

analysis and could exceed the prescribed EPFD limit.

(3) Prior to commencement of operation, the MVDDS licensee must take into account any new DBS customers or other relevant information provided by DBS licensees in response to the notification in paragraph (d)(1) of this section.

(e) Beginning thirty days after the DBS licensees are notified of a potential MVDDS site in paragraph (d)(1) of this section, the DBS licensees are responsible for providing information they deem necessary for those entities who install all future DBS receive antennas on its system to take into account the presence of MVDDS operations so that these DBS receive antennas can be located in such a way as to avoid the MVDDS signal. These later installed DBS receive antennas shall have no further rights of complaint against the notified MVDDS transmitting antenna(s).

(f) In the event of either an increase in the EPFD contour in any direction or a major modification as defined in § 1.929 of this chapter, such as the addition of an antenna, to an MVDDS station, the procedures of paragraphs (d) and (e) of this section and rights of complaint begin anew. Exceptions to this are renewal, transfer of control, and assignment of license applications.

(g) *Interference complaints.* The MVDDS licensee must satisfy all complaints of interference to DBS customers of record which are received during a one year period after commencement of operation of the transmitting facility. Specifically, the MVDDS licensee must correct interference caused to a DBS customer of record or cease operation if it is demonstrated that the DBS customer is receiving harmful interference from the MVDDS system or that the MVDDS signal exceeds the permitted EPFD level at the DBS customer location.

[FR Doc. 04-12708 Filed 6-4-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket 980702167-4150-03; 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: Interim final rule; request for comments.

SUMMARY: NMFS is publishing this interim final rule 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 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).

DATES: Effective July 7, 2004, except for § 660 360(f)(3)(iv) which is effective 60 days after the date of publication in the **Federal Register** of a notice announcing approval of the Paperwork Reduction Act clearance request for this information collection.

Comments are due by July 7, 2004.

ADDRESSES: You may submit comments, identified by (docket number and/or RIN number), by any of the following methods:

- E-mail:

WhitingObservers.nwr@noaa.gov.

Include (docket number and/or RIN number) in the subject line of the message.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

- Fax: 206-526-6736

- Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Becky Renko.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this interim final rule may be submitted to Becky Renko, NMFS,

Northwest Region, and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.gov*, or fax to 202-395-7285.

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.

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 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.*

A proposed rule was published on September 10, 2003 (68 FR 53334), and public comment was requested through October 10, 2003. During the comment period, NMFS received one letter. The comments and responses are presented later in the preamble to this interim final rule. See the preamble to the proposed rule for additional information on the affected fishery and this rule.

NMFS believes it is necessary to implement a mandatory observer program for the at-sea processing sector before the start of the 2004 whiting fishery. However, new standards for how vessel-funded observer services may be paid have been established by NMFS. These new standards have resulted in this rule being published as an interim final rule rather than a final rule. As described later in the preamble, NMFS intends to publish a proposed and final rule before the start of the 2005 whiting season to modify the program slightly from what is being defined by this interim final rule.

Background

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 U.S. vessel 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. NMFS is publishing this interim final rule to amend the regulations implementing the FMP to provide for a mandatory, vessel-financed observer program on at-sea processing vessels. This action would require processing vessels to pay for and carry 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.

So far, the only processing vessels participating in the groundfish fishery are large catcher-processors and motherships that target Pacific whiting. 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 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. Under the Alaska observer program, vessels are required to carry 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 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.

It is anticipated that some smaller vessels may enter the at-sea processing sector of the Pacific whiting fishery in the near future. Severe harvest 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 processing vessels, they would not be required to carry observers under WOC observer requirements at 50 CFR 660.360, unless this 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; monitor the attainment of annual groundfish allocations; estimate catch rates of prohibited species; and to assess stock conditions. NMFS depends on these methods to manage the fishery.

In recent years, observer data has also become increasingly important for monitoring incidental catch of overfished species and Endangered Species Act (ESA) listed salmonids. Several 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 adequately 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. To assure the integrity and availability of observer data in the future, NMFS is establishing a mandatory observer program and mandatory observer coverage levels for

all at-sea processing vessels in the Pacific Coast groundfish fishery.

