

(E) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(F) Whether the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives stated in the application.

(ii) The Director may issue a permit for enhancement of survival of a species that allows the applicant to create, restore, or improve habitat, reintroduce the species, contribute to in-situ conservation of foreign-listed species, or conduct similar activities if the Director finds that the net effect of those activities, together with any incidental or other taking to be authorized by the permit, will likely be beneficial to the conservation of that species. In determining whether these actions are beneficial, the Director will consider factors including, but not limited to: whether the action is expected to increase the number of individuals or amount of suitable habitats, whether the potential benefits outweigh any negative effects associated with the action, whether the action eliminates or reduces threats to the species, and whether the duration of planned activities is sufficient to achieve the expected benefits. In the case of an application for a permit to allow intentional take of any species in association with a Safe Harbor Agreement, the Director must find that the activity will be in accordance with the terms of an associated Safe Harbor Agreement and will comply with all requirements of the Safe Harbor Agreements Policy, except for the limitation in that policy to incidental take. In the case of an application for a permit to allow intentional take of any species not yet listed at the time of the permit application, the Director must find that the activity will be in accordance with the terms of an associated Candidate Conservation Agreement with Assurances and will comply with all requirements of the Candidate Conservation Agreements with Assurances Policy, except for the limitation in that policy to incidental take.

(3) *Permit conditions.* (i) In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section that authorizes the keeping of living wildlife in captivity will be subject to the condition that the escape of wildlife covered by the permit will be immediately reported to the Service office designated in the permit.

(ii) Permits issued under this section for enhancement of survival to undertake habitat creation, restoration, or improvement, or reintroduction of a species, or similar activities will be subject to such conditions as the Director deems appropriate to ensure that the net effect of those activities, together with any incidental or intentional take to be authorized by the requested permit, will be beneficial to the conservation of such species.

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Dated: May 3, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-22777 Filed 9-9-03; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 980702167; I.D. 031901A]

RIN 0648-AK26

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; 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 to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action would require processing vessels to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under these

requirements, a fishery management plan (FMP) must adopt a standardized reporting methodology for assessing the amount and kind of bycatch occurring in the fishery. In addition, this action will benefit fisheries conservation and management by providing information needed for enforcing fishery regulations, maintaining safe and adequate working conditions for observers, and establishing certification and performance standards for observers to ensure that quality data are available for managing the fishery.

DATES: Comments on this proposed rule must be received by October 10, 2003.

ADDRESSES: Send comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070, Attn: Becky Renko. Comments also may be sent via facsimile (fax) to 206-526-6736. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (IRFA) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 7700 NE Ambassador Place, Portland, OR 97220, or by contacting Don McIsaac at 503-326-6352. Copies may also be obtained from William L. Robinson, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to one of the NMFS addresses and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 00503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson, Northwest Region, NMFS, telephone: 206-526-6140; fax: 206-526-6736; and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, telephone: 562-980-4000; fax: 562-980-4047; and e-mail: svein.fougner@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible via the Internet at the Office of the **Federal Register's** website at http://www.access.gpo.gov/su_docs/aces/aces140.html.

The Federal groundfish fishery off the Washington, Oregon, and California (WOC) coasts is managed pursuant to the Magnuson-Stevens Act and the

Pacific Coast Groundfish FMP. The FMP was developed by the Council.

Regulations implementing the FMP appear at 50 CFR part 660 subpart G.

The Magnuson-Stevens Act at 16 U.S.C. 1853(a)(11) requires each FMP to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Further, at 16 U.S.C. 1853(b)(8), the Magnuson-Stevens Act provides that an FMP may require that one or more observers be carried aboard a vessel of the United States engaged in fishing for species that are subject to an FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. Placement of fishery observers on vessels at sea is acknowledged as an important method for collecting fisheries data. Therefore, the Pacific Coast Groundfish FMP provides that all catcher/processors and at-sea processing vessels operating in the groundfish fishery may be required to accommodate on board observers for purposes of collecting scientific data. Amendment 13 to the FMP also provides that vessels may be required to pay for observers. Under the Magnuson-Stevens Act at 16 U.S.C. 1855(d), the Secretary of Commerce, acting through NMFS, has general responsibility to carry out any fishery management plan and may promulgate such regulations as may be necessary to carry out this responsibility.

