

**SUPPLEMENTARY INFORMATION:**

Throughout this document, “we”, “us”, and “our” refer to EPA.

**I. General Information****A. What Should I Consider as I Prepare My Comments for EPA?**

1. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify this ANPR by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

**B. Where Can I Get a Copy of This Document and Other Related Information?**

In addition to being available in the docket, an electronic copy of the Advanced Notice of Proposed Rulemaking is available at <http://www.epa.gov/region09/air/navajo/index.html#upcoming>. Following signature by the EPA Regional Administrator, a copy of this extension notice will be posted at the same Web site.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: September 22, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9-23633 Filed 9-29-09; 8:45 am]

**BILLING CODE 6560-50-P**

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

[Docket No. 080228322-8338-01]

**RIN 0648-AW24**

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

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes this rule to amend regulations supporting the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to improve the operational efficiency of the Observer Program, as well as improve the catch, bycatch, and biological data provided by observers for conservation and management of the North Pacific groundfish fisheries, including that provided through scientific research activities. The proposed rule is intended to promote the goals and objectives of the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area and the FMP for Groundfish of the Gulf of Alaska.

**DATES:** Written comments must be received by October 30, 2009

**ADDRESSES:** Send comments to Sue Salvesson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by “RIN 0648-AW24,” by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: 907-586-7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be

posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202-395-7285.

Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this action may be obtained from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

**FOR FURTHER INFORMATION CONTACT:** Brandee Gerke, 907-586-7228.

**SUPPLEMENTARY INFORMATION:****Background**

NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA) under the FMP for Groundfish of the BSAI and the FMP for Groundfish of the GOA, respectively. The North Pacific Fishery Management Council (Council) prepared these FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1851-1891d. 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.

The Observer Program provides the administrative framework for observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Observer Program at § 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

This proposed rule would amend regulations at § 679.2 and § 679.50 applicable to observer providers, observers, and industry required to carry observers. The proposed regulatory amendments are organized under six issues and would: remove regulations that are unnecessary, impractical to apply, or are considered to be unenforceable; revise regulations to explicitly allow observer providers to provide observers for exempted fishing permit-based and scientific research permit-based activities; add regulations to prohibit activities that result in non-representative fishing behavior from counting toward an observer coverage day; require observer providers to report to NMFS information about the cost of providing observers; and establish a deadline when observer providers must submit to NMFS, an exemplary copy of each of type of contract they enter into with observers and the fishing industry to NMFS. The Council selected a preferred alternative for each of these issues at its April 2008 meeting. This action is necessary to improve the operational efficiency of the existing Observer Program, as well as to improve the catch, bycatch, and biological data provided by observers for conservation and management of the North Pacific groundfish fisheries, including those provided through scientific research activities.

#### *Issue 1: Observer Certification and Observer Provider Permitting Process*

Persons seeking to provide observer services or work as an observer under § 679.50 must obtain an observer provider permit or observer certification, respectively, from NMFS. The granting or denial of observer provider permits and observer certifications are discretionary agency actions. This proposed rule expands NMFS' discretion to consider additional needs and objectives of the Observer Program and other relevant factors when considering whether or not to issue a new observer provider permit or observer certification.

Existing regulations at § 679.50 obligate NMFS to grant a provider permit to an applicant who submits a complete application, meets narrowly-defined criteria regarding criminal history and past performance on federal contracts, and has no conflict(s) of interest with the fishing industry. These regulations prevent NMFS from exercising its discretion to not issue permits when other concerns or inconsistencies with the Observer Program's goals and objectives have been identified in a permit application. This proposed rule would expand

NMFS' discretion by broadening the conditions the observer provider permit application review board may consider in deciding whether or not to issue a new permit. Moreover, this proposed rule would remove the application evidentiary period at § 679.50(i)(1)(iv). This would allow NMFS to tailor a time period in which an applicant may provide additional information on a case-by-case basis.

