) Amount charged for air transportation; and

(6) Amount charged by the provider for any other observer expenses, including but not limited to: Ground transportation, excess baggage, and lodging. Charges for these expenses must be separated and identified.

(ix) *Change in observer provider management and contact information.* Except for changes in ownership addressed under paragraph (a)(6) of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs (a)(3)(i) through (iv) of this section. Within 30 days of the effective date of such change, the information must be submitted by fax or mail to the Observer Program Office at the address listed in § 679.51(c)(3). Any information submitted under paragraphs (a)(3)(iii) or (a)(3)(iv) of this section will be subject to NMFS review and determinations under paragraphs (a)(4) through (7) of this section.

(x) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email:

(A) Within 24 hours after the observer provider becomes aware of the following information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 679.7(g) or § 600.725(o), (t), and (u) of this chapter;

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7), or processor safety;

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described in § 679.53(b)(1) through (b)(2), or;

(B) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct and behavior policy described at paragraph (b)(3)(i) of this section; these reports shall include the underlying facts and circumstances of the violation.

(12) *Replace lost or damaged gear.* An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(13) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(c) *Limitations on conflict of interest.* Observer providers:

(1) Are authorized to provide observer services under an FMP or the Halibut Act for the waters off Alaska as required in § 679.51(a)(2) or (b)(2), or scientific data collector and observer services to support NMFS-approved scientific research activities, exempted educational activities, or exempted or experimental fishing as defined in § 600.10 of this chapter.

(2) Must not have a direct financial interest, other than the provision of observer or scientific data collector services, in a North Pacific fishery managed under an FMP or the Halibut Act for the waters off Alaska, including, but not limited to:

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor or stationary floating processor facility involved in the catching or processing of fish,

(ii) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska, or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a fishery managed pursuant to an FMP or the Halibut Act in the waters off Alaska.

(3) Must assign observers without regard to any preference by representatives of vessels, shoreside processors, or stationary floating processors other than when an observer will be deployed.

(4) 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 fish processing 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 the observer provider.

■ 14. A new § 679.53 is added to subpart E to read as follows:

**§ 679.53 Observer certification and responsibilities.**

(a) *Observer certification*—(1) *Applicability.* Observer certification authorizes an individual to fulfill duties for operations requiring full observer coverage per § 679.51(a)(2) and (b)(2) as specified in writing by the NMFS Observer Program Office while under the employ of an observer provider permitted under § 679.52(a) and according to certification endorsements as designated under paragraph (a)(5) of this section.

(2) *Observer certification official.* The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program on whether to issue or deny observer certification.

(3) *Certification requirements.* NMFS may certify an individual who, in addition to any other relevant considerations:

(i) Is employed by a permitted observer provider company at the time of the issuance of the certification;

(ii) Has provided, through their observer provider:

(A) Information identified by NMFS at § 679.52(b)(11)(i)(A)(3) and (4) and in writing from the Observer Program; and

(B) Information identified by NMFS at § 679.52(b)(11)(iii) regarding the observer candidate's health and physical fitness for the job;

(iii) Meet all education and health standards as specified in § 679.52(b)(1)(i) and § 679.52(b)(11)(iii), respectively;

(iv) Has successfully completed a NMFS-approved training as prescribed by the Observer Program.

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(B) If a candidate fails training, he or she will be orally notified of the unsatisfactory status of his or her training on or before the last day of training. Within 10 business days of the oral notification, the Observer Program will notify the observer candidate in writing. The written notification will specify why the candidate failed the training and whether the candidate may retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of a written determination denying certification, as specified under paragraph (a)(4)(i) of this section.

(v) Have not been decertified under paragraph (c) of this section.

(4) *Agency determinations on observer certification*—(i) *Denial of certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(ii) *Issuance of an observer certification.* An observer certification will be issued upon determination by the NMFS observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (a)(3) of this section.

(5) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy as indicated.