The current regulations requiring observers in the Pacific Coast groundfish fishery (50 CFR 660.360) apply to catcher vessels, but not to processing vessels. So far, the only processing vessels participating in the fishery are large catcher/processors and motherships that also participate in the Alaskan pollock fisheries. This fishery is described in more detail below.

The WOC at-sea Pacific whiting fishery is a mid-water trawl fishery that is currently composed of large catcher-processor and mothership vessels. The catcher-processors harvest and process catch while the motherships rely on smaller catcher vessels to deliver unsorted catch for processing. These large processing vessels primarily operate in the Alaskan pollock (*Theragra chalcogramma*) fisheries, but move south to the WOC to fish for whiting between pollock seasons. While they participate in the pollock fishery, they are subject to 50 CFR part 679, which specifies requirements related to observer services for the North Pacific (Alaskan) Groundfish fisheries. The Alaska observer requirements have recently been revised, a proposed rule was published at 67 FR 58452 (September 16, 2002) and a final rule

was published at 67 FR 72595 (December 6, 2002).

Under the Alaska observer program (as specified in the final Alaskan rule), vessels are required to employ and pay for NMFS-certified observers that are provided by third-party observer provider companies operating under permits administered by the NMFS Alaska Region. The Alaska program contains rigorous qualification and performance standards both for observers and observer provider companies, and also contains processes for sanctioning observer provider company permits, as well as certifying and decertifying observers.

In addition to the large processing vessels that also participate in the Alaskan fisheries, it is anticipated that some smaller vessels may enter the at-sea processing sector of the Pacific whiting fishery in the near future. Severe constraints for the non-whiting Pacific Coast groundfish fishery are expected to motivate catcher vessel operators to seek new opportunities. At-sea processing of Pacific whiting may represent one such opportunity. As catcher vessels, such vessels are currently required to carry observers under the observer regulations for the groundfish fishery at 50 CFR 660.360. However, as processing vessels, they would not be covered by the WOC observer requirements unless this proposed rule is adopted.

Since 1991, the large at-sea whiting processing vessels have each voluntarily carried at least one NMFS-trained observer to provide data for estimating total landed catch and discards; monitoring the attainment of annual groundfish allocations; estimating catch rates of prohibited species; and assessing stock conditions. NMFS has come to depend on data from whiting observers to provide information critical to conservation and management of the marine resources.

In recent years, observer data has also become increasingly important for monitoring incidental catch of overfished species and Endangered Species Act (ESA) listed salmonids. Some of the overfished species are taken as bycatch in the Pacific whiting fishery. Pacific whiting itself was declared overfished in 2002.

For the most part, the at-sea whiting fishery has been monitored satisfactorily under the voluntary program. However, there is concern about the lack of data that would be available if at-sea processing vessels no longer voluntarily carried observers. With this in mind, at its April 1999 meeting the Council recommended that NMFS proceed with a regulatory package to provide for a

mandatory observer program in the at-sea processing portion of the whiting fishery for vessels more than 125 ft (38.1 m) in length. The Council's recommendation would have covered all the processing vessels that were participating in the whiting fishery at that time. In addition, on April 12, 2002, a Federal magistrate concluded in *Pacific Marine Conservation Council, Inc. v. Evans*, 200 F. Supp.2d 1194 (N.D. Calif. 2002), that the Pacific Coast Groundfish FMP fails to establish a legally adequate bycatch reporting methodology because it fails to establish either a mandatory or adequate observer program. By establishing mandatory observer requirements for the at-sea processing sector of the groundfish fishery, this proposed rule in part responds to the court's ruling.

To assure the integrity and availability of observer data in the future, NMFS now proposes to establish a mandatory observer program and mandatory observer coverage levels for all at-sea processing vessels in the Pacific Coast groundfish fishery. At-sea processing is currently confined to the Pacific whiting fishery. The proposed rule requires at-sea processing vessels greater than 125 ft (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery. Vessels less than 125 ft (38.1 m) in length are required to carry one observer. Observers must be obtained, and paid for by the vessels, through third-party observer provider companies operating under permits issued by the NMFS Alaska Region. The proposed rule also specifies certification and decertification requirements for observers that will be administered by the Northwest Region of NMFS in Seattle, Washington, and defines the responsibilities of observers and processing vessels.