Current regulations at § 679.50(j)(1)(iv) provide an appeal forum to a candidate for observer certification who fails training to the extent that the program certification official determines that the candidate demonstrates "unresolvable deficiencies" and should not be allowed to re-enter a subsequent training class. Most candidates who fail the initial training are permitted to retake it. However, in the rare instance that a candidate's performance is deficient to the extent he or she is unlikely to improve performance, the certification official can issue an Initial Agency Decision (IAD) denying readmission into a training class. The same appeal forum is provided at § 679.50(i)(1)(v) for an observer provider applicant who is denied an observer provider permit. As explained in the RIR/IRFA for this proposed rule, the appeal forum at § 679.50(j)(1)(iv) has only been activated on two occasions and has not resulted in the subsequent certification of an observer candidate. One appeal resulted in the decision that an observer could retake training; however, that candidate never returned to training. When it has been activated, the appeal process requires both Observer Program staff and NOAA General Counsel to devote a substantial amount of time to the appeal. Moreover, the appellate forum process can consume up to a year before an appeal is resolved, a situation that does not facilitate an observer candidate's interest in obtaining training and a certification for employment within reasonable time frame. Therefore, NMFS proposes to remove the appeal forum provided for observer candidates who fail training and who are notified that they may not retake the course, and for observer provider applicants whose permit applications are denied to better allocate scarce agency resources. This proposed rule does not affect the ability of observers and observer providers to appeal any decision to revoke or sanction a certification or permit that is already issued.

#### *Issue 2: Observer Conduct*

Current regulations at § 679.50(j)(2)(ii)(D) attempt to control

observer conduct so that certified observers present themselves professionally on vessels, at plants, at NMFS sites, and in fishing communities. NMFS has found these regulations impractical to apply and potentially unenforceable. For example, for NMFS to decertify an observer who has violated the Observer Program's drug and alcohol policy, or the regulation that prohibits observers from engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer is assigned, NMFS must establish connection between the unsanctioned behavior and the collection of reliable fisheries data. Proving that such a connection exists, especially in cases in which the unsanctioned behavior occurs outside of the workplace, can be very difficult. Moreover, some of the observer conduct regulations are vague and impractical to apply. For example, current regulations require observers to "refrain from engaging in any activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole." (50 CFR 679.50(j)(2)(ii)(D)). The regulations offer observers no guidance as to the types of behavior that is prohibited, nor does NMFS have any practical means to enforce adherence to these vague standards.

Due to the impracticality of applying these regulations and proving these connections, NMFS has determined that it should not attempt to regulate observer behavior that does not directly affect observer job performance and views the prescription of conduct standards as an employer responsibility. Therefore, NMFS proposes to remove current regulations at § 679.50(j)(2)(ii)(D) that attempt to control observer behavior related to activities involving drugs, alcohol, and physical sexual conduct, and to remove references to the Observer Program's drug and alcohol policies in the regulations.

In recognition of the fact that drug and alcohol use and physical sexual activity while deployed may affect an observer's ability to perform his or her duties and may compromise workplace safety, regulations would be revised to require each observer provider to have a policy addressing observer conduct and behavior related to drugs, alcohol, and physical sexual conduct. Each provider would be required to submit a copy of its policy to NMFS by February 1 of each year. A requirement would be added under § 679.50(i)(2) that observer providers notify NMFS within 72 hours upon determination that an observer has

violated the provider's conduct policy. This notification shall include the facts and circumstances of the violation. NMFS intends to use this information when assessing observer performance and quality of data collection.

NMFS would not define standards for these policies; thus, providers would exercise discretion when developing their policies. However, NMFS continues to have an interest in the providers' conduct policies. Thus, if NMFS determines that the providers' policies lead to a negative impact on the quality of data collected by observers, NMFS would reconsider this action. If that occurs, NMFS would have to consider additional authorization and funding to institute an effective system to regulate observer conduct and behavior.

#### *Issue 3: Providing Observers for Research Activities*

Current regulations at § 679.50(i)(3)(i) prohibit observer providers from having a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed under an FMP. However, observer providers have historically provided observers and "scientific data collectors" to researchers operating under exempted fishing permits (EFPs) and scientific research permits (SRPs). While the regulations do not specifically prohibit observer providers from providing observers or scientific data collectors in support of these activities, they are ambiguous as to whether these activities are allowed under the conflict of interest regulation. This proposed rule would clarify that observer providers are not prohibited from supplying observers and scientific data collectors for fishing conducted pursuant to EFPs and for scientific research activities.

