

09/02/2011 Draft Preamble for the Proposed Rule to Implement Groundfish FMP Amendments 86 and 76

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.]

RIN 0648-BB42

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 86 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) and Amendment 76 to the FMP for Groundfish of the Gulf of Alaska (GOA), (collectively referred to as “the FMPs”). If approved, Amendments 86 and 76 would add a funding and deployment system for observer coverage to the existing North Pacific Groundfish Observer Program (Observer Program) and amend existing observer coverage requirements for vessels and processing plants at 50 CFR 679.50. The new funding and deployment system would allow NMFS to determine when and where to deploy observers according to management and conservation needs, with funds provided through a system of fees based on the ex-vessel value of groundfish and halibut in fisheries covered by the new system. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable law.

DATES: Written comments must be received by [insert date 30 days after date of publication in the Federal Register.] Public hearings on the proposed rule will be held as follows: 1. [Month, day, year, time] Anchorage, Alaska. 2. [Month, day, year, time] Seattle, Washington. 3. [Month, day, year, time] Portland, Oregon.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0210, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal website at <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter [NOAA-NMFS-2011-0210] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to P. O. Box 21668, Juneau, AK 99802.
- Fax: 907-586-7557, Attn: Ellen Sebastian.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of Amendment 86 to the FMP for Groundfish of the BSAI and Amendment 76 to the FMP for Groundfish of the GOA, and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS (see ADDRESSES) and by e-mail to OIRA_Submission@omb.eop.gov, or by fax to 202-395-7285.

Public hearings will be held at the following locations: 1. Anchorage--Anchorage Hilton Hotel, 500 W. 3rd Avenue, Anchorage, Alaska (907-272-7411) 2. Seattle-- NOAA Western Regional Center Auditorium, 7600 Sand Point Way Northeast, Building 9, Seattle, Washington (206-526-4213) 3. Portland, Oregon—[place].

Inspections for U.S. Coast Guard Safety decals may be scheduled through the U.S. Coast Guard website at <http://www.fishsafe.info/contactform.htm> or by contacting the Seventeenth Coast Guard District safety coordinator at <http://www.uscg.mil/d17/>, or via phone at (907-463-2810), or (907-463- 2823).

FOR FURTHER INFORMATION CONTACT: Brandee Gerke, 907-586-7228

SUPPLEMENTARY INFORMATION:

NMFS manages the U.S. groundfish fisheries in the Exclusive Economic Zone (EEZ) of the BSAI and GOA under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs), respectively. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Management of the Pacific halibut fisheries in and off Alaska is governed by an international agreement, the “Convention Between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea,” (Convention) which was signed in Ottawa, Canada, on March 2, 1953, and was amended by the “Protocol Amending the Convention,” signed in Washington, D.C., on March 29, 1979. The Convention is implemented in the United States by the Northern Pacific Halibut Act of 1982.

The Council has submitted Amendments 86 and 76 for review by the Secretary of Commerce (Secretary) and a Notice of Availability of the FMP amendments was

published in the Federal Register on [date, FR citation], with comments on the FMP amendments invited through [date].

Comments may address the FMP amendments, the proposed rule, or both, but must be received by 1700 hours, A.L.T. on [date], to be considered in the approval/disapproval decision on the FMP amendments. All comments received at that time, whether specifically directed to the FMP amendments or to this proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Background

The Observer Program provides the regulatory framework for NMFS-certified observers (“observers”) to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Regulations implementing the Groundfish Observer Program at 50 CFR 679.50 require observer coverage aboard catcher vessels, catcher/processors, motherships, and shoreside and stationary floating processors that participate in the groundfish fisheries off Alaska. These regulations also establish vessel, processor, and observer provider responsibilities relating to the Observer Program.

Observer requirements for fisheries off Alaska have been in place since the mid-1970s, when the MSA was implemented and NMFS began to monitor U.S. EEZ foreign groundfish fisheries. The Secretary and the Council recognized that effective management of living marine resources requires the types of information that are either available only or most efficiently through an observer program. In 1989 the Council developed a domestic, industry-funded Observer Program that authorized the placement of observers on domestic fishing vessels and at shoreside processing plants participating

in Alaskan groundfish fisheries in response to a large reduction in foreign fishing and an emergence of a domestic fleet. The domestic program was implemented in 1990 and foreign fishing ended in 1991. The domestic Observer Program was implemented through Amendment 18 to the GOA FMP and Amendment 13 to the BSAI FMP (54 FR 50386, December 6, 1989, and 55 FR 4839, February 12, 1990). Though requirements have increased for vessels and processors participating in limited access and individual quota-based fisheries (referred to as catch share programs), observer coverage requirements have remained mostly unchanged since approval of the program.

The Observer Program has an integral role in the management of North Pacific fisheries. The information collected by observers provides the best available scientific information for managing the fisheries and developing measures to minimize bycatch in furtherance of the purposes and national standards of the MSA. Observers collect biological samples and fishery-dependent information on total catch and interactions with protected species. Data collected by observers are used by managers to monitor quotas, manage groundfish and prohibited species catch, and document and reduce fishery interactions with protected resources. Scientists use observer-collected data for stock assessments and marine ecosystem research.

High quality observer-collected data are a cornerstone of Alaska groundfish fisheries management. However, the quality and utility of observer-collected data are deficient due to the current structure of procuring and deploying observers in those fisheries with less than 100 percent observer coverage requirements. Under the current program, coverage requirements vary according to vessel length or the quantity of fish processed, and vessels less than 60 ft. length overall (LOA) and vessels fishing for

halibut are exempt from coverage. A vessel equal to or greater than 60 ft. LOA, but less than 125 ft. LOA must carry an observer during at least 30 percent of its fishing days in a calendar quarter (“30 percent coverage”). Vessel owners and operators in the 30 percent coverage category choose when to carry observers, and fishery managers do not control when and where observers are deployed.

Under the current program, owners of smaller vessels face observer costs that are disproportionately high relative to their gross earnings. To address these concerns, the Council and NMFS have explored alternative program structures as part of four separate actions since the early 1990s. However, the Council identified problems with each of these actions and none were adopted or implemented. While the Council was developing and considering options for an alternate program structure, the Council recommended, and the Secretary approved, several extensions of the Observer Program regulations. A thorough discussion of the history of the Observer Program, including past efforts to restructure and extend the Observer Program, is provided in the EA/RIR/IRFA prepared for this action (see ADDRESSES), and is not repeated here.

MSA section 313 authorizes the Council to prepare a fisheries research plan that requires observers to be deployed in North Pacific fisheries and that establishes a system of fees to pay the costs of observer coverage. The system of fees must be fair and equitable to all participants in the fisheries and may vary by fishery, management area, or observer coverage level and may be expressed as a fixed amount reflecting actual observer costs or as a percentage of the unprocessed ex-vessel value of the fish and shellfish harvested under the jurisdiction of the Council, including the Northern Pacific halibut fishery. The fee percentage cannot exceed two percent of the ex-vessel value and

proceeds may only be used for costs incurred in carrying out the plan. Fee proceeds may not be used to pay administrative overhead costs, though they may be used to station observers or electronic monitoring systems on vessels and in processing plants and for inputting observer-collected data.

At its October 2010 meeting, the Council adopted a motion to restructure the Observer Program's funding and deployment system. This proposed action would divide the Observer Program into two observer coverage categories—partial and full. All groundfish and halibut vessels and processors would be included in one of the categories. The partial observer coverage category would include fishing sectors (vessels and processors) that would not be required to have an observer at all times and the full observer coverage category would include fishing sectors required to have all of their operations observed. The Council's motion would restructure the funding and deployment system for all fisheries and shoreside processors in the partial observer coverage category and retain the existing funding and deployment system for operations in the full coverage category. Vessels and processors in the partial coverage category would pay an ex-vessel value-based fee to NMFS for their observer coverage. By creating two observer coverage categories with separate funding and deployment systems, the Council's motion would address cost inequity and data quality concerns with the existing Observer Program structure without imposing higher costs on operations that already pay for full observer coverage. Moreover, future management programs with increased monitoring needs would not reduce the funds available to provide observer coverage for the fisheries as a whole under the Council's motion.

Observer Coverage Requirements and Deployment of Observers: Full Coverage Category

Since implementation of the domestic Observer Program in 1990 (55 FR 4839), 100 percent observer coverage has been required for vessels greater than or equal to 125 ft. LOA and for shoreside processors or stationary floating processors that process at least 1,000 metric tons (mt) of groundfish during a calendar month. Observer coverage levels have increased since 1990 for vessels and processors in catch share programs with increased monitoring needs such as the Western Alaska Community Development Quota (CDQ) Program, the American Fisheries Act (AFA), Amendment 80 to the BSAI FMP, and the GOA Rockfish Program. Observer coverage requirements under the proposed action would be based on data needs for specific management programs rather than requirements based on vessel length or processing volume. The current length and volume-based requirements would be removed from regulations and vessels and processors would be assigned to either the partial or full coverage category based on NMFS' data needs.

Full observer coverage is needed in programs where catch is allocated to specific entities with quotas and limits of prohibited species catch, which must be discarded at-sea. Economic incentive exists to underreport discarded catch at-sea, especially in catch share programs because limits are placed on retained and discarded catch. Therefore, full observer coverage would be required on catcher vessels while fishing under a management system that uses prohibited species catch limits in conjunction with a catch share program.

Most catcher/processors and motherships are required to have one or two observers onboard at all times under the existing regulations due to their participation in catch share programs. This proposed rule would not reduce the observer coverage

established under those programs.

This proposed rule would also require full observer coverage on all other catcher/processors and motherships. Currently, NMFS uses industry production reports and rates from observed vessels to estimate retained catch and at-sea discards, respectively, on unobserved catcher/processors. Catcher/processor vessels report the processed weight of their catch. On catcher/processors with less than 100% observer coverage, NMFS converts the reported processed weight to a whole-fish (round weight) weight equivalent, using a product recovery rate. The application of product recovery rates for retained catch and at-sea discard rates from several vessels to estimate vessel-specific catch and discards introduces error into NMFS' catch accounting as discard rates may vary substantially among vessels. This proposed rule would place all catcher/processors and motherships participating in the groundfish or halibut fisheries in the full coverage category to eliminate the need for NMFS to use production reports to estimate retained catch and imputed at-sea discard rates to estimate vessel-specific discard rates.