Observers

Observers are a uniformly trained group of technicians whose objective is fisheries data gathering. Observers are stationed aboard vessels to gather independent data about the fish that are taken, harvested, received or processed by the vessel. Standardized sampling procedures, defined by NMFS, are intended to provide statistically reliable data for fleetwide monitoring of the fishery. The primary duties of an observer include: estimating catch weights; determining catch composition; collecting length and weight measurements, and determining sex distribution.

To be an observer, applicants are required to have a bachelor's degree in fisheries, wildlife biology, or a related

field of biology or natural resource management. Observers must be capable of performing strenuous physical labor, and of working independently under difficult conditions without direct supervision. To date, only individuals who have successfully completed at least one cruise as an observer in the federal groundfish fishery off Alaska have been deployed as observers in the whiting fishery.

Under the existing voluntary observer program, hiring procedures, minimum qualifications, certification requirements, responsibilities, or prohibited behaviors are not defined by regulations. In addition, there are no provisions that allow NMFS to sanction individuals who are found to have violated program requirements or unsatisfactorily performed the duties of an observer.

Defining certification requirements and prohibited behaviors will ensure that observers are qualified, and understand their responsibilities and duties. Establishing a suspension/decertification process will allow NMFS to deal with observer performance or behavioral issues while allowing observers an opportunity to file an administrative appeal prior to a final determination.

In small fleets, such as the at-sea catcher-processor and mothership sectors of the whiting fishery, a single observer's data collection represents a substantial portion of the data available to manage the fishery. As a result, poor quality data may have a strong influence on fleetwide estimates of total catch by species. Although poor performance by observers has not been a significant problem to date, it is important to have procedures available to address performance concerns in order to maintain data integrity.

Vessels

In recent years, approximately twelve processing vessels, have annually participated in the WOC at-sea whiting fishery. There are currently no regulations that require at-sea processors to provide safe and adequate working conditions for observers. Operational or mechanical barriers can easily prevent an observer from sampling according to the protocols defined by NMFS. The observer's ability to accomplish their duties, and thereby maintain data integrity, requires that the vessel provide: (1) notification of fish being brought aboard, (2) access to unsorted catch, (3) sufficient time to collect a sample, and (4) adequate space in which to collect and work up samples. When there are no regulatory requirements defining the conditions

necessary for an observer to carry out their duties, individual operations may intentionally or inadvertently neglect to provide these necessities.

Observer health and safety is of primary importance to NMFS. Instituting a mandatory observer program will ensure that the health and safety standards specified at 50 CFR 600.725 and 600.746 will apply to whiting observers. Under these regulations, owners and operators of fishing vessels that carry observers must comply with specific requirements in order to ensure that their vessels are adequate and safe for the purposes of carrying an observer. In addition to the national regulations, existing regulations specific to the treatment and well being of Pacific coast groundfish observers at 50 CFR 660.360 will also apply to observers on board at-sea processing vessels.

Observer Coverage

This proposed rule includes requirements for each at-sea processing vessel over 125 feet (38.1 m) in length to carry two observers while participating in the fishery and each at-sea processing vessel less than 125 feet (38.1 m) in length to carry one observer while participating in the fishery. Since 1991, all processing vessels participating in the at-sea whiting fishery have voluntarily carried at least one observer. Since mid-1997, when the Department of Justice approved allocation of quota shares among members of the Whiting Conservation Cooperative, all catcher-processors have generally carried two observers on a voluntary basis. Having two observers allows all or almost all hauls to be sampled. This level of sampling also provides the Whiting Conservation Cooperative members with additional data for managing their voluntary quota program among vessels that are members of the Cooperative.

In contrast, the mothership sector did not begin carrying two observers until 2000. Beginning in 2000, most motherships in the sector chose to increase their observer coverage to obtain additional data for estimating incidental catch of salmon and overfished species. Since 2001 all motherships have carried two observers. The treaty Indian tribal mothership, which processes catch taken by catcher vessels harvesting the Makah tribal whiting allocation, has typically carried two observers since 1996.

