PART 9—AMENDED

Paragraph 1. The authority citation for part 9 continues to read as follows:


Par. 2. Section 9.52(b) is revised to read as follows:

§ 9.52 Chalk Hill.

(b) Approved maps. The appropriate maps for determining the boundaries of the "Chalk Hill" viticultural area are 4 U.S.G.S. Quadrangle (7.5 Minute Series) maps titled:

"Mark West Springs Quadrangle, California," 7.5 minute series, 1958 (Photoinspected 1978).


"Healdsburg Quadrangle, California Sonoma Co.," 7.5 minute series, 1955 (Photoinspected 1980).

"Jimtown Quadrangle, California Sonoma Co.," 7.5 minute series, 1955 (Photoinspected 1975).

Par. 3. Section 9.52 is amended by removing paragraph (c) (12) through (22), adding new paragraphs (c) (12), (13), and (14), and redesignating paragraphs (c) (23), through (30) as (c) (15) through (22), respectively to read as follows:

(c) Boundary

(18) Then west approximately 3,000 feet along the township line common to T. 8 N., and T. 9 N., in R. 9 W.;

(19) Then southerly for approximately 2,000 feet in a straight line to the point of intersection with an unnamed stream drainage;

(20) Then east in a straight line to the point of intersection with Eastside Road;

(21) Then northwesterly along Eastside road to the point of intersection with Redwood Highway;

(22) Then southeasterly along Redwood Highway to the point of beginning.

* * * * *

Signed: December 1, 1989.

Daniel R. Black,
Acting Director.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-9278]

RIN 0648-AD04

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes regulations to implement the Observer Plan provided for by amendments 13 and 18 to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska, respectively. This action is necessary to provide the public an opportunity to comment on these provisions. It is intended to further the goals and objectives contained in the fishery management plans that govern these fisheries.

DATE: Comments are invited until December 21, 1989.

ADDRESS: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21868, Juneau, AK 99802. Copies of the environmental assessment/regulatory impact review/ final regulatory flexibility analysis (EA/ RIR/FRFA) that was prepared for Amendments 13 and 18 may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: Janet Smoker (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone (EEZ) of the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) areas are managed by the Secretary according to FMPs prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMPs are implemented by regulations for the foreign fisheries at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to the U.S. fisheries are implemented at 50 CFR part 820.

The Secretary of Commerce (Secretary) approved amendments 13 and 18 under section 304(b) of the Magnuson Act. Those amendments contained certain management measures as listed in the final rule published at 54 FR 50386 (December 6, 1989). One of the listed measures authorized a comprehensive domestic observer program. An Observer Plan to implement provisions of this program has been prepared by the Secretary in consultation with the Council.

The preamble prepared for proposed regulations to implement amendments 13 and 18 contained the reasons for the observer program. At the time the proposed regulations were published, the Observer Plan was still being developed. NMFS has now prepared the Observer Plan, copies of which may be obtained from the Regional Director at the above address. It describes the responsibilities that will be imposed on NMFS, vessel operators, and managers of shoreside processing facilities, and NMFS-certified contractors who will act as agents of NMFS in providing observers to groundfish fishing vessels and shoreside processors. Minimum qualifications for observers are also stated in the Observer Plan.

Descriptions of major parts of the Observer Plan are as follows:

Responsibilities of NMFS

NMFS is responsible for (1) the overall program administration, (2) training or certification of observers, (3) contractor certification, (4) final trip debriefing of observers, (5) specification of observer coverage for the subject fisheries, (6) logistical monitoring, and (7) management of the data collected by the
observers. Each of the aspects of NMFS responsibilities is further described as follows:

1. Program administration. Within this task, general program policy is established; observer duties, sampling methods, and data format are specified, observer qualifications and contractor certification are specified, NMFS personnel and budgets are administered, and regulations are proposed that pertain to observer work, accommodations on board vessels and at shoreside processing facilities, and safety considerations.

2. Observer training and certification. Observers who meet the basic educational and experience qualifications stated in the Observer Plan and who are hired by certified contractors to be placed on board domestic vessels will be required to successfully complete a 2-week training certification program conducted by NMFS, or its designated agent, prior to being deployed on board a domestic vessel or at a shoreside processing facility. Individuals who have successfully completed either a foreign or domestic groundfish observer deployment administered by NMFS will be only required to attend a 2-4 day briefing. Certification training will be provided at a minimum on a scheduled quarterly basis and more frequently if required. The training of observers is critical to the overall success of the observer program and the quality of information collected. Because observers will act as agents of NMFS to collect fisheries information for Federal management of the Alaska groundfish fisheries, training must be consistent and must respond to changing management and data collection needs. Observers must not adhere to standards of conduct prescribed by NMFS.