Proposed Full Coverage Category Vessels and Processing Plants

Catcher/processors (with limited exceptions noted below)

Motherships

Catcher vessels while participating in:

AFA or CDQ pollock fisheries

CDQ groundfish fisheries (except: sablefish; and pot or jig gear catcher vessels)

Central GOA Rockfish Program fisheries

Inshore processors when receiving or processing Bering Sea pollock

Vessels and processing plants in the full observer coverage category would be required to carry or provide at least one observer 100 percent of the days they harvest, receive, or process groundfish or halibut. The proposed rule would not modify observer coverage, experience, or workload requirements at 50 CFR 679.50 for AFA and CDQ directed pollock fishery vessels in the Bering Sea (BS), catcher/processors and motherships in the Aleutian Islands (AI) pollock fishery, Amendment 80 vessels and non-AFA trawl catcher/processors, the Rockfish Program vessels, and observer coverage requirements for AFA inshore processors.

Under the status quo structure, owners and operators of vessels and processing plants contract directly with NMFS-permitted observer providers to meet observer coverage requirements at 50 CFR 679.50. The fishing industry pays the direct costs of carrying observers and NMFS is not a party to contracts between the industry and observer providers. Vessels and processors in the full coverage category would continue to obtain observers through direct contracts with observer providers per the status quo

structure. Responsibilities for observer providers and observers in the current regulations at 50 CFR 679.50(i) and (j) would remain unchanged for the purposes of the full coverage category, though the numbering of the regulations would be modified.

All catcher/processors would be included in the full coverage category, thus, a vessel would need to be classified as either a catcher/processor or a catcher vessel; sometimes vessels are registered as both. The determination of whether a vessel is a catcher/processor or a catcher vessel for purposes of observer coverage would be based on the operation category designation on the vessel's Federal Fishing Permit (FFP). A vessel designated as a catcher/processor at the beginning of a fishing year would be classified as a catcher/processor for the entire fishing year for the purposes of observer coverage. If an FFP is amended during the fishing year to add a catcher/processor designation, that vessel would be assigned to the catcher/processor category for the remainder of the calendar year for the purposes of observer coverage. Except for the one-time election noted below, the catcher/processor designation would supersede the catcher vessel designation for vessels with both endorsements. Thus, a vessel with both a catcher-processor and a catcher vessel endorsement on the FFP would be assigned to the full coverage category for all fishing in that year, regardless of how the fishing was actually conducted.

This proposed rule would increase observer coverage requirements for catcher/processors less than 125 ft. LOA to 100 percent of the days they harvest, take delivery of, or process groundfish or halibut. However, the proposed rule would allow owners of vessels less than 60 ft. LOA with a history of catcher/processor and catcher vessel activity in the same year, and owners of catcher/processors with an average daily

production of less than 5,000 pounds in the most recent full calendar year from January, 2003¹ through January 2010, to make a one-time election as to whether they will be in the partial observer coverage category or the full observer coverage category. For vessels less than 60 ft. LOA with catcher/processor and catcher vessel activity in the same year, the election would be effective as long as both operation categories are listed on the FFP. Should an operator amend their FFP to list only one operation type, the one-time election would no longer apply if the permit were subsequently amended back to list both operation types. The one-time election for catcher/processers with an average daily production of less than 5,000 pounds in the most recent year of operation prior to 2010 would apply for the duration the vessel named on an FFP is issued to the operator making the one-time election. Upon transfer of a vessel to a new operator, the one-time election would be void and the catcher/processor designation would be the default designation with a full observer coverage requirement if listed on the FFP.

NMFS would verify a vessel's eligibility for the one-time election with the official Catch Accounting System (CAS) which contains production information back to 2003. Operators of eligible vessels would be required to notify NMFS in writing of their observer coverage category choice by November 1, 2012. If the operator meets the above criteria and does make a one-time election by November 1, 2012, the catcher/processor designation would be the default designation.

In preparation of the proposed rule, it was realized that some vessels used to harvest and freeze a minimal amount of whole fish would meet the existing definition of

¹ The Council's motion does not specify the period of time prior to 2010 that a vessel may qualify for this one-time election. NMFS proposes 2003 as the lower bound for this time period because CAS data are not available before 2003.

a catcher/processor and would thus be included in the full coverage category. To better align observer coverage with the data needs from these vessels, this proposed rule would permit operators of vessels that process up to 1 mt of round weight equivalent groundfish per day (to a maximum of 365 mt in a calendar year) to be considered a catcher vessel for the purposes of observer coverage. This allowance is consistent with the existing catcher vessel definition for license limitation program groundfish. An operator of a catcher/processor that processes up to 1 mt of groundfish per day in the current calendar year would be eligible to follow the procedures for participating in the partial observer coverage category (described below) in lieu of the full observer coverage category for the following calendar year. NMFS proposes that vessels that process up to 1 mt of groundfish per day would elect to be in the partial coverage category for the following year by certifying via the Deployment System that they processed no more than 365 mt of groundfish in the current year. If a vessel processes more than 1 mt round weight equivalent per day in a calendar year, it would not be eligible to participate in the partial observer coverage category in the following year. Vessels that process halibut or more than 1 mt of round weight equivalent groundfish per day would be a catcher/processor for purposes of observer coverage category assignment.

Observer Coverage Requirements and Deployment of Observers: Partial Coverage Category

Groundfish and halibut catcher vessels and shoreside and stationary floating processors required to carry or provide an observer for less than 100 percent of their operations would comprise the partial observer coverage category. Operations that would be in the partial observer coverage category include: all catcher vessels except while

participating in fisheries requiring full observer coverage (see above) and all shoreside or stationary floating processors except while receiving deliveries of BS pollock.

Proposed Partial Coverage Category Vessels and Processing Plants

Catcher vessels designated on an FFP when directed fishing for groundfish in federally

managed or parallel fisheries, except those in the full coverage category

Catcher vessels when fishing for halibut individual fishing quota (IFQ) or CDQ

Catcher vessels when fishing for sablefish IFQ

Catcher/processors with a maximum daily production of 1 mt, if so elect

Catcher/processors meeting criteria above for one time election of coverage category, if
so elect

Shoreside or stationary floating processors, except those in the full coverage category

The partial observer coverage category is designed to replace rigid coverage levels currently specified in regulations with a plan tailored to fit data needs for conservation and management, and to improve the quality of observer-collected data among fleets where only a portion of the fishing and processing activity is monitored. Under the proposed rule, vessels and processing plants in the partial coverage category would be assigned observer coverage through a deployment system with predetermined random selection probabilities. As described in the analysis (see ADDRESSES), the use of a randomization process (such as a simple random design) to assign observers to individual trips or vessels, addresses NMFS' need to collect unbiased, representative data on catch and bycatch in the groundfish and halibut fisheries. The existing design is

limited as vessels and plants required to have 30 percent observer coverage select when to carry observers, which statistically biases estimates of catch and bycatch. Moreover, NMFS lacks catch and effort information from groundfish vessels less than 60 ft. LOA and halibut vessels of any length. This proposed rule would remove exemptions from observer coverage for halibut vessels and for groundfish vessels less than 60 ft. LOA, and implement a randomized observer deployment process to improve the likelihood that unbiased information on catch and bycatch can be collected.

Operations subject to the partial coverage category would be randomly selected for observer coverage when fishing for halibut or when directed fishing for groundfish in the federally managed or State of Alaska (State) parallel groundfish fisheries. This proposed rule would define the commonly-used “parallel groundfish fisheries” term as fisheries that occur in State waters and are open concurrently with Federal groundfish fisheries such that groundfish catch is deducted from the Federal total allowable catch (TAC).

The proposed rule would require participants in the partial coverage category to pay an ex-vessel value-based fee for observer coverage. NMFS would use the ex-vessel value fee proceeds to contract with observer providers to deploy observers in the partial coverage category. The fees authorized by section 313 of the MSA may be used to pay for stationing observers or electronic monitoring systems on board fishing vessels and fish processors and may be assessed against a subset of fishing vessels and processors, including those not required to carry an observer or electronic monitoring under the fisheries research plan (deployment plan).

The maximum ex-vessel value fee authorized under section 313 of the MSA for

observer coverage is 2 percent. In its October 2010 motion, the Council selected a fee of 1.25 percent. Under the ex-vessel value fee program, the fee amount would be paid by both vessels and processors in the partial coverage category. The Council's intent is for owners and operators of catcher vessels delivering to shoreside processors or stationary floating processors to split the fee liability 50/50 with the shoreside processor, such that each operation would pay 0.625 percent of the total ex-vessel value of the landing. While the intent is that vessels and processors would be responsible for their portion of the ex-vessel value fee, processors would collect the vessel's portion of the fee at the time of landing and remit the full fee amount to NMFS. However, because NMFS does not govern business transactions between vessels and processors, the intended fee liability split would not be codified in Federal regulation. NMFS would hold the processor liable for payment of the fee.

The proposed fee percentage (1.25 percent) seeks to balance the need for revenue to support the observer program while minimizing impacts on the industry sectors included in the restructured program. The Council was considering a fee of less than 2 percent on vessels less than 60 ft. LOA to minimize the costs to the smallest operations. However, to develop a fee program that would be fair and equitable across all sectors in the restructured program, the Council determined that the same fee percentage should apply to all restructured sectors as they all benefit from resulting observer data that is essential for conservation and management of the fisheries in which they participate. In the analysis (see ADDRESSES), a 1.25 percent fee was estimated to generate about \$4.2 million per year, based on the estimated average of ex-vessel revenues from 2005 through 2008, and fund over 9,000 observer days. The amount of revenue needed to support the

minimum proposed 30 percent at-sea observer coverage for the partial coverage category is estimated to be \$3.8 million, which would fund 8,093 observer days (see ADDRESSES). The estimate assumes that vessels less than 40 ft. LOA would not be observed, although they would be subject to the ex-vessel value fee and benefit from observer data collected on larger vessels. Vessels less than 40 ft. LOA would have zero probability of being selected for observer coverage in the initial year or years of the program; however, the criteria for no selection could change annually through an annual deployment plan. The Council determined that a 1.25 percent fee would fund the necessary observer days to reach the target coverage, with a buffer equal to roughly 10 percent of the estimated revenue. In addition, a fee of 1.25 percent better ensures that an individual vessel or processor does not pay over the 2 percent maximum fee authorized in the MSA. Should the 1.25 percent fee be deemed to be insufficient or excessive following review of the annual observer report to be prepared as part of this proposed action, the fee percentage could be adjusted up or down through a subsequent regulatory action.

