

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