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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

**[Docket No. 170621579-7579-01]**

**RIN 0648-BG96**

**Fisheries of the Exclusive Economic Zone Off Alaska; Nontrawl Lead Level 2**

**Observers**

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

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

**SUMMARY:** NMFS proposes regulations to modify specific provisions of the North Pacific Observer Program. The first two elements of this propose rule would modify the requirements for an observer to obtain a nontrawl lead level 2 (LL2) deployment endorsement and implement a pre-cruise meeting requirement for vessels required to carry an observer with a nontrawl LL2 deployment endorsement. These elements are intended to increase the number of observers that qualify for a nontrawl LL2 deployment endorsement and maintain observer safety and data quality. The third element of this proposed rule would make editorial changes, and modify observer coverage and reporting requirements for vessels when participating in the Western Alaska Community Development Quota (CDQ) Program. This element is intended to promote operational efficiency, and remove unnecessary requirements for specific vessels participating in the CDQ Program. This action is intended to promote the goals and objectives of the

Magnuson-Stevens Fishery Conservation and Management Act, the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska, and the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area, and other applicable law.

**DATES:** Comments must be received no later than [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2017-0071 by either of the following methods:

- *Federal e-Rulemaking Portal.* Go

to [www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0071](http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0071), click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.

*Instructions:* NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and NMFS will post the comments for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (*e.g.*, name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Electronic copies of the draft Regulatory Impact Review (RIR) and the Categorical Exclusion prepared for this action are available from [www.regulations.gov](http://www.regulations.gov) or from the NMFS Alaska Region Web site at [alaskafisheries.noaa.gov](http://alaskafisheries.noaa.gov).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; and to OIRA by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or by fax to 202-395-5806.

**FOR FURTHER INFORMATION CONTACT:** Alicia M Miller, 907-586-7228 or [alicia.m.miller@noaa.gov](mailto:alicia.m.miller@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority for Action**

NMFS manages the groundfish fisheries in the exclusive economic zone under the Fishery Management Plan for Groundfish of the Gulf of Alaska and under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

**Background**

Regulations at subpart E of 50 CFR part 679 require that most vessels fishing for groundfish or halibut must carry an observer onboard their vessel for some, or all, fishing activities to ensure the collection of data necessary to manage the groundfish and halibut fisheries. The following sections describe 1) the North Pacific Observer Program, 2)

nontrawl lead level 2 observer requirements, 3) the need for this action, and 4) this proposed rule.

### **North Pacific Observer Program**

The North Pacific Observer Program (Observer Program) is an integral component in the management of North Pacific fisheries. The Observer Program was created with the implementation of the Magnuson-Stevens Act in the mid-1970s and has evolved from primarily observing foreign fleets to observing domestic fleets. Regulations at subpart E of 50 CFR part 679 implement the Observer Program and prescribe how NMFS-certified observers (observers) will be deployed on board vessels and in processing plants to obtain information necessary for the conservation and management of the groundfish and halibut fisheries off Alaska. The information collected by observers contributes to the best available scientific information used to manage the fisheries in furtherance of the purposes and national standards of the Magnuson-Stevens Act.

Observers collect biological samples and gather information on total catch, including bycatch, and interactions with protected species. Fishery managers use data collected by observers to manage groundfish catch and bycatch limits established in regulation and to document fishery interactions with protected species. Fishery managers also use data collected by observers to inform the development of management measures that minimize bycatch and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

On January 1, 2013, the Observer Program was restructured to establish two observer coverage categories: partial and full (77 FR 70062; November 21, 2012). Regulations at 50 CFR 679.50 identify that all vessels and processors that participate in

federally managed or parallel groundfish and halibut fisheries off Alaska, except catcher vessels delivering unsorted codends to mothership vessels, are subject to observer coverage in one of these two categories. Regulations at 50 CFR 679.51 require vessels and processors in the full coverage category to carry an observer at all times when fish are caught or processed. Importantly for this proposed rule, the full coverage category includes most catcher/processors (*i.e.*, vessels that catch and process their own catch at-sea), and all motherships (*i.e.*, those vessels that receive unsorted catch from other vessels and process that catch at-sea). Owners of vessels or processors in the full coverage category must contract directly with a permitted observer provider and pay for required observer coverage. Vessels affected by these proposed changes to nontrawl LL2 observer deployment endorsement requirements are in the full coverage category.