#### *Issue 4: Fishing Day Definition*

Regulations at § 679.50(c)(1)(v) require a catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) length overall (LOA), but less than 125 ft (38.1 m) LOA, to carry an observer for at least 30 percent of its fishing days per calendar quarter and at all times during at least one fishing trip per calendar quarter while directed fishing for groundfish. A "fishing day" is defined at § 679.2 as a 24-hour period, from 0001 hours Alaska local time (A.l.t.) through 2400 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. Under these regulations, an observer must be onboard a vessel only at some point, no matter how briefly, during a 24-hour period when fishing occurs and groundfish are retained, to count as a

"fishing day" for the purpose of observer coverage requirements. While many vessels operate with an observer as they would without an observer, NMFS suspects that others intentionally alter their fishing pattern to meet minimum observer coverage requirements. Often, these fishing events are not representative of normal fishing duration, location, and depth, and catch composition may vary significantly from that associated with the vessel's normal, legitimate fishing pattern. These non-representative events bias the observer information NMFS relies on for effective management of the groundfish fisheries.

NMFS' Office of Law Enforcement has also documented instances in which vessel operators intentionally structure fishing activities to fish unobserved until late in the day, pick up an observer and make a short tow prior to midnight, make one more tow immediately after midnight, and then return the observer to port. Additional fishing activities then occur during the remainder of the second day, during which the observer is not onboard. Under the current regulations, this scenario counts for two "observer" days and may result in biased observer data.

To reduce the potential for biasing observer data, the proposed rule would revise the definition of "fishing day" at § 679.2 to be a 24-hour period, from 1201 hours A.l.t. through 1200 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. It will require that an observer be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor will not be considered fishing days, as is currently the case.

This revision would reduce the cost-effectiveness of making a fishing trip solely to manipulate observer coverage requirements. Revising the definition of the 24-hour period from the current midnight-to-midnight definition (from 0001 hours through 2400 hours Alaska local time) to a noon to noon definition (1201 hours through 1200 hours Alaska local time) is intended to discourage vessels from making sets or tows solely for the purpose of obtaining observer coverage around the transitional hours from one fishing day to the next.

#### *Issue 5: Observer Cost Information*

Under the current system for Alaska groundfish fishery observer services, vessels and plants required to take observers under § 679.50 contract directly with certified observer providers. Because NMFS is not a party to the contracts, NMFS lacks

information on the actual costs for observer coverage incurred by the groundfish fishery. Without this information, NMFS has had to rely on estimates of the average daily cost of observer coverage across all North Pacific groundfish fisheries to assess the economic effects of various management regimes on impacted entities. Industry has commented that although observer costs vary by region and sector, NMFS' estimates do not take that variability into account. Several factors affect the daily cost of observer coverage; for example, deploying observers to remote locations for short periods of time results in higher costs per day than deploying observers to ports with regularly scheduled air service or in fisheries of substantial duration. NMFS' analyses would be improved by the acquisition of actual cost information.

The MSA authorizes the collection of fees from North Pacific fishery participants to pay for implementing a fisheries research plan, including observer coverage. More accurate information on the cost of the existing observer program would help the Council and NMFS determine appropriate fees and the extent of observer coverage afforded by those fees when a fee-based research plan is developed and implemented.

This proposed rule would require observer providers to submit to NMFS copies of all individual invoices for observer coverage in the North Pacific groundfish fishery. Every third year would be a reporting year for submitting invoices. Observer providers would be required to submit these invoices to NMFS for a full calendar year in each reporting year. If the program were implemented in 2010, providers would be required to submit copies of actual invoices during 2010. Invoices would be submitted again in the next reporting year (e.g., 2013, 2016, 2019).

The Council recommended that observer providers submit copies of actual invoices to NMFS because these are less burdensome than requiring the providers to prepare and submit summarized expense reports; it allows NMFS to understand the full cost of providing observer coverage in the groundfish fisheries off Alaska; it provides for verifiable data; and it allows for increased flexibility in data analysis compared to requiring summarized information from providers. The RIR/IRFA for this action recognizes that under this alternative the primary burden for data-entry and analysis would be shifted from the observer providers to NMFS. However, this alternative would provide NMFS with independently verifiable

information and enhanced analytical flexibility over collecting summarized expense reports from the observer providers because NMFS will be able to confirm the number of days an observer was deployed to a particular vessel and bin the raw invoice information as analytical needs dictate.

