May 18, 2001

Dear West Coast Fishing Community:

An observer program to improve management of groundfish has been discussed in the west coast fisheries community for many years. A primary goal of this program is to improve the estimates of total catch, mainly through the collection of information on discarded catch which will complement current shoreside information on landed catch. Over the past year, NMFS has been working closely with the Pacific States Marine Fisheries Commission (PSFMC) and state fishery agencies to complete the design for this program. In 2001, the NMFS budget was increased to support about 20 at-sea observers and limited program infrastructure. The federal observer regulations to establish this mandatory program went into effect on May 24 and the program will begin this summer. The selection process is beginning, and vessels that are selected to carry observers in the first two-month period will be notified soon.

We want to make the fishing community’s participation in the observer program as smooth and productive as possible. In order to do so, we will be providing you information on the program via mailings, public meetings, and our web site. In this mailing we are enclosing: Additional Information about the Observer Program; the Federal Observer Regulations; the Federal Safety Regulations; and Dates and Locations of Public Workshops.

The enclosed schedule for the public workshops that we will be holding at several ports in Washington, Oregon and California in early June will be of special interest to you. This will be your opportunity to meet members of the observer “team” and ask any questions that you may have about the program. If you are unable to attend the meetings or for updates on the program - visit the link to the West Coast observer program at the NWFSC web site at www.nwfsc.noaa.gov. You also can contact the observer program at (206) 860-3381 (in the near future a 1-800 number will be provided) or send questions to us at our observer email address: nwfsc.observerprogram@noaa.gov. We look forward to hearing from you.

Sincerely,

[Signature]

Elizabeth Clarke, Ph.D.
Director,
Fishery Resource Analysis and Monitoring Division
Additional Information About the Observer Program

Background
Discarded catch occurs for a variety of reasons including size, unmarketable species, prohibited species, and fishery management regulations. For 20 years, the fishery has had regulatory catch limits to slow the pace of landed catch and obtain year-round fishing, processing, and marketing opportunities. A result of these trip limits is discarded catch. Accurate information on landed catch and catch that is discarded at sea is necessary to assure accuracy in quota management, stock assessments, and allocations among fishing groups. This observer program is designed to obtain this needed information on the total catch in the west coast groundfish fishery.

What are observers?
Fisheries observers are trained professionals who monitor and record catch data from commercial fishing vessels and processing facilities. The observers may collect data on species composition of the catch, weights and disposition of fish caught, seabird sightings, and marine mammal interactions. Observers also collect biological data such as fish lengths, weights, and aging structures.

Observer Program Structure
The West Coast groundfish program will have a core NMFS and PSMFC staff in Seattle to manage the program, train the observers, and process the data. In each state, there will be a NMFS field coordinator for the observers and a state liaison to coordinate with their port samplers regarding shoreside fishery data collection. The observer contractor will provide insurance coverage for the observers that is separate from the vessel’s own liability insurance coverage. The program will be able to deploy approximately 20 observers stationed along the coast from California through Washington. In addition to deploying observers on vessels, the program will explore alternative means, such as enhanced logbooks and video systems, to collect information.

Who will be selected for observer coverage?
The coverage plan for the first year of operation is to allocate about 75% of the observer time to cover the coastwide trawl fishery. With the prior information collected during the voluntary programs on this fishery, we are best prepared to successfully design the coverage for the trawl fishery. Vessels will be selected from the pool of limited entry trawl vessels so that coverage will be balanced along the coast, will cycle through all the trawl vessels approximately every two years, and will prevent vessels from being drawn in consecutive periods. Selected vessels will have observer coverage for all their trips during a two-month period. Data collection will focus on at-sea discards and we will integrate these new data with existing logbook and fish ticket data on retained catch. The remaining 25% observer time will be used in a pilot mode to collect data on the 2001 fixed gear sablefish fishery and other pilot programs.

What to expect and what should you do to prepare
We are beginning to select the first representative sample of limited entry participants for the first two-month period of coverage. Selected vessels will be notified via mail in early June. The notification will give a time period during which a vessel will be required to notify NMFS 24
hours in advance of fishing so that an observer may accompany the trip. Vessels that inform NMFS that they did not plan to fish groundfish would be placed in a holding pattern and will be asked to notify NMFS when they next plan to fish groundfish so they can be assigned an observer during that period. Once selected to carry an observer, a vessel must obtain Coast Guard safety inspection through a dockside examination. Many vessels routinely request dockside inspections. If you have a dockside examination safety decal that will still be in good standing for the entire time the observer may be on board your vessel, then an additional inspection is not necessary.

Once you have been notified that your vessel has been selected to carry an observer, the field coordinator will contact the vessel to discuss logistics. Whenever possible, the observer and field coordinator will visit the vessel, meet with captain or crew and familiarize themselves with how to sample on board. The captain must call and inform the observer program 24 hours in advance of departure. The vessel will be responsible for providing accommodations and food for the observer equal to that of the crew.

How do I get a CG safety inspection and decal?
A Commercial Fishing Vessel Safety Exam can be obtained through any Fishing Vessel Safety Coordinator located throughout the Washington, Oregon and California area. Due to the volume of requests that will be received in connection with each fishery season, advanced planning is necessary to ensure you can get your vessel examined and in compliance before you are scheduled to carry the observer. Call the Fishing Vessel Safety Coordinators at least 3 weeks in advance to schedule your examination. You can then arrange a mutually convenient time to have your vessel examined for issuance of a dockside examination decal. The Fishing Vessel Safety Coordinator will discuss the scope of the examination with you in greater detail. Contact information for each Fishing Vessel Safety Coordinator is provided below:

<table>
<thead>
<tr>
<th>Office</th>
<th>Coordinator</th>
<th>Phone Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>MSO Puget Sound</td>
<td>Dan Hardin</td>
<td>(206) 217-6208</td>
</tr>
<tr>
<td>MSO Portland</td>
<td>Ken Lawrenson</td>
<td>(503) 240-7337</td>
</tr>
<tr>
<td>MSO San Francisco</td>
<td>Rob Lee</td>
<td>(510) 437-5788</td>
</tr>
<tr>
<td>MSO Los Angeles</td>
<td>Fran McClain</td>
<td>(310) 732-2062</td>
</tr>
<tr>
<td>MSO San Diego</td>
<td>Mark Walker</td>
<td>(619) 683-6497</td>
</tr>
</tbody>
</table>

Contact Information
The observer program can be contacted at this time at the Fishery Resource Analysis Division of the NMFS Northwest Fisheries Science Center (206) 860-3381. In the near future a 1-800 number will be provided. Our website is www.nwfish.noaa.gov with links to the West Coast observer program and the program’s email address is NWFSC.observerprogram@noaa.gov.
9. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by removing Channel 252A and adding Channel 252C3 at Laconia.

10. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 241A and adding Channel 241C3 at Norwood.

11. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 288C2 and adding Channel 288C3 at Coalgate and by removing Channel 292A and adding Channel 292C3 at Durant.

12. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 281C1 and adding Channel 281C3 at Sisters.

13. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 255C and adding Channel 255C1 at Munford.

14. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 228C3 and adding Channel 228A at Greenville, by removing Channel 268C2 and adding Channel 268C1 at Snyder, and by removing Channel 223A and adding Channel 223C3 at Wake Village.

15. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 265C2 and adding Channel 265C3 at Berlin.

16. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 244A and adding Channel 244C3 at Laramie and by removing Channel 300A and adding Channel 290C at Midwest.

Federal Communications Commission.

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

[FR Doc. 01–10159 Filed 4–23–01; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
50 CFR Part 660
[Docket No. 000301054–1054; I.D. 0530000]
RIN 0648–AN27
Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Observer Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for an at-sea observation program on all limited entry and open access catcher vessels. This final rule requires vessels in the groundfish fishery to carry observers when notified by NMFS or its designated agent; establishes notification requirements for vessels that may be required to carry observers; and establishes responsibilities and defines prohibited actions for vessels that are required to carry observers. The at-sea observation program is intended to improve estimates of total catch and fishing mortality.


ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/FRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland OR 97201, or by contacting Don Mcbaac at 503–326–6352, or may be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. C15700, Seattle, WA 98115–0070. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, 206–526–6140; fax: 206–526–6736 and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, 562–980–4000; fax: 562–980–4047 and e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This Federal Register document is also accessible via the Internet at the Office of the Federal Register's website at http://www.access.gpo.gov/su_docs/aces/aces140.html.

Background

The U.S. groundfish fisheries off the Washington, Oregon, and California coasts are managed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801-1883) and the Pacific Coast Groundfish FMP. Regulations implementing the FMP appear at 50 CFR Part 660, Subpart G. The Magnuson-Stevens Act at 16 U.S.C. 1853(b)(4) provides that an FMP may require that one or more observers be carried on-board a vessel of the United States engaged in fishing for species that are subject to the FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. The Pacific Coast Groundfish FMP provides that all fishing vessels operating in the groundfish fishery may be required to accommodate on-board observers for purposes of collecting scientific data. Under the Magnuson-Stevens Act at 16 U.S.C. 1855(d), the Secretary of Commerce, acting through NMFS, has general responsibility to carry out any fishery management plan, and may promulgate such regulations as may be necessary to carry out this responsibility.

With the exception of the mid-water trawl fishery for Pacific whiting, most groundfish vessels sort their catch at sea and discard species that are in excess of cumulative trip limits, unmarketable, in excess of annual allocations, or incidentally caught non-groundfish species. Landed or retained catch is monitored by individual state fish ticket programs in Washington, Oregon, and California. However, because a portion of the catch is discarded at sea, there is no opportunity for NMFS or the states to monitor total catch (retained plus discarded catch) at onshore processing facilities. This lack of information on at-sea discards has resulted in imprecise estimates of total catch and fishing mortality.

Discard information is needed to assess and account for total fishing mortality and to evaluate management measures, including rebuilding plans for overfished stocks. Discard estimates based on limited studies conducted in

† Station WGTK was modified in MM Docket No. 98–72 by substituting Channel 265C2 for Channel 265A. The license was further modified by granting request to reallocate Channel 265C2 from Middlebury, Vermont, to Berlin, Vermont, as the new community of license. See 65 FR 3150, January 20, 2000.
the mid-1980's, and information on species compositions in landings, are available for some groundfish species. For other species, there is little or no discard information. During the past decade, there have been significant reductions in cumulative trip limits, and trip limits have been applied to increasing numbers of species. In light of these changes in the regulatory regime, doubt has been raised by the Council, NMFS, and the industry about the old discard estimates, which were based on data collected in the 1980's. Accurate estimates of discards are essential to computing total catch, and thus are an important component of any fishery conservation and management program. If the discard estimates are too high, harvest allocations may be set too low; if discard estimates are too low, then harvest allocations may be set too high, and the long-term health of the stock may be jeopardized.

Observers are a uniformly trained group of qualified technicians. They are stationed aboard vessels to gather conservation and management data that are too burdensome for vessel personnel to collect, and which would otherwise not be available for managing the fisheries or assessing interactions with non-groundfish species. The purposes of this final rulemaking are to establish the obligations of vessels that will be required to carry observers; to safeguard the observers' well-being; and to provide for sampling conditions necessary for an observer to follow scientific sampling protocols and thereby maintain the integrity of observer data collections. Nationwide regulations addressing vessels with conditions that are unsafe or inadequate for purposes of carrying an observer are found at 50 CFR 600.746. Nationwide regulations applicable to observers are also found under "General Prohibitions" at 50 CFR 600.725 (o), (r), (s), (t), and (u).

A proposed rule was published on September 14, 2000 (65 FR 55495). Further background information was presented in the preamble of the proposed rule. Public comment on the proposed rule was invited through October 16, 2000. NMFS received three letters containing comments. Two of the three letters, one from the United States Coast Guard and one from the United States Fish and Wildlife Service, expressed support for the proposed observer program. The third letter expressed support, but also expressed concern about funding mechanisms. At its June 2000 Council meeting, the Council reviewed the observer program and encouraged the public to comment on the proposed rulemaking. One individual provided comment during public hearing at the June Council meeting. The comments are summarized below followed by NMFS' responses to those comments.

Changes to the Final Rule From the Proposed Rule

The final rule includes the following changes from the proposed rule:

1. Section 660.360 (a) was revised for clarity.

2. In Section 660.360 (c)(2) language was added to clarify that vessels using exempted gear types could be required to carry an observer under this rulemaking.

3. Section 660.360 (c)(2)(f) was revised for clarity.

4. Section 660.360 (c)(2)(f)(A), addressing departure reports, is revised from the proposed rule to include language that is intended to provide greater flexibility to vessels that are in port less than 24 hours from the time offloading of catch from one fishing trip begins until the time the vessel departs on the following fishing trip. Because such vessels expect to be on the fishing grounds at the time that they are required to submit the next departure report, the owner, operator, or manager of a vessel is given the option of providing notification to NMFS or its designated agent before departing on the trip prior to that which the observer coverage may be needed and again at the time offloading of the catch from the previous fishing trip begins.

5. Section 660.360 (c)(2)(f)(B), addressing departure reports, is revised from the proposed rule to include language that is intended to provide greater flexibility to vessels that intend to depart on a fishing trip less than 24 hours after weather or sea conditions allow for departure. This change was made in response to comment 3 (below).

The West Coast groundfish fleet is composed of many small vessels, whose fishing schedules are heavily influenced by weather and sea conditions. To avoid departure delays, the owner, operator, or manager of a vessel who intends to depart on a fishing trip less than 24 hours after weather or sea conditions become favorable, may choose to inform NMFS or its agent of his/her intentions at least 24 hours before the expected departure time. After the initial notification, only an update 4 hours before the expected departure time would be required.

Comments and Responses

Comment 1: The rulemaking is too narrow; it focuses only on observers as a means for collecting the necessary data at sea.

Response: Other approaches for obtaining total catch data include full retention and data sampling by vessel personnel. NMFS believes that data collected under these approaches would not meet the defined management need without adequate verification, such as video systems for monitoring full retention or observer data to compare to vessel-collected data. Video surveillance systems connected to global positioning systems are useful in tracking activity by area fished, but do not provide the necessary total catch data. New digital camera technology has improved the ability to provide species-specific catch information in particular situations (e.g., fixed gear fisheries with a small variety of species). The technology is still early in development and is generally considered to be supplemental to an observer program.