(i) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain this endorsement. A certification training endorsement is required for any deployment as an observer in the Bering Sea and Aleutian Islands groundfish fisheries and the Gulf of Alaska groundfish fisheries or Halibut Act fisheries and will be granted with the initial issuance of an observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program for a period of time specified by the Observer Program after his or her most recent debriefing. In order to renew the endorsement, the observer must successfully retake the certification training. Observers will be notified of any changes to the endorsement expiration period prior to the effective date of the change.

(ii) *Annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her initial deployment within any calendar year subsequent to a calendar year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment

endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) *Level 2 endorsements.* A certified observer may obtain a level 2 endorsement to their certification. A level 2 endorsement is required for purposes of performing observer duties aboard vessels or stationary floating processors or at shoreside processors participating in fisheries as prescribed in § 679.51(a)(2)(vi)(A) through (E). A level 2 endorsement to an observer's certification may be obtained if the observer meets the following requirements:

(A) Previously served as an observer in the groundfish or halibut fisheries off Alaska and has completed at least 60 days of observer data collection;

(B) Received an evaluation by NMFS for his or her most recent deployment that indicated the observer's performance met Observer Program expectations standards for that deployment; and

(C) Complies with all the other requirements of this section.

(v) An observer who has obtained a level 2 endorsement to his or her observer certification as specified in paragraph (a)(5)(iv) of this section may additionally receive a "lead" level 2 observer endorsement if the observer meets the following requirements:

(A) A "lead" level 2 observer on a catcher/processor using trawl gear or a mothership must have completed two observer cruises (contracts) and sampled at least 100 hauls on a catcher/processor using trawl gear or on a mothership.

(B) A "lead" level 2 observer on a catcher vessel using trawl gear must have completed two observer cruises (contracts) and sampled at least 50 hauls on a catcher vessel using trawl gear.

(C) A "lead" level 2 observer on a vessel using nontrawl gear must have completed two observer cruises (contracts) of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear.

(b) *Standards of observer conduct*—(1) *Limitations on conflict of interest.* (i) An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2):

(A) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery, including, but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside processor, or stationary floating processor facility involved in the catching or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery, or

(3) Any business involved with purchasing raw or processed products from any vessel, shoreside processor, or stationary floating processor participating in a North Pacific fishery.

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

(C) May not serve as an observer on any vessel or at any shoreside or stationary floating processing facility owned or operated by a person who previously employed the observer.

(D) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor in a North Pacific fishery while employed by an observer provider.

(ii) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(2) *Standards of behavior.* An observer fulfilling duties for operations in the full observer coverage category per § 679.51(a)(2) or (b)(2) must:

(i) Perform assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office;

(ii) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment; and

(iii) Not disclose collected data and observations made aboard the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(c) *Suspension and decertification—*

(1) *Suspension and decertification review official.* The Regional Administrator will establish an observer suspension and decertification review official(s), who will have the authority to review observer certifications issued under paragraph (a) of this section and issue initial administrative

determinations of observer certification suspension and/or decertification.

(2) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

(A) Failed to satisfactorily perform the duties of an observer as specified in writing by the Observer Program; or

(B) Failed to abide by the standards of conduct for an observer as prescribed under paragraph (b) of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for:

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the Observer Program;

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

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

(3) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (c)(2) of this section, the suspension/decertification official will issue a written initial administrative determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS under § 679.43(e).

The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification can be made effective upon issuance of the IAD in cases of willfulness or in cases in which public health, interest, or safety require such action. In such cases, the suspension/decertification official will state in the IAD that suspension or decertification is effective at time of issuance and the reason for the action.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to § 679.43.

■ 15. A new § 679.54 is added to subpart E to read as follows:

**§ 679.54 Release of observer data to the public.**

(a) *Summary of weekly data.* The following information collected by observers for each catcher/processor and catcher vessel during any weekly

reporting period may be made available to the public:

(1) Vessel name and Federal permit number.

(2) Number of Chinook salmon and "other salmon" observed.

(3) The ratio of total round weight of incidentally caught halibut or Pacific herring to the total round weight of groundfish in sampled catch.

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

(5) The number of observed trawl hauls or fixed gear sets.

(6) The number of trawl hauls that were basket sampled.