A primary goal of the restructured program is to attain unbiased fishery catch estimates by allowing NMFS to assign and deploy observers on vessels and plants that are currently unobserved or observed at a rate of 30 percent, using a random selection plan. The restructured observer program would require NMFS to efficiently allocate observer effort towards multiple objectives within the budget generated by ex-vessel value-based fee proceeds. By September 1 of each year, NMFS would develop an observer deployment plan containing projected observer coverage rates in the upcoming year for the various sectors in the partial coverage category. The deployment plan would describe the methods by which vessels, plants, or individual fishing trips would be

chosen for observer coverage.

Two distinct observer coverage selection pools are proposed for vessels in the partial coverage category—fishing trip selection and vessel selection. Criteria for inclusion in the respective pools (i.e., vessel length and gear-type) would be established to maximize efficiency in generating representative estimates of catch and bycatch given available funds and anticipated fishing effort. NMFS would specify the vessel-length and gear-type criteria for each selection pool in the annual deployment plan.

As part of this proposed action, NMFS would establish the Observer Declaration and Deployment System (Deployment System) as the communication platform among industry participants in the partial coverage category, NMFS, and contracted observer providers. Operators of vessels in the partial coverage category would be required to register with the Deployment System annually in December to be notified of their selection-pool-placement for the following year (i.e., whether they are in the vessel selection pool or trip selection pool). The Deployment System would be accessible by internet and phone and would request contact information from participants in the partial coverage category as well as confirm vessel information (size) and intended activity (e.g., active fisheries and quarters) in the upcoming fishing year to determine the applicable selection pool. Upon successful registration, the system would inform the user of their respective selection pool and provide instructions to the user to coordinate with an observer provider to obtain an observer for any required observer coverage. The Deployment System would also inform the user of their responsibilities to provide additional notifications to the system throughout the fishing year. The system would generate and provide a confirmation of a successful registration to the user.

In addition to providing information and instructions to operators in the partial coverage category, the registration requirement would inform NMFS as to the level of participation anticipated for each selection pool and assist in preparing for observer deployment for the upcoming year. NMFS would need to properly anticipate fleet activity or observer resources could be improperly allocated resulting in lower-than-planned coverage or a shortage of funds prior to the year's end.

Trip Selection Pool

Individual fishing trips would be selected for observer coverage in the trip selection pool. Initially, trips taken by fixed gear (hook-and-line and pot gear) vessels 57.5 ft. LOA or greater and all trawl vessels in the partial coverage category would comprise the trip selection pool. NMFS would further subdivide the trip selection pool into groups with similar traits ("sampling strata") and assign a specific sampling rate to each stratum to minimize the variance, and thus increase certainty, in observer-derived catch estimates. In subsequent years, NMFS would review the suitability of the sampling strata and rates and make necessary adjustments to the strata through the annual deployment plan.

Operators of vessels in the trip selection pool would be required to hail-in to the Deployment System at least 72 hours in advance of embarking on a fishing trip for halibut or directed fishing for groundfish. Upon hailing-in, the vessel operator would be prompted to enter information about the departure location and duration of the upcoming fishing trip. The Deployment System would determine the sampling stratum for each vessel by the vessel's identification number and information provided in the user's Deployment System account (FFP or Alaska Department of Fish and Game (ADF&G)

number). A determination as to whether the trip is or is not selected for observer coverage would be generated during the web session or call via a randomization protocol that would be described in the annual deployment plan. The vessel operator would be notified of the result (affirmative or negative for observer coverage), and the unique call identification number (receipt) would be provided. For selected trips, the Deployment System would provide the user with instructions on how to coordinate with an observer provider to obtain the required observer coverage as well as notify observer-provider(s) contracted by NMFS of trips subject to observer coverage through a separate interface. The observer provider would work with the vessel operator to coordinate observer logistics in a manner consistent with the current observer deployment system. Operators would be prohibited from embarking on a trip selected for observer coverage without an observer, unless NMFS released the selected trip from observer coverage due to extenuating circumstances (e.g., the observer provider is unable to deploy an observer to the vessel within a day of the intended fishing trip departure).

A notification period of 72 hours prior to a fishing trip departure is proposed to allow the observer provider sufficient time to deploy an observer to the port of embarkation. NMFS recognizes that a longer notification window is preferable for observer providers to make arrangements to deploy an observer to the port indicated by the vessel operator and a shorter notification window is preferable for vessel operators, whose fishing plans may change over the course of a week. Existing regulations for observer deployment systems in Northeast and Western Pacific fisheries at 50 CFR 648.85 and 665.205, respectively, require operators to notify NMFS 72 hours in advance of an intended fishing trip and NMFS considers this a reasonable compromise between

the need for an observer provider to have advanced notice of a selected trip and the operator's desire for flexibility in their fishing plans. An operator would not be required to wait 72 hours to embark on a trip that is registered with the Deployment System and not selected for observer coverage; rather they could depart per their leisure. Further, an operator could embark on a fishing trip selected for observer coverage when the observer is on board, which may be less than 72 hours in some cases. Thus, NMFS proposes that the prior-notification period be 72 hours and notes that there is a possibility that an observer could be deployed in less than 72 hours, however, that would not be a guarantee.

NMFS recognizes several factors that could result in the failure of a vessel to realize a trip as planned, such as a mechanical breakdown or weather delay. Vessel operators may also alter fishing plans to avoid having to take an observer on a particular trip if selected for coverage. The delay or cancellation of a selected fishing trip would not result in an automatic release from observer coverage. NMFS would make an observer available to a vessel for up to 48 hours past the departure date and time of the fishing trip that was selected by the Deployment System. After 48 hours, if an operator has not embarked on a selected trip, the trip would be invalidated by the Deployment System and the observer may be deployed to another vessel. If a selected trip is cancelled by the operator or invalidated by the Deployment System, the vessel's next trip would inherit the observer coverage requirement. The vessel operator would be required to register a new trip with the Deployment System and wait for an observer to be available before embarking on their new trip. NMFS proposes the maximum 48-hour delay to provide some room for unexpected delays while avoiding the cost of paying for an observer to wait in port for more than two days before embarking on a trip.

Observer coverage would be required for the entire fishing trip if selected in the trip selection pool. The “fishing trip” definition at 50 CFR 679.2 specific to vessels in the partial coverage category of the groundfish and halibut observer program would be revised to refer to the period of time between when the harvest of groundfish or halibut begins until all fish are offloaded or transferred off of the vessel. With the exception of regulatory discards, a fishing trip would be prohibited from commencing with fish onboard. The intent of the revised definition is to ensure that all fishing events and harvest from an entire trip are observed when selected. The “fishing day” definition at 50 CFR 679.2 would be removed from regulations as observer coverage would no longer be required as a portion of the days fished by an operation in a calendar quarter. Thus, the existing fishing trip definition at 50 CFR 679.2 would be redefined to reflect the new intent.

NMFS recognizes that some operators would not know their exact departure plans 72 hours in advance of some fast-paced fisheries. To address this uncertainty, vessel operators would be able to register more than one trip at a time with the Deployment System. The opportunity for the operator to register and enter information about multiple trips would inform them if any of their trips in a fast-paced open access fishery, such as the pollock or Pacific cod fisheries in the Gulf of Alaska, are selected for observer coverage. The observer provider would be notified of the anticipated trips that are selected for coverage so that logistics to deploy an observer can be arranged in advance. Moreover, NMFS and the observer provider contractor(s) would need to put observers on stand-by in the departure ports for deployment into fast-paced fisheries. Doing so would prevent the interruption of a vessel’s fishing activity or the need for NMFS to release

selected fishing trips from observer coverage.

Vessel Selection Pool

The vessel selection pool is proposed as an alternate to the trip selection pool. Vessel selection would reduce the volume of trip notifications received by the Deployment System. Further, vessel selection would increase NMFS' ability to deploy observers on small fixed gear vessels, which would otherwise be logistically challenging under a trip selection protocol. Initially, vessels between 40 and 57.5 ft. LOA using fixed gear to fish groundfish or halibut would comprise the vessel selection pool. Vessel criteria for inclusion in the vessel selection pool would be specified in annual deployment plans.

Vessels with an FFP, or, vessels used to harvest IFQ or CDQ halibut would be included in a selection pool. For the vessel selection pool, NMFS would randomly choose a subset of vessels based on either FFP number, or, a combination of ADF&G registration number and planned fishing activity, to observe for a predetermined time period.

Upon registering with the Deployment System, either prior to the fishing year or upon receipt of a new FFP or IFQ permit, the Deployment System would notify the operator if his or her vessel is selected for observer coverage. The Deployment System would provide instructions for the operator of a vessel selected for observer coverage to contact a NMFS-contracted observer provider to discuss logistics for obtaining observer coverage. The proposed rule would require operators to comply with the instructions provided by the Deployment System.

For the vessel selection pool, the time period for which a selected vessel is

required to carry an observer would be specified in the annual deployment plan and in the Deployment System when vessel operators register each year. In the analysis (see ADDRESSES), a period of three months was proposed as the initial vessel selection duration. Under that scenario, an observer would be required on every fishing trip while the vessel is directed fishing for groundfish or halibut over a 3-month period. Initially, the 3-month period would correspond to a quarter of the calendar year. Selection of vessels each quarter would be with replacement, thus, a vessel selected in the first “block” of 3 months would go back into the pool and could be selected again in the following blocks. Sampling with replacement ensures that each selected sample is independent of the others so that each vessel has an equal probability of being selected on any given draw. Under the assumption that the vessels registered in the selection system represent similar entities, this randomization protects against bias so that representative estimates of fishery catch from observer-collected data are generated. Given the large number of vessels expected in the pool, successive selections of the same vessel are possible but unlikely. The majority of vessels in the vessel selection system would be hook-and-line vessels participating in halibut IFQ and CDQ, and sablefish IFQ fisheries. In the future, the vessel selection time period may be adjusted through the annual deployment plan to match logical increments of the fishing season and to ensure that operators of vessels selected are not choosing their fishing trip dates to avoid carrying an observer.