Comment 2: Some boats may not have the ability to carry an observer. Page 19 of the EA notes that if it is determined that a vessel is simply too small to accommodate an observer alternative methods of sampling may need to be considered. Under these rules, some sectors of the fishery are opted right out of any observer program or any meaningful observation without alternatives such as cameras, or somebody in a Zodiac, or full retention, or something like that. Moving forward with an observer program does not preclude further development of other approaches for obtaining the necessary total catch data.

Response: Vessel safety and accommodations are individual vessel issues and are not ones that can be easily addressed. NMFS recognizes that it is likely that some, particularly the smallest groundfish vessels, may not be safe or adequate for carrying observers. Page 19 of the EA notes that it is determined that a vessel cannot safely accommodate an observer, alternative methods of sampling may need to be considered. This final rulemaking does not preclude further development of alternative sampling methods for vessels that are determined to be unsuitable for observers.

Comment 3: If you are one of those that is required to have an observer and you do not know 24 hours in advance when you are going, because you are looking for the weather to break, that means a lot of times in the winter that you won't go fishing because you cannot get an observer.

Response: A departure report is necessary for NMFS or its designated agent to identify which vessels need to carry observers and to coordinate the placement of observers aboard vessels. It is necessary for vessel owners, operators
or representatives to submit these reports because only they can make statements about their future intent. NMFS recognizes that vessels need to wait for favorable weather and sea conditions before departing on fishing trips. Language has been added to the rule in section 660.360(c)(2)(ii)(B) to obtain the necessary information to ensure that an observer is available while allowing for possible delays in vessel schedules as a result of poor weather or sea condition. The initial contact between NMFS and the individual representing the vessel is still necessary to identify that the vessel intends to depart for fishing, when the weather or sea conditions are favorable. As conditions improve, the individual representing the vessel need only provide 4 hours notice before the anticipated departure.

Comment 4: In various places in the EA, it suggests that the program is contingent on Federal funding. If a program is contingent on Federal funding, it would violate the Magnuson Stevens Fishery Conservation and Management Act.

Response: NMFS disagrees with this comment. Nowhere in the rulemaking documents or in the EA does it state that an observer program is contingent on Federal funding. This final rulemaking establishes the framework necessary to support an at-sea observer program. It includes regulations that require vessels to carry observers when notified, provide notification of fishing schedules, provide food and accommodations, and a suitable location for observers to safely collect sample data according to scientific sampling protocols. The analysis examined the impacts resulting from a federal program because no additional rulemaking would be required before a program could be implemented if it were federally funded. Therefore, Federal funding was analyzed to facilitate the implementation of an observer program should Federal funding become available. This final rulemaking does not preclude NMFS or the Council from exploring alternative funding options or from providing fishermen with greater compensation for all or a portion of the costs of carrying an observer. Such measures would build upon this final rulemaking and would require additional rulemaking and analysis before implementation.

Classification

NMFS prepared an EA for this final rule and concluded that there will be no significant impact on the human environment as a result of this final rule. This final rulemaking will have no direct biological or physical impacts on the environment. It is NMFS's intention, to provide for observer training and the direct costs of deploying observers including salaries, payroll taxes, employment insurance, medical insurance, pension, and travel costs. The observers' employer will provide protection and indemnity insurance to cover bodily injury or property damage claims that may result from actions of the observer. Vessels will be responsible for providing information regarding their fishing schedule, and food and accommodations, for the observers. Some of the smallest groundfish vessels may find that crew members are displaced because limited bunk space must be allocated to the observer. Vessels will also need to provide adequate sampling facilities and unobstructed access to catch. This may result in increased handling time if sorting of the catch needs to be slowed or centralized to allow an observer to collect samples. Space requirements for analyzing and storing samples may reduce the available work and storage space for vessel activities. It is likely that the smallest groundfish vessels would be most affected by space requirements for analyzing and storing samples. However, without minimal sample space, data quality cannot be assured. The safety, health, and well-being of observers while stationed aboard fishing vessels is of the utmost importance. When this final rule is implemented, observer health and safety provisions at 50 CFR 600.725 and 600.746 will apply. A copy of the EA is available from NMFS (see ADDRESSES). NMFS prepared a FRFA describing the impact of the action on small entities. For the purposes of the analysis, all categories were considered small entities.

This final rulemaking creates the regulatory framework needed to support an on-board observer program and is not predicated on a particular funding mechanism. Federal funding is available for 2001 and NMFS intends to provide for observer training and the direct costs of deploying observers including: salaries, payroll taxes, employment insurance, medical insurance, and travel costs. Observers would be employed directly by NMFS or through a contractor approved by NMFS. The observer's employer will provide protection and indemnity insurance to cover property damage claims that may result from actions of the observer. The individual vessel will be responsible for observer subsistence costs. Costs to the vessel that are analyzed in conjunction with this final rule are costs other than those that would be paid by NMFS. If NMFS chooses to use other funding mechanisms in the future, including shifting costs to the vessels, additional rulemaking would be required.

The costs to industry to deploy observers will vary depending on the coverage strategy that is selected. Three approaches that could be taken in developing a coverage plan include: random selection of trips from a large pool of vessels; complete sampling of all trips taken by a small number of vessels over a specific period; or sampling a portion of trips by an intermediate number of vessels over a specific period. The FRFA states that the impacts of the rule on individual vessels would depend on the nature and size of the program and the coverage approach that is chosen - all vessels in the groundfish fleet or a small portion of the vessels.

Of the 2,116 vessels in the open access and limited entry (LE) fisheries, the number of vessels that could be required to carry an observer annually ranges from 60 (if each observer samples one LE vessel over an entire cumulative trip limit period) to 967 (if observers sample vessel trips at random, no vessel is sampled more than once, and each vessel requires two observers to have all days sampled), depending on the coverage strategy that is employed. The FRFA indicates that the costs to the individual vessel are expected to range between $157 and $3334, depending on the coverage strategy and the number of days fished per year. An upper value of $11,044 per vessel is an extreme that would only occur if a vessel fished every day of the year and carried an observer at all times. It is most likely that the open access and limited entry groundfish fleets would be divided into applying sectors based on criteria such as geographic fishing period, geographical location, or fishing strategy. Each sector may be required to have a different level of observer coverage. Sectors with the greatest annual catch of groundfish or those that most frequently interact with priority species, for which there is a serious need for information, could be required to have a substantially higher proportion of observer coverage than the other sectors. The analysis assumes that only vessels that carry an observer would bear the burden. Among the 2,116 vessels in the open access and limited entry groundfish fisheries that could be selected to bear the cost to carry an observer, there are substantial differences in terms of the annual ex-vessel value of the catch, and therefore in the burden imposed.

