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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 200622-0166]

RIN 0648-BJ40

**Fisheries of the Exclusive Economic Zone off Alaska; Adjust the North Pacific
Observer Program Fee**

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to adjust the North Pacific Observer Program (Observer Program) fee. This action is intended to increase funds available to support observer and electronic monitoring systems deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting desired monitoring objectives. This action is intended to promote the goals and objectives of the Individual Fishing Quota (IFQ) Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable law.

DATES: Effective [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the Environmental Assessment/Regulatory Impact Review (referred to as the “Analysis”) prepared for this final rule are available from

<http://www.regulations.gov> or from the NMFS Alaska Region Web site at
<https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Alicia M Miller, 907-586-7228 or
alicia.m.miller@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). 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.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. Sections 5(a) and 5(b) of the Halibut Act (16

U.S.C. 773c(a), (b)) provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. Section 5(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Throughout this preamble the term halibut is used for Pacific halibut.

Background

NMFS issues regulations to adjust the Observer Program fee percentage. This action is intended to increase funds available to support observer and electronic monitoring systems (EM) deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting monitoring objectives. Additional detail describing the Observer Program, the landings subject to the observer fee, and the need for this action were included in the Analysis prepared for this action and preamble to the proposed rule for this action and are not repeated here. The following sections provide a brief summary of this information.

Observer Program

Regulations at 50 CFR part 679, subpart E, implementing the Observer Program, require the deployment of NMFS-certified observers or EM. Fishery managers use information collected by observers or EM to monitor fishing quotas, manage catch and bycatch, and document fishery interactions with protected resources, such as marine mammals and seabirds. The current Observer Program was implemented in 2012 (77 FR 70061, November 21, 2012) and modified in 2017, to integrate EM into the partial coverage category (82 FR 36991, August 8, 2017).

The Observer Program includes two observer coverage categories—the partial coverage category and the full coverage category (defined in regulation at § 679.51). All groundfish and halibut vessels and fish processors subject to observer coverage are included in one of these two categories. Throughout this rule, the term “processor” refers to shoreside processors, stationary floating processors, and catcher/processors.

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the Council, in consultation with NMFS, to prepare a fishery research plan that includes stationing observers to collect data necessary for the conservation, management, and scientific understanding of the fisheries under the Council’s jurisdiction, including the halibut fishery. Section 313(d) of the Magnuson-Stevens Act authorized creation of the North Pacific Fishery Observer Fund within the U.S. Treasury. NMFS uses its authority under section 313 of the Magnuson-Stevens Act to fund the deployment of observers and EM on vessels and processors in the partial coverage category. Section 313 of the Magnuson-Stevens Act authorizes NMFS to assess a fee up to 2 percent of the unprocessed ex-vessel value of the fisheries under the jurisdiction of the Council, including the halibut fishery.

Each year, NMFS prepares an annual report and consults with the Council to develop an Annual Deployment Plan (ADP). The annual report evaluates the performance of observer deployment in the prior year and informs the development of the ADP for the following year. The ADP describes how observers and EM will be deployed in the partial coverage category for the upcoming calendar year. Deployment requirements for observers and EM in the full coverage category are established in regulations 50 CFR part 679. Observer and EM selection rates for a given year are

dependent on the available budget generated from the observer fee and supplemental funds. Additional information about the Observer Program is available in the preamble to the proposed rule for this action and in Section 3 of the Analysis.

Landings Subject to the Fee

Regulations at § 679.55(c) describe which landings are subject to the observer fee assessment. The observer fee is assessed on all landings accruing against a Federal total allowable catch (TAC) for groundfish or a commercial halibut quota made by vessels that are subject to Federal regulations and not included in the full coverage category.

The intent of the Council and NMFS is for vessel owners to split the fee liability 50-50 with the processor or registered buyer. While the intent is that vessels and processors are each responsible for paying their portion of the ex-vessel value fee, the owner of a processor is responsible for collecting the fee, including the vessel's portion of the fee, at the time of landing and for remitting the full fee amount to NMFS.

Annually, NMFS publishes in the **Federal Register**, a notice of the standard ex-vessel prices for groundfish and halibut for the calculation of the observer fee under the Observer Program (84 FR 68409, December 16, 2019). Each year the notice provides information to vessel owners, processors, registered buyers, and other participants about the standard ex-vessel prices that will be used to calculate the observer fee assessed against landings of groundfish and halibut. NMFS sends invoices to processors and registered buyers subject to the fee by January 15 of each year for the previous year's fee liabilities. Fees are due to NMFS on or before February 15.

Need for this Action

The annual process of establishing observer coverage and EM selection rates in the partial coverage category using the Observer Program Annual Report and Draft ADP is a well-designed and flexible process. This annual process produces a statistically reliable sampling plan for the collection of scientifically robust data at any level of observer coverage and allows for annual consideration of policy-driven monitoring objectives identified through the Council process (Section 3.3 of the Analysis). Due to higher than expected observer deployment costs since 2013, and to the diminishing availability of supplemental Federal funding and declining fee revenues, additional funding is necessary to deploy observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In October 2019, the Council unanimously recommended to increase the observer fee to 1.65 percent. Additional information about funding and coverage rates afforded since 2013 is included in Section 3.4 of the Analysis.