As these invoices contain proprietary business information, NMFS will consider this information as business confidential information afforded the protections of section 402 of the MSA. Accordingly, NMFS will collect and maintain this information as it does with other confidential data, and will limit access to unaggregated invoice information to NMFS staff.

The Council also recommended a three-year invoice submission cycle to accommodate ongoing data collection while minimizing the reporting burden on observer providers. NMFS has found shortcomings with the three-year data collection cycle preferred by the Council, as it would delay NMFS' ability to detect trends in observer coverage costs and limit the precision in evaluating the temporal variability of these costs. The Council's preferred alternative would not allow for a complete, continuous overview of the industry's Observer Program costs due to the three-year lapse between data collection cycles; however, it would provide information that NMFS currently needs and lacks. The Council could revisit this issue in the future should NMFS and the Council determine that data are needed more frequently from observer providers.

During a reporting year, within 45 days of the invoice date, observer providers would be required to submit to NMFS a copy of each invoice for services provided that year. NMFS seeks public comment on this submission deadline to help determine if this time period is reasonable for observer providers to provide copies of invoices to NMFS. Invoices shall include the following information: the name of each individual catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant to which the invoice applies; the name of the observer who worked aboard each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant; the dates of service for each observer on each catcher/processor, catcher vessel, mothership, stationary floating processor, or shoreside processing plant; the rate charged in dollars per day for observer services; the total charge for observer services (number of days multiplied by daily rate); the amount charged for air transportation; and the

amount charged for other expenses, such as ground transportation, lodging, or excess baggage. These charges would be required to be separated and identified.

#### *Issue 6: Miscellaneous Revisions*

The proposed rule would establish a deadline by which observer providers must submit to NMFS an exemplary copy of a contract between the provider and the observer and the provider and the vessel or plant operator requiring observer service in the groundfish fisheries off Alaska. Existing regulations at § 679.50 require the submission of these contracts; however no deadline is specified. This proposed rule would establish a submission deadline of February 1 of each year, which corresponds with the deadline for submitting certificates of insurance required by § 679.50(i)(2)(x)(F). This issue was referenced as Issue 7 in the RIR/IRFA; however, the Council selected the "no action" alternative for Issue 6. Thus, for the purposes of this proposed rulemaking, this miscellaneous revision now comprises Issue 6.

Two other miscellaneous revisions analyzed under this issue in the RIR/IRFA have been subsequently removed from the proposed rule. The first minor revision would have corrected an erroneous reference to observer workload restrictions at § 679.50(c)(5)(i)(A). In developing this proposed rule it came to NMFS' attention that additional corrections to § 679.50(c)(5) were needed. Thus, this reference will be corrected in a separate rule making and is not addressed in this proposed rule. The other miscellaneous revision included in the RIR/IRFA would have corrected references to NMFS' Alaska Fisheries Science Center, Fisheries Monitoring and Analysis Division website throughout the regulations at § 679.50, as the existing reference is now invalid. Because website references and content are subject to change, NMFS is proposing to exclude references to the Fisheries Monitoring and Analysis Division website from the regulations. This revision under Issue 6 is expected to have the intended effect of the Council's motion as the erroneous references will be revised in the regulations.

#### **Classification**

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the regulatory amendment, other provisions of the MSA, and other applicable law,

subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The IRFA for this proposed action describes in detail the reasons why this action is being proposed; describes the objectives and legal basis for the proposed rule; describes and estimates the number of small entities to which the proposed rule would apply; describes any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; identifies any overlapping, duplicative, or conflicting Federal rules; and describes any significant alternatives to the proposed rule that accomplish the stated objectives of the MSA and any other applicable statutes that would minimize any significant adverse economic impact of the proposed rule on small entities.