There were two alternatives considered in this final rulemaking:
Status quo, and adoption of regulations to support an observer program. Under the status quo alternative, a program could be designed where vessels carry observers on a voluntary basis. However, this would be a voluntary program with no way to ensure that a specific coverage plan could be followed or the integrity of the data collections maintained. Discard information needed to assess and account for total fishing mortality and to evaluate management measures is considered by NMFS to be deficient under a status quo alternative. Adopting regulations for an at-sea observer program on all limited entry and open access catcher vessels establishes the framework for a mandatory observer program, i.e., obligations of vessels that will be required to carry observers; safeguarding the observers’ well-being; and providing for sampling conditions necessary for an observer to follow scientific protocols and thereby maintain the integrity of observer data collections.

The Magnuson-Stevens Act at 16 U.S.C. 1853a(10)(b)(8) provides that an FMP may require that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery. On March 3, 1999, NMFS determined that the bycatch provisions in Amendment 11 failed to respond meaningfully to the bycatch requirements at Section 303(a)(11) of the Magnuson-Stevens Act, which state that an FMP must "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." Establishing an observer program to collect total catch data would bring the Pacific coast groundfish FMP closer to the Magnuson-Stevens Act bycatch requirements for a standardized reporting methodology on bycatch. A copy of this analysis is available from NMFS (see ADDRESSES).

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA). This collection of information requirement has been approved by OMB under control number 0648-0423. Public reporting burden for these collections of information is estimated to average 5 minutes for making a toll-free call to provide either notification of departure or a fishing trip or notification of intent to cease participating in the fishery. This estimate 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 these burden estimates or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to OMB, Washington, DC 20503 (ATTN: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall a 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.

NMFS issued Biological Opinions (BOS) under the Endangered Species Act on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Ozette Lake), steelhead (upper, middle, and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, southern California), and cutthroat trout (Umpqua River, southwest Washington/Columbia River). NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This final rule implements a data collection program and is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these BOSs, additional consultations on these species are not required for this action.

This action implements a data collection program and is not expected to result in any adverse effects on marine mammals.

This final rule has been determined to be significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.


John Oliver,
Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 660 to read as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In §660.302, the definitions for "Active sampling unit," and "Vessel manager" are added in alphabetical order to read as follows:

§660.302 Definitions.

Active sampling unit means a portion of the groundfish fleet in which an observer coverage plan is being applied.

* * * * *

Vessel manager means a person or group of persons whom the vessel owner has given authority to oversee all or a portion of groundfish fishing activities aboard the vessel.
3. In § 660.306, paragraph (y) is added to read as follows:

§ 660.306 Prohibitions.

(y) Groundfish observer program. (1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including either mechanically or physically sorting or discarding catch before sampling.

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

(4) Harass an observer by conduct that:

(i) Has sexual connotations,

(ii) Has the purpose or effect of interfering with the observer’s work performance, and/or

(iii) Otherwise creates a intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under § 660.360(c).

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

(7) Fail to provide departure or cease fishing reports specified at § 660.360(c)(2).

(8) Fail to meet the vessel responsibilities specified at § 660.360(d).

4. Section 660.360 is added to subpart C to read as follows:

§ 660.360 Groundfish observer program.

(a) General. Vessel owners, operators, and managers are jointly and severally responsible for their vessel’s compliance with this section.

(b) Purpose. The purpose of the Groundfish Observer Program is to allow observers to collect fisheries data deemed by the Northwest Regional Administrator, NMFS, to be necessary and appropriate for management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources and their habitat.

(c) Observer coverage requirements—

(1) At-sea processors. [Reserved]

(2) Catcher vessels. For the purposes of this section, catcher vessels include all vessels, using open access or limited entry gear (including exempted gear types) that take and retain, possess or land groundfish at a processor(s) as defined at § 660.302. When NMFS notifies the vessel owner, operator, permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not take and retain, possess, or land any groundfish without carrying an observer.

(i) Notice of departure—Basic rule. At least 24 hours (but no more than 36 hours) before departing on a fishing trip, a vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel’s intended time of departure. Notice will be given in a form to be specified by NMFS.

(A) Optional notice—Weather delays. A vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (c)(2)(i) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(B) Optional notice—Back-to-back fishing trips. A vessel that intends to make back-to-back fishing trips (i.e., trips with less than 24 hours between unloading from one trip and beginning another), may provide the basic notice described in paragraph (c)(2)(ii) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(ii) Cease fishing report. Not more than 24 hours after ceasing the taking and retaining of groundfish with limited entry or open access gear in order to leave the fishery management area or to fish for species not managed under the Pacific Coast Groundfish Fishery Management Plan, the owner, operator, or vessel manager of each vessel that is required to carry an observer or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit must provide NMFS or its designated agent with notification as specified by NMFS.

(3) Vessels engaged in recreational fishing. [Reserved]

(4) Waiver. The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel’s control.

(d) Vessel responsibilities. An operator of a vessel required to carry one or more observer(s) must provide:

(1) Accommodations and food. Provide accommodations and food that are:

(i) At-sea processors. [Reserved]

(ii) Catcher vessels. Equivalent to those provided to the crew.

(2) Safe conditions. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(3) Observer communications. Facilitate observer communications by:

(i) Observer use of equipment. Allowing observer(s) to use the vessel’s communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the United States or designated agent.

(ii) Communication equipment requirements for at-sea processing vessels. [Reserved]

(4) Vessel position. Allow observer(s) access to, and the use of, the vessel’s navigation equipment and personnel, on request, to determine the vessel’s position.

(5) Access. Allow observer(s) 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.

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

(7) Records. Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(8) Assistance. Provide all other reasonable assistance to enable
observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.
(ii) Providing the observer(s) with a safe work area.
(iii) Collecting bycatch when requested by the observer(s).
(iv) Collecting and carrying baskets of fish when requested by the observer(s).
(v) Allowing the observer(s) to collect biological data and samples.
(vi) Providing adequate space for storage of biological samples.

(9) At-sea transfers to or from processing vessels. [Reserved]

(e) Procurement of observers services by at-sea processing vessels. [Reserved]
(f) Certification of observers in the at-sea processing vessels. [Reserved]
(g) Certification of observer contractors for at-sea processing vessels. [Reserved]

(h) Suspension and decertification process for observers and observer contractors in the at-sea processing vessels. [Reserved]

(i) Release of observer data in the at-sea processing vessels. [Reserved]

(j) Sample station and operational requirements—(1) Observer sampling station. This paragraph contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this section so that the observer can carry out required duties.

(ii) Accessibility. The observer sampling station must be available to the observer at all times.

(iii) Location. The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) Minimum work space aboard at-sea processing vessels. [Reserved]

(iv) Table aboard at-sea processing vessels. [Reserved]

(v) Scale hanger aboard at-sea processing vessels. [Reserved]

(vi) Diverter board aboard at-sea processing vessels. [Reserved]

(vii) Other requirements for at-sea processing vessels. [Reserved]

(2) Requirements for bins used to make volumetric estimates on at-sea processing vessels. [Reserved]

(3) Operational requirements for at-sea processing vessels. [Reserved]

[FR Doc. 01-10150 Filed 4-23-01; 8:45 am]
ACTIONS: Correction to final rule preamble.

SUMMARY: This document contains a correction to the preamble of the final rule on two-way end-of-train telemetry devices (two-way EOTs) and certain passenger train operations, which was published on Friday, May 1, 1998 (63 FR 21430). The final rule specifically addressed and clarified the applicability of the existing two-way EOT requirements to certain passenger train operations where multiple units of freight-type equipment, material handling cars, or express cars are part of a passenger train’s consist.