Because the large whiting processing vessels process whiting twenty four hours per day, seven days a week, a single observer typically samples less than half of all hauls taken by an

individual vessel. Requiring two observers would increase the number of observed hauls and is likely to increase the proportion of each individual haul that is sampled. The increased sampling coverage provided by two observers is necessary to increase the precision in estimates of incidentally caught species. Having more precise estimates is especially important for infrequently occurring species (those that are encountered in large numbers in only a few hauls or occurring in low numbers in most hauls) such as ESA listed salmon and overfished groundfish species.

Requiring each vessel to carry two observers deviates from the Council's April 1999 recommendation to require one observer per processing vessel. As discussed above, requiring each processing vessel to carry two observers will provide the data necessary for monitoring the fishery. Because all processors have carried two observers since 2001, this change from the Council's 1999 recommendation is not expected to be controversial nor to increase economic impacts upon the large processing vessels.

The proposed rule also requires at-sea processing vessels less than 125 ft (38.1 m) in length to carry one observer, should they choose to enter the processing sector of the fishery. This would be a new regulatory requirement for small vessels operating as processors. Currently, NMFS funds the observer program for similar sized catcher vessels, and the vessels themselves are not required to pay for anything but food and incidentals for the observers. Under this proposed rule the small processing vessels would be required to pay for their observer coverage.

Biological Impacts

Requiring large processing vessels to carry two observers, and smaller vessels to carry one observer, is expected to improve the accuracy of catch projections and reduce the likelihood of overestimating or underestimating the harvested amounts of target and incidentally caught species. Data inaccuracies could affect the long-term biological stability and yield of whiting or incidentally caught species. The ESA terms and conditions for incidental take of chinook salmon in the whiting fishery are also more likely to be met.

Socio-Economic Impacts

NMFS believes this action will benefit management of the Pacific whiting fishery by providing information needed for enforcement of fishery regulations. Regulations at 15 CFR part 905 preclude

NMFS from using information collected by voluntarily carried observers for enforcing regulations under the Magnuson-Stevens Act, Marine Mammal Protection Act, or ESA. Without mandatory observer coverage requirements, NMFS ability to address serious violations of fishery regulations is hindered.

At-sea processing vessels operating in the whiting fishery generally participate in the Alaska groundfish fisheries during the same calendar year, and are subject to Federal observer regulations at 50 CFR 679.50. These vessels also participate in the restricted access fisheries in Alaska, which require certified observer sampling stations. In developing observer regulations for the WOC whiting fisheries, the Alaskan observer regulations have been duplicated as much as possible, recognizing differences in Pacific coast groundfish fisheries, management strategies and objectives, and uses of observer data. Requirements in this proposed rule are not expected to create a significant burden on any vessel that is in compliance with the Alaskan regulations.

Because all large processors currently carry two observers voluntarily, mandating them to carry two observers is not expected to place an additional economic burden on processing vessels. The costs of carrying an observer during whiting season is about \$300 per day. On average in 2001, each vessel fished for 31 days (ranging from 9–118 days). At \$300 per day, the average cost to the vessel for each observer was \$9,300 (ranging from \$3,950 - \$36,650) during the 2001 whiting season. In addition, training and debriefing costs would have been approximately \$1,250 per observer. Applying \$0.035 per pound (the average ex-vessel value of whiting to the Oregon shore-based fishery in July in 2001) to the average round weight of whiting processed per vessel in 2001 (7,705 mt) the cost of one observer would be on the order of 1.6 percent of the ex-vessel value of the whiting harvest, and would be double, 3.1 percent of the ex-vessel value of the whiting harvest if the vessel carried two observers.

With respect to smaller vessels that might enter the fishery as processors, nothing is known about the economics of their potential operations. Observer costs would be fixed, and would be the same as for the larger vessels, except that smaller vessels would only be required to carry one observer.

Observer certification requirements for the WOC whiting fishery have been patterned after those for the Alaskan groundfish fisheries contained in the

Alaskan proposed rule at 67 FR 58452 (September 16, 2002). Regulations defining standards of observer conduct, and providing for suspension and revocation of observer certifications are also consistent with those used for the Federal groundfish fishery off Alaska. Some minor adjustments have been made to adapt the regulations to the WOC fishery. Also, a simplified appeals procedure limited to the needs of this particular observer program has been provided. The Alaska appeals procedure is an omnibus procedure that encompasses numerous types of agency actions, and is more elaborate than is necessary to accommodate the needs of the WOC observer program. An expected annual cost burden of \$8 per observer is the cost estimated for the time required for observers to prepare appeals of initial administrative decisions on certifications, suspensions, or decertifications. This is expected to affect, at a maximum, 5 percent of the WOC observers per year.

