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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 200321-0084]

RIN 0648-BJ70

Emergency Measures to Address Fishery Observer Coverage During the COVID-19 Coronavirus Pandemic

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: NMFS issues this temporary rule (also referred to herein as “emergency action”) to provide it with authority to waive observer coverage requirements established in regulations promulgated under the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and other statutes, consistent with applicable law and international obligations. NMFS is taking this action to address public health concerns relating to the evolving pandemic of Coronavirus Disease 19 (COVID-19). NMFS is taking this action to protect public health, economic security, and food security, and to safeguard the health and safety of fishermen, observers, and other persons involved with such monitoring programs, while safeguarding the ability of fishermen to continue business operations and produce seafood for the Nation. This action also authorizes NMFS to waive some training or other program requirements to ensure that as many observers are available as possible while ensuring the safety and health of the observers

and trainers.

DATES: Effective [*insert date of filing in the FEDERAL REGISTER*] through [*insert date 180 days after date of publication in the FEDERAL REGISTER*]. Comments must be received by [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Written comments, identified by NOAA-NMFS-2020-0036, may be submitted to NMFS using an electronic submission via the Federal e-Rulemaking portal. Go to <https://www.regulations.gov/docket?D=NOAA-NMFS-2020-0036>, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

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 by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Kelly Denit at 301-427-8517.

SUPPLEMENTARY INFORMATION:

Background

NMFS is promulgating this emergency action in response to the evolving COVID-19 pandemic. Currently, NMFS requires many fishing vessels to carry an observer as part of a mandatory observer program (or provides for voluntary observer

programs) under the MSA (16 U.S.C. 1801 *et seq.*) and other Federal fishery statutes, including the Marine Mammal Protection Act (MMPA, 16 U.S.C. 1361 *et seq.*), and statutes implementing international agreements, such as the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), Western and Central Pacific Commission Implementation Act (16 U.S.C. 6901 *et seq.*), Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), Antigua Convention Implementing Act (16 U.S.C. 951 *et seq.*), High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), and the Agreement on the International Dolphin Conservation Program as per MMPA. National observer regulations for the adequacy of a vessel for safety purposes are at 50 CFR 600.746, but there are also fishery-specific regulations regarding observers.

Many fisheries across the Nation are subject to mandatory observer coverage requirements that prohibit a vessel from fishing unless it carries one or more observers or at-sea monitors. While observers most frequently are deployed on fishing vessels, they are also deployed on motherships and at shoreside locations, including first receivers and processing facilities. Observers can also be called “catch-monitors” or “at-sea monitors.” Observers provide critical fishery-dependent data, which are used to manage fisheries pursuant to catch limits, collect information on bycatch, and monitor compliance. Observers also collect biological information that may not otherwise be collected. In some fisheries, observers are placed on only a portion of fishing vessel trips, while in other fisheries, observers are placed on every fishing vessel trip. Observers are also placed at fish processing plants and collect additional information, such as that associated with a prohibited species census. Regulations requiring observer coverage do not

expressly address the circumstances when NMFS may waive coverage due to a public health emergency. Further, some observer coverage regulations stipulate specific training and other program requirements that observers must meet in order to continue to serve as an observer, and do not address when NMFS may waive such requirements. Consistent with applicable law and international obligations, this emergency action will allow NMFS, under certain circumstances related to the COVID-19 pandemic, to waive observer coverage and some training and other program requirements for observers.

Given the COVID-19 pandemic, the resulting national and local declarations of emergency, and guidance from the Centers for Disease Control and Prevention, NMFS has determined that an emergency action is needed to enable NMFS to waive observer coverage and some related training and other program requirements. This emergency action would permit waivers in appropriate circumstances to protect public health and to ensure the safety of fishermen, observers, and other persons involved with observer coverage, while meeting conservation needs and providing an ongoing supply of fish to markets.

Emergency Management Measures

Under this emergency action, NMFS may waive observer coverage requirements if:

- Local, State, or national governments, or private companies or organizations that deploy observers pursuant to NMFS regulations, restrict travel or otherwise issue COVID-19-related social control guidance, or requirement(s) addressing COVID-19-related concerns, such that it is inconsistent with the requirement(s) or not recommended to place an observer(s); or

- No qualified observer(s) are available for placement due to health, safety, or training issues related to COVID-19.

If either of these conditions is satisfied, then NMFS may waive observer coverage requirements for an individual trip or vessel, an entire fishery or fleet, or all fisheries administered under a NMFS Regional Office (*see* 50 CFR 600.10 (defining Region) and <https://www.fisheries.noaa.gov/regions>) or NMFS Headquarters Office. However, waivers should be issued as narrowly as possible in terms of duration and scope to meet the particular circumstances. Such waivers will be communicated in writing or electronic format. At any time, if the circumstances for a waiver are no longer applicable, NMFS will withdraw, in writing or electronic format, that waiver. In making decisions regarding observer coverage waivers, NMFS will gather information, if needed, from relevant observer service providers and other parties involved with observer coverage before issuing the waivers. Additionally, NMFS will take into account the ability of fishermen who are subject to observer coverage to adjust operations in response to this pandemic, such as for those fisheries that have year-round access compared with those that have only seasonal availability of fish.