FOR FURTHER INFORMATION CONTACT: James Wilson, Motive Power and Equipment Division, Office of Safety, RRS-14, FRA, 400 Seventh Street, SW, Stop 25, Washington, DC 20590 (telephone 202–632–3367); or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–12, FRA, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590 (telephone 202–632–3178).

SUPPLEMENTARY INFORMATION:

Background

The “Regulatory Impact” portion of the preamble to the final rule addressing Executive Order 12866 and DOT regulatory policies and procedures stated that because the requirements contained in the final rule clarify the applicability of the two-way EOT regulations to a specific segment of the industry and generally reduce the regulatory burden on these operators, FRA concluded that the final rule did not constitute a significant rule under either Executive Order 12866 or DOT’s policies and procedures. However, FRA inadvertently omitted a statement that the impact of the rule would be so minimal that any further analysis was not warranted.

Need for Correction

As published, the “Regulatory Impact” portion of the preamble failed to inform the public of FRA’s determination that the impact of the rule would be so minimal that any further analysis was not warranted. Thus, that portion of the preamble is in need of clarification.

Correction

Accordingly, the publication on May 1, 1998, of the final rule on two-way EOTs and certain passenger train operations, which was contained in FR Doc. 98–11408, is corrected as follows:

On page 24134 in the first column, at the end of the paragraph headed “Executive Order 12866 and DOT Regulatory Policies and Procedures,” the following sentence is added:

Furthermore, as the final rule is intended to clarify the applicability of the two-way EOT regulations and affects a very limited number of passenger train operations, FRA has determined that the impact of the rule would be so minimal that any further analysis was not warranted.

Issued in Washington, D.C., on May 12, 1998.

S. Mark Lindsey,
Chief Counsel, Federal Railroad Administration.

[FR Doc. 98–13127 Filed 5–15–98; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 970829214–8090–02; I.D. 082907B]

RIN 0648–AJ76

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Observer Health and Safety

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

ACTION: Final rule.

SUMMARY: NMFS amends the regulations that pertain to fishery observers and the vessels that carry them. This regulatory amendment implements measures to ensure the adequacy and safety of fishing vessels that carry observers. Owners and operators of fishing vessels that carry observers are required to comply with guidelines, regulations, and conditions in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer and allowing normal observer functions.


ADDRESSES: Copies of the Regulatory Impact Review prepared for this action may be obtained from NMFS, SF3, 1315 East-West Highway, Silver Spring, MD 20910, Attn: William J. Bellows.

FOR FURTHER INFORMATION CONTACT: William J. Bellows, 301–713–2341.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended (16 U.S.C. 1801 et seq.), the Marine Mammal Protection Act, as amended (MMPA; 16 U.S.C. 1361 et seq.), and the Atlantic Tunas Convention Act, as amended (ATCA; 16 U.S.C. 971 et seq.) authorize the Secretary of Commerce (Secretary) to station observers aboard commercial fishing vessels to collect scientific data required for fishery and protected species conservation and management, to monitor incidental mortality and serious injury to marine mammals, and to other species listed under the Endangered Species Act (ESA), and to monitor compliance with existing Federal regulations. In addition, pursuant to the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.) observers may be required in the South Pacific Tuna Fishery.

The Magnuson-Stevens Act directs that—

the Secretary shall promulgate regulations, after notice and opportunity for public comment, for fishing vessels that carry observers. The regulations shall include guidelines for determining:

1. When a vessel is not required to carry an observer on board because the facilities of such vessel for the quartering of an observer, or for carrying out observer functions, are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; and

2. Actions which vessel owners or operators may reasonably be required to take to render such facilities adequate and safe.

A proposed rule to implement the required measures was published in the Federal Register on September 22, 1997 (62 FR 49463), and invited public comment through October 22, 1997. Several comments were received late in the comment period requesting that the comment period be extended. NMFS extended the comment period 30 days (62 FR 55774, October 28, 1997).

Eleven letters of comment were received concerning the proposed rule. Of these 11, eight expressed opposition to the rule or to specific provisions in the rule, and one letter was signed by eight individuals who represented different industry organizations. Two letters expressed strong support for the rule, one of which was from an observer organization with approximately 150 members. One letter expressed neither opposition nor support but listed many problems that observers face on the job.

Comment 1: The publication of the rule was inadequately advertised/announced. It was not on any of the following notice mediums: NMFS bulletin boards, NMFS press release, NMFS homepage, or Alaska Region homepage. The commenter requested an extension of the 30-day comment period.
Response: The proposed rule was published in the Federal Register on September 22, 1997 (62 FR 49463). The comment period was extended for 30 days and was announced by publication in the Federal Register on October 28, 1997 (62 FR 55774). In addition to the October 28 publication of the extension of the comment period, both the proposed rule and the extension of the comment period were posted on the NMFS homepage and on the Alaska Region homepage during the extended comment period.

Comment 2: The 30-day extension of the comment period is grossly inadequate.

Response: NMFS disagrees. By extending the public comment period by an additional 30 days, NMFS doubled the length of the original comment period. NMFS believes that a 60-day public comment period is adequate.

Comment 3: Observers are not qualified to make a judgement regarding vessel safety.

Response: It is true that observers do not receive the same vessel safety examination training that U.S. Coast Guard (USCG) personnel do. However, NMFS observers are provided training that addresses vessel safety. For example, in the North Pacific observer training, observers are taught to look for obvious areas of non-compliance that may jeopardize their safety. In addition to viewing several safety videos, the observers are shown a set of "safety tour" slides in which they are asked to look for items on a safety check list. Section 600.746(c)(3) has been added to the rule; this section encourages the observer to check major safety items (as identified by the USCG) and to briefly check the vessel's major spaces for especially hazardous conditions. The intent of this rule is not to empower an observer as a USCG enforcement officer. Its purpose is to encourage an observer to check the major safety items identified in § 600.746(c)(3). If these items are absent or unserviceable, the rule empowers the observer not to sail with the vessel until those deficiencies are corrected. The observer's pre-trip safety check will be made in accordance with published USCG guidance on some of the most important items that would be required in the event of an at-sea emergency.

Comment 4: The rule's evaluation that there will be no significant impact on a substantial number of small entities is wrong. If an observer refuses to board a vessel that is safe in accordance with USCG standards, the vessel could be delayed in departing long enough to miss an important part of a short season, resulting in significant lost opportunity to fish. The observer's refusal could be the result of poor judgement, lack of expertise or training, or vindictiveness.

Response: NMFS has added language to the rule in § 600.746(c)(3) that is intended to minimize, if not eliminate, the possibility of an observer making a decision, for whatever reason, regarding a safe vessel that would delay its beginning legal fishing at the optimum time. The above-mentioned section was added to the regulations in order to give the observer detailed guidance regarding the pre-trip safety check. In addition, this document makes it clear that the observer's safety check is to confirm that the USCG safety decal is current and to spot-check other safety items by conducting a brief walk through the vessel's major spaces to check for obviously hazardous conditions. NMFS believes that the training observers now receive is adequate to enable an observer to conduct the pre-trip safety check as discussed in the response to comment 3.