Observers are a uniformly trained group of technicians whose objective is gathering fisheries data. 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 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.

This rule defines certification requirements and prohibited behaviors that 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 providing observers an opportunity to file an administrative appeal, should they be recommended for decertification, prior to a final determination on their certification status.

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.

This rule includes requirements for each at-sea processing vessel over 125 ft (38.1 m) in length to carry two observers while participating in the fishery. Having two observers allows all or almost all hauls to be sampled. This rule will also require at-sea processing vessels less than 125 ft (38.1 m) in length to carry and pay for one observer, should they choose to enter the processing sector of the fishery.

Because the large 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 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.

Under this interim final 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 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, and the observer provider companies will continue to be regulated under the Alaska regulations by the NMFS Alaska Region. Therefore, this rule refers to the Alaskan requirements for observer providers, but does not repeat them in the WOC regulations.

Revised Standards for Vessel-Financed Observer Programs

In May 2000, an independent review of the North Pacific Groundfish Observer Program examined the relationship between NMFS and certified observer providers. This review found that Alaskan contractor certification and decertification regulations leave observers and observer contracting companies vulnerable to pressures that jeopardize the quality and credibility of data. A separate document titled the 2000 Management and Control Review of Observer Programs, addressed similar issues such as the perception of conflict of interest and data confidentiality. The competitive environment to supply observer services at the lowest costs has led to low observer remuneration, low observer morale and high observer turnover rates. Contractual relationships, including "no-cost" Federal contracts, are more likely to provide NMFS with the authority to hold contracting companies accountable for their performance. A federal contract allows service expectations to be defined for the observer provider. If service expectations are not met, NMFS may take remedial action, including termination of the agreement if necessary. In addition, a contract can be modified as necessary in a relatively short time period. The viability of such approaches have been evaluated and therefore, NMFS is discouraging the use of direct pay structure (where vessels pay the third-party observer providers directly for services) for observer services in new observer programs.

This interim final rule is a temporary action. Because NMFS has established standards for new programs and

discourages the use of direct pay structure for observer services the contents of this interim final rule will be changed through another proposed and final rulemaking. NMFS intends to publish a proposed and final rule before the start of the 2005 whiting season to modify the program slightly from what is being defined by this interim final rule. It is anticipated that the following sections which are being implemented by this action will be modified: section 50 CFR 660.303 (e) *Procurement of observer services* will require vessels to procure observer services from companies that have negotiated contractual agreements with NMFS; and 50 CFR 660.303 f) *Observer certification and responsibilities* will be removed from regulation and a similar set of qualifications, code of conduct, and performance requirements would be included in the service contract.

Comments and Responses

One letter of comment was received from a private party. The letter contained numerous comments which are summarized and answered below.

Comment 1: Observers should be independent and environmentally connected for the program to be credible.

Response: NMFS believes that the qualification criteria specified in this regulation are adequate to ensure that the observers have the necessary skills, experience and independence to perform the required job duties.

Comment 2: The observer's well being must be protected.

Response: Provisions within this rule are specifically intended to ensure observer safety and safeguard their well being.

Comment 3: There should be enforcement agents working undercover on these ships and video cameras should be required.

Response: NMFS maintains a separate, trained enforcement division that employs enforcement methods as necessary to document suspected violations. In appropriate cases these methods may include use of undercover agents and electronic technology.

Comment 4: The regulatory text should not contain the word "may" because that implies that the regulatory requirements are not mandatory.

Response: The word "may" appears ten times in the regulatory text for this action. The word may has either been used to indicate that the observer or NMFS has a choice, or the word "may" has been used within the phrase "may not" to indicate the lack of choice by the observer. NMFS has determined that the

word "may" has been used correctly throughout this document.

Comment 5: The preamble text is incorrect in stating that small processing vessels may enter the at-sea processing sector. They either do or they don't enter, if they do then regulations should be in place to prevent them from overfishing.

Response: At this time there are no small (less than 125 ft (38.1 m)) vessels in the at-sea processing sector of the Pacific Coast groundfish fishery. However, under existing regulations such vessels could choose to enter the fishery. If, at a future date, a small processing vessel begins to process Pacific coast groundfish the regulations implemented by this rule would require them to carry an observer. Data provided by the observers will be used to estimate total catch in relation to the harvest specifications that are established during the harvest specification and management process. Overfished species rebuilding plans and harvest specifications and management measures necessary to prevent overfishing will be adopted through other rulemakings.