The description of the proposed action, its purpose, and its legal basis are described elsewhere in the preamble and are not repeated here. The directly regulated entities are different under the different issues addressed in this proposed rule. Because the RFA is applicable only to businesses, non-profit organizations, and governments, observers fall outside of the RFA's scope, and are therefore not discussed in the IRFA.

Five observer provider companies are currently holding observer provider permits and are active in the North Pacific. These entities would be directly regulated by the proposed actions under Issues 2, 3, 5 and 6. All of the current observer provider companies are considered small entities under the RFA. The potential number of small observer provider firms that may be interested in obtaining a permit to provide observer services in the future would be regulated under Issue 1. However, the potential number of observer provider firms cannot be estimated, and because they represent a future scenario, they are not considered

directly regulated under the proposed action.

Trawl and hook-and-line catcher vessels (CVs) and catcher processors (CPs) subject to the 30 percent observer coverage requirements would be directly regulated by the proposed action in Issue 4. Trawl and hook-and-line CVs between 60 feet and 125 feet LOA and hook-and-line CPs between 60 feet and 125 feet LOA in the BSAI and GOA, with the exception of vessels participating in specific programs that require 100 percent observer coverage, would be directly regulated by actions under Issue 4. AFA trawl CVs subject to the 30 percent observer coverage requirements are categorized as large entities for the purpose of the RFA due to their affiliation with one another through the American Fisheries Act (AFA) pollock harvest cooperatives.

The table below summarizes all of the potentially directly regulated small entities, by sector, under Issue 4 of the proposed action. The IRFA 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, nor does NMFS have information on the combined annual gross receipts for each entity by size. Absent these data, a more precise characterization of the size composition of the directly regulated entities impacted by this action cannot be offered.

TABLE 1. ESTIMATE OF THE NUMBER OF SMALL ENTITIES POTENTIALLY DIRECTLY REGULATED BY ISSUE 4 OF THE PROPOSED ACTION.

Sector	2006	2007
Observer Providers	5	5
Trawl CV >60' and ≤125'	39	23
Trawl CP >60' and ≤125'	12	10
H&L CV >60' and ≤125'	97	74
H&L CP >60' and ≤125'	11	11

Proposed actions under Issue 2 and Issue 5 would require additional recordkeeping and reporting requirements for the five observer providers currently supplying services to the Observer Program. Issue 6 actions would impose a deadline for submission of information that is already required of observer providers under existing regulations. Issue 2 actions would require observer providers to have observer policies related to alcohol, drugs, and sexual contact; provide NMFS a copy of the conduct policy by February 1 of each year; and to notify (including the underlying facts and

circumstances) NMFS of a violation of the observer provider's policies within 72 hours after the provider determines that an observer violated a policy. Current regulations at § 679.50(i)(2)(x)(I) require observer providers to notify NMFS of other types of conduct violations within 24 hours of becoming aware of the alleged violation; thus, this proposed action does not substantially alter that reporting requirement. It may take 20 minutes or less for an employee of the observer provider company to report this information to NMFS as fax or email are acceptable means of communication.

The proposed rule under Issue 5 would require observer providers to submit copies of billing invoices to NMFS for a full year, every third year. This recordkeeping and reporting requirement will not require the observer providers to modify or interpret their billing invoices. Observer provider companies should incur minor costs associated with copying and transmitting copies of their actual billing invoices to NMFS under the proposed rule for Issue 5. NMFS estimates that approximately six hours a year would be required for observer providers to email their invoices to NMFS with no additional expenses anticipated because observer providers have computers with internet access. If an observer provider mails copies of his or her invoices to NMFS, it is estimated to cost the observer provider approximately \$48 per year for paper, envelopes, and postage in addition to six hours of labor expected for copying and mailing.

The proposed rule under Issue 6 slightly modifies existing regulations by imposing a February 1 deadline for observer providers to submit to NMFS each type of contract they have entered into with observers or the fishing industry. Because regulations already require observer provider companies to submit this information to NMFS, and because most observer provider companies have been submitting this information by February 1 in the past, this regulatory amendment should impose virtually no additional net burden on the observer provider companies.

The analysis revealed no Federal rules that would conflict with, overlap, or be duplicated by the alternatives under consideration.

