

*Comment 6:* Can shoreside processors provide their own internal pager system as a means for communication with the observer assigned to that processor?

*Response:* The observer provider company is ultimately responsible for ensuring that observers are issued individual communications devices and maintaining them in working order as specified in the rule. If it is logistically more convenient to meet these requirements through an arrangement with the shoreside processor, the observer provider company may do so.

*Comment 7:* If the present communication system between shoreside processors and their observers is working, is a pager or cell phone necessary?

*Response:* Yes. While the present communications systems between processors and observers may be successful for some processors, the current approach is not working for others. In light of these failures, NMFS believes that regulation on how these important communications must occur is necessary to some degree. Communications are largely reliant on the dependability of the individuals involved, as well as the communications equipment available. In cases where individuals involved are highly dependable, any system has a better chance of working. NMFS cannot control the level of human dependability in all cases, but the agency can require a certain standard for communications equipment that must be available to individual observers. In promulgating such regulations, NMFS must apply these requirements to all shoreside processors without bias.

*Comment 8:* What accommodations will be made for those shoreside processors where cell and/or pager services are not available?

*Response:* Where cell phone or pager service is not available at the location of the shoreside processor, walkie-talkies may be an acceptable substitute. However, due to inherent range restrictions and unreliability of these devices, they would be approved only on a case by case basis. Where cell phone or pager service is not available and walkie talkies are not approved, another method of communication between the processor and the observer would need to be proposed by the observer provider company to the Observer Program for approval.

*Comment 9:* Who is responsible for lack of compliance when an observer drops his or her cell/pager in the harbor while going out to a vessel and it takes a lot of money and a week to get a new one to the observer? What obligation

does the plant have to notify the observer during that down time?

*Response:* The observer provider company is responsible for ensuring observers have individual communications devices in working order. If a device ceases to be in working order, the provider must provide a back up device in a timely manner such that the observer is able to communicate with the processor regarding the next delivery following the loss or failure of the communications device. In light of that, having one or two working back-up devices on site at all times to avoid "down time" makes logistical sense. The regulations do not include an exception for "down time".

*Comment 10:* Who is liable if the observer takes the pager out of cell/pager range?

*Response:* The observer provider company is responsible for providing the equipment in working order. As is currently the case, the observer is expected to remain in reasonable communication with the processor. That includes remaining in range of such communication devices as the individual circumstances of the shoreside processor operations and location dictate.

*Comment 11:* It is unclear whether the criteria for lodging an observer assigned to a shoreside plant "within a mile of a shoreside processor" is determined by road distance or "as the crow flies".

*Response:* This requirement relies on the distance along the road or path traveled by the observer between his or her lodging and the shoreside processor to which he or she is assigned.

*Comment 12:* In some ports where observers lodge away from the plant premises, taxi service is not available 24 hours/day. Under these conditions, what will happen when a taxi is not available and the observer has to rely on transportation from the plant given that NMFS has implied in the analysis that plant transportation is unreliable? Plants which have to lodge their observers more than a mile away will see a significant increase in transportation costs for their observers. Is there any time a taxi would not be considered acceptable motorized transportation?

*Response:* Reliable, alternate arrangements that meet the requirements of the rule must be made when a taxi is not available. A taxi would not be considered acceptable transportation if it cannot transport an observer to the shoreside processor in a timely manner to allow the observer to perform his or her official duties. These duties include being present at the processor at appropriate times during

the delivery and/or processing of the fish from delivery that requires sampling. Once in a while, a taxi may not be able to deliver an observer to the assigned shoreside processor in a timely manner to perform assigned duties due to unexpected mechanical break down of a taxi or other unforeseen circumstances. However, if such events become chronic and transportation by taxi becomes unreliable and untimely, alternate transportation arrangements that conform to the regulatory requirements must be made.

*Comment 13:* Do observers still have the option of walking or taking a bike to their assigned plant if they prefer to do so?

*Response:* Yes. Observers may choose to walk or ride a bicycle between their shoreside lodging and the shoreside processor to which they are assigned, as long as transportation, as described in regulations, is always available.

*Comment 14:* If this new regulation goes into effect, vessels using pot gear would be forced to wait until near the end of the season or quarter to obtain their 30-percent coverage for the number of pot lifts they performed. Consequently, the demand for observer coverage may exceed the availability of observers. Vessels may not be able to comply with required coverage as contractors would be less likely to be able to cover all of the pot boats during the end of the season crunch.

Additionally, under those circumstances, vessels will see cost increases because they won't be able to share observer airfare, transportation and subsistence costs with other vessels.

*Response:* NMFS believes that proper planning by pot gear vessels and observer providers can ensure observer availability in most cases. However, NMFS does acknowledge that last minute changes in management decisions related to fishery openings and closures can present challenges for compliance with observer coverage requirements. NMFS strives to take coverage needs into consideration when determining midseason fishery openings.

This regulation, which bases observer coverage levels on the actual amount of gear fished, rather than days fished, is intended to ensure observer data that are more representative of actual fishing effort. The majority of vessels, for which days fished does reflect average fishing effort over the course of a quarter or season, should see no substantive change in the way they estimate observer coverage needs. Likewise, no more problem should exist with observer availability at the end of the quarter or season than what is currently