

destruction of ocean life caused by wasteful fishing" and the failure of government to enforce four Federal laws (MSA, ESA, MMPA, MBTA) to reduce bycatch. Most urged the enforcement of law and the placement of observers on fishing vessels to monitor bycatch. These letters and petitions also urged near-zero levels of bycatch for all marine life. We acknowledge these comments and have given them due consideration in formulating this notice of decision.

Of the remaining 31 letters: 21 commenters urged that the petition should be rejected or denied; 2 commenters provided mixed comments on the petition; and 8 commenters supported the petition to count, cap, and control bycatch. Most of these commenters noted that there is an existing MSA process that should be used for rulemaking, that this process includes RFMCs, and that a global, national rulemaking is inappropriate. Some noted that the petition failed to acknowledge what NMFS and RFMCs have done and are doing to minimize bycatch. Many commenters specifically addressed the points of incorporating bycatch estimates into total allowable catches (TACs) and establishing quotas or absolute limits on catch and bycatch.

Other key points made by commenters included: observer programs are not needed for all fisheries; there should be selection criteria; and high priority fisheries should get observers. Several commenters noted that NMFS and RFMCs need a bycatch planning process. Others referred to seabird bycatch and seabird avoidance measures. Two commenters supported the call for a coordinated effort at a national level to standardize protocols for observers. Another commenter emphasized that bycatch is an international issue and urged NMFS to set an example on bycatch conservation goals. Commenters also expressed the need to make funding available for observer programs and bycatch programs.

Responses to the specific points of the 31 letters are provided below, organized under the four headings corresponding to the four main components of the bycatch petition.

1. Workplan for Sufficient Observer Coverage

Comment 1: Several commenters stated that bycatch is either nonexistent or extremely uncommon in certain fisheries such as in the Commonwealth of the Northern Marianas Islands or in the spiny lobster fishery of the Gulf of Mexico (i.e., 7 dead fish in 21,000 trap

observations). These commenters expressed that while some level of coverage may be valuable in certain fisheries such as the Gulf of Mexico shrimp fishery, any requirements for an observer program for those fisheries in which bycatch has been determined not to be a problem is onerous and costly with no added benefit.

Response: NMFS recognizes that certain fishing gears and configurations are more selective than others. Nonetheless, fisheries must be assessed at some level, using observers or other bycatch assessment methods, to determine whether there is a bycatch problem. NMFS uses logbook information, existing information on gear selectivity, distribution and abundance of fish and protected resource populations, and bycatch information in other similar fisheries to make preliminary evaluations of potential bycatch in unobserved fisheries. These preliminary evaluations are used by NMFS, and the RFMCs where appropriate, to determine whether observer placement in these fisheries is warranted, and at what levels. NMFS will be developing a national approach to a standardized bycatch reporting methodology as noted under the NMFS National Bycatch Strategy section below. A national in-house working group will evaluate the current methodologies for estimating bycatch, review the current use of self-reporting to estimate discards, evaluate the potential for estimating discards by inferences drawn from fishery independent surveys, recommend a statistical design for observer programs to cover all U.S. fisheries, recommend standards of precision to be achieved for discard estimates, and recommend observer sample sizes and associated costs for all U.S. fisheries.

Comment 2: Another commenter objected to the petition's request for requiring observers on all U.S. fleets regardless of whether there is bycatch and for requiring a statistically reliable estimate of bycatch within a 1-year time period, which would necessitate, in some cases, well in excess of 20 percent observer coverage. The commenter explained that this would be costly, unnecessary, inefficient, and devastating to fishermen.

Response: The bycatch petition does not request observers on all fleets, but instead, calls for a workplan for placing observers on enough fishing trips to provide statistically reliable bycatch estimates in all fisheries. NMFS, in collaboration with RFMCs, evaluates and addresses the problems of bycatch on a fishery-by-fishery basis. In some cases, this involves deploying observers

in certain fisheries. In other cases, because observer coverage is not possible, new methods must be devised to assess bycatch. This is an ongoing process, as part of the fishery management process, and we recognize that a 1-year time frame for collecting statistically reliable bycatch estimates by deploying observers in all fisheries is unrealistic, and, for some fisheries, unwarranted. The development by NMFS of a national approach to a standardized bycatch reporting methodology will help in determining what is needed in individual fisheries.

Comment 3: One commenter indicated that the Atlantic Coast Cooperative Statistics Program's (ACCSP) "Release, Discard, and Protected Species Interactions Monitoring Program Module" is in use on the Atlantic Coast and that it represents an adequate process for bycatch monitoring and collection standards.

Response: NMFS agrees that the goals and protocols of the ACCSP bycatch monitoring program, establishing the preferred methodology to collect data and estimate bycatch, are well defined and scientifically reliable. Once funded and implemented in all Atlantic fisheries, this should provide extremely valuable data and will be an effective tool for estimating bycatch.

Comment 4: While concurring that observers are an effective method for gathering detailed information on fishing activities, one commenter asserted that such programs may present logistical difficulties (small vessels, rare events) and may not be the best way to assess bycatch in "all" fisheries. The commenter urged NMFS not to rush to implement a comprehensive observer program for every fishery, but rather to consider a more strategic approach. The commenter also stated that observer programs should be prioritized by existing information demonstrating the need for observer coverage.

Response: NMFS agrees that observers are effective in many fisheries but are not appropriate in all fisheries. NMFS, in collaboration with RFMCs, evaluates and addresses the problems of bycatch and the need for observers on a fishery-by-fishery basis. The development of a national approach to standardized bycatch reporting methodology is discussed below in the NMFS National Bycatch Strategy section. In fisheries that NMFS determines are not appropriate for observer coverage, NMFS works with the RFMCs to implement alternative methods to assess bycatch in fisheries. Also, NMFS recently has developed long-term budget initiatives for observer programs,