With regard to the economic burden of the proposed rule on small entities, the Council selected the least economically burdensome alternatives that met the purpose and need for action based upon the analysis in the RIR and IRFA. The Council selected the only

action alternative under Issue 2 and Issue 6. There were three action alternatives for Issue 5 and the Council selected the least economically burdensome alternative for observer providers by rejecting alternatives that would require providers to compile annual expense reports summarized by fishery or expense category. The alternative that would require observer providers to submit copies of invoices already being prepared as part of their standard bookkeeping was determined to be less burdensome than the other alternatives. The Council sought to further reduce the economic burden on observer providers by requiring them to submit copies of their invoices only once every three years.

#### *Collection-of-Information*

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control Number 0648-0318. Public reporting burden is estimated to average 30 minutes per individual response for Copies of Invoices; 15 minutes for Observer Provider Contract Copies; two hours for Other Reports; 40 hours for Appeals for Observer Provider Permit Expiration or Denial of Permit (this item is removed with this action); and 40 hours for Observer Conduct and Behavior Policy, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The PRA package submitted for this proposed rule estimated that it will cost each observer provider \$1500 per reporting year to comply with this information submission requirement.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS Alaska Region at the **ADDRESSES** above, and e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, 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 in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: September 24, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 679 as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108—447.

2. In § 679.2, revise the definition of “Fishing day” to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

Fishing day means (for purposes of subpart E of this section) a 24-hour period, from 1201 hours A.l.t. through 1200 hours A.l.t., in which fishing gear is retrieved and groundfish are retained. An observer must be on board for all gear retrievals during the 24-hour period in order to count as a day of observer coverage. Days during which a vessel only delivers unsorted codends to a processor are not fishing days.

\* \* \* \* \*

3. In § 679.50:

A. Remove and reserve paragraph (i)(1)(iii)(B) and remove paragraphs (i)(1)(iv), (i)(2)(i)(C)(1), (j)(1)(iv)(B), and (j)(2)(ii)(D).

B. Redesignate paragraphs (i)(1)(v) through (viii) as paragraphs (i)(1)(iv) through (vii) respectively.

C. Redesignate paragraphs (i)(2)(i)(C)(2) through (4) as paragraphs (i)(2)(i)(C)(1) through (3), respectively.

D. Redesignate paragraphs (i)(2)(iii) through (xii) as paragraphs (i)(2)(iv) through (xiii), respectively.

E. Redesignate newly redesignated paragraphs (i)(2)(xi)(H) and (I) as paragraphs (i)(2)(xi)(I) and (J), respectively, and further redesignate paragraphs (i)(2)(xi)(J)(1) through (5) as paragraphs (i)(2)(xi)(J)(1)(i) through (v), respectively.

F. Redesignate paragraphs (i)(3)(i) through (iii) as paragraphs (i)(3)(ii) through (iv), respectively.

G. Redesignate paragraph (j)(1)(iv)(C) as paragraph (j)(i)(iv)(B).

H. Add paragraphs (i)(2)(iii), (i)(2)(xi)(H), (i)(2)(xi)(J)(1) introductory text, (i)(2)(xi)(J)(2), and (i)(3)(i).

I. Revise paragraphs (i)(1)(i)(A), (i)(1)(iii)(A) introductory text, (i)(2)(i)(B), (j)(1)(iii)(B) introductory text, (j)(1)(iv)(A), (j)(2)(ii) introductory text, and (j)(2)(ii)(A) through (C).

J. Revise newly redesignated paragraphs (i)(1)(iv), (i)(1)(vi)(B), (i)(2)(xi)(G) first sentence, (i)(2)(xi)(J) introductory text, (i)(2)(xi)(J)(1)(v), and (i)(3)(ii) introductory text.

The revisions and additions read as follows:

§ 679.50 Groundfish Observer Program.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) The Regional Administrator may issue a permit authorizing a person’s participation as an observer provider. Persons seeking to provide observer services under this section must obtain an observer provider permit from NMFS.

\* \* \* \* \*

(iii) \* \* \*

(A) The Regional Administrator will establish an observer provider permit application review board, comprised of NMFS staff, to review and evaluate an application submitted under paragraph (i)(1) 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, and the following criteria for each owner, or owners, board members, and officers if a corporation:

\* \* \* \* \*

(iv) 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.