Under this proposed rule, at-sea processing vessels will be required to obtain their observers from third-party observer provider companies that are subject to the Alaskan regulations at 50 CFR part 679.50. These are comprehensive regulations that provide for permitting and permit sanctions against the observer provider companies. These provisions are not duplicated in the WOC regulations, the observer provider companies will be regulated under the Alaska regulations by the NMFS Alaska Region. Therefore, the proposed action refers to the Alaskan requirements for observer providers, but does not repeat them in the WOC regulations.

Classification

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

NMFS prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from NMFS (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the SUMMARY and at the beginning of this section of this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Three alternative actions were considered and analyzed. The alternatives included: (1) the status quo, (2) one observer, observer and observer provider certification/decertification procedures, vessel standards, and

prohibitions, and (3) two observers, observer and observer provider certification/decertification procedures, vessel standards, and prohibitions.

Under the preferred alternative, processing vessels would be required to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels. To the extent possible the proposed regulations are consistent with existing regulations for observers in the Alaska groundfish fisheries which are found at 50 CFR part 679. This has been done to minimize the burden on industry participants and to maintain a program that is similar to the existing voluntary program.

Processing vessels would be required to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery.

Due to biological concerns, a no observer alternative was not considered. If the whiting allocation is greatly exceeded or there are substantial discards of other species that go unmeasured, the long-term biological stability and yield of whiting or incidentally-caught species may be affected. Without accurate and timely information, the risk of error associated with fishery management decisions will increase.

Under the status quo (Alternative 1), NMFS would continue to administer the program; vessels would continue to voluntarily carry NMFS-trained observers; businesses that are certified as observer providers for the Federal groundfish fishery off Alaska would continue to pay the direct costs associated with carrying the observers.

The Council's April 1999 recommendation was to require each processing vessel to carry one observer (Alternative 2). However NMFS preferred option, Alternative 3, would require processing vessels equal to or greater than 125 ft (38.1 m) in length to carry two NMFS-certified observers while participating in the groundfish fishery and vessels less than 125 ft (38.1 m) in length would be required to carry one observer. Having two observers on large processors increases the number of observed hauls and is likely to increase the proportion of each individual haul that is sampled. The increased sampling

coverage provided by two observers is necessary to increase the precision in estimates of incidentally caught species. Having more precise estimates is especially important for infrequently occurring species (those that are encountered in large numbers in only a few hauls or occurring in low numbers in most hauls) such as ESA listed salmon and overfished groundfish species. Since 2001, all processors have carried two observers and all processing vessels proposed to carry two observers. To date, no at-sea processors under 125 ft (38.1 m) or less have participated in the fishery.

This proposed rule is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. The Magnuson-Stevens Act at 16 U.S.C. 1853(a)(11) requires each FMP to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery. Further, at 16 U.S.C. 1853(b)(8), the Magnuson-Stevens Act provides that an FMP may require that one or more observers be carried aboard a vessel of the United States engaged in fishing for species that are subject to an FMP, for the purpose of collecting data necessary for the conservation and management of the fishery. The Pacific Coast Groundfish FMP provides that all catcher/processors and at-sea processing vessels operating in the groundfish fishery may be required to accommodate on board observers for purposes of collecting scientific data. Amendment 13 to the FMP also provides that vessels may be required to pay for observers. This action would require processing vessels to employ and pay for either one or two (depending on vessel length) NMFS-certified observers obtained from a third-party NMFS-permitted observer provider company while participating in the Pacific Coast groundfish fishery. The action also specifies certification and decertification requirements for observers, and defines the responsibilities of observers and processing vessels. To the extent possible, the proposed regulations are consistent with existing regulations for observers in the Alaska groundfish fisheries, which are found at 50 CFR part 679. This has been done to minimize the burden on industry participants and to maintain a program that is similar to the existing voluntary program.