Logistical complexities are anticipated with deploying observers on vessels less than 57.5 ft. LOA, and coordination between NMFS and vessel operators would be needed to successfully deploy observers with minimal impact to the vessel’s normal operations. Vessels less than 57.5 ft. LOA have not previously been subject to observer

coverage. Due to NMFS' unfamiliarity with individual, less than 57.5 ft. LOA vessels, legitimate concerns about crew and observer safety and displacement of crew members to carry an observer would be expected for these previously unobserved vessels. When possible in the coordination process, at the request of the vessel owner or operator, the observer and a program coordinator may visit the vessel, meet with the captain and crew, and familiarize themselves with how to sample onboard a particular vessel. In some cases, alternatives to observers such as electronic monitoring may be necessary.

As a first step in coordination, upon first login to the Deployment System (registration), vessel operators would indicate their assessment as to whether or not an observer could be accommodated onboard their vessel or if an electronic monitoring system would likely be required in lieu of an observer. The operator would be prompted to enter the reason why an observer could not be accommodated (e.g., lack of space for an observer to sample) if so indicated. A program coordinator may visit any vessel selected for observer coverage where the operator indicated that an observer could not be accommodated to verify this assessment. If, during the inspection by the program coordinator, it is determined that the vessel is not suited to monitoring by an observer for safety or logistical reasons, NMFS could approve an electronic monitoring system pending development and implementation of electronic monitoring as part of the monitoring program. The electronic monitoring system and instructions on its operation would be provided by NMFS or their contracted provider. If the vessel is deemed to be unfit to carry an observer and an electronic monitoring alternative is unavailable, NMFS, in its discretion, could release the vessel from the requirement to be observed for the duration of the selection period.

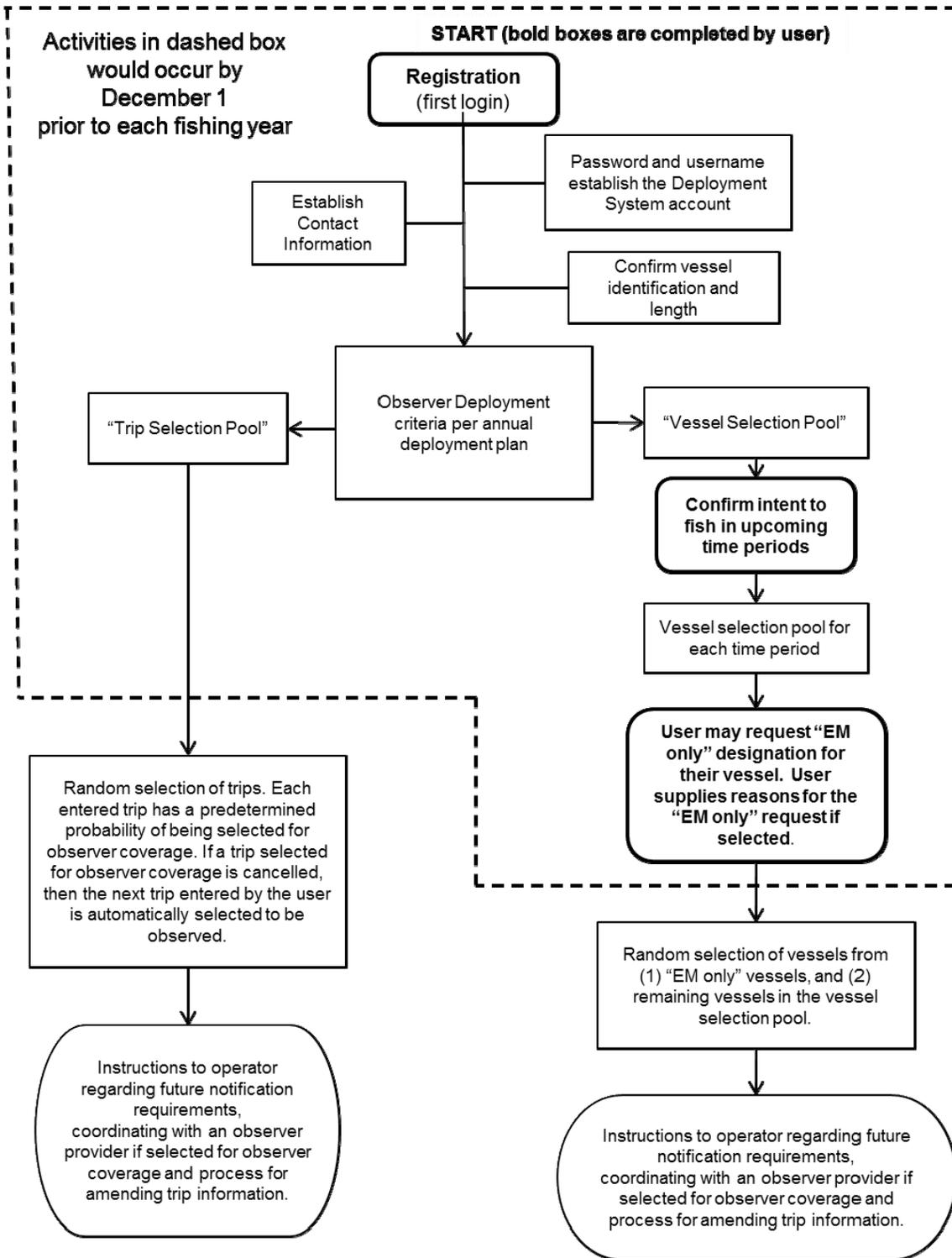
Any determination to release a selected vessel from observer coverage during the selected time period would be made on a case by case basis by management level staff of the NMFS observer program. When their expertise is needed, NMFS staff would consult U.S. Coast Guard personnel to evaluate a vessel's suitability for carrying an observer. NMFS would consider factors such as vessel size; vessel age and condition; distance the vessel would travel offshore; amount of time the vessel would be at-sea; type of fishing gear that would be used; amount of fish to be harvested; hold capacity of the vessel; weather conditions; amount of berthing space; fishing season; amount of space available for observer to sample; experience of the captain and crew; crew size; observer feedback; observer safety; prior U.S. Coast Guard violations; the ability/willingness of the vessel to use electronic monitoring in lieu of an observer; and the need to reduce crew size or supplement a life raft to be in compliance with U.S. Coast Guard requirements.

Comparison of Vessel and Trip Selection Pools

The table below shows the primary distinctions between the proposed vessel and trip selection pools.

	Vessel Selection Pool	Trip Selection Pool
Selected Unit	Vessel	Fishing Trip
When Selected	Prior to each calendar quarter	At least 72 hours prior to trip
When Operator Notified	Prior to each calendar quarter	Prior to each trip
How Operator Notified	Via Deployment System	Via Deployment System
Duration of Coverage	For the first year of the program, three months. Subject to change per annual deployment plan.	Fishing Trip
Possible Electronic Monitoring Option	Yes	No
Owner's or Operator's Notification Requirements	If selected, must provide access and comply with instructions provided by the Deployment System to obtain observer coverage.	Must notify NMFS at least 72 hours prior to embarking on a groundfish or halibut fishing trip.

The following diagram depicts the proposed vessel and trip selection process within the Deployment System:



Shoreside and Stationary Floating Processor Selection

With three exceptions, existing observer coverage requirements for shoreside and stationary floating processors are based on the weight of groundfish delivered to the plant each month. Plants that receive at least 1,000 mt of groundfish in a month are required to have an observer present at the facility each day it processes or receives groundfish, and plants that receive between 500 mt and 1,000 mt of groundfish in a month are required to have an observer at the facility at least 30 percent of the days it processes or receives groundfish. Plants that receive less than 500 mt of groundfish in a month are not required to have an observer. The duties of observers in plants consist of compliance monitoring (e.g., verifying delivery weights recorded by scales), identifying and counting salmon bycatch in certain fisheries, and collection of biological samples to meet various science and management objectives.

Exceptions to the existing weight-based observer requirements for plants include plants when receiving CDQ groundfish, BS pollock under the AFA, CDQ pollock from either the BS or AI, and species harvested under the GOA Rockfish Program. These plants are required to have an observer present at all times these deliveries are being received or processed. When receiving BS pollock or GOA Rockfish Program deliveries, plants are required to have a Catch Monitoring and Control Plan (CMCP) that defines how each plant will sort and weigh fish during these deliveries. In these fisheries, the plant observer is tasked with confirming that plant activities conform to their stated CMCP.

Consistent with the dual coverage categories for vessels, the proposed rule would

create two observer coverage categories for shoreside and stationary floating processing plants—full and partial. Classification in the coverage categories would be based on fishery management and monitoring needs and would replace existing requirements based on the weight of fish processed per month. The role of observers in plants in the partial coverage category would remain compliance monitoring, composition sampling as needed, and biological information collection. With the exception of plants when receiving BS pollock (AFA and CDQ), all shoreside and stationary plants possessing a Federal processing permit (FPP) would be included in the partial coverage category and would pay the ex-vessel value-based fee to NMFS for their observer coverage. NMFS would deploy observers directly and plant operators would no longer contract with observer providers for their coverage.

The new funding and deployment system proposed by this rule would allow NMFS to deploy observers in plants in a randomized fashion according to management needs. The increased flexibility in observer deployment relative to the status quo expected through the proposed funding and deployment system would eliminate the need for plants to be observed 100 percent of the days they receive or process groundfish. Deliveries of BS pollock harvested by AFA and CDQ vessels are the exception, and full coverage would continue to be required for plants when taking deliveries of BS pollock as observers are needed to conduct a full census of incidentally harvested Chinook salmon. All other deliveries could be adequately monitored for compliance and biological data collection at a rate less than 100 percent through a randomized sampling design.