Regulations at 50 CFR 679.51 describe the vessels and processing plants that are in the partial coverage category. Most catcher vessels using nontrawl gear are in the partial coverage category. NMFS, in consultation with the Council, develops an annual deployment plan for the Observer Program to determine when and where observer coverage is needed for vessels and processors in the partial coverage category. NMFS contracts with an observer provider to deploy observers based on the scientific sampling plan described in the annual deployment plan.

### **Nontrawl Lead Level 2 Observer Requirements**

Two groups of vessels are required to carry an observer with a nontrawl LL2 deployment endorsement. The first group of vessels includes vessels named on a License Limitation Program (LLP) license with a Pacific cod catcher/processor hook-and-line endorsement for the Bering Sea, Aleutian Islands, or both the Bering Sea and Aleutian

Islands. These vessels are subject to monitoring requirements at 50 CFR 679.100 and are referred to as “freezer longline vessels” throughout this proposed rule. Pursuant to 50 CFR 679.100, a freezer longline vessel must carry an observer with a nontrawl LL2 deployment endorsement when the vessel 1) operates in either the BSAI or Gulf of Alaska groundfish fisheries and directed fishing for Pacific cod is open in the BSAI, or 2) when the vessel participates in the CDQ groundfish fisheries. These monitoring requirements for freezer longline vessels were implemented in 2012 and require freezer longline vessel owners and operators to select between one of two monitoring options: either carry two observers so that all catch can be sampled, or carry one observer and use a motion-compensated flow scale to weigh Pacific cod before it is processed. Both monitoring options require the vessel to carry one observer endorsed as a nontrawl LL2 observer. (77 FR 59053; September 26, 2012).

The second group of vessels that are required to carry an observer with a nontrawl LL2 deployment endorsement includes catcher/processors that use pot gear when participating in the CDQ groundfish fisheries (groundfish CDQ fishing) (77 FR 6492; February 8, 2012). These pot catcher/processors are required to carry an observer with a nontrawl LL2 deployment endorsement when groundfish CDQ fishing and may participate in other fisheries that do not require a nontrawl LL2 observer. Regulations at 50 CFR 679.32 describe the specific monitoring requirements for vessels when participating in the sablefish CDQ, pollock CDQ, groundfish CDQ, and other CDQ fisheries.

Regulations at 50 CFR 679.53 define the requirements for an observer to receive a nontrawl LL2 deployment endorsement. An observer obtains a nontrawl LL2 deployment

endorsement when the observer meets minimum experience requirements for a level 2 deployment endorsement (has completed 60 days of data collection and met the Observer Program's performance expectations on their most recent evaluation) and has completed two cruises of at least 10 days each and sampled at least 30 sets on a vessel using nontrawl gear. This means that prior to gaining a nontrawl LL2 deployment endorsement, an observer must first deploy on a nontrawl vessel that is not required to carry a nontrawl LL2 observer and sample at least 30 sets.

### **Need for this Action**

In 2014, observer providers and representatives of freezer longline vessels reported shortages of nontrawl LL2 observers for deployment on freezer longline vessels and that, in some cases, shortages delayed fishing operations (See section 3.3.4 of the Analysis). Since 2012, all active freezer longline vessels, except one, have chosen the option to carry one LL2 observer and weigh Pacific cod on a flow scale. This means that only one freezer longline vessel subject to the nontrawl LL2 observer requirement has chosen to carry two observers – one observer with a nontrawl LL2 endorsement, and one observer who will gain sampling experience to count toward the requirements for a nontrawl LL2 deployment endorsement. In addition, since 2013, there are few other nontrawl vessels in the full observer coverage category that do not require an LL2 observer. Therefore, the few observers deployed in the full coverage category are able to gain the sampling experience necessary to gain the nontrawl LL2 deployment endorsement. Observer providers contracted by vessels in the full coverage category have reported that they have been unable to create and retain an adequate pool of qualified nontrawl LL2 observers since 2014.

In contrast, observers deployed on vessels in the partial coverage category have opportunities to gain nontrawl sampling experience to count toward the requirements for a nontrawl LL2 deployment endorsement on catcher vessels in the partial coverage category. However, until August 2016, the observer provider contracted to deploy observers in the partial coverage category did not have a permit to deploy observers in the full coverage category pursuant to regulations at 50 CFR 679.52. These conditions from 2013 through August 2016 resulted in a diminishing pool of qualified observers employed by permitted observer providers in the full coverage category (See Tables 11, 12, and 13 in the Analysis).

