

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.

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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