

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