Since 2014, NMFS, observer providers, and freezer longline vessels have undertaken a series of non-regulatory actions designed to build and retain a pool of qualified nontrawl LL2 observers available for the freezer longline vessels. For example, NMFS modified its policy on how sampled sets are credited to observers when determining the number of sampled sets for a nontrawl LL2 deployment endorsement, and some members of the freezer longline fleet voluntarily deployed a second observer on some freezer longline vessels to allow those observers to gain sampling experience necessary to receive a nontrawl LL2 deployment endorsement (See Section 3.3.5 of the Analysis for additional detail). However, these non-regulatory actions resulted in additional costs to the freezer longline fleet and did not fully address the industry's concerns about the limited availability of nontrawl LL2 observers.

Between 2014 and 2017, the Council and its Observer Advisory Committee discussed and analyzed potential solutions to address industry concerns about the limited availability of nontrawl LL2 observers in the full coverage category. In June 2017, the

Council recommended changes to regulations that would 1) allow trawl sampling experience to count toward a nontrawl LL2 deployment endorsement and authorize the observer program to require additional training as necessary to adequately prepare observers to perform data collection duties when deployed as a nontrawl LL2 observer, and 2) require the operator or manager of a vessel required to carry an observer with a nontrawl LL2 deployment endorsement to participate in a pre-cruise meeting with the observer if notified by NMFS to do so. These regulatory changes are intended to minimize additional costs to industry while also maintaining observer safety and data quality.

### **This Proposed Rule**

This proposed rule includes three elements. The first element of this proposed rule would modify regulations at § 679.53(a)(5)(v)(C) to allow 100 sampled hauls on trawl catcher/processor or mothership vessel (equivalent to the required sampling experience for an observer to obtain a trawl LL2 deployment endorsement) to count toward a nontrawl LL2 deployment endorsement and authorize the observer program to require additional training for observers as necessary to adequately prepare them to safely perform data collection duties relevant to the nontrawl LL2 deployment endorsement.

These changes are intended to reduce the potential for a shortage of nontrawl LL2 observers, because many observers deployed in the full coverage category qualify for a trawl LL2 deployment endorsement. This would allow observers that qualify as a trawl LL2 observer to potentially qualify as a nontrawl LL2 observer (See Table 11 and Section 3.3.3 of the Analysis for more information), and reduce the pressure for freezer longline vessels to voluntarily carry second observers for the purpose of providing

opportunities for observers to gain sampling experience to count toward a nontrawl LL2 deployment endorsement. An observer with sampling experience on a trawl catcher/processor or mothership would be familiar with the pressures of data collection on vessels participating in a catch share program and would also be familiar with the use of a flow scale to weigh catch. These skills are important to successfully performing data collection duties when deployed as a nontrawl LL2 observer. Because these observers may not have nontrawl sampling experience, additional training and a pre-cruise meeting may be necessary to ensure that these observers are adequately prepared to handle the safety and sampling challenges that are unique to nontrawl LL2 deployments (See Section 4.3.2.2 of the Analysis).

This proposed rule would implement regulations to authorize the Observer Program to require additional training for observers as necessary to adequately prepare them to perform data collection duties relevant to the nontrawl LL2 deployment endorsement. The Observer Program would develop and implement an observer training and also determine when this training would be required prior to receiving a nontrawl LL2 deployment endorsement. Potentially, NMFS would require observers without sampling experience on a nontrawl catcher/processor to attend a two or three day training class prior to receiving a nontrawl LL2 deployment endorsement for the first time.

The Observer Program would use this training class to adequately prepare observers with different types of qualifying sampling experience to complete sampling duties when deployed as a nontrawl LL2 observer (See section 4.3.2 of the Analysis for additional detail). The nontrawl LL2 training class would be designed to address common safety and sampling challenges that are unique to nontrawl LL2 observer deployments.

This training would prepare observers who do not have sampling experience on nontrawl catcher/processors for deployment on these vessels as a nontrawl LL2 observer. At a minimum, through existing trainings and briefings, the Observer Program would continue to train observers to follow the safety and data collection protocols established in the Observer Sampling Manual.

The second element of this proposed rule would require the operator or manager of a vessel that carries nontrawl LL2 observers to participate in a pre-cruise meeting with the observer assigned to the vessel if notified to do so by NMFS. This proposed rule would add a paragraph at §§ 679.32(c)(3)(i)(E) and 679.100(b)(1) and (2) to require freezer longline vessels and pot catcher/processors when groundfish CDQ fishing to notify the Observer Program prior to embarking on a trip with a nontrawl LL2 observer who has not deployed on that vessel in the past 12 months. The Observer Program may contact the vessel and require the vessel operator or manager and the observer assigned to the vessel to participate in a pre-cruise meeting prior to embarking on a trip.

