

experienced. Additionally, observer coverage needs should be somewhat predictable over time, allowing vessels to meet coverage needs prior to the end of the season or quarter.

Comment 15: We believe that this proposed regulation would not solve the identified issue of pot gear vessels going out just beyond the harbor and pulling one pot to obtain observer coverage for that day. Vessels would now be able to set just a few pots and pull them as many times as possible in one day to obtain a large portion of their coverage.

Response: NMFS does not anticipate this type of behavior, particularly because it would not be cost effective. If and when this behavior occurs, NMFS will respond accordingly.

Changes From the Proposed Rule

To provide clarity in the application of certain provisions of this action, regulatory text in § 679.50(d)(3) and (i)(2) is changed from the proposed rule. Nearly all Observer Program regulations that apply to shoreside processors also apply to stationary floating processors. The proposed rule identified only shoreside processors in the revised language for these paragraphs. Thus, the final rule is changed from the proposed rule to apply to both shoreside processors and stationary floating processors.

The final rule also is changed to reflect revised regulatory text that became effective January 1, 2003, under a separate final rule that extended the Observer Program through December 31, 2007 (67 FR 72595, December 6, 2002). These changes include redesignating proposed changes to paragraphs (i)(2)(v) and (i)(2)(xiii) as final changes to paragraphs (i)(2)(vi) and (i)(2)(xii), respectively. The portion of redesignated paragraph (i)(2)(xii) that addressed an expectation of observer providers to monitor observer performance is deleted because this provision was superseded in the December 6, 2002, final rule. Last, redesignated paragraph (i)(2)(vi) is revised to incorporate the regulatory guidance referenced to in the response to comment 5.

Classification

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

The amendment of the existing regulations implementing the Interim Observer Program is consistent with the intent and purpose of the Interim Observer Program. These actions follow previous actions to refine observer coverage requirements and improve support for observers. Previous actions

addressing these matters were analyzed in the EA/RIR/FRFA for the Interim Observer Program dated August 27, 1996, the RIR/FRFA for the extension of the Interim Observer Program through 1998 dated October 28, 1997, and the RIR/FRFA for the extension of the Interim Observer Program through 2000, dated June 4, 1998. Copies of these analyses are available from NMFS (see **ADDRESSES**).

NMFS prepared a FRFA which describes the impact this final rule would have on small entities. A copy of the FRFA is available from the Regional Administrator (see **ADDRESSES**). In addition to the discussion below, the FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) and its findings, and the finding from the EA/RIR/FRFA for the Observer Program and its extension. No comments on the IRFA were received during the public comment period on the proposed rule. Thus, no new data were incorporated into the analysis during the comment period that would result in findings that differ from those previously described. A description of the impacts of this action on small entities was summarized in the proposed rule (67 FR 15520, April 2, 2002) and is not repeated here.

This action includes measures that will minimize the significant economic impacts of observer coverage requirements on at least some small entities. Vessels less than 60 ft (18.3 m) LOA are not required to carry an observer while fishing for groundfish. Vessels 60 ft (18.3 m) and greater, but less than 125 ft (38.1 m) LOA, have lower levels of observer coverage than those 125 ft (38.1 m) and above. Since the inception of the North Pacific Groundfish Observer Program in 1989, NMFS has strived to mitigate the economic impacts of the observer program on small entities. In doing so, NMFS has not significantly adversely affected the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Fishery Conservation and Management Act.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 30, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended 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.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (d)(3) through (6) are redesignated as (d)(4) through (7); paragraph (c)(1)(vii), newly redesignated paragraph (d)(4) and paragraphs (i)(2)(vi) and (i)(2)(xii) are revised; and new paragraph (d)(3) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(c) * * *

(1) * * *

(vii) Vessels using pot gear. (A) A catcher/processor or catcher vessel equal to or greater than 60 ft (18.3 m) LOA fishing with pot gear that participates for more than 3 fishing days in a directed fishery for groundfish in a calendar quarter must carry an observer:

(1) For at least 30 percent of the total number of pot retrievals for that calendar quarter, and

(2) For at least one entire fishing trip using pot gear in a calendar quarter, for each of the groundfish fishery categories defined under paragraph (c)(2) of this section in which the vessel participates.

(B) Groundfish are required to be retained each day that pot gear is retrieved in order for gear retrieved that day to count toward observer coverage requirements for all catcher vessels and catcher/processors using pot gear and required to carry observers.

* * * * *

(d) * * *

(3) Is subject to observer requirements specified in paragraph (d)(1) of this section that receives pollock or Pacific cod, may reduce observer coverage in the event that a directed fishery for such species closes, subject to the following conditions:

(i) The shoreside or stationary floating processor must maintain observer coverage for 30 percent of all days that groundfish are received or processed, beginning on the fourth calendar day following the day that the directed fishery for pollock or Pacific cod was closed and ending on the last day of the month, except as allowed in this paragraph (d)(3)(iv) of this section.

(ii) Observer coverage for the month following the month with reduced observer coverage will be based on monthly landings projections and thresholds as specified in paragraphs (d)(1) and (2) of this section, but may also be reduced for that subsequent