Final Rule

This action will increase the observer fee specified at § 679.55(f) to 1.65 percent of the ex-vessel value of landings subject to the fee beginning on January 1, 2021. A 1.65 percent fee will increase fee revenues (as compared to a 1.25 percent fee) to support observer and EM deployment at rates more likely to meet the Council's and NMFS' monitoring objectives. Observer and EM data are an integral component of management for all fisheries in the partial coverage category. Data collected by observers is fundamental to fisheries management off Alaska, and the Observer Program is critical to collecting important information for NMFS, the Council, and stakeholders.

This action balances concerns about the impacts of increased costs with the need to increase revenue in order to meet monitoring objectives. This action does not modify other aspects of the fee collection process, the responsibility to pay the fee, the ADP process, or other aspects of the Observer Program regulations and management.

Comments and Responses

NMFS received three comment letters during the comment period for the proposed rule (85 FR 13618, March 9, 2020). Two of these comment letters were outside the scope of this action and are not addressed in this final rule. One comment letter from an individual fishery participant included three distinct comments which are summarized and responded to below.

Comment 1: There is no reason to increase the observer fee.

Response: This action is necessary to support the Council's objective of increasing fee revenues and improving the ability of NMFS and the Council to support observer and EM deployment rates that are more likely to meet monitoring objectives of the Observer Program. Each year NMFS, in consultation with the Council, establishes observer and EM deployments rates in the ADP. Due to diminishing availability of supplemental Federal funding and declining fee revenues, additional funding is necessary to decrease risk and increase the probability of deploying observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In October 2019, the Council unanimously recommended to increase the observer fee to 1.65 percent to support observer and EM deployment at rates that are more likely to meet Observer Program monitoring objectives. Fishery dependent data collected through the Observer Program is fundamental to fisheries management off Alaska and is important

for NMFS, the Council, and stakeholders. Additional information about the Council's rationale for this action is included in the preamble to the proposed rule and Section 2.4.1 of the Analysis for this action.

Comment 2: NMFS should work within the available budget.

Response: Each year, NMFS establishes observer and EM deployment rates based on the available budget that is generated from the observer fee revenue and supplemental Federal funds. Under current regulations, the observer fee cannot be adjusted annually without notice and comment rulemaking. This action would not change the annual deployment process and NMFS would continue to annually decide the rate of observer coverage and EM coverage that are possible given the budget generated by fee revenues. The amount of coverage allocated to both deployments would continue to be determined annually in the ADP based on an analysis of the costs, budget, and fishing effort in the partial coverage category.

Since 2014, NMFS has set the annual partial coverage budget based on expected fee revenues, unused funds from the previous year's budget, and supplemental Federal funding. NMFS uses the estimated budget and anticipated fishing effort to evaluate the expected budget for the upcoming year. This process in the ADP enables NMFS to reduce the risk of going over the budget. If at some point during the fishing year, NMFS evaluates spending and determines that the realized costs of observer and EM deployment could exceed the available budget, NMFS may either provide additional supplemental funding or reduce the observer or EM deployment rates to reduce expenditures. Realized expenditures and deployment rates for observers and EM are evaluated each year in the Annual Report. This annual process enables the agency to incorporate information from

previous years and adjust the deployment methods. This final rule establishes the fee percentage that will directly influence the available budget in future years.

Comment 3: Cameras are the answer and more cameras should be deployed on boats instead of observers to reduce costs. Cameras work well, the costs were paid years ago and the labor to review the video must cost less.

Response: NMFS, in collaboration with Industry and the Council's Fishery Monitoring Advisory and Electronic Monitoring Committees, continues to work on developing and implementing EM to improve available monitoring tools and improve cost efficiencies within the partial coverage category. In 2018 NMFS developed regulations to allow fixed gear vessels in partial coverage category to request placement in the EM selection pool for the calendar year rather than carrying an observer. The data collected from this coverage are used to obtain catch and discard information from these vessels. Additional information about ongoing work to develop EM and improve cost efficiency is available on the Council's website at: <https://www.npfmc.org/observer-program/>.

Until 2020, EM deployment in the partial coverage category has been funded through a combination of Federal funding and grants to industry partners. Starting in 2020, funds from the observer fee will be used to fund EM deployment. The average annual cost per day for EM deployment in the partial coverage category since 2015 has thus far been similar to average annual cost per day for deploying observers in the partial coverage category, though this may change as more information becomes available about the annual EM equipment replacement costs. The costs to deploy EM in lieu of an observer are generally thought to be lower over time for a mature and stable monitoring

program. Annual EM deployment costs are variable and depend on a number of factors, including equipment costs (for new installations and replacements), maintenance, video review, and data storage. Section 3.4 of the Analysis (see **ADDRESSES**) includes additional detail on EM deployment costs.