This regulatory change would authorize the Observer Program to require a pre-cruise meeting as needed to address safety or sampling challenges on a specific vessel. Because vessel operations and individual observer's sampling history will vary, this would give the Observer Program the flexibility necessary to evaluate whether a pre-cruise meeting is necessary on a case-by-case basis between the observer and the vessel operator or manager to ensure the nontrawl LL2 observer is adequately prepared to collect high quality data in a safe manner. The Observer Program may consider the observer's deployment history or sampling experience, vessel specific information, or other relevant information to determine whether a pre-cruise meeting is necessary, and if

so, the Observer Program would contact the vessels to arrange the pre-cruise meeting prior to the start of a trip (See section 4.3 of the Analysis for additional detail). This action would impose additional administrative costs for NMFS to process pre-cruise notifications, contact a vessel if a pre-cruise meeting is necessary, and participate in pre-cruise meetings if staff are available. Section 2.3.1 of the Analysis describes that these administrative costs are minimal relative to other alternatives considered.

In addition to the two elements recommended by the Council, NMFS proposes the third element of this proposed rule to remove duplicative and unnecessary regulatory reporting requirements and make minor changes to observer coverage requirements for specific vessels participating in the CDQ Program. These proposed revisions are intended to 1) align regulations with Magnuson-Stevens Act section 305(i)(1)(B)(iv), 2) reduce observer coverage costs, 3) improve operational efficiency, and 4) reduce the reporting burden for catcher/processors and motherships when participating in CDQ fisheries (See Section 2.4 in the Analysis).

This proposed rule would define the terms “cruise” and “Observer Program” in § 679.2. The term “cruise” is used to describe the minimum experience requirements for an observer to obtain LL2 deployment endorsements in § 679.53. This proposed rule would define a “cruise” to mean an observer deployment with a unique cruise number. This proposed definition would clarify that a cruise begins when an observer receives an endorsement to deploy and ends when the observer completes all debriefing responsibilities. The term “Observer Program” would replace and update the definition of “Observer Program Office,” because that term does not describe the Observer Program. This proposed rule would update corresponding references throughout part 679.

This proposed rule would remove provisions at §679.32(c)(3)(i) that require operators of catcher/processors and motherships to provide observers with prior notification of CDQ catch and CDQ group number associated with the CDQ catch before the CDQ catch is brought on board the vessel. This provision would be removed for all catcher/processors and motherships when participating in the pollock CDQ or groundfish CDQ fisheries. These notification requirements were implemented in 1998 (63 FR 30381; June 4, 1998) when observer sampling methods for CDQ hauls and sets were different than observer sampling methods for non-CDQ hauls and sets. At that time, an observer needed to know if a haul would be designated as a CDQ haul before it was brought on board the vessel so that they could apply the appropriate sampling methods. With implementation of other catch share programs since 1998 and overlap of vessel participation between CDQ and other catch share programs, observer sampling methods have been made consistent between CDQ and non-CDQ hauls and sets. Therefore, these prior notification requirements are unnecessary and duplicative. An observer does not need prior notice of CDQ haul designation to appropriately sample CDQ catch, and other regulations ensure that an observer has access to this information.

This proposed rule would modify the heading for subpart E to part 679 from “Groundfish and Halibut Observer Program” to “North Pacific Observer Program” in order to be consistent with the term as used in the new definition of the Observer Program.

This proposed rule also would modify § 679.50(a)(2) to clarify that a catcher vessel is not subject to the requirements of subpart E when delivering unsorted codends to a mothership. The existing wording is more restrictive than intended, and this proposed

rule would clarify that a catcher vessel which, for some of its fishing activity, delivers unsorted codends to a mothership, would not be subject to the requirements of subpart E only during the fishing activity that results in delivering unsorted codends to a mothership.

This proposed rule would modify § 679.51(a)(2)(vi)(A)(5) to update the observer coverage requirement for motherships that receive unsorted codends from catcher vessels groundfish CDQ fishing. This coverage requirement would be modified to no longer require that both observers deployed have a level 2 deployment endorsement. A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing would be required to carry two observers, one of which must have a LL2 deployment endorsement for a catcher/processor using trawl gear or a mothership. This would make observer coverage requirements for motherships participating in the groundfish CDQ fishery consistent with observer coverage requirements for catcher/processors participating in the Amendment 80 Program.