Plants would be in the full coverage category when receiving BS pollock and would contract directly for their observer coverage with permitted observer providers per

the status quo funding and deployment system. These same plants would be in the partial coverage category for all other groundfish and halibut deliveries.

Plant observers in the partial coverage category would be assigned to multiple shoreside plants under a randomization scheme to fulfill NMFS' monitoring needs. Unlike the two-pool selection and hail-in system for vessels, there would not be such a selection system and notification requirement for shoreside plants. Under the sampling hierarchy for plants, offloads corresponding to trips would be nested within plants which would be nested within ports. Observers would be assigned to ports and randomly assigned by NMFS to offloads as they occur using the existing operation notification requirements at § 679.50 for shoreside processors and stationary floating processors which require managers to notify observers of planned facility operations and expected receipt of groundfish prior to receipt of those fish. NMFS would notify a plant when it is randomly selected for coverage. An observer would be assigned to a plant for the duration of a randomly selected offload. The selection probability for an observed offload would vary according to the types of deliveries a plant receives. Selection probabilities would be higher for plants that receive deliveries from the GOA Rockfish Program due to the need for rapid turnaround and transmission of data. Random assignment of observers to plants would maximize the efficiency of the plant observer and increase the odds that biological samples are taken throughout the fishing season, thus providing an unbiased estimate of the fleet's catch as required for stock assessments. Actual sample sizes (number of deliveries observed or number of biological samples obtained) and resulting sampling fractions (observed vs. total deliveries) would depend on the amount of revenue generated in prior years from the ex-vessel value-based fee and the number of trips

realized in the target year.

Vessel exclusions from the partial coverage category

Initially, NMFS does not propose to place observers on vessels less than 40 ft. LOA due to the limited amount of space on these vessels and concerns about crew and observer safety. NMFS analyzed landings information to arrive at a proposed minimum length for including in the vessel selection pool. Full details are provided in the analysis (see ADDRESSES). NMFS grouped historic data on total landed weight by vessel properties that are known before a trip begins (e.g., vessel length and gear type). It was important to group landing data by known vessel properties since observers are deployed prior to a landing and properties such as the target species are determined after the fishing trip. NMFS sought to maximize the sampling efficiency and precision in the resulting estimates by defining vessel length and gear type groups to minimize the variation in landed weight within a group and maximize the variation in landed weight between groups. The first grouping property was “gear type” due to large differences in landed weight between trawl and fixed (hook-and-line and pot) gear. The second grouping property was vessel length with a break in landed weights from vessels below and above 57.5 ft. LOA. Since there were no trawl vessels below 57.5 ft. LOA, this effectively separated trawl vessels. However, there was a large number of fixed gear vessels less than 57.5 ft. LOA. Landings made in 2007 and 2008 from vessels up to 57.5 ft. LOA using fixed gear were further analyzed to determine the vessel length where the amount of fish harvested per trip was significantly lower than the amount harvested by larger vessels. The analysis (see ADDRESSES) concluded that a vessel length of 39 ft. LOA was the break point below which the amount of harvest per trip was different than the

amount of harvest per trip for larger vessels. NMFS rounded that length up to 40 ft. LOA as a proposed vessel length below which observers would not be deployed in the initial year(s) of the program. NMFS also does not propose to place observers on catcher vessels using jig gear in the first year of a restructured program due to the low weight of fish harvested annually by this gear type relative to other gear types.

Consistent with existing observer coverage requirements, the operator of a groundfish catcher vessel delivering an unsorted cod end to a mothership would not be required to notify NMFS of their intent to embark on a fishing trip, carry an observer, or pay the ex-vessel value-based fee. The catch from these vessels would continue to be sampled by the observer onboard the mothership and under the proposed rule the mothership operator would continue to contract directly with an observer provider for their required coverage. Groundfish or halibut landings from catcher vessels in the partial coverage category that is retrieved (sorted) onboard the catcher vessel before delivery to the mothership would be subject to the fee assessment and observer coverage under the new funding and deployment system.

Vessels designated on an FFP would be included in observer coverage requirements when directed fishing for groundfish in federally managed or State parallel groundfish fisheries; however, they would not be required to carry an observer or hail-in to the Deployment System when participating in non-parallel groundfish fisheries managed by the State in State waters. Finally, with the exception of vessels fishing halibut and sablefish IFQ, vessels without an FFP would not be required to comply with Federal observer coverage requirements.

Observer Coverage in CDQ Fisheries

Observer coverage requirements for vessels participating in the groundfish and halibut CDQ fisheries would be governed primarily by section 305(i)(1)(B)(iv) of the MSA which requires that the harvest of allocations under the CDQ program for fisheries with IFQs or fishing cooperatives shall be regulated no more restrictively than for other participants in the applicable non-CDQ sector. This requirement is described in more detail in a final rule implementing regulatory amendments to comply with this provision ([76 FR TBD, 2011]). Observer coverage requirements for vessels halibut CDQ fishing and fixed gear sablefish CDQ fishing would be the same as requirements that apply for the halibut and fixed gear sablefish IFQ Programs. Catcher/processors would be in the full coverage category and catcher vessels would be in the partial coverage category. Observer coverage requirements for vessels pollock CDQ fishing would be the same as the requirements that apply to vessels directed fishing for pollock in the BS under the AFA. Catcher/processors, motherships, and catcher vessels would be in the full coverage category. Observer coverage requirements for catcher/processors using trawl gear in the CDQ fisheries for species other than pollock would be the same as the requirements that apply to the “non-AFA trawl catcher/processors” under the Amendment 80 Program. These catcher/processors would be in the full coverage category.

If a voluntary cooperative exists in a non-CDQ sector, the same observer coverage requirements that apply to these vessels while they are fishing under a voluntary cooperative would apply while they are participating in CDQ fisheries. A voluntary cooperative currently exists among the catcher/processors using hook-and-line gear to harvest Pacific cod in the BSAI. As long as this voluntary cooperative exists, the catcher/processors in the voluntary cooperative would be required to comply with the

same observer coverage requirements that apply to them in the non-CDQ fisheries. Under this proposed rule, these catcher/processors would be in the full coverage category for both their non-CDQ and CDQ fishing.

Additional experience requirements for observers in some of the CDQ fisheries would be maintained, as described in newly created § 679.51(a)(2)(vi)(A). With one exception, existing level 2 and lead level 2 observer experience requirements at § 679.50 would be required for CDQ vessel observers in the full coverage category. The one exception is that catcher/processors using hook-and-line gear that participate in a voluntary cooperative in a non-CDQ fishery would not be subject to these additional requirements while CDQ fishing, if NMFS approved such an exemption for these vessels under § 679.32(e) [*a new section that will be created in the CDQ regulation of harvest final rule*].

The only remaining vessel categories in the CDQ fisheries that were not covered by the CDQ regulation of harvest final rule are catcher vessels participating in CDQ fisheries for groundfish other than sablefish or pollock. NMFS proposes to place catcher vessels using pot or jig gear in the CDQ fisheries in the partial observer coverage category because halibut prohibited species catch by these vessels does not accrue against the halibut prohibited species catch limit. Catcher vessels using hook-and-line gear or trawl gear would be placed in the full coverage category because their prohibited species bycatch accrues against the CDQ group's transferable prohibited species bycatch allocations.

The following table shows the observer coverage requirements that would apply to vessels participating in the groundfish and halibut CDQ fisheries under this proposed

rule:

Fishery or vessel category	Trawl gear	Catcher Vessels using:		Catcher/processors	Motherships
		Hook-and-line gear	Pot or jig gear		
Are in the following observer coverage categories:					
Halibut CDQ	n/a	partial	n/a	full	n/a
Sablefish CDQ	full	partial	partial	full	n/a
Pollock CDQ	full	n/a	n/a	full	full
Other Groundfish CDQ	full	full	partial	full	full

Observer Provider and Observer Responsibilities

Under the status quo program, responsibilities for observer providers and observers are detailed in the regulations at 50 CFR 679.50(i) and (j). These requirements and responsibilities would be retained for observer providers and observers serving operations in the full coverage category, however, they would not pertain to observer providers and observers serving the partial coverage category. For the partial coverage category, NMFS would award contracts rather than issue permits to successful observer providers. Government contracts with providers would include a statement of work with performance measures. Federal contracts would stipulate the time frame of the contract, set minimum observer pay and benefit requirements, observer deployment logistics and limitations, limitations on conflict of interest, communications with observers and with NMFS, requirements to provide qualified observers in a timely manner, and other aspects to ensure high quality observer data are available for management. Moreover, observer qualifications, training requirements, and performance expectations would be defined in contracts with observer providers such that the contents of § 679.50(j) would not apply to

observer services provided through direct government contracts. Level 2 observer and lead level 2 observer endorsements currently stipulated through regulations at § 679.50(j) would likewise be replaced by qualification requirements specified in government contracts with observer providers. This would increase NMFS' ability to match observer skill with sampling complexity, as well, contracts are more readily modified than regulations and would provide increased flexibility to respond to changing fisheries management needs relative to regulatory amendments, which is a primary objective of restructuring.

It would be possible for an observer provider to simultaneously contract directly with NMFS and the industry and be subject to different requirements under the two different funding and deployment systems. Observers would have to be certified per the requirements of paragraph § 679.50(j) to observe full coverage category fisheries while observers working for providers in the partial coverage category would have different performance requirements and would not have a certification per se.

U.S. Coast Guard Safety Decal

Current regulations at § 600.746 and § 679.50 require all vessels to pass a U.S. Coast Guard Commercial Fishing Vessel Safety Examination prior to carrying an observer. This requirement would pertain to all vessels that would be required to carry an observer under this proposed rule. The existing exemption for vessels less than 26 ft. LOA in remote locations would be maintained under this proposed rule; all other vessels without a valid safety decal would continue to be considered inadequate for carrying an observer. Observers are instructed not to board a vessel if the safety decal is absent or expired. An operator's obligation to carry an observer when selected would not be

obviated for lack of a valid safety decal, rather, the operator would be prohibited from embarking on a selected trip. Therefore, it behooves any vessel eligible to be selected for observer coverage to undergo a U.S. Coast Guard safety equipment examination prior to being selected to carry an observer to avoid potential fishing delays for lack of a current safety decal. Once issued, the decal is valid for 2 years. Dockside examinations for U.S. Coast Guard safety decals may be arranged by contacting the U.S. Coast Guard (see ADDRESSES).