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

(b) *Haul-specific data.* (1) The information listed in paragraphs (b)(1)(i) through (xiii) of this section and collected by observers from observed hauls on board vessels using trawl gear to participate in a directed fishery for groundfish other than rockfish, Greenland turbot, or Atka mackerel may be made available to the public:

(i) Date.

(ii) Time of day gear is deployed.

(iii) Latitude and longitude at beginning of haul.

(iv) Bottom depth.

(v) Fishing depth of trawl.

(vi) The ratio of the number of Chinook salmon to the total round weight of groundfish.

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

(viii) The ratio of total round weight of incidentally caught halibut to the total round weight of groundfish.

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

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

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

(xii) Sea surface temperature (where available).

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

(2) The identity of the vessels from which the data in paragraph (b)(1) of this section are collected will not be released.

(c) *Competitive harm.* In exceptional circumstances, the owners and operators of vessels may provide to the Regional Administrator written justification at the time observer data are submitted, or within a reasonable time thereafter, that disclosure of the information listed in paragraphs (a) and

(b) of this section could reasonably be expected to cause substantial competitive harm. The determination whether to disclose the information will be made pursuant to 15 CFR 4.7.

■ 16. A new § 679.55 is added to subpart E to read as follows:

**§ 679.55 Observer fees.**

(a) *Responsibility.* The owner of a shoreside processor or a stationary floating processor named on a Federal Processing Permit (FPP) or a person named on a Registered Buyer permit at the time of the landing subject to the observer fee as specified at paragraph (c) of this section must comply with the requirements of this section. Subsequent non-renewal of an FPP or a Registered

Buyer permit does not affect the permit holder's liability for noncompliance with this section.

(b) *Observer fee liability determination.* After each fishing year, the Regional Administrator will mail an observer fee liability invoice to each permit holder specified in paragraph (a) of this section for landings of groundfish and halibut subject to the observer fee. The observer fee liability invoice will provide a summary of the round pounds of groundfish and headed-and-gutted weight for halibut landed during the previous fishing year for each permit by species, landing port or port-group, and gear category. The total fee liability for each permit holder will be determined

by applying the observer fee percentage in paragraph (f) of this section to the ex-vessel value of the groundfish and halibut landings subject to the observer fee. The method for determining the ex-vessel value of the groundfish and halibut landings subject to the observer fee is provided in paragraph (e) of this section. The fee liability will be assessed on the groundfish round weight and the headed-and-gutted weight for halibut.

(c) *Landings subject to the observer fee.* The observer fee is assessed on landings by vessels not in the full observer coverage category described at § 679.51(a)(2) according to the following table:

If fish in the landing is from the following fishery or species:	Is fish from the landing subject to the observer fee?	
	If the vessel is not designated on an FFP or required to be designated on an FFP:	If the vessel is designated on an FFP or required to be designated on an FFP:
(1) Groundfish listed in Table 2a to this part that is harvested in the EEZ and subtracted from a total allowable catch limit specified under § 679.20(a).	Not applicable, an FFP is required to harvest these groundfish in the EEZ.	Yes.
(2) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, including in a parallel groundfish fishery, and subtracted from a total allowable catch limit specified under § 679.20(a).	No .....	Yes.
(3) Sablefish IFQ, regardless of where harvested .....	Yes .....	Yes.
(4) Halibut IFQ or halibut CDQ, regardless of where harvested .....	Yes .....	Yes.
(5) Groundfish listed in Table 2a to this part that is harvested in Alaska State waters, but is not subtracted from a total allowable catch limit under § 679.20(a).	No .....	No.
(6) Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ halibut, regardless of where harvested.	No .....	No.

(d) *Standard ex-vessel prices*—(1) *General.* NMFS will publish the standard ex-vessel prices used to determine the observer fee in the upcoming year in the **Federal Register** during the last quarter of each calendar year. The standard ex-vessel prices will be described in U.S. dollars per equivalent round pound for groundfish and per equivalent headed-and-gutted weight for halibut.

(2) *Effective duration.* The standard ex-vessel prices will remain in effect until revised by subsequent publication in the **Federal Register**.