In April 1999, the Council recommended moving forward with certification and decertification requirements for observer providers. Therefore, an alternative to regulations

that would have defined the responsibilities of observer providers was included in the National Environmental Policy Act analysis. However, since April 1999, NMFS has discussed an alternative to regulations that would have the responsibilities of contracting companies via the Government contracting process with a statement of work or possibly a contract at "no-cost." The viability of a government procurement contract needs further research to determine if the contracting process would allow the use of such a mechanism for whiting observers.

Approximately seven WOC groundfish catcher/processors and five mothership processors will be affected by this proposed rulemaking. The Small Business Administration guidelines for fishing firms uses a \$3,000,000 gross revenue threshold to separate small from large operations. In the application to any one firm, the \$3,000,000 threshold considers income to all affiliated operations. NMFS records indicate that the gross annual revenue for each of the catcher/processor and mothership operations operating in the WOC exceeds \$3,000,000 and are therefore not considered small businesses. On average in 1998 the catcher/processor and mothership operations gross revenue was more than \$15,000,000.

Between fifteen and twenty catcher vessels participate in the fishery annually, these companies are all assumed to be small businesses. This rulemaking is expected to have minimal impacts on the business that catcher vessels conduct with the mothership processors. A separate final rule to establish an observer program for catcher vessels in the groundfish fishery off Washington, Oregon, and California was published on April 24, 2001 (66 FR 20609).

Projected reporting, recordkeeping and compliance requirements include the information for an appeal to an observer decertification. This is a narrative document that is voluntarily submitted by observers and would not require special skills or training. The proposed rule does not specify recordkeeping requirements for observer providers; however NMFS assumes that information needed for training/briefing registration, monitoring deployment/logistics, scheduling debriefings, and identifying observer harassment, observer safety concerns, or observer performance problems will continue to be voluntarily submitted by observer providers.

A catcher-processor or mothership 125 ft (38.1 m) in length or longer will

be required to carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) in length will be required to carry one NMFS-certified observer. Requiring this level of observer coverage creates no additional burden to fishery participants than is currently incurred under status quo, because vessels currently carry two observers on a voluntary basis. Mandatory coverage provisions are expected to benefit the observer providers by insuring that each vessel will continue to carry two observers in the future as is currently done. Similarly, observers are expected benefit by having continued employment opportunities. Requiring 2 observers increases the number of hauls sampled and reduces the variability in total catch estimates. This is most important for estimating total catch of infrequently or rare occurring species which are incidentally caught with whiting. If smaller processing vessels (125 ft or less) (38.1 m) should enter the fishery in the future, one observer should be able to provide adequate sampling coverage. Therefore, the additional burden of two observers was determined to be unnecessary.

Because most vessels voluntarily follow the Alaska observer requirements under status quo, maintaining these provisions while participating in the whiting fishery would not create a substantial burden on the individual processing vessels, providing they are in compliance with the Alaska regulations. The proposed sample station requirements are consistent with those required for the Alaska restricted access fisheries. In recent years, all of the processing vessels that participated in the whiting fishery have had certified observer sample stations for the restricted access fisheries in Alaska, therefore the WOC requirements are not expected to place an additional burden on these vessels.

Requiring observers to adhere to the same standards as they are required to follow when they are deployed in Alaska creates only a small burden on the observers. The annual cost burden on whiting observers is expected to be \$240 and are the costs related to the appeals process for certification, suspension and decertification, which are only expected to affect 5 percent of the WOC observers per year.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

Notwithstanding any other provisions of law, no person is required to respond to nor shall a person be subject to a

penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB Control Number.

The estimated time for observers to obtain college transcripts and prepare a disclosure statement regarding criminal convictions is 15 minutes per response. The estimated time for observers to submit documentary evidence or to petition a rejected certification, suspension or decertification decision is 4 hours per response. Although the proposed rule does not contain requirements specific to the observer contracting companies, these companies do submit information to NMFS. The estimated time for this collection is as follows: training/briefing registration lists: 7 minutes per response; notification of physical examinations: 2 minutes per response; time required for physical exam: 2 hours; lists of projected observer assignments: 7 minutes per response; weekly logistics reports: 7 minutes per response; debriefing registration materials: 7 minutes per response; and reports on observer harassment, safety or performance concerns: 2 hours per response. All estimates of annual response time include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999, pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central

Valley, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, Oregon coastal), chum salmon (Hood Canal, Columbia River), sockeye salmon (Snake River, Odette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, and southern California).