3. Contractor certification. NMFS will certify contractors prior to their providing observers to the industry to assure that the contractors do not have a financial or personal conflict of interest with the fishing vessel or shoreside processing facility owners, and to assure that the contractors understand their responsibilities, which will be defined by NMFS. NMFS will review technical proposals submitted by prospective contractors that describe task performance to ensure that they are able to adequately provide the required services as an agent of NMFS under the mandatory observer program. The costs of providing observers will not be considered in the evaluation. Firms submitting proposals judged adequate to provide services and which do not have a financial or personal conflict of interest will be included in a list of certified contractors from which industry members can obtain their required observers. A contractor could lose certification if the contractor is found to have a financial or personal conflict of interest with either vessel or shoreside processor owners or the contractor is deficient in the performance of the duties prescribed by NMFS.

4. Observer debriefing. Debriefing observers will be done by staff of the NMFS observer program and by the Alaska Department of Fish and Game (ADF&G) staff located at debriefing sites. Debriefing sites will be at Dutch Harbor and Kodiak, Alaska, and such other major fishing ports as deemed necessary by NMFS, and at the Alaska Fisheries Science Center in Seattle, Washington. Observers will be debriefed between deployments to make information available for editing, assimilation, and analysis.

5. Coordination of observer coverage and logistics. NMFS will coordinate observer coverage with certified contractors to ensure scientifically adequate sampling and to ensure receipt of information from the observers.

6. Data management. NMFS is responsible for the entry, editing, and database management of the data collected by observers. Primary data storage of weekly catch data will be located at the NMFS Alaska Regional Office in Juneau with subsequent transmission to the Alaska Fisheries Science Center in Seattle. Primary data storage of trip reports will be at the Alaska Fisheries Science Center.

Responsibilities of Vessel Owners and Managers of Shoreside Processing Facilities

The vessel operators or owners and managers of shoreside processing facilities are responsible for the direct costs of deploying observers on board vessels or at shoreside processing facilities. They are also responsible for coordinating with NMFS-certified contractors to assure that observer coverage meets requirements contained in regulations. Any vessel operator or manager of a shoreside processing facility who is required to accommodate an observer is responsible for obtaining a NMFS-certified observer from any of the certified observer contractors.

The vessel operator or manager of a shoreside processing facility will pay the cost of the observer directly to the contractor. Prior to the vessel beginning fishing, the observer must notify NMFS that he/she is on board the vessel and prepared to perform his/her duties as an observer. Prior to receiving groundfish and commencement of processing operations by a shoreside processing facility, an observer must notify NMFS that he/she is on site and prepared to perform his/her duties.

A vessel operator must maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(a) Adequate fire fighting equipment;
(b) A life raft capable of holding all persons on board; and
(c) Any other equipment required by regulations pertaining to safe operation of the vessel.

Responsibilities of Certified Observer Contractors

Contractors must be certified by NMFS. Firms holding a contract with NMFS to provide observer services will be included in the list of certified observers. To obtain certification, a firm must not have a financial or personal conflict of interest with the fishing companies and vessels to which they are providing observers and must agree to provide directly to NMFS all data collected by observers. No limit is placed on the number of contractors which could participate in the observer program and a vessel owner or manager of a shoreside processing facility could choose to work with whichever contractor he chooses. As agents of NMFS, contractors are responsible for the following tasks:

1. Recruiting, evaluating, and hiring of qualified candidates to serve as observers.
2. Ensuring that prospective observers have obtained the required NMFS certification.
3. Providing observer salaries, benefits, and personnel services.
4. Providing workmen's compensation and insurance to cover and protect observers injured in the performance of their duties.
5. Providing all deployment logistics to place and maintain the observers on board the fishing vessels or at shoreside processing facilities.
6. Providing substitute observers in the event an observer has to be removed from, or leaves, a vessel or a shoreside processing facility.
7. Arranging observer debriefings at specified debriefing ports.
8. Assuring that all observer catch messages and other required transmissions between the observer and NMFS are delivered to NMFS within a time specified by the Regional Director.
9. Assuring that all trip data, reports, and specimens collected by observers are delivered to NMFS within five working days of the completion of each observer trip.
10. Assuring that all gear and equipment issued to observers by NMFS is returned to a storage place designated by NMFS within five working days of the completion of the observer trip.