This proposed rule would update the phone number that is currently provided in §§ 679.84(c)(7) and 679.93(c)(7) for notifying the Observer Program as required under regulations governing the Rockfish Program and Amendment 80 Program, in order to allow vessel operators or managers to contact the Dutch Harbor or Kodiak field offices directly.

To improve clarity and consistency, this proposed rule would remove the term “certified” and replace it with the term “endorsed” when used to describe observer deployment endorsements throughout § 679.51. This proposed rule would also remove the provision at § 679.53(a)(5)(v)(B) that describes sampling experience requirements for

an observer to obtain an LL2 deployment endorsement for a catcher vessel using trawl gear. This LL2 deployment endorsement is not required for any vessels that operate in the commercial groundfish or halibut fisheries, which makes this regulation unnecessary.

### **Classification**

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the FMPs, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration of comments received during the public comment period.

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

### *Regulatory Impact Review (RIR or Analysis)*

An RIR was prepared to assess the costs and benefits of available regulatory alternatives. A copy of this Analysis is available from NMFS (see **ADDRESSES**). The Council and NMFS recommend this action based on those measures that maximize net benefits to the Nation. Specific aspects of the economic analysis related to the impact of the proposed rule on small entities are discussed below in the Initial Regulatory Flexibility Analysis section.

### *Initial Regulatory Flexibility Analysis*

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the economic impact this proposed rule, if adopted, would have on small entities. An IRFA describes why this action is being proposed; the objectives and legal basis for the proposed rule; the number of small entities to which the proposed rule would

apply; any projected reporting, recordkeeping, or other compliance requirements of the proposed rule; any overlapping, duplicative, or conflicting Federal rules; and any significant alternatives to the proposed rule that would accomplish the stated objectives, consistent with applicable statutes, and that would minimize any significant adverse economic impacts of the proposed rule on small entities. Descriptions of this proposed rule, its purpose, and the legal basis are contained earlier in this preamble and are not repeated here.

#### Number and Description of Small Entities Regulated by This Proposed Rule

This proposed rule would directly regulate observers and owners and operators of the following vessels: 1) freezer longline vessels that participate in the BSAI hook-and-line Pacific cod fishery; and 2) pot catcher/processors, trawl catcher/processors, nontrawl catcher/processors, and motherships when groundfish CDQ fishing. Observer providers are impacted by the limited availability of nontrawl LL2 observers, but the proposed rule would not modify regulations that directly apply to observer provider firms. Observers are individuals and not entities, so they do not meet the Small Business Administration (SBA) definition of a small entity. Therefore, neither observer providers nor observers are considered directly regulated entities in this IRFA.

This proposed rule would directly regulate the activities of 29 BSAI freezer longline vessels, two pot catcher/processors, and 22 trawl catcher/processors and motherships. Two questions must be considered in classifying catcher/processors under the RFA. First, are the individual vessels independently owned and operated and not dominant in their field of operation, or are these vessels affiliated under the RFA?

Second, which industry classification is appropriate to use for vessels that conduct both fish harvesting and fish processing?

Freezer longline vessels directly regulated by this action are all members of the Freezer Longline Conservation Cooperative (FLCC), a voluntary fishing cooperative operating through a contract among all parties, whose members have a de facto catch share program because they effectively control fishing for the freezer longline vessel subsector's allocation of Pacific cod in the BSAI. NMFS has determined that vessels that are members of a fishing cooperative, including members of the FLCC, are affiliated when classifying them for the RFA analyses. In making this determination, NMFS considered SBA's "principles of affiliation" at 13 CFR 121.103. Specifically, in § 121.103(f), SBA refers to "[A]ffiliation based on identity of interest," which states "[A]ffiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated." If business entities are affiliated, then the threshold for identifying small entities is applied to the group of affiliated entities rather than on an individual entity basis.

In addition, distinct from their affiliation through the FLCC, vessels regulated by this proposed rule also may be affiliated through ownership. NMFS has reviewed cooperative membership and available ownership data to assess ownership and affiliations among vessels. Based on this information, NMFS estimates that the 29 active FLCC vessels and two pot catcher/processors affected by this action are owned and

operated by no more than 11 separate entities. Of these 11 entities, 6 entities own 26 freezer longline vessels and one pot catcher/processor vessel.