Changes from Proposed to Final Rule

There were no changes from the proposed to final rule.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is consistent with the FMP for Groundfish of the GOA and the FMP for Groundfish of the BSAI Management Area, other provisions of the Magnuson-Stevens Fishery and Conservation Act, and other applicable laws.

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

This final rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this action and is included below. NMFS published a proposed rule on March 9, 2020 (85 FR 13618). An initial regulatory flexibility analysis (IRFA) was prepared and included in the “Classification” section of the preamble to the proposed rule. The comment period closed on April 8, 2020. NMFS received three letters of comment on the proposed rule. Two of these comment letters were outside the scope of this action and are not addressed in this final rule and no comments were received on the IRFA. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, information included in the small entity compliance guide for the Observer Program was prepared. Copies of this final rule and the small entity compliance guide, are available on the Alaska Region’s website at: <https://www.fisheries.noaa.gov/alaska/fisheries-observers/north-pacific-observer-program>.

Final Regulatory Flexibility Analysis (FRFA)

This FRFA was prepared for this action, as required by section 603 of the Regulatory Flexibility Act (RFA). This FRFA describes the economic impact this action will 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.

Number and Description of Small Entities Regulated by This Final Action

This action directly regulates the owners (permit holders) of fish processors required to pay the observer fee. A shoreside processor or stationary floating processor primarily involved in seafood processing is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual employment, counting all individuals employed on a

full-time, part-time, or other basis, not in excess of 750 employees for all its affiliated operations worldwide. Reliable information is not available on ownership affiliations between individual processing operations or employment for the fish processors directly regulated by this final rule. Therefore, NMFS assumes that all of the processors directly regulated by this action could be small. Section 5.7 of the Analysis identifies 50 shorebased processors and 14 floating processors that received partial coverage deliveries subject to the observer fee in 2018 (the most recent year of available ownership and permit data).

This action also directly regulates the owners (permit holders) of catcher/processors required to pay the observer fee, and directly affects the owners (permit holders) of catcher vessels that harvest fish subject to the observer fee. Under the RFA, businesses classified as primarily engaged in commercial fishing are considered small entities if they have combined annual gross receipts (revenues) not in excess of \$11.0 million for all affiliated operations worldwide, regardless of the type of fishing operation – *i.e.*, finfish or shellfish (81 FR 4469; January 26, 2016). If a vessel has a known affiliation with other vessels – through a business ownership or through a cooperative – the vessel’s gross receipts are measured against the small entity threshold based on the total gross revenues of all affiliated vessels. Because public information on business ownership is incomplete, this analysis only considers affiliation in the form of membership in a fishing cooperative. Gross revenues for catcher vessels that participated in fishing cooperatives under the Central Gulf of Alaska Rockfish Program, the Bering Sea American Fisheries Act pollock fishery, or the Crab Rationalization Program were combined for purposes of identifying small entities directly affected by this final rule.

In 2018, 997 vessels participated in fisheries in the partial coverage category. Section 4.5.3.2 of the Analysis notes that the number of catcher/processors eligible for partial coverage when fishing off Alaska is currently estimated to be between 6 and 10. Of the total of 997 vessels in partial coverage in 2018, 982 are classified as small entities (4 were catcher/processors and the rest were catcher vessels). Of those 982 vessels, 827 vessels fished hook-and-line gear, 87 fished pot gear, 30 fished trawl gear, and 22 fished jig gear.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

The Council and NMFS considered three alternatives to this action. Alternative 1, the no action Alternative, would maintain the current level of the fee at 1.25 percent of the ex-vessel value of the fish landings subject to the fee. Alternative 2 included fee options up to 2 percent, that would be applied equally across all fisheries included in the program (*i.e.*, gear types). Alternative 3 included fee options up to 2 percent that would be implemented differentially across the fisheries included in the program (*i.e.*, gear types). This action increases the observer fee to 1.65 percent of ex-vessel value for all landings subject to the observer fee. Some of the fee levels considered under Alternatives 2 and 3 would have implemented a fee percentage lower than this action for some or all directed regulated or directly affected small entities. However, the Council recommendation to increase the observer fee is necessary to increase fee revenues to deploy observers and EM at coverage rates adequate to meet the Council's and NMFS' monitoring objectives in future years. In addition, the Council recommended and NMFS agrees that a single observer fee percentage applied equally to the ex-vessel value of all of the landed catch subject to the observer fee continues to be fair and equitable.

Recordkeeping, Reporting, and Other Compliance Requirements

This action does not contain recordkeeping, reporting, or other compliance requirements.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements, Observers.

Dated: June 22, 2020.

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 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 § 679.55, revise paragraph (f) to read as follows:

§ 679.55 Observer fees.

* * * * *

(f) *Observer fee percentage.* The observer fee percentage is 1.25 percent through December 31, 2020. Beginning January 1, 2021, the observer fee percentage is 1.65 percent.

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