Comment 5: There are no provisions for redress and appeal in the event that a vessel is unnecessarily detained or impacted.

Response: There are no specific procedures for redress or appeal in these regulations. It would be redundant to include those legal procedures here because they are available to anyone who considers that he or she has experienced wrongful negative impact of any regulations. As is suggested in the response to comment 17, when a vessel operator disputes the observer's decision and is unable to reach a resolution, the vessel operator should call the USCG for a reexamination of the issue in dispute.

Comment 6: If the regulations were approved in the absence of USCG regulations, they would be inadequate.

Response: They are not being approved in the absence of USCG regulations. The intent of this rule is to build upon the USCG and other safety regulations. The regulations intend to insure the safety of observers at sea without duplicating USCG regulations, which are designed to insure the safety of all persons on board fishing vessels.

Comment 7: All vessels carrying observers are required to have a current safety decal; consequently, there is no basis for an observer refusing to board a vessel.

Response: If the decal is valid (current) and if no safety equipment has been lost, damaged, or is otherwise unserviceable, there should be no safety-related reasons for an observer to refuse boarding. If, on the other hand, the decal is current, but safety equipment is missing or unserviceable, the observer is authorized not to board the vessel.

Comment 8: The style of referring to other sections of the CFR is difficult to read and understand. Furthermore, some of the sections cited have not been written.

Response: This rule cites other sections of the CFR rather than duplicating those sections in order to make the regulations published in the Federal Register as concise as possible. NMFS wants the regulations to refer to the most recent versions of the regulations cited. If other agencies' regulations were repeated in NMFS' regulations, it would be nearly impossible for NMFS to keep the regulations current. By citing the other agencies' regulations, the reference is always to the most recently amended regulation. All cited sections have been written and published before they are incorporated into the CFR except for citations to the rule being enacted through this action. The regulatory text for this rule follows after this preamble. Some changes may have been too recent to appear in the CFR dated October 1996, which was the last-published CFR at the time that the proposed rule was published.

Comment 9: USCG no longer performs no-cost inspections of processor vessels.

Response: The commenter is correct. Processing vessels examined by private organizations comprise the only category of fishing vessels that pay to have inspections done. These for-fee inspections are in lieu of USCG dockside examinations but do not preclude at-sea examinations by USCG. The inspections of processing vessels are required whether observer safety rules are in effect or not.

Comment 10: This rulemaking is premature; "neither the industry nor NMFS is ready at this time to begin discussions on such rules. Before that discussion can begin, NMFS first needs to develop appropriate rules regarding onboard observers in all the other fisheries in which they have been deemed necessary."

Response: This rule is required by the Magnuson-Stevens Act.

Comment 11: It is unrealistically generous to require that accommodations be equivalent to those of the vessel's officers. Observers do not warrant treatment as officers.

Response: This rule requires nothing specific regarding accommodations for observers. It merely refers to regulations already in place.

Comment 12: Under the regulations that would be put in place by this rule, if all vessels were required to carry
observers, all vessels would have to undergo safety inspections. This would mean the end of uninspected fishing vessels.

Response: Under the assumptions made by the commenter, it is true that if all vessels were required to carry observers, all of them would have to be examined. At the present time, however, not all vessels are required to carry observers. NMFS wants fishing vessels carrying observers to fish safely, and undergoing USCG safety examinations promotes safety.

Comment 13: What is the authority under which regional requirements governing observer accommodations might be developed? It is possible that these regional requirements could have unintended effects. For example, if the regional requirement deals with an issue that is judged subjectively, such as the adequacy of accommodations or food, the observer in applying that subjective judgement could keep a safe vessel from fishing.

Response: The authorities under which regional requirements are developed are the Magnuson-Stevens Act, the Marine Mammal Protection Act, and the ESA. The addition of §600.746(c)(3) to the rule should eliminate the problem of subjective judgement in conducting the vessel’s pre-trip safety check. It is not the intent of this rule to develop regional requirements.

Comment 14: If a vessel has a valid USCG safety decal, there should be no question concerning the vessel’s safety. To have an observer, who has the authority to refuse to board the vessel because of a safety deficiency, is double jeopardy.

Response: If a vessel has passed a USCG dock-side safety examination, the regulations indicate that such vessel would be considered safe with respect to the USCG regulations. However, it is possible that some requirements with which the vessel was in compliance at the time of the USCG safety examination may not be met at the time of boarding by an observer for a specific trip. NMFS has added language at §600.746(c)(3) to encourage the observer to examine some of the most important items that would be required in the case of an emergency at sea. This approach is consistent with that applied by USCG in recognizing that changes in vessel safety may occur between the time when a USCG safety decal is issued and the beginning of subsequent fishing. NMFS notes that this rule gives an observer authority not to board an unsafe or inadequate vessel. If such a vessel is operating in a fishery with mandatory observer coverage, the result of the observer’s refusing to board might be that the vessel would not be authorized to conduct fishing.

Comment 15: This rule cites other regulations already in place, which suggests that regulations to effect safety are already in place. That being the case, this rule will not change anything.

Response: This rule applies safety standards to all fisheries, including those for which no other observer regulations are in place. In fisheries with mandatory observer programs in place now, and for those in which mandatory programs may be established, this rule makes it a violation to fish without an observer aboard. This rule also requires vessels to submit to an otherwise voluntary inspection program to provide evidence of compliance with safety standards.

Comment 16: This rule is an attempt to exceed the authority conveyed by the Magnuson-Stevens Act in that it goes beyond USCG regulations by authorizing an observer to refuse to board an unsafe vessel, thereby keeping the vessel from fishing legally. It goes beyond what is necessary to provide a safe environment for an observer, and it gives an observer authority that Congress gave to USCG.

Response: NMFS believes that the rule does not go beyond what is required to provide a safe environment for observers and for other persons aboard fishing vessels. The intent of the rule is not to empower an observer with USCG enforcement officer status; its intent is to provide a safe vessel for an assigned observer. The NMFS rule does not encroach on USCG authority to terminate a voyage. Rather, it conditions a vessel’s ability to fish safely by requiring compliance with existing regulations enforced by the USCG. The authority to regulate fishing activities properly rests with NMFS.

Comment 17: If NMFS wants to require more than vessel- provided personal flotation devices (PFDs) and safety briefings, it should specifically identify the requirements that relate to observer safety rather than to such other safety concerns as the environment. NMFS should also consider which safety requirements warrant giving observers “the extraordinary authority to prevent a vessel from undertaking a fishing trip.”