Vessel Participation

During the development of a plan to implement the observer program, the Secretary considered the numbers of vessels that participate in the fishery and the value of information that an observer on a vessel may provide. In doing so, the Secretary has considered the levels of observer coverage that will be required relative to the sizes of vessels on which observers will be deployed and the magnitude of their groundfish landings. All vessels would be required to comply with the observer coverage requested by the Regional Director during a fishing year. For the 1990 fishing year, and possibly for subsequent years, the Secretary proposes that operators of all domestic fishing and processing vessels equal to or longer than 125 feet will be required by the Regional Director to carry an observer at all times. Vessels of this size category harvest most of the groundfish off Alaska. For example, 63 vessels of this size harvested 58 percent of all the domestic annual processing (DAP) groundfish landings in 1988 off Alaska. Through September 1988, 61 vessels harvested 68 percent of all the DAP groundfish landings off Alaska. In both years, the numbers of vessels equal to or longer than 125 feet represented 4 percent of all the DAP vessels making groundfish landings. Because these large vessels harvest more than 50 percent of the groundfish, requiring them to have higher observer coverage relative to smaller vessels and shoreside processing facilities is appropriate. Furthermore, a single observer onboard a vessel will observe less than 100 percent of a vessel's fishing or processing activity, and likely will result in only 25 to 30 percent observer coverage of a vessel's operation. This level of observer coverage is necessary, at least initially, to gather adequate information on variability factors associated with different fisheries, bycatch species, and the experience of vessel operators themselves. Future levels of observer coverage may be modified once adequate information is collected to enable valid sampling within different elements of the groundfish fleet. The 63 vessels 125 feet and longer in length that landed groundfish in 1988 fished an average of 142 days for that year. If similar patterns hold, 8,946 observer days could be required for this segment of the fleet in 1990 at a cost of $2,236,500, based on a cost estimate of $250 per observer day.

The Secretary also proposed for the 1990 fishing year that operators of all domestic fishing and processing vessels that are 50 feet and longer but less than 125 feet carry an observer, upon request by the Regional Director. Vessels must have observer coverage for at least 30 percent of the days they fish for each January-March, April-June, July-September, and October-December period of the fishing year. This level of observer coverage is proposed, because vessels of this size also harvest a significant amount of the DAP harvest and should participate in the observer program. For example, 352 vessels of this size harvested 38 percent of all the DAP groundfish landings in 1988 off Alaska. Through September 1989, 317 vessels in this size category harvested 23 percent of all the DAP groundfish landings off Alaska. In these two years, the numbers of vessels of this size represented 20 and 18 percent, respectively, of all the DAP vessels making groundfish landings. The amount of observer information that would be received from these vessels justifies the costs of carrying an observer during a portion of their fishing effort as determined by the Regional Director.

The 352 vessels within this size category that landed groundfish in 1988 fished an average of 34 days per vessel. If similar patterns hold, 3,590 observer days could be required for this segment of the fleet in 1990 at a cost of $897,500, based on a cost estimate of $250 per observer day.

The Secretary also proposes for the 1990 fishing year, and possibly for subsequent years, that all vessels less than 50 feet in length should not be requested by the Regional Director to carry an observer. The overall groundfish catch by these vessels is small even though their aggregate number is large. For example, 1,314 vessels of this size harvested 3 percent of all the DAP groundfish landings in 1988 off Alaska. Through September 1989, 1,000 vessels of this size harvested only 8 percent of all the DAP groundfish landings off Alaska. In these two years, the numbers of vessels less than 50 feet in length represented 76 and 73 percent, respectively, of all the DAP vessels making groundfish landings. As a practical matter, the amount of observer information that would be received from these small vessels does not justify the costs of carrying an observer that would be imposed on them, nor the costs of program administration that would be imposed on NMFS.

Shoreside Processor Participation

The Secretary proposes that managers of shoreside facilities would be required to have an observer at the facility each day groundfish are received from regulated vessels, if requested to do so by the Regional Director. In 1968, a total of 85 shoreside processors recorded Alaska groundfish landings.

For the 1990 fishing year, and possibly for subsequent years, managers of shoreside facilities that annually receive 10,000 mt or more of groundfish would be requested by the Regional Director to have an observer at each such facility on each day it receives groundfish. Based on 1989 landings to date, an estimated 8 facilities will fall into this category, receiving groundfish an average of 250 days per year. If similar patterns hold, 1,504 observer days could be required for this category of processing facilities in 1990 at a cost of $375,000, based on a cost estimate of $250 per observer day.

Managers of shoreside facilities that annually receive between 1,000 mt and 10,000 mt of groundfish would be requested by the Regional Director to have an observer for 30 percent of the days they receive groundfish. It is estimated that 14 plants will fall into this category in 1989 and receive groundfish an average of 120 days. If similar patterns hold, 504 observer days could be required for this category of processing facility in 1990 at a cost of $125,000, based on a cost estimate of $250 per observer day.