The thresholds applied to determine if an entity or group of entities are “small” under the RFA depend on the industry classification for the entity or entities. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts not in excess of \$11.0 million for all affiliated operations worldwide (81 FR 4469; January 26, 2016). Businesses classified as primarily engaged in fish processing are considered small entities if they employ 750 or fewer persons on a full-time, part-time, temporary, or other basis, at all affiliated operations worldwide. Since at least 1993, NMFS Alaska Region has considered catcher/processors to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of \$11.0 million in annual gross receipts is appropriate.

By applying the \$11.0 million annual gross receipts threshold collectively to the vessels affiliated through the FLCC, all of the members of the FLCC are considered large entities under the RFA. The two pot catcher/processors are affiliated with additional vessels that, when interests are aggregated, exceed the \$11.0 million threshold and are considered large entities under the RFA. NMFS considered vessel affiliation independent of the FLCC contracts and concluded that if not for FLCC affiliation, five vessels owned by four entities would be considered small entities under the SBA. Additional detail about data sources used to prepare this IRFA and the analysis of vessel affiliation independent of FLCC contract are available in Section 4.6 of the RIR prepared for this proposed rule (see **ADDRESSES**).

The proposed regulatory change to modify observer coverage requirements for motherships receiving unsorted codends from catcher vessels groundfish CDQ fishing and to remove prior notification of CDQ catch and CDQ number would affect 19 nontrawl catcher/processors and 22 trawl catcher/processors, 4 of which also act as a mothership to receive unsorted codends from catcher vessels groundfish CDQ fishing. As described above, the 19 nontrawl catcher/processors are considered large entities under the RFA. All of the trawl catcher/processors and motherships affected by this proposed rule are affiliated as members of either an American Fisheries Act or an Amendment 80 cooperative with a combined average annual gross revenue above the \$11.0 million threshold, classifying them as large entities under the RFA.

Based on this analysis, NMFS preliminarily determines that there are no small entities that would be affected by this proposed rule. However, due to the complexity of the affiliation among the entities and the overlay of affiliation due to ownership and affiliation based on the contractual relationship among members of cooperatives, NMFS has prepared this IRFA. This provides potentially affected entities an opportunity to provide comments on this IRFA. NMFS will evaluate any comments received on the IRFA and may consider certifying that this action will not have a significant economic impact on a substantial number of small entities prior to publication of the final rule.

To the degree that this proposed rule would increase the pool of available nontrawl LL2 observers, the primary economic impact of this proposed rule would be to reduce costs to vessel owners. Costs would be reduced by the amount vessel owners would otherwise pay to deploy second observers on some freezer longline vessels to allow those observers to gain sampling experience to count toward a nontrawl LL2

deployment endorsement. In addition, an increase in the number of available nontrawl LL2 observers would reduce the potential costs associated with a shortage of nontrawl LL2 observers. This proposed rule would add new costs for freezer longline vessels and pot catcher/processors to comply with pre-cruise meeting requirements. NMFS estimates the cost savings associated with the increase in the pool of qualified nontrawl LL2 observers is expected to exceed the relatively small costs that would be associated with the pre-cruise meeting requirements.

The proposed regulatory change to modify observer coverage requirements for motherships receiving unsorted codends from catcher vessels groundfish CDQ fishing could reduce costs by allowing less experienced observers to deploy, and would increase operational flexibility for vessels that operate in the CDQ and non-CDQ fisheries. The proposed regulatory change to remove the prior notification of CDQ catch and CDQ number would reduce costs to the owners of catcher/processors when pollock CDQ fishing, catcher/processors and motherships when groundfish CDQ fishing, and catcher/processors using nontrawl gear when groundfish CDQ fishing. All vessels affected by this action would benefit by reducing recordkeeping and reporting requirements with no negative impacts on affected entities.

#### Recordkeeping, Reporting, and Other Compliance Requirements

This proposed rule adds additional reporting, recordkeeping, and other compliance requirements for freezer longline vessels and pot catcher/processors that are required to carry a nontrawl LL2 observer. Vessel operators would be responsible to ensure that the Observer Program is notified by phone 24 hours prior to departure when a vessel will be carrying a nontrawl LL2 observer that has not previously been deployed on

that vessel in the last 12 months. Vessel operators contract directly with permitted observer providers to procure observer coverage. The Observer Program could be notified by anyone with knowledge of the upcoming observer assignment, including the vessel operator, a crew member, or the observer provider. The person notifying the Observer Program would need knowledge of the vessel's prior observer assignment history and the upcoming observer assignment 24 hours in advance of a trip.