\* \* \* \* \*

(vi) \* \* \*

(B) The Regional Administrator will provide a written initial administrative determination (IAD) to an observer provider if NMFS’ deployment records indicate that the permit has expired. An observer provider who receives an IAD of permit expiration may appeal under § 679.43. A permit holder who appeals the IAD will be issued an extension of the expiration date of the permit until after the final resolution of that appeal.

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(2) \* \* \*

(i) \* \* \*

(B) Prior to hiring an observer candidate, the observer provider must provide to the candidate copies of NMFS-provided pamphlets and other literature describing observer duties.

\* \* \* \* \*

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

(1) Observer use of alcohol;

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

(3) 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.

(B) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to:

(1) Observers, observer candidates

and;

(2) The Observer Program Office.

\* \* \* \* \*

(xi) \* \* \*

(G) 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 paragraphs (c) and (d) of this section, by February 1 of each year.

\* \* \*

\* \* \* \* \*

(H) Observer provider invoices.

Beginning in 2010 and in every third calendar year thereafter (e.g., 2013, 2016, 2019), certified observer providers must submit to the Observer Program Office copies of all invoices for observer coverage required or provided pursuant to paragraphs (c) and (d) of this section.

(1) Copies of 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.

(2) Invoices must contain the following information:

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

(ii) 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 shall be identified on the invoice;

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

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

(v) Amount charged for air transportation; and

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

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

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

(v) Any information, allegations or reports regarding observer conflict of interest or failure to abide by the standards of behavior described at paragraph (j)(2)(i) or (j)(2)(ii) of this section, or;

(2) Within 72 hours after the observer provider determines that an observer violated the observer provider's conduct

and behavior policy described at paragraph (i)(2)(iii)(A) of this section; these reports shall include the underlying facts and circumstances of the violation.

(3) \* \* \*

(i) Are authorized to provide observer services under an FMP for the waters off the coast of Alaska as required in this part, 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.

(ii) 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 for the waters off the coast of Alaska, including, but not limited to:

(j) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(B) *New observers.* NMFS may certify individuals who, in addition to any other relevant considerations:

(iv) \* \* \*

(A) *Denial of a 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.

(2) \* \* \*

(ii) *Standards of Behavior.* Observers must:

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

(B) 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;

(C) Not disclose collected data and observations made on board 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.

§ 679.50 [Amended]

4. At each of the locations shown in the Location column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column for the number of times indicated in the "Frequency" column.

Location at § 679.50	Remove	Add	Frequency
Newly redesignated (i)(2)(i)(C)(3)	in paragraph (i)(2)(x)(C) of this	in paragraph (i)(2)(xi)(C) of this	1
(i)(2)(ii)(A)	under paragraph (i)(2)(x)(E) of this	under paragraph (i)(2)(xi)(E) of this	1
Newly redesignated (i)(2)(iv)(B)	in paragraph (i)(2)(x)(C) of this	in paragraph (i)(2)(xi)(C) of this	1
Newly redesignated (i)(2)(vii)(B)	in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this	in paragraphs (i)(2)(vii)(C) and (i)(2)(vii)(D) of this	1
Newly redesignated (i)(2)(xi)(C)	paragraph (i)(2)(i)(B)(1) of	paragraph (i)(2)(i)(B) of	1
(j)(1)(iii)(B)(2)(i)	at paragraphs (i)(2)(x)(A)(1)(iii) and	at paragraphs (i)(2)(xi)(A)(1)(iii) and	1
(j)(1)(iii)(B)(2)(ii)	at paragraph (i)(2)(x)(C)	at paragraph (i)(2)(xi)(C)	1
(j)(1)(iii)(B)(3)	and (i)(2)(x)(C)	and (i)(2)(xi)(C)	1
(j)(1)(iii)(B)(4)(i)	the candidate failed the training; whether	the candidate failed the training and whether	1
(j)(1)(iii)(B)(4)(ii)	in the form of an IAD denying	in the form of a written determination denying	1
(j)(3)(iii)	will issue a written IAD to the observer	will issue a written initial administrative determination (IAD) to the observer	1