Response: NMFS is not giving greater significance to some USCG regulations than to others. NMFS is encouraging observers to check for compliance with existing regulations. A safety decal is considered to be evidence of compliance, but if there is obvious non-compliance, the observer has the option of not boarding the vessel. If the vessel operator disputes the observer’s decision, which should be based upon published USCG guidance on some of the most important items that would be required in the event of an at-sea emergency, and no resolution is reached, the vessel operator should call the USCG to request reexamination of the issue in dispute. The addition of §600.746(c)(3) clarifies which items the observer should check at the time of boarding. The observer’s pre-trip safety check will be made in accordance with published Coast Guard Guidance on some of the most important items that would be required in the event of an at-sea emergency. NMFS recognizes that, in some circumstances, an observer may raise a safety question that requires a vessel to wait for a USCG boarding before fishing. It is true that this could result in a loss of fishing days. In structuring the rule this way, NMFS had to weigh the impacts of this approach versus the impacts of alternative approaches. Just as there is a potential for a vindictive observer declining to board and thereby delaying a vessel’s departure, other approaches would have raised the possibility of an observer being coerced into boarding a vessel that he or she believes is unsafe. Given the safety risks at issue and the probability that most safety violations will be easily remedied, e.g., replacing PFDs, NMFS determined that placing the presumptions in the selected manner was preferable.

Whenever possible, vessel owners/operators are encouraged to arrange for the observer to make the pre-trip safety check in advance of the beginning of the planned fishing trip. In that way, there would be time to correct problems without delaying the trip’s departure time.

Comment 18: There are alternatives that would accomplish NMFS’ objectives that were not considered by NMFS. One alternative is to provide an automatic waiver for those situations in which an observer refused to board a vessel for safety reasons. The waiver would be valid until the vessel had undergone a USCG inspection either at sea or in port. Alternative two would be to require that the safety determination be made by a NMFS enforcement agent who had completed the USCG training program for vessel safety inspections. Alternative three would be to determine which classes of vessels have consistently failed to provide safe working conditions for observers. Only those classes of vessels would be required to comply with the rule. Vessels with proven safety records would be exempt from the provisions of this rule.
Response: Alternative one would void the intent of the rule. It would not make the vessel safe for the observer on the fishing trip that the observer was assigned to observe. Furthermore, it could provide an opportunity for vessel operators to avoid taking observers by incurring safety violations, such as no PFD for the observer. By authorizing an observer to refuse to board an unsafe vessel and by making it illegal to fish without an observer in a mandatory observer fishery, there is a strong incentive for the vessel to meet all USCG safety regulations. Alternative two was considered and rejected. It is equally possible that a NMFS enforcement agent, like an observer, would discover a safety violation that would delay a vessel’s fishing trip. This option would also create the risk of an observer having to board a vessel that he or she believes is unsafe. In addition, from a practical standpoint, the current work load for NMFS enforcement agents makes it impossible for them to undertake this responsibility and continue to perform other enforcement functions/duties. Alternative three is not feasible because vessel safety is an individual vessel issue not one that can be addressed by classes of vessels.

Comment 19: The rule does not analyze measures taken by regions.

Response: It is not the intent of this rule to analyze measures taken by regions. That analysis is done at the time those measures are developed and proposed in the rulemaking process.

Comment 20: One commenter believes that, should an observer refuse to board a vessel because of safety deficiencies, there could be legal implications beyond the simple issue of the USCG safety requirement and the vessel’s fishing. After an observer has determined a vessel to be unsafe, a crew member injures himself [sic] in the factory. Considering the Jones Act, the lawyers would have a field day.

Response: NMFS believes this comment refers to the possible use of an observer’s safety determinations as evidence in a lawsuit. As stated in the responses to comments 3 and 16, this rule is not intended to give observers the authority to make actual determinations as to a vessel’s compliance with USCG regulations. Rather, it simply requires that a vessel, if its safety has been called into question, rectify the shortcoming or submit to a new USCG safety examination or inspection. If anything, this rule is likely to reduce the number of negligence claims because vessels with questionable safety issues will correct them or be reexamined by USCG before fishing.

Comment 21: The USCG should be consulted.

Response: The USCG was involved at every stage of development of this rule.

Comment 22: One commenter raised specific issues about an observer who was terminated and who subsequently filed suit.

Response: Because the case is before the court, it would be inappropriate for NMFS to respond at this time.

Changes From the Proposed Rule

Four changes were made from the proposed rule. One was made in response to comments: A provision was added at § 600.746(c)(3) to provide guidance on the scope of the observer’s pre-trip safety check.

Another change was made to clarify that USCG performs either an inspection or an examination: The words “examination or inspection” replaced “inspection” in §§ 600.725(p), 600.746(c)(1), and § 608.746(f)(1) so that it is clear that either an examination or an inspection can be performed.

The word “Examination” was inserted in § 600.746(c)(1) in order to more clearly identify the Commercial Fishing Vessel Safety Examination decal.

The word “examine” replaced “inspect” in § 600.746(c)(2) in order to avoid confusion with USCG inspection.

The observer’s pre-trip safety check of a vessel that displays a current Commercial Fishing Vessel Safety Examination decal will normally consist of no more than a spot check of the equipment identified in § 600.746(c)(3), i.e., PFDs/immersion suits, ring buoys, distress signals, fire extinguishing equipment, emergency position indicating radio beacon, when required; survival craft, when required; and a walk through major spaces. This walk-through is not intended to broaden the scope of the safety check. The safety check should be done expeditiously because the decal indicates that the vessel has already undergone an extensive dockside inspection.

Classification

At the proposed rule stage, NMFS certified to the Assistant General Counsel for Legislation and Regulation, Department of Commerce and to the Chief Counsel for Advocacy, Small Business Administration that this action would not result in a significant economic impact on a substantial number of small entities. Comments received on the proposed rule suggested that small entities might experience a significant economic impact as a result of the rule. Based on this new information, NMFS decided to prepare a Final Regulatory Flexibility Analysis (FRFA). The FRFA concludes that the rule’s authorization for an observer to refuse to board a vessel that the observer believes to be unsafe and the rule’s requirement that a vessel required to carry an observer cannot legally fish without the observer make it possible that implementation of this rule could delay a vessel’s departure for a fishing trip. Because of variations in the structures of different fisheries’ mandatory observer programs and in the structures of the different fishery management regimes, the fact that an observer refused to board would not necessarily mean that the vessel would lose fishing time as might be the case in those fisheries where vessels are allowed a limited number of days fishing per year. It is not possible to estimate accurately how many, if any, vessels would lose days at sea as a result of this rule. Therefore, there is at least a theoretical possibility that 20 percent of the affected small entities could experience a significant economic impact.

In addition to the preferred alternative, which is the alternative that is implemented by this rule, NMFS considered several other alternatives. One of them would have been to take no action. Under this approach, vessels that carry observers would be required to comply with the same safety standards that would be applicable under the preferred alternative, but there would be no guidance to interested parties as to how to conduct a pre-trip safety check or nor would there be any means by which an observer could quickly ascertain whether the vessel was in compliance with applicable USCG regulations. If the agency were to adopt the no-action alternative, the Congressional mandate in the Magnuson-Stevens Act would not be affected. In addition, there would be continued risk of unsafe conditions on board vessels to which observers were assigned.