No small entity is subject to reporting requirements that are in addition to or different from the requirements that apply to all directly regulated entities. No unique professional skills are needed for the vessel operators to comply with any of the reporting and recordkeeping requirements associated with this proposed rule.

#### Duplicate, Overlapping, or Conflicting Federal Rules

No duplication, overlap, or conflict between this proposed rule and existing Federal rules has been identified.

#### Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

No significant alternatives were identified that would accomplish the stated objectives for placing observers on fishing vessels, are consistent with applicable statutes, and that would reduce costs to potentially affected small entities more than the proposed rule. The Council and NMFS considered three alternatives. Alternative 1, the no action alternative, would not reduce the potential for a shortage of nontrawl LL2 observers and would continue to impose additional costs on the industry. Alternative 2 would create a process to allow a vessel to go fishing without a nontrawl LL2 observer if there were no nontrawl LL2 observers available. Alternative 3 included two options. Option 1 would allow a vessel required to carry one LL2 observer to choose between carrying two level 2

observers or one LL2 observer. Option 2 would modify the training and experience requirements necessary for an observer to obtain the nontrawl LL2 deployment endorsement.

The preferred alternative, Alternative 3 Option 2 was designed to minimize the impacts to small entities from the status quo requirement by increasing the pool of qualified observers and reducing the need for vessels to voluntarily carry second observers for the purpose of gaining the necessary experience to obtain a nontrawl LL2 deployment endorsement. Alternative 3 Option 2 includes additional observer training and a pre-cruise meeting as necessary to ensure that observers are adequately prepared to fulfill the data collection responsibilities.

Relative to Alternative 1, the preferred alternative would increase the recordkeeping burdens on small entities by requiring the Observer Program be notified prior to a vessel embarking on a trip with an observer who has not previously deployed on that vessel in the past 12 months, and by requiring, if necessary, the vessel operator or manager to participate in a pre-cruise meeting with the observer, which could delay fishing activity by the amount of time necessary to complete a pre-cruise meeting.

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

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval under OMB control number 0648-0318 (North Pacific Observer Program). The public reporting burden for the collection-of-information requirements in this proposed rule includes the time for reviewing instructions, searching existing data sources,

gathering and maintaining the data needed, and completing and reviewing the collection of information.

This proposed rule would require that the Observer Program be notified by phone at least 24 hours prior to departure when a vessel will carry an observer who had not deployed on that vessel in the past 12 months. Public reporting burden per response to notify the Observer Program by phone is estimated to be five minutes.

Public comment is sought regarding 1) 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; 2) the accuracy of the burden estimate; 3) ways to enhance the quality, utility, and clarity of the information to be collected; and 4) 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 to OIRA by e-mail to *OIRA\_Submission@omb.eop.gov* or by fax to (202) 395-5806.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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. All currently approved NOAA collections of information may be viewed at

*[http://www.cio.noaa.gov/services\\_programs/prasubs.html](http://www.cio.noaa.gov/services_programs/prasubs.html)*.

## List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: December 21, 2017.

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Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be 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.*; 3631 *et seq.*; Pub. L. 108–447;

Pub. L. 111-281.

2. In § 679.2,

a. Remove the definition for “Observer Program Office”; and

b. Add the definitions for “Cruise” and “Observer Program” in alphabetical order

to read as follows:

#### **§ 679.2 Definitions.**

\* \* \* \* \*

*Cruise* means an observer deployment with a unique cruise number. A cruise begins when an observer receives an endorsement to deploy and ends when the observer completes all debriefing responsibilities.

\* \* \* \* \*

*Observer Program* means the administrative office of the North Pacific Observer Program located at the Alaska Fisheries Science Center (See § 679.51(c)(3) for contact information).