Ex-vessel Value-Based Observer Fee

Observer coverage in the proposed partial coverage category would be funded through revenue generated from an ex-vessel value-based fee. The Council approved a 1.25 percent ex-vessel value-based observer fee to be paid by all groundfish and halibut vessels and processors for landings and fish subject to the observer fee. Examples of these landings and fish are described in a later section. The analysis (see ADDRESSES) describes which observer deployment costs are authorized and which would be intended to be covered with the ex-vessel value fee proceeds, and which costs NMFS would fund through agency contributions. NMFS would prepare an annual report on the financial aspects of the restructured program and the revenues provided by the 1.25 percent ex-vessel fee. As part of this annual report, the 1.25 percent ex-vessel value fee percentage would be reviewed by the Council after completion of the second year of observer deployment in the restructured program. The Council could revise the fee assessment percentage in a subsequent rule at any time, upon evaluation of program revenues and costs, observer coverage levels, fishery management objectives, and future deployment plans. This report would be provided to the Council at the same time the annual

deployment plan is provided.

Ex-vessel value refers to the price paid to fishermen for their raw, unprocessed catch. The objective of the ex-vessel value-based fee is to collect 1.25 percent of the ex-vessel value of each groundfish and halibut landing from operations in the partial coverage category. NMFS applied several principles to develop proposed methods to derive the ex-vessel value of groundfish and halibut landings for purposes of the observer fee. The ex-vessel value fee should be: broad-based such that all fishery participants pay a share; fair and equitable among participants; easy to collect without undue burden on participants; assessed on any post-season price settlements or retroactive payments in addition to assessments at the time of landing; account for non-monetary exchange of fish or other forms of compensation; and assessed on weight equivalents used to debit quotas (e.g., round weight for groundfish and headed and gutted weight for halibut). Observer fees would not be linked to the actual level of observer coverage for individual vessels and plants as it is under the status quo. Instead, each participant in the partial coverage category would pay an equal percentage of the value they derive from the groundfish and halibut fisheries to contribute towards the cost of collecting observer data for conservation and management of the fisheries as a whole.

Standard Ex-vessel Prices

NMFS would annually establish standard ex-vessel prices for species subject to the observer fee. These prices would be used in assessing fees and in estimating the total ex-vessel value of the fisheries for the coming year. To avoid new reporting requirements for participants in the partial coverage category, NMFS would use existing reports and ex-vessel value determinations to establish standard prices for groundfish and halibut

landings for purposes of the observer fee. Proposed data sources for ex-vessel price information are NMFS' halibut and sablefish IFQ Buyer Report, and the State of Alaska's Commercial Fishery Entry Commission's gross revenue data based on the Commercial Operator Annual Report (COAR) and fish tickets.

NMFS collects IFQ cost recovery fees at the end of a year to recover costs incurred by the agency for IFQ program management in that same year. Regulations at § 679.5 (l)(7)(i)(E) require an IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut to submit annually to NMFS a complete IFQ Buyer Report by October 15 of the year the registered buyer receives IFQ fish. The IFQ Buyer Report includes information on the pounds purchased and values paid (with price adjustments) for each IFQ species by port or port group and month. Information provided through the IFQ Buyer Reports are used to generate standard prices for ex-vessel value-based cost recovery fees collected under the authority of the MSA section 304(d)(A).

Regulations at § 679.45(c)(2)(i) require the Regional Administrator to publish IFQ standard prices during the last quarter of each calendar year. The standard prices are established in U.S. dollars per IFQ equivalent pound for IFQ halibut and IFQ sablefish landings made during the year. IFQ equivalent pound(s) is the weight (in pounds) for an IFQ landing, calculated as the round weight for sablefish and headed and gutted net weight for halibut.

Under the proposed rule, volume and value data collected on the IFQ buyer's report would be used to calculate the standard ex-vessel prices to determine the value in the following year for purposes of the observer fee for halibut IFQ and CDQ landings,

sablefish IFQ landings, and sablefish landings that accrue against the fixed gear sablefish CDQ allocation by catcher vessels in the partial coverage category. Observer fees would be assessed on all landings in a year to pay for observer coverage in the following year. Vessels participating in halibut CDQ fisheries would be in the partial observer coverage category and landings of halibut CDQ by these vessels would be subject to the observer fee. However, because halibut CDQ is not yet included in a cost recovery program, no data about the ex-vessel value of halibut CDQ currently is collected by NMFS.

Therefore, NMFS proposes to add a requirement in this proposed rule that registered buyers submit on the IFQ buyer report the pounds purchased and values paid for halibut CDQ. These additional data about halibut CDQ would not be used to calculate standard ex-vessel prices for the IFQ cost recovery program. However, the data for both halibut IFQ and halibut CDQ would be combined by NMFS to calculate an average annual standard ex-vessel price for halibut by port or port-group for the observer fee. While the standard ex-vessel prices for halibut IFQ for the cost recovery program are calculated monthly by port or port-group, the observer fee standard ex-vessel prices will be calculated as a single annual average for halibut IFQ and halibut CDQ combined, by port or port-group.

The standard ex-vessel prices used to determine the observer fee for halibut would be published in the Federal Register in the annual notice of standard ex-vessel prices that will apply to groundfish and halibut landings subject to the observer fee. Under the IFQ cost recovery program, data from ports are combined to protect confidentiality in cases where price information is provided by less than three entities. The port and port groups used to collect the observer fee under this proposed rule could be different from the ports

or port groups used to collect cost recovery fees because the observer fee is an annual price, thus, the number of buyers and harvesters in a port may allow information to be reported where it would be confidential for some or all of the individual months.

Groundfish Standard Ex-vessel Prices

NMFS would calculate standard prices for all groundfish except sablefish by aggregating the most recent annual prices from the State of Alaska's Commercial Fisheries Entry Commission (CFEC) for their gross earnings estimates by the applicable species, port of landing, and gear combinations. Three gear categories would be established: pelagic trawl gear, non-pelagic trawl gear, and fixed gear (all gear except trawl). The analysis (see ADDRESSES) describes the methods employed by the CFEC to estimate ex-vessel prices based initially on landings data from ADF&G Fish Tickets and ultimately refined with information from the COAR. The COAR contains statewide buying and production information and is generally considered the best routinely collected information to determine the ex-vessel value of groundfish fish harvested from waters off Alaska. The COAR is completed by the first buyers of fish harvested from State and Federal waters off the coast of Alaska. Post-season price adjustments and bonuses paid to harvesters are required to be reported in the COAR. The report is due to the ADF&G by April 1 of the year after the fishing occurred. The standard, average price would be weighted by the amount of pounds at each price for each species, port, and gear combination.

CFEC ex-vessel prices are available in the fall of the year after the fishing occurred. Because NMFS would apply the standard prices received from CFEC in the fall to landings that occur in the subsequent fishing year, a 2-year lag is anticipated before

standardized prices based on the COAR are able to be applied to landings for establishing ex-vessel fee liabilities. Notwithstanding these limitations, the COAR data were determined to comprise the best available information to establish the ex-vessel value of the groundfish fisheries off Alaska.

The proposed approach to establish the ex-vessel value for the purpose of the observer fee, would apply prior-year price information to current year harvest volumes. Fish prices and harvest volumes vary annually. Thus, a current-year ex-vessel value estimate based on prior-year price information would not equate to the true ex-vessel value for a particular year. A 2-year lag would occur between the date fish are landed and when standard prices for those landings are applied. The analysis (see ADDRESSES) shows potential impacts of the time lag on the ex-vessel value estimated with prior-year and current-year information from 2001 through 2009. The time lagged ex-vessel value estimate was lower than the actual ex-vessel value over most of the years considered. Thus, while it would be possible for the ex-vessel value fee to exceed 1.25 percent of the actual ex-vessel value in a particular year, over two to three years, the 1.25 percent fee percentage would likely not be exceeded.

The effect of averaging the standard price estimates over multiple years was evaluated (see ADDRESSES) as a way to stabilize interannual variability in fish prices and thus, ex-vessel value fees and resulting revenue for observer coverage. Increasing the period of time over which prices are averaged decreases the effect of a price that is substantially different from other years on the average price. Using fewer years for the average price allows the price to respond more quickly to increases or decreases in ex-vessel price. Three, five, and seven-year averages were considered in the analysis (see

ADDRESSES). The Council selected the 3-year average as part of its preferred alternative. Thus, standard groundfish (except sablefish) ex-vessel prices for observer fees would be the 3-year average of the price estimated for each species, gear, and port combination.

Confidential Data

Standard prices that would apply to groundfish and halibut landings in the upcoming year would be published in the Federal Register each December. NMFS would adhere to policies and procedures for protecting confidentiality of data submitted to or collected by NMFS as prescribed by a Reciprocal Data Access Agreement (1999) among the NOAA, the ADF&G, and the CFEC, which are more stringent than the procedures prescribed by NOAA Administrative Order 216-100. Therefore, NMFS would not publish any price information that would permit the identification of an individual. For example, at least four persons would need to make landings of a species with a particular gear type at each port in order for NMFS to publish that price information at the level of individual ports. Price information that would be confidential due to the 4-person minimum would be aggregated by subarea in the BSAI (BS subarea and AI subarea) and by regulatory area in the GOA (Eastern GOA, Central GOA, and Western GOA). If confidentiality requirements are still not met by aggregating prices across ports at the subarea or regulatory area level, they would be aggregated at the level of GOA and BSAI or statewide.

Landings subject to an observer fee

Vessels and processors subject to the proposed action commonly participate in fisheries managed under State or Federal jurisdiction. Most federally managed fisheries

occur in the EEZ and most fisheries managed by the State occur in waters within 3 nm of the coast, although some federally managed fisheries occur in State waters and vice versa. This rule proposes to distinguish between fisheries in State and Federal waters where catch accrues against the Federal TAC and State-managed fisheries in State waters where catch accrues against a guideline harvest level (GHL). The objective of the observer fee assessment is to levy a fee on all landings accruing against the Federal TAC by vessels that are not in the full coverage category and subject to Federal regulations. Therefore, a fee would only be assessed on deliveries from vessels possessing an FFP or from vessels landing IFQ or CDQ halibut or IFQ sablefish. Within the subset of vessels subject to the observer fee, only landings accruing against the Federal TAC would be included in the fee assessment.