Shoreside processing facilities that annually receive less than 1,000 mt of groundfish would not be requested by the Regional Director to have an observer.

Secretarial approval of the mandatory domestic observer program set forth in amendments 13 and 18 was based upon his finding that reliable observer information is necessary and appropriate for the conservation and management of the Alaskan groundfish fisheries. He proposes to implement specific provisions of the Observer Plan. The Secretary anticipates working with the industry to develop and refine the domestic observer program to meet the needs of both fishery management agencies and the fishing industry.
Amendments to the Groundfish of the Gulf of Alaska

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Council prepared an environmental assessment (EA) for Amendments 13 and 18. The Assistant Administrator found that no significant impact on the quality of the environment will occur as a result of this rule. A copy of the EA may be obtained from the Regional Director at the address above.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this rule is not a “major rule” requiring a regulatory impact analysis under Executive Order 12291.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Assistant Administrator found that no significant effects on small entities would result from this proposed rule. The Under Secretary concluded that this rule, if adopted, would have effects on approximately 0.66 percent of the projected 1989 processed value of the groundfish fisheries of the EEZ off Alaska. These costs would be offset by a more effective utilization of the groundfish stocks made possible by the improved information base. The ability to safely set allowable harvest levels even 10 percent higher could result in an increase in exvessel revenues of approximately $56 million with a processed product value of over $100 million. These effects have been discussed in the EA/RIR/FRFA, a copy of which may be obtained from the Regional Director at the address above.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

NOAA has determined that this rule will be implemented in a manner that is consistent to the maximum extend practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

Atmosphere, NOAA, (Under Secretary) Regional Director at the address above.

The classification of the rule is as follows:

(a) Observer plan. The operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on-board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) A life raft capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(ii) Allow the observer to inspect and unobstructed access to the vessel’s bridge, trawl or working decks; holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board the vessel;

(vii) Allow the observer to inspect and copy the vessel’s daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;

The rule is proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for part 672 reads as follows:

Authority: 16 U.S.C. 1801 et seq.

2. Section 672.27 is revised to read as follows:

§ 672.27 Observers.

(a) Observer plan. The operator of a vessel subject to this part and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part, must comply with the observer plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that received groundfish from vessels subject to this part must assure that the operator or manager complies with the observer plan and is jointly and severally liable for compliance with that plan. The observer plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) Purpose. The purpose of this section is to allow observers to collect Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act as amended.

(c) General requirements. (1) Compliance by vessels. Except when exempted under paragraph (f) of this section, an operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is requested to do so by the Regional Director.

(2) Compliance by shoreside processing facilities. Except as exempted under paragraph (f) of this section, a manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is requested to do so by the Regional Director.

(d) Responsibilities. (1) An operator of a vessel must:

(i) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on-board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) A life raft capable of holding all persons on board; and

(C) Other equipment required by regulations pertaining to safe operation of the vessel.

(iii) Allow the observer to inspect and unobstructed access to the vessel’s bridge, trawl or working decks; holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Notify the observer at least 15 minutes before fish are brought on board the vessel;
(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;

(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;

(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;

(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;

(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and

(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

(2) A manager of a shoreside processing facility must:

(i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;

(ii) Accept an observer, at no cost to the observer or the United States, for purposes of complying with the observer plan;

(iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish;

(iv) Allow the observer to use the processing facility’s communication equipment and personnel on request for the transmission and receipt of messages;

(v) Allow the observer free and unobstructed access to the processing facility’s holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;

(vi) Allow the observer to inspect and copy:

(A) The shoreside processing facility’s daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines, and

(B) The catcher vessel’s daily fishing logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines, and

(vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) Prohibited actions. No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;

(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer’s collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;

(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer’s duties; or

(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer’s work performance, or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(f) Exemptions. An operator of a vessel or a manager of a shoreside processing facility who is requested by the Regional Director to have an observer under paragraph (c) of this section, must obtain and accept an observer unless a NMFS observer contractor notifies the Regional Director and the vessel operator or facility manager that an observer is not available at the time of the vessel’s scheduled departure or within the time when a shoreside processing plant is scheduled to receive groundfish.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for part 675 reads as follows:

Authority: 16 U.S.C. 1601 et seq.