(3) *Standard ex-vessel price determination and use*—(i) *Groundfish standard ex-vessel prices.* Except as described in paragraph (d)(3)(ii) of this section, NMFS will calculate groundfish standard ex-vessel prices based on standardized ex-vessel nominal prices calculated using information submitted in the Commercial Operator's Annual Report described at § 679.5(p) and the shoreside processor or stationary floating processor landing report described at § 679.5(e)(5), as well as

methods established by the State of Alaska's Commercial Fisheries Entry Commission.

(A) Groundfish standard ex-vessel prices will be calculated as a 3-year rolling average of standard prices for each species, port or port-group, and gear.

(B) Gear categories for groundfish standard ex-vessel prices are: Pelagic trawl gear, non-pelagic trawl gear, and non-trawl gear.

(ii) *Halibut and fixed gear sablefish standard ex-vessel prices.* NMFS will use data submitted to NMFS on the IFQ Registered Buyer report under § 679.5(l)(7) to calculate the standard ex-vessel prices for each year for halibut and fixed gear sablefish, by port or port group. These standard ex-vessel prices will be applied to landings of:

(A) Halibut;

(B) IFQ sablefish; and

(C) Sablefish accruing against the fixed-gear sablefish CDQ allocation.

(iii) *Confidentiality.* Standard ex-vessel prices will be aggregated among ports if fewer than four processors

participate in a price category for any species and gear combination.

(e) *Determining the ex-vessel value of groundfish and halibut.* The ex-vessel value of groundfish and halibut subject to the observer fee will be determined by applying the standard ex-vessel price published in the **Federal Register** in the year prior to the year in which the landing was made to the round weight of groundfish and the headed-and-gutted weight of halibut landings subject to the observer fee.

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent.

(g) *Fee collection.* A permit holder specified in paragraph (a) of this section, receiving a groundfish or halibut landing subject to the observer fee under paragraph (c) of this section, is responsible for collecting fees during the calendar year in which the groundfish or halibut is received.

(h) *Payment*—(1) *Payment due date.* A permit holder specified in paragraph (a) of this section must submit his or her observer fee liability payment(s) to NMFS no later than February 15 of the

year following the calendar year in which the groundfish or halibut landings subject to the observer fee were made.

(2) *Payment recipient.* Make electronic payment payable to NMFS.

(3) *Payment address.* Payments must be made electronically through the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>. Instructions for electronic payment will be provided on the payment Web site and on the observer fee liability invoice to be mailed to each permit holder.

(4) *Payment method.* Payment must be made electronically in U.S. dollars by automated clearinghouse, credit card, or electronic check drawn on a U.S. bank account.

(5) *Underpayment of fee liability.* (i) Under § 679.4, an applicant will not receive a new or amended FPP or Registered Buyer permit until he or she submits a complete permit application. For the application to be considered complete, all fees required by NMFS must be paid.

(ii) If a permit holder fails to submit full payment for the observer fee liability by the date described in

paragraph (h)(1) of this section, the Regional Administrator may:

(A) At any time thereafter send an initial administrative determination to the liable permit holder stating that the permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the permit holder pursuant to paragraph (b) of this section, is the amount of observer fee due from the permit holder.

(B) Disapprove any issuance of an FPP or Registered Buyer permit to the applicant in accordance with § 679.4.

(iii) If payment is not received by the 30th day after the final agency action, the agency may pursue collection of the unpaid fees.

(i) *Overpayment of fee.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the observer fee liability determined to be due by the final agency action will be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

(j) *Appeals.* A permit holder who receives an IAD may either pay the fee

liability or appeal the IAD pursuant to § 679.43. In any appeal of an IAD made under this section, a permit holder specified in paragraph (a) of this section has the burden of proving his or her claim.

■ 17. In § 679.100, revise paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2)(i)(A) to read as follows:

**§ 679.100 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(1).

(ii) The vessel is in compliance with observer workload requirements described at § 679.51(a)(2)(iii).

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) The vessel is in compliance with observer coverage requirements described at § 679.51(a)(2)(vi)(E)(2).

\* \* \* \* \*

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