If a vessel possesses an FFP, the only groundfish landings that would not be subject to the ex-vessel value-based fee are landings of Pacific cod, pollock, and sablefish accruing against the State GHL. Groundfish which accrue against a Federal TAC (shown in the table below and Table 2a to § 679) and landed in conjunction with GHL Pacific cod, pollock, or sablefish would be included in the observer fee assessment if delivered by a vessel possessing an FFP and excluded from the observer fee assessment if the vessel does not possess an FFP.

Groundfish which accrue against a Federal TAC that would be subject to the observer fee assessment.

Species Description	Code
Atka mackerel (greenling)	193
Pacific cod	110
Pollock	270
Octopus, North Pacific	870

Squid, majestic	875
Flatfish, miscellaneous (flatfish species without separate codes)	120
FLOUNDER	
Alaska plaice	133
Arrowtooth	121
Bering	116
Kamchatka	117
Starry	129
ROCKFISH	
Aurora (<i>Sebastes aurora</i>)	185
Black (BSAI) (<i>S. melanops</i>)	142
Blackgill (<i>S. melanostomus</i>)	177
Blue (BSAI) (<i>S. mystinus</i>)	167
Bocaccio (<i>S. paucispinis</i>)	137
Canary (<i>S. pinniger</i>)	146
Chilipepper (<i>S. goodei</i>)	178
China (<i>S. nebulosus</i>)	149
Copper (<i>S. caurinus</i>)	138
Darkblotched (<i>S. crameri</i>)	159
Dusky (<i>S. variabilis</i>)	172
Greenstriped (<i>S. elongatus</i>)	135
Harlequin (<i>S. variegatus</i>)	176
Northern (<i>S. polyspinis</i>)	136
Pacific Ocean Perch (<i>S. alutus</i>)	141
Pygmy (<i>S. wilsoni</i>)	179
Quillback (<i>S. maliger</i>)	147
Redbanded (<i>S. babcocki</i>)	153
Redstripe (<i>S. proriger</i>)	158
Rosethorn (<i>S. helvomaculatus</i>)	150
Rougheye (<i>S. aleutianus</i>)	151
Sharpchin (<i>S. zacentrus</i>)	166
Shortbelly (<i>S. jordani</i>)	181
Shortraker (<i>S. borealis</i>)	152
Silvergray (<i>S. brevispinis</i>)	157
Splitnose (<i>S. diploproa</i>)	182
Stripetail (<i>S. saxicola</i>)	183
Thornyhead (all <i>Sebastes</i> species)	143

Tiger (<i>S. nigrocinctus</i>)	148
Vermilion (<i>S. miniatus</i>)	184
Widow (<i>S. entomelas</i>)	156
Yelloweye (<i>S. ruberrimus</i>)	145
Yellowmouth (<i>S. reedi</i>)	175
Yellowtail (<i>S. flavidus</i>)	155
Sablefish (blackcod)	710
Sculpins	160
SHARKS	
Other	689
Pacific sleeper	692
Salmon	690
Spiny dogfish	691
SKATES	
Big	702
Longnose	701
Other	700
SOLE	
Butter	126
Dover	124
English	128
Flathead	122
Petrals	131
Rex	125
Rock	123
Sand	132
Yellowfin	127
Turbot, Greenland	134

The table below shows whether or not a landing or certain fish in a landing would be subject to the observer fee assessment for vessels with and without an FFP.

Row #	Fishery/species	Will fee be assessed on the fish landed?	
		Vessel not designated on an FFP	Vessel designated on an FFP
Landings in Federally Managed Fisheries			
(1)	FMP groundfish (those listed on Table 2a to 50 CFR part 679), harvested in the EEZ in a groundfish fishery managed by NMFS, including CDQ	n/a, an FFP is required to retain any FMP groundfish from the EEZ	Yes
(2)	Sablefish IFQ	Yes	Yes
(3)	Halibut IFQ or CDQ in Convention Waters	Yes	Yes
(4)	FMP groundfish landed incidental to halibut IFQ/CDQ or sablefish IFQ	No	Yes
Landings in Fisheries Managed by the State of Alaska			
	Demersal Shelf Rockfish (DSR) in the Southeast Outside (SEO) District of the GOA (managed by State, catch accrues against a Federal TAC, catch can occur in both State waters and EEZ)		
(5)	DSR and any other FMP groundfish species landed incidental to the SEO DSR fishery	No	Yes
	State of Alaska Parallel Groundfish Fishery (managed by State, catch of all FMP groundfish species accrue against Federal TAC, harvest occurs only in State waters)		
(6)	FMP groundfish	No	Yes
	State of Alaska GHF Fisheries (managed by State, catch of target species does not accrue against Federal TAC, harvest occurs only in State waters)		
(7)	Target species, currently includes pollock, Pacific cod, and sablefish	No	No
(8)	FMP groundfish species landed incidental to the GHF target species, if catch accrues against a Federal TAC	No	Yes

	State of Alaska fisheries for species not managed under an FMP , (managed by State, catch of target species does not accrue against Federal TAC, harvest could occur in State waters or the EEZ)		
(9)	Landings of the target species, including lingcod, black rockfish, and blue rockfish in the GOA and dark rockfish in the BSAI and GOA	No	No
(10)	FMP groundfish species landed incidental to the target species, if catch accrues against a Federal TAC	No	Yes
	Salmon Troll Fishery (managed by the State, harvest occurs in both State waters and EEZ)		
(11)	Target species (salmon)	No	No
(12)	FMP groundfish species landed incidental to the target species, if catch accrues against a Federal TAC	No	Yes
Landings of FMP groundfish that are used as bait			
(13)	If sold for bait (disposition code = 62)	No	Yes
(14)	If retained for bait and not sold (disposition code 92)	No	No
Landings of fish that are not managed under an FMP and do not accrue against a Federal TAC			
(15)	Any groundfish or other species not listed in Table 2a to part 679, except halibut IFQ or CDQ, if harvested in a Federal groundfish fishery, a parallel groundfish fishery, or a State GHL fishery.	No	No

Fee determination and collection

Under this proposed action, the 1.25 percent ex-vessel value fee liability would be split between processors or registered buyers and vessel owners or operators, although

the split would not be in regulation. The processor or registered buyer would collect the vessel operator's observer fee liability at landing and remit the fee to NMFS on an annual basis. The fee liability would be determined by multiplying the standard price for groundfish by the round weight equivalent for each species and gear combination, and the standard price for halibut by the headed and gutted weight equivalent. The fee liability for each landing would be 1.25 percent of the sum of the individual species/gear combination amounts.

Information submitted to NMFS by processors and registered buyers via eLandings would be used to determine the fee liability for each landing. eLandings is the web-based data entry component of the Interagency Electronic Reporting System that allows processors, registered buyers and others to submit, edit and summarize landings, production, discard, and disposition data. When reports of catch and production are submitted via eLandings they are available to NMFS, the International Pacific Halibut Commission, and ADF&G in near real-time. Registered buyers who do not process any groundfish and are not able to use eLandings use an alternate electronic reporting system (the "legacy" IFQ system). If registered buyers need to make changes to IFQ reports then they are required to file manual landing reports with NMFS and that information is entered into the halibut and sablefish IFQ accounting system by NMFS contractors.

Under existing regulations, processors and registered buyers enter delivery information including the weight of each species of fish in the landing into eLandings or, in some cases for halibut and sablefish, through an alternate electronic reporting system or manual landing report to NMFS. Originally, NMFS envisioned that the standard ex-vessel prices would be entered into eLandings at the beginning of each year. Further,

eLandings would be programmed to calculate the fee liability for each landing based on the landing weights entered by the processor for each species and the pre-programmed prices. However, upon further review, NMFS has determined that the information entered by processors in eLandings does not provide all of the information necessary to determine if a landing is subject to the observer fee. Specifically, eLandings is not designed to perform some functions of NMFS' CAS that are needed to determine if landings of fish harvested in waters of the State accrue against the Federal TAC or the GHF and thus whether or not the landing would be subject to the observer fee. These determinations are made through NMFS' CAS and the State's examination of landing reports ("fish tickets"). Although NMFS could program eLandings to allow the processor to designate whether the groundfish from a landing accrued against a Federal TAC, the processor may not have all of the information to make that determination and could inadvertently assign catch to the wrong category, thereby generating inaccurate information about the observer fee liability associated with the landing. In addition, halibut IFQ and CDQ landings or sablefish IFQ landings reports submitted via the legacy reporting system or manual landing report do not always get entered into eLandings, so information about the fee liability associated with each landing could not be provided to the registered buyer via eLandings for these landings.

As an alternative to providing fee liability information through eLandings, NMFS would develop a separate web-based application that would assess each landing report submitted via eLandings and each manual landing entered into the IFQ landing database and determine if the landing is subject to the observer fee and, if it is, which groundfish in the landing is subject to the observer fee. For any groundfish or halibut subject to the

observer fee, the web-application would apply the appropriate standard ex-vessel prices for the species, gear type, and port, and calculate the observer fee liability associated with the landing. All processors and registered buyers would have access to the web-application through a user id and password issued by NMFS. This information generally would be available within 24 hours of the time that the landing report was submitted via eLandings or the manual landing report was submitted to NMFS. Processors would deduct the vessel's fee liability from their payment and add the processor's portion of the fee liability. The information generated by this web-application also would provide the annual billing for the processors and registered buyers. The fee remittal process would be as follows:

1. Annually, NMFS would publish a standard price per pound by port, species, and gear type in the Federal Register.
2. NMFS would program the most recent standard prices into an observer fee web-based application at the beginning of each year.
3. Processors would enter the delivery information and the pounds of each species landed into eLandings.
4. The observer fee web-application would evaluate the landings report and calculate the fee liability for the landing, this information will generally be available within 24 hours of receipt of the report.
5. Processors could access the web-based application at least 24 hours after submitting a report to view the landing-specific observer fee liability information.
6. Processors would withhold the vessel operator's portion and self-collect the processor's portion of the observer fee liability.