This emergency action also allows NMFS to waive certain observer training and other observer program requirements (*e.g.*, requiring a minimum class size or requiring that observers transfer to other vessels between trips). Before doing so, NMFS will ensure that any such waiver does not remove requirements that ensure the health and safety of the observer or observer trainer.

This emergency action is effective on [*insert date of filing for public inspection in the FEDERAL REGISTER*]. However, NMFS is soliciting public comment on this

temporary rule, and will consider any comments received as it evaluates whether any modifications to the emergency measures are needed. NMFS will continue to monitor and evaluate the COVID-19 pandemic and will take additional action if needed. Unless otherwise determined, NMFS anticipates that these emergency measures will be effective until the earlier of the following dates: (1) the date when the current COVID-19 pandemic is no longer deemed a public health emergency by the Secretary of Health and Human Services; and (2) [*insert date 180 days after date of publication in the FEDERAL REGISTER*], with a possible extension of 186 days following that date, see MSA section 305(c)(3)(B), 16 U.S.C. 1855(c)(3)(B), if necessary. As warranted, if this emergency continues beyond the end of the 186-day extension period, NMFS may consult with the Secretary of Health and Human Services pursuant to MSA section 305(c)(3)(C) or may conduct more permanent rulemaking.

NMFS expects this emergency action to advance the protection of and to promote public health and the safety of fishermen, observers, and other parties in the area that may come in contact with those persons, consistent with relevant guidance and any local, State, and national requirements, and to help secure the economic well-being of the Nation. NMFS will consider applicable law (*e.g.*, the Endangered Species Act and the statutes noted above) and international obligations when making decisions about observer coverage waivers. In issuing such waivers, NMFS will carefully monitor the status of the fishery and/or protected species that were being observed or monitored to ensure that the relevant conservation and management goals are still being met. If needed to address any significant issues or concerns, or if NMFS determines that a waiver cannot be issued (*e.g.*, observer coverage is required due to other applicable law or international

obligations), NMFS may implement additional, separate actions (*e.g.*, fishery closures, additional monitoring) per existing regulations or may issue emergency regulations, as necessary and appropriate. As a result, no ecological or socioeconomic impacts are expected by this temporary rule beyond any caused by the COVID-19 pandemic itself.

Classification

This action is issued pursuant to section 305(c) of the MSA, 16 U.S.C. 1855(c), and pursuant to the rulemaking authority under other statutes that apply to Federal fisheries management or that implement international agreements. Such statutes include, but are not limited to, the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*), South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), Western and Central Pacific Commission Implementation Act (16 U.S.C. 6901 *et seq.*), Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), Antigua Convention Implementing Act (16 U.S.C. 951 *et seq.*), High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), and MMPA (16 U.S.C. 1361 *et seq.*). This temporary rule is intended to authorize NMFS to waive any observer requirement implemented under any of those authorities, consistent with other applicable law. Consistent with MSA section 305(c)(3)(B), this action will remain in effect as to all such requirements for 180 days, with a possible extension of up to an additional 186 days (unless, prior to these dates, the current COVID-19 pandemic is no longer deemed a public health emergency by the Secretary of Health and Human Services, in which case NMFS anticipates that a notice of termination of this temporary rule would be filed in the **Federal Register** pursuant to MSA section 305(c)(3)(D)). If this emergency needs to be extended beyond that time, or if this public health emergency evolves to the point where it is deemed necessary, NMFS

will consult with the Secretary of Health and Human Services, pursuant to MSA section 305(c)(3)(C), to seek the Secretary's concurrence on extending the action until the circumstances that created the public health emergency related to COVID-19 no longer exist.

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. Prior notice and opportunity for public comment would be contrary to the public interest, as this action is needed immediately to enable NMFS to respond to evolving, public safety-related concerns. NMFS is implementing this emergency action to authorize action to prevent any potential health issues caused by spreading the virus to fishermen, observers, technicians, and other persons involved with observer coverage. Any delay of implementation of this emergency action could result in public health and safety issues during this global pandemic. In addition, this emergency action is needed to address potential disruptions in observer and technician availability due to health, training or travel issues or COVID-19-related guidance, requirements, or restrictions.

For the reasons stated above, the AA also finds good cause to waive the 30-day delay in effective date of this temporary rule under 5 U.S.C 553(d)(3).

Because prior notice and opportunity for public comment are not required for this

temporary rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Dated: March 24, 2020.

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

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