4. Section 675.25 is revised to read as follows:

§675.25 Observers.
(a) Observer Plan. The operator of a fishing vessel subject to this part and the manager of a shoreside processing facility that receives groundfish from vessels subject to this part must comply with the observer plan. The owner of a fishing vessel subject to this part or a shoreside processing facility that receives groundfish from vessels subject to this part must ensure that the operator or manager complies with the observer plan and is jointly and severally liable for compliance with that plan. The observer plan has been prepared by the Secretary in consultation with the Council for purposes of providing data useful in management of the groundfish fishery.

(b) Purpose. The purpose of this section is to allow observers to collect from Alaska fisheries data deemed by the Regional Director to be necessary and appropriate for research, management, and compliance monitoring of the groundfish fisheries, or for other purposes consistent with the Marine Mammal Protection Act, as amended.

(c) General requirements.

(1) Compliance by vessels. Except when exempted under paragraph (f) of this section, an operator of a vessel subject to this part must carry an observer on board the vessel whenever fishing or processing operations are conducted, if the operator is requested to do so by the Regional Director.

(2) Compliance by shoreside processing facilities. Except as exempted under paragraph (f) of this section, a manager of a shoreside facility that receives groundfish from vessels regulated under this part must have an observer present at the facility whenever groundfish is received, if the manager is requested to do so by the Regional Director.

(d) Responsibilities.

(1) An operator of a vessel must:

(I) Provide, at no cost to the observer or the United States, accommodations on a participating vessel for the observer which are equivalent to those provided for crew members of the participating vessel;

(ii) Maintain safe conditions on the vessel for the protection of the observer during the time the observer is on board the vessel, by adhering to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel and by keeping on board the vessel:

(A) Adequate fire fighting equipment;

(B) A life raft capable of holding all persons on board; and

(C) Other equipment required by regulating pertaining to safe operation of the vessel.

(iii) Allow the observer to use the vessel’s communication equipment and personnel on request for the transmission and receipt of messages;
(iv) Allow the observer access to and the use of the vessel's navigation equipment and personnel on request to determine the vessel's position;
(v) Allow the observer free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds and any other space which may be used to hold, process, weigh or store fish or fish products at any time;
(vi) Notify the observer at least 15 minutes before fish are brought on board or fish products are transferred from the vessel to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified;
(vii) Allow the observer to inspect and copy the vessel's daily fishing logbook, daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines;
(viii) Provide all other reasonable assistance to enable the observer to carry out his or her duties;
(ix) Move the vessel to such places and at such times as may be designated by the contractor, as instructed by the Regional Director, for purposes of embarking and debarking the observer;
(x) Ensure that transfers of observers at sea via small boat or raft are carried out during daylight hours, under safe conditions, and with the agreement of the observer involved;
(xi) Notify the observer at least three hours before an observer is transferred so the observer can collect personal belongings, equipment, and scientific samples;
(xii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of the observer during the transfer; and
(xiii) Provide an experienced crew member to assist the observer in the small boat or raft in which the transfer is made.

2. A manager of a shoreside processing facility must:
   (i) Maintain safe conditions at the processing facility for the protection of the observer by adhering to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of the processing facility;
   (ii) Accept an observer, at no cost to the observer or the United States, for purposes of complying with the observer plan;
   (iii) Notify the observer on a daily basis of the planned facility operations and expected receipt of groundfish;
   (iv) Allow the observer to use the processing facility's communication equipment and personnel on request for the transmission and receipt of messages;
   (v) Allow the observer free and unobstructed access to the processing facility's holding bins, processing areas, freezer spaces, weight scales, warehouses and any other space which may be used to hold, process, weigh, or store fish or fish products at any time;
   (vi) Allow the observer to inspect the copy;

   A. The shoreside processing facility's daily cumulative production logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines, and

   B. The catcher vessel's daily fishing logbook, transfer logbook, and any other logbook or document required by regulations, information from which will be kept confidential by the observer under Federal guidelines; and

   (vii) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(e) Prohibited actions. No person may:

(1) Forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer;
(2) Interfere with or bias the sampling procedure employed by an observer, including sorting or discarding any catch before sampling; or tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the observer;
(3) Prohibit or bar by command, impediment, threat, coercion, or by refusal of reasonable assistance, an observer from collecting samples, conducting product recovery rate determinations, making observations, or otherwise performing the observer's duties; or
(4) Harass an observer by conduct which has sexual connotations, has the purpose or effect of interfering with the observer's work performance or otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(f) Exemptions. An operator of a vessel or a manager of a shoreside processing facility who is requested by the Regional Director to have an observer under paragraph (c) of this section, must obtain and accept an observer unless a NMFS certified observer contractor notifies the Regional Director and the vessel operator or facility manager that an observer is not available at the time of the vessel's scheduled departure or within the time when a shoreside processing plant is scheduled to receive groundfish.