This action implements a data collection program and is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat or result in any adverse effects on marine mammals.

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

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 28, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposed to amend 50 CFR part 660 as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.302, add the following definitions “Direct financial interest,” “IAD,” and “Observer Program Office,” in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Direct financial interest means any source of income to, or capital investment or other interest held by, an individual, partnership, or corporation or an individual's spouse, immediate family member or parent that could be influenced by performance or non-performance of observer duties.

* * * * *

IAD means Initial Agency Decision.

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Observer Program Office means the Observer Program Office of the

Northwest Fishery Science Center, National Marine Fisheries Service, Seattle, Washington.

* * * * *

3. In § 660.303, paragraph (b) is revised as follows:

§ 660.303 Reporting and recordkeeping.

* * * * *

(b) Any person who is required to do so by the applicable state law must make and/or file, retain, or make available any and all reports (i.e., logbooks, fish tickets, etc.) of groundfish harvests and landings containing all data, and in the exact manner, required by the applicable state law.

* * * * *

4. Section 660.360 is amended as follows:

A. The text of paragraph (c)(1) is added;

B. The text of paragraph (d)(1)(i) is added;

C. Paragraph (d)(3)(ii) is revised;

D. Paragraph (d)(3)(iii) is added;

E. The text of paragraphs (d)(9) and (e) is added;

F. Paragraph (f) is revised;

G. Paragraphs (g),(h), and (i) are removed;

H. Paragraph (j) is redesignated as paragraph (g); and

I. Newly redesignated paragraphs (g)(1)(iii) through (vii) are revised.

The added and revised text reads as follows:

§ 660.360 Groundfish observer program.

* * * * *

(c) *Observer coverage requirements—*
(1) *At-sea processors.* A catcher-processor or mothership 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and a catcher-processor or mothership shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

* * * * *

(d) * * *

(1) * * *

(i) *At-sea processors.* Equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

* * * * *

(3) * * *

(ii) *Functional equipment.* Ensuring that the vessel's communications equipment that is used by observers to enter and transmit data, is fully functional and operational.

(iii) *Hardware and software.* At-sea processing vessels must provide hardware and software pursuant to

regulations at 50 CFR 679.50(f)(1)(iii)(B)(1) and 50 CFR 679.50(f)(2), as follows:

(A) Providing for use by the observer a personal computer in working condition that contains a full Pentium 120 Mhz or greater capacity processing chip, at least 32 megabytes of RAM, at least 75 megabytes of free hard disk storage, a Windows 9x or NT compatible operating system, an operating mouse, and a 3.5-inch (8.9 cm) floppy disk drive. The associated computer monitor must have a viewable screen size of at least 14.1 inches (35.8 cm) and minimum display settings of 600 x 800 pixels. The computer equipment specified in this paragraph (A) must be connected to a communication device that provides a modem connection to the NMFS host computer and supports one or more of the following protocols: ITU V.22, ITU V.22bis, ITU V.32, ITU V.32bis, or ITU V.34. Processors that use a modem must have at least a 28.8kbs Hayes-compatible modem. The above-specified hardware and software requirements do not apply to processors that do not process groundfish.

(B) *NMFS-supplied Software.* Ensuring that each at-sea processing ship that is required to have two observers aboard obtains the data entry software provided by the Regional Administrator for use by the observer.

* * * * *

(9) *At-sea transfers to or from processing vessels.* Processing vessels must;

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

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

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

(e) *Procurement of observer services by at-sea processing vessels.* Owners of vessels required to carry observers under paragraph (c)(1) of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50(i), except that:

(1) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given

notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

(2) Vessels are required to procure observer services directly from NMFS and a permitted observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff or individuals authorized by NMFS, in addition to an observer provided by a permitted observer provider.

(f) *Observer certification and responsibilities—(1) Observer Certification—(i) Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph (f)(1)(v) of this section.