Another alternative would have prescribed new national standards for a wide range of safety and accommodations issues. Basic standards for determining a vessel’s safety and adequacy would be based on USCG safety requirements and NMFS regional observer requirements as is the case in the first alternative. In addition to those basic USCG standards, this alternative would result in new regulations addressing a wide range of accommodation issues, such as quality of food, which, if not met, would authorize an observer not to board a fishing vessel. The observer would be authorized to make the pre-trip safety check to determine whether or not he/
she would board the vessel. In mandatory observer programs, a fishing vessel would not be permitted to fish legally without an observer. This alternative is not the preferred alternative because of the degree to which an observer would be authorized to make subjective, qualitative determinations. Furthermore, because of the variability of working conditions on fishing vessels, some vessels could not reasonably or economically meet the expectations of all observers. Therefore, the risk of this alternative resulting in delays of fishing trips is greater than that of the preferred alternative.

The last alternative that NMFS considered would have prescribed basic standards for determining safety and adequacy as described in the preferred alternative, but either the National Marine Fisheries Service or an authorized observer contractor would have been authorized to make the pre-trip safety check to determine whether or not the observer would board the vessel. In mandatory observer programs, a fishing vessel would not be permitted to fish legally without an observer. This alternative would have used the same evaluation criteria (USCG dockside safety examination, pre-trip safety check, presence of a current Commercial Fishing Vessel Safety Decal, etc.) as the preferred alternative but would give NMFS and/or an authorized observer contractor the authority to decide whether a vessel is safe and adequate. The rationale for this approach is that it would avoid putting the observer into a situation where vessel owner, operator, and crew might exert pressure to coerce the observer to declare the vessel safe despite conditions that the observer believed to be unsafe. It would also avoid the potential for a "vindictive" observer to abuse discretion in making safety checks. The benefit of having NMFS or an authorized observer contractor make the safety and adequacy decision is that it would avoid putting the additional pressure on an observer of potentially having to tell a captain and crew with whom he/she would be spending time at sea that a fishing trip would be delayed. However, this alternative would also have the potential to delay a fishing voyage pending safety resolution. It is just as possible that a NMFS employee or observer contractor would discover safety issues in need of attention as an observer would. In addition, under this alternative, an observer who believes a vessel to be unsafe may be instructed to board because NMFS or the observer contractor believes the vessel to be safe. There would also be costs to NMFS and/or the observer contractor in the form of having a representative on site each time an observer boarded a vessel. NMFS and/or the observer contractor would also experience the cost of training employees to make the pre-trip safety check. This alternative is not preferred because it would put a third party in a position of judging a vessel's safety and perhaps of forcing an observer aboard an unsafe vessel.

In addition to these alternatives, one commenter suggested two additional alternatives: The first would have provided an automatic waiver for those situations in which an observer refused to board a vessel for safety reasons. The waiver would be valid until the vessel had undergone a USCG inspection either at sea or in port. This alternative would have voided the intent of the rule. It would not make the vessel safe for the observer on the fishing trip that the observer was assigned to observe. Furthermore, it could provide an opportunity for vessel operators to avoid taking observers by incurring safety violations, such as no FFD for the observer. The other suggested alternative would be to determine which classes of vessels have consistently failed to provide safe working conditions for observers. Only those classes of vessels would be required to comply with the rule. Vessels with proven safety records would be exempt from the provisions of this rule. This approach is not feasible because vessel safety is an individual vessel issue not one that can be addressed by classes of vessels.

NMFS tried to mitigate the potential impact of the rule by using objective standards for the observer's pre-trip safety check in the form of the published USCG guidance about the most important items that would be required in the event of an at-sea emergency. This particular alternative was chosen because it seemed to be an appropriate balance between the objectives of increasing observer safety and minimizing the risk of negative economic impact on vessels.

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

List of Subjects in 50 CFR Part 600

Administrative practice and procedure. Confidential business information, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: May 12, 1998.

David L. Evans,
Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 600 is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

1. The authority citation for 50 CFR part 600 continues to read as follows:


2. Section 600.725 is amended by redesignating paragraph (p) as paragraph (t), adding paragraphs (p), (q), (r), (s), and (u), and revising newly redesignated paragraph (t) to read as follows:

§ 600.725 General prohibitions.

* * * * * * * * * (p) Fail to submit to a USCG safety examination when required by NMFS pursuant to § 600.746.

(q) Fail to display a Commercial Fishing Vessel Safety Examination decal or a valid certificate of compliance or inspection pursuant to § 600.746.

(r) Fail to provide to an observer, a NMFS employee, or a designated observer provider information that has been requested pursuant to § 600.746, or fail to allow an observer, a NMFS employee, or a designated observer provider to inspect any item described at § 600.746.

(s) Fish without an observer when the vessel is required to carry an observer.

(t) Assault, oppress, impede, intimidate, or interfere with a NMFS-approved observer aboard a vessel.

(u) Prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer from conducting his or her duties aboard a vessel.

3. In subpart H, § 600.746 is added to read as follows:

§ 600.746 Observers.

(a) Applicability. This section applies to any fishing vessel required to carry an observer as part of a mandatory observer program or carrying an observer as part of a voluntary observer program under the Magnuson-Stevens Act, MMPA (16 U.S.C. 1361 et seq.), the ATCA (16 U.S.C. 971 et seq.), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.), or any other U.S. law.

(b) Observer requirement. An observer is not required to board, or stay aboard, a vessel that is unsafe or inadequate as described in paragraph (c) of this section.

(c) Inadequate or unsafe vessels. (1) A vessel is inadequate or unsafe for
purposes of carrying an observer and allowing operation of normal observer functions if it does not comply with the applicable regulations regarding observer accommodations (see 30 CFR parts 229, 285, 300, 600, 622, 648, 660, 678, and 679) or if it has not passed a USCG safety examination or inspection. A vessel that has passed a USCG safety examination or inspection must display one of the following:

(i) A current Commercial Fishing Vessel Safety Examination decal, issued within the last 2 years, that certifies compliance with regulations found in 33 CFR, chapter I and 46 CFR, chapter I;

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

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

(2) Upon request by an observer, a NMFS employee, or a designated observer provider, a vessel owner/operator must provide correct information concerning any item relating to any safety or accommodation requirement prescribed by law or regulation. A vessel owner or operator must also allow an observer, a NMFS employee, or a designated observer provider to visually examine any such item.

(3) Pre-trip safety check. Prior to each observed trip, the observer is encouraged to briefly walk through the vessel’s major spaces to ensure that no obviously hazardous conditions exist. In addition, the observer is encouraged to spot check the following major items for compliance with applicable USCG regulations:

(i) Personal flotation devices/immersion suits;
(ii) Ring buoys;
(iii) Distress signals;
(iv) Fire extinguishing equipment;
(v) Emergency position indicating radio beacon (EPIRB), when required; and
(vi) Survival craft, when required.

(d) Corrective measures. If a vessel is inadequate or unsafe for purposes of carrying an observer and allowing operation of normal observer functions, NMFS may require the vessel owner or operator either to:

(1) Submit to and pass a USCG safety examination or inspection; or

(2) Correct the deficiency that is rendering the vessel inadequate or unsafe (e.g. if the vessel is missing one personal flotation device, the owner or operator could be required to obtain an additional one), before the vessel is boarded by the observer.

(e) Timing. The requirements of this section apply both at the time of the observer’s boarding, at all times the observer is aboard, and at the time the observer is disembarking from the vessel.

(f) Effect of inadequate or unsafe status. A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage.

[FR Doc. 98–13131 Filed 5–15–98; 8:45 am]
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