\* \* \* \* \*

3. In § 679.32,

a. Remove and reserve paragraphs (c)(3)(i)(B)(2), (c)(3)(i)(C)(2), and (c)(3)(i)(E)(2); and

b. Add paragraph (c)(3)(i)(E)(4) to read as follows:

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

\* \* \* \* \*

(c) \* \* \*

(3) \* \* \*

(i) \* \* \*

(E) \* \* \*

(4) Notify the Observer Program by phone at 1 (907) 581-2060 (Dutch Harbor, AK) or 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-

cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

\* \* \* \* \*

4. In part 679, revise subpart E heading to read as follows:

**Subpart E—North Pacific Observer Program**

5. In § 679.50, revise paragraph (a)(2) to read as follows:

**§ 679.50 Applicability.**

(a) \* \* \*

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

\* \* \* \* \*

6. In § 679.51, revise paragraph (a)(2)(vi)(A)(5) to read as follows:

**§679.51 Observer and Electronic Monitoring System requirements for vessels and plants.**

(a) \* \* \*

(2) \* \* \*

(vi) \* \* \*

(A) \* \* \*

(5) *Motherships.* A mothership that receives unsorted codends from catcher vessels groundfish CDQ fishing must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

\* \* \* \* \*

7. In § 679.53,

- a. Remove and reserve paragraph (a)(5)(v)(B); and
- b. Revise paragraph (a)(5)(v)(C) to read as follows:

**§679.53 Observer certification and responsibilities.**

(a) \* \* \*

(5) \* \* \*

(v) \* \* \*

(C) A lead level 2 observer on a vessel using nontrawl gear must have completed the following:

(1) Two observer cruises (contracts) of at least 10 days each; and

(2) Successfully completed training or briefing as prescribed by the Observer Program; and

(3) Sampled at least 30 sets on a vessel using nontrawl gear; or

(4) Sampled 100 hauls on a catcher/processor using trawl gear or on a mothership.

\* \* \* \* \*

8. In § 679.84, revise paragraph (c)(7) to read as follows:

**§679.84 Rockfish Program Recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(c) \* \* \*

(7) *Pre-cruise meeting.* The Observer Program is notified by phone at 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be

carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

\* \* \* \* \*

9. In § 679.93, revise paragraph (c)(7) to read as follows:

**§679.93 Amendment 80 Program recordkeeping, permits, monitoring, and catch accounting.**

\* \* \* \* \*

(c) \* \* \*

(7) *Pre-cruise meeting.* The Observer Program is notified by phone at 1 (907) 581-2060 (Dutch Harbor, AK) or 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

\* \* \* \* \*

10. In § 679.100, add paragraphs (b)(1)(v) and (b)(2)(i)(E) to read as follows:

**§679.100 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) The Observer Program is notified by phone at 1 (907) 581-2060 (Dutch Harbor, AK) or 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

(2) \* \* \*

(i) \* \* \*

(E) The Observer Program is notified by phone at 1 (907) 581-2060 (Dutch Harbor, AK) or 1 (907) 481-1770 (Kodiak, AK) at least 24 hours prior to departure when the vessel will be carrying an observer who has not previously been deployed on that vessel within the last 12 months. Subsequent to the vessel's departure notification, but prior to departure, NMFS may contact the vessel to arrange for a pre-cruise meeting. The pre-cruise meeting must minimally include the vessel operator or manager and any observers assigned to the vessel.

\* \* \* \* \*

11. In the table below, for each section indicated in the "Location" column, remove the phrase indicated in the "Remove" column and replace it with the phrase indicated in the "Add" column from wherever it appears in the "Frequency" column.

Location	Remove	Add	Frequency
§ 679.51(a)(2)(vi)(B)(I),	certified	endorsed	1

(a)(2)(vi)(B)(3),(a)(2)(vi)(B)(4), (a)(2)(vi)(C), (a)(2)(vi)(D)(1), (a)(2)(vi)(D)(2), and (a)(2)(vi)(E)(1)			
§ 679.51(c)(3), (a)(2), (b)(1)(iii)(A), (b)(2)(iv), (b)(3)(ii)(B), and (b)(8) introductory text	Observer Program Office	Observer Program	1
§ 679.52(b)(11) introductory text	Observer Program Office	Observer Program	2
§ 679.52(b)(11)(i) introductory text, (b)(11)(ii), (b)(11)(iii), and (b)(11)(vi) introductory text	Observer Program Office	Observer Program	1
§ 679.52(b)(11)(vii) introductory text	Observer Program Office	Observer Program	3
§ 679.52(b)(11)(viii) introductory text, (b)(11)(viii)(A), (b)(11)(ix), (b)(11)(x) introductory text, and (b)(12)	Observer Program Office	Observer Program	1
§ 679.53(a)(1)	Observer Program Office	Observer Program	1
§ 679.53(a)(5)(v) introductory text, and (a)(5)(v)(A)	“lead”	lead	1
§ 679.53(b)(2)(i)	Observer Program Office	Observer Program	1

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