(ii) *Observer certification official.* The Regional Administrator (or a successor) will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) *Certification requirements.* NMFS will certify individuals who:

(A) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(B) Have provided, through their observer provider,;

(1) Information identified by NMFS at 50 CFR 679.50(i)(2) (x)(A)(1)(iii) and (iv); and

(2) Information identified by NMFS at 50 CFR 679.50(1)(2)(i)(C) regarding the observer candidate's health and physical fitness for the job;

(C) Meet all education and health standards as specified in 50 CFR 679.50(i)(2)(i)(A) and (1)(2)(i)(C), respectively; and

(D) Have successfully completed NMFS-approved training as prescribed by the Observer Program.

(1) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(2) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training;

whether the candidate can retake the training, and under what conditions, or whether, the candidate will not be allowed to retake the training. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under paragraph (f)(1)(iv)(A) of this section.

(E) Have not been decertified under paragraph (f)(3) of this section, or pursuant to 50 CFR 679.50.

(iv) Agency determinations on observer certification—(A) *Denial of a certification.* The NMFS observer certification official will issue a written IAD denying observer certification when the observer certification official determines that a candidate has unresolvable deficiencies in meeting the requirements for certification as specified in paragraph (f)(1)(iii) of this section. The IAD will identify the reasons certification was denied and what requirements were deficient.

(B) *Appeals.* A candidate who receives an IAD that denies his or her certification may appeal pursuant to paragraph (f)(4) of this section. A candidate who appeals the IAD will not be issued an interim observer certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(C) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (f)(1)(iii) of this section.

(v) *Endorsements.* The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. Renewal can be obtained by the observer successfully completing certification training once more. Observers will be notified of any changes to the endorsement expiration period prior to that change taking place.

(B) *Annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year

subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *Deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(D) *Pacific whiting fishery endorsements.* A Pacific whiting fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(1) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available;

(2) Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment;

(3) Successfully complete a NMFS-approved observer training and/or whiting briefing as prescribed by the Observer Program; and

(4) Comply with all of the other requirements of this section.

(2) *Standards of observer conduct—(i) Limitations on conflict of interest.*

(A) Observers:

(1) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to,

(i) Any ownership, mortgage holder, or other secured interest in a vessel, shoreside or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(ii) Any business involved with selling supplies or services to any

vessel, shoreside or floating stationary processing facility; or

(iii) Any business involved with purchasing raw or processed products from any vessel, shoreside or floating stationary processing facilities.

(2) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(3) May not serve as observers on any vessel or at any shoreside or floating stationary processing facility owned or operated by a person who previously employed the observers.

(4) May not solicit or accept employment as a crew member or an employee of a vessel, shoreside processor, or stationary floating processor while employed by an observer provider.

(B) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(ii) *Standards of behavior.* Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(A) Observers must perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) Observers must accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(C) Observers must not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(D) Observers must refrain from engaging in any illegal actions or any other activities that would reflect negatively on their image as professional scientists, on other observers, or on the Observer Program as a whole. This includes, but is not limited to:

(1) Violating the drug and alcohol policy established by and available from the Observer Program;

(2) Engaging in the use, possession, or distribution of illegal drugs; or

(3) Engaging in physical sexual contact with personnel of the vessel or processing facility to which the observer

is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(3) *Suspension and Decertification—*

(i) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

(ii) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(A) When it is alleged that the observer has committed any acts or omissions of any of the following:

(1) Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or

(2) Failed to abide by the standards of conduct for observers as prescribed under paragraph (f)(2) of this section;

(B) Upon conviction of a crime or upon entry of a civil judgment for:

(1) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

(2) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(iii) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted under paragraph (f)(3)(ii) of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(iv) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph (f)(4) of this section.

(4) *Appeals.* (i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefor.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final

administrative decision of the Department as of the date of the decision.

(g) * * *

(1) * * *

(iii) *Minimum work space aboard at-sea processing vessels.* The observer must have a working area of 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(iv) *Table aboard at-sea processing vessels.* The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(v) *Diverter board aboard at-sea processing vessels.* The conveyor belt conveying unsorted catch must have a removable board (diverter board) to allow all fish to be diverted from the belt directly into the observer's

sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(vi) *Other requirement for at-sea processing vessels.* The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(vii) *Observer sampling scale.* The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at 50 CFR 679.28(d)(5) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

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