7. By January 15 each year, NMFS would invoice processors for the total fee liability determined by the sum of the fees reported by the observer fee web-application for each processor for the prior calendar year.

8. Processors would remit the fees to NMFS electronically by February 15.

9. NMFS would audit the payments to ensure all liabilities are paid in full.

The Council requested that NMFS determine, during the development of the regulations, whether current-year ex-vessel prices could be used to determine the ex-vessel observer fee using a billing system similar to the halibut and sablefish IFQ cost recovery fee program to collect fees from processors and harvesters. NMFS continues to propose the method by which shoreside processors and registered buyers would be billed in the beginning of a calendar year for all landings in the prior year based on standard ex-vessel prices established by using data reported on the COAR and the IFQ Registered Buyer's Report. The analysis (see ADDRESSES) explains why basing the ex-vessel value fee on actual prices would not be feasible and that standard prices would need to be established to determine the ex-vessel value of landings for purposes of the observer fee. A fee collection system similar to the one used to collect cost recovery fees for IFQ halibut and sablefish would require processors to submit a buyer's report to NMFS that would virtually duplicate the information collected through the COAR. This would also require NMFS to duplicate the process used by the State CFEC to estimate gross earnings and arrive at standard prices. Moreover, a method that would require NMFS to invoice each vessel operator and shoreside processor in the partial coverage category, rather than just the shoreside processors and Registered buyers would increase NMFS' administrative costs substantially. NMFS would combine an IFQ Registered Buyer's

observer fee invoice with the IFQ cost recovery invoice in the case where a person is liable for both fees.

Payment Compliance

An FPP or Registered Buyer Permit holder who has incurred a fee liability would be required to pay the fee to NMFS by February 15 of the year following the calendar year in which the landing was made.

If an FPP or Registered Buyer Permit holder (“permit holder”) makes a timely payment to NMFS of an amount less than the fee liability NMFS estimated, the permit holder would have the burden of demonstrating that the fee amount submitted is correct. If, upon preliminary review of the accuracy and completeness of a fee payment and the Fee Submission Form, NMFS determines the permit holder has not paid a sufficient amount, NMFS would notify the permit holder by letter. NMFS would explain the discrepancy and the permit holder would have 30 days to either pay the remaining amount that NMFS determined should be paid or provide evidence that the amount paid is correct. If the permit holder submits evidence in support of his or her payment, NMFS will evaluate it and, if there is any remaining disagreement as to the appropriate observer fee, prepare an Initial Administrative Determination (IAD). The IAD would set out the facts, discuss those facts within the context of the relevant agency policies and regulations, and make a determination as to the appropriate disposition of the matter. A permit holder disagreeing with the IAD could appeal an IAD through the NMFS Office of Administrative Appeals as described in existing regulations at 50 CFR 679.43. An IAD that is not appealed within 60 days of issuance to the NMFS Office of Administrative Appeals, would become a final agency action.

During the pendency of the appeal proceedings outlined here, the following conditions would exist: The FPP or Registered Buyer Permit holder could not receive or process groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut or IFQ sablefish, respectively. An FPP or Registered Buyer Permit holder could pay, under protest, the disputed fee difference in order to avoid permit restrictions. If the final agency action determines that the permit holder owes additional fees and if the permit holder has not paid such fees, NMFS would deem any new FPP or Registered Buyer permit applications to be incomplete. If NMFS does not receive such payment within 30 days of the issuance of the final agency action, NMFS would refer the matter to the appropriate authorities within the U.S. Treasury for purposes of collection. Non-renewal of an FPP or Registered Buyer permit would not affect the permit holder's liability for observer fees incurred while they possessed or were required to possess an FPP or Registered Buyer permit.

Overpayment of fees

Upon issuance of final agency action, any amount submitted by an FPP or Registered Buyer Permit holder to NMFS in excess of the observer fee liability determined to be due by the final agency action would be returned to the permit holder unless the permit holder requests the agency to credit the excess amount against the permit holder's future observer fee liability.

Federal Processing Permit and Registered Buyer Permits

Shoreside processors and stationary floating processors are required to possess a FPP to receive or process groundfish harvested in the GOA or BSAI per existing regulations at § 679.4. To receive IFQ or CDQ halibut or IFQ sablefish, a person must

possess a Registered Buyer Permit (§ 679.4). Currently, both FPPs and Registered Buyer Permits are issued for a 3-year period which begins on January 1 of the first year and ends on December 31 of the third year. Under this proposed rule, shoreside and stationary floating processors and Registered Buyers would be required to submit the balance of the observer fee liability to NMFS by February 15 in the year after the landings occurred. To match the observer fee payment schedule proposed by this action, NMFS proposes to modify the current 3-year FPP and Registered Buyer permit cycles to an annual cycle, running from March 1 through February 28.

The effective FPP duration is not specified in regulations; however the effective duration for a Registered Buyer Permit is specified as the date it is issued through the end of the current 3-year permit cycle. NMFS proposes to amend regulations at § 679.4(d)(3) such that a Registered Buyer Permit would be effective until the date of expiration rather than a cycle of specified duration. The effective duration for FPPs and Registered Buyer Permits would be from the latter of March 1 or the date of issuance, through February 28; although these dates would not be codified in regulations consistent with the existing regulations for the FPP effective duration.

FPP or Registered Buyer Permits would be renewed electronically at the time the permit holder submits electronic payment to NMFS for their observer fee liability. In this manner, a permit holder would be required to pay their observer fee liability to receive a renewed permit. The fee payment and permit issuance application would be web-based and would allow the user to print their FPP or Registered Buyer Permit upon payment of observer fee. The process for new FPP and Registered Buyer Permit applications would

be unchanged from the existing regulations at § 679.4. Similarly, the process for modifying a permit would remain unchanged from the process in the existing regulations.

NMFS would not issue a renewed FPP or Registered Buyer Permit if a liable party fails to pay their observer fee liability. Shoreside and stationary floating processors and Registered Buyers would continue to be prohibited from receiving groundfish harvested from the BSAI or GOA, or IFQ or CDQ halibut without a valid permit.

The analysis (see ADDRESSES) prepared for this action noted that NMFS would suspend or revoke FPPs or Registered Buyer Permits if a holder failed to pay their observer fee liability; no changes were proposed for the 3-year effective duration in the Council analysis for FPPs and Registered Buyer Permits. In development of this proposed rule, NMFS identified administrative and enforcement efficiencies that could be accomplished through a modification to the effective duration for FPPs and Registered Buyer Permits from a 3-year cycle to an annual cycle to coincide with the observer fee collection cycle. This proposed amendment was not part of the Council's motion, but rather was identified by NMFS as a way to increase efficiencies in program administration.

Annual Report and Review of the Deployment Plan and Fee Percentage

Per the Council's motion, NMFS would release an observer report by September 1 of each year. The observer report would contain a detailed spreadsheet by budget category on the financial aspects of the program and the annual deployment plan—the proposed stratum and coverage rates for the deployment of observers in the following calendar year. The Council may request its Observer Advisory Committee, Groundfish Plan Teams, or Scientific and Statistical Committee to review and comment on the observer

report. NMFS would consult with the Council each year on the observer report for the upcoming year. The Council will select a meeting for the observer report consultation that provides sufficient time for Council review and input to NMFS. The Council would likely need to schedule this review for its October meeting. The Council would not formally approve or disapprove the observer report, including the deployment plan, but NMFS would consult with the Council on the observer report on an annual basis.

NMFS would include information on how industry participants have adapted to the new program in the annual observer report. The Council could revise the fee assessment percentage through rulemaking after it had an opportunity to evaluate program revenues and costs, observer coverage levels, fishery management objectives, and future sampling and observer deployment plans.

Program Review

Beginning five years after implementation of this proposed action, the Council would assess whether or not the goals and objectives leading to these proposed modifications to the Observer Program have been achieved. Per the Council's motion, implementation is considered the first year of observer deployment under the new program.

Start-up Funding

Start-up funds would need to be available for NMFS to contract with observer providers for observer coverage in the partial coverage category. Funds equal to or greater than the full cost of a contractual task order must be on deposit in the North Pacific Fishery Observer Fund (NPOF) for the task order to be assigned to a contractor. Government-contracted work cannot commence until a task order is assigned. Currently,

there are no funds in the NPOF. In the out-years of the modified observer program, revenues for contracts for the partial coverage category would be provided through the ex-vessel fee, thus, a one-time action is needed to fund the transition from direct industry contracts with observer providers to government contracts with observer providers. Potential ways to fund the first year of the new deployment system include: collecting ex-vessel fees from partial coverage category participants for a period of time prior to issuing contracts and deploying observers under the new system; Federal contributions to the NPOF, if available; or a combination of Federal funding and industry fees.

The Council recommended that, in the absence of a Federal contribution for start-up funds for the new system, vessels and processors subject to the 1.25 percent ex-vessel fee assessment under the proposed action would continue to pay for their observer coverage required under the existing regulations at § 679.50. These vessels and processors would pay the difference between their ex-vessel value fee liability under the new system and the actual observer coverage costs they incurred to comply with existing observer coverage requirements at § 679.50. It was noted in the analysis (see ADDRESSES) that one to three years after publication of the final rule may be required to collect sufficient revenue to deploy observers under the new funding and deployment system using this approach. The Council's motion noted that, if available, Federal funding would be used towards the initial deployment of observers under the new deployment system and would offset the amount of fees collected from industry to transition to the new deployment system.

NMFS proposes to use Federal funds to pay for the first year of observer coverage for the partial coverage category and anticipates that funds will be available for this

purpose. Federal funding would assist the transition of one industry-funded observer program to an alternate industry-funded observer program and accelerate the ability for NMFS to address longstanding concerns with data quality and cost equity in operations that are observed at a rate of less than 100 percent. This approach would also preclude the need for NMFS to calculate and collect the difference of an operation's observer costs under the status quo system and the associated rulemaking for that one-time event.