Comment 6: A voluntary program is inadequate in fisheries where overfishing occurs.

Response: To maintain a source of information for managing the Pacific coast groundfish resources, NMFS agrees that a mandatory observer program is necessary for at-sea processing vessels. The purpose of this action is to move from a voluntary observer program to a mandatory observer program with specified coverage levels.

Comment 7: This action is being taken to avoid the Court order.

Response: NMFS assumes that the commenter is referring to an April 12, 2002, order in which 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, the rule complies with the Court's ruling.

Comment 8: The rule has no provisions to insure that observers will not be "paid under the table" or lie about fishing production, nor does the rule contain training requirements to keep the observer honest. Observers should be checked by undercover officers and fined at least \$50,000 with

possible jail time of at least one year if they are caught lying.

Response: This rule establishes standards of behavior for observers. These standards include the requirement to accurately record sample data and report any observations such as suspected violations. This rule also implements observer decertification procedures.

Comment 9: From the preamble language in the proposed rule which states "poor quality data may have a strong influence on fleetwide estimates of total catch by species," it appears that NMFS has been working with poor quality data in the at-sea processing sector. By continuing this program NMFS is taking no steps to improve the quality of data obtained from at-sea processing vessels.

Response: The background information in the preamble that the commenter is referring to is in reference to the potential impacts under status quo if less than 100 percent of the processing vessels carry observers or if the data collected by observers is not provided to NMFS. The commenter is incorrect in assuming that the preamble text suggests that NMFS has been using poor quality data from the at-sea processing sector or that data obtained from the existing observer program is of poor quality or inadequate to meet management needs.

Classification

This rule is being published as an interim final rule. NMFS expects to publish a final rule in time for the 2005 fishing season.

NMFS prepared a final regulatory flexibility analysis (FRFA) that describes the economic impact this interim final rule will have on small entities. A description of the action, including why it is being considered and the legal basis for this action, are contained in the preamble. The FRFA is available from NMFS (see **ADDRESSES**) and a summary of the initial regulatory flexibility analysis (IRFA) follows:

During the comment period for the proposed rule, NMFS received one letter containing numerous comments. None of these comments addressed the IRFA analysis or economic impacts of the proposed rule on small entities. This interim final rule does not duplicate, overlap, or conflict with other Federal rules.

This action is necessary to satisfy the standardized bycatch reporting methodology requirements of the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Act. Under these requirements, an 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.

Three alternative actions that primarily differ in the number of mandatory observers that would be required to be carried were considered and analyzed. The alternatives considered included: Alternative 1, the status quo; Alternative 2, one observer, observer and observer provider certification/decertification procedures, vessel standards, and prohibitions; and Alternative 3 (the preferred alternative) two observers on vessels greater than 125 ft (38.1 m) in length or greater or one observer on vessels less than 125 ft (38.1 m), observer and observer provider certification/decertification procedures, vessel standards, and prohibitions.

Under the status quo alternative, NMFS would continue to administer the program; vessels would voluntarily carry NMFS-trained observers; and businesses that are certified as observer providers for the Federal groundfish fishery off Alaska would pay the direct costs associated with carrying the observers. Alternatives 2 or 3 were similar in that they specified certification and decertification requirements for observers; defined the responsibilities of observers and processing vessels; and required that mandatory NMFS-certified observers be obtained from NMFS-permitted observer provider companies. The difference between Alternatives 2 and 3 was in the number of observers each processing vessel would be required to carry. The regulatory package that has been prepared for this interim final rule is based on Alternative 3 in which each processing vessel would carry one or two NMFS-certified observers, depending on the vessel's length. An alternative with no observer coverage was considered but not analyzed because of biological concerns.

The Council's April 1999 recommendation was to require each processing vessel to carry one observer (Alternative 2). However NMFS preferred alternative, 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. Since 2001, under the status quo alternative (Alternative 1) all processors have carried two observers. To date, no at-sea processors under 125 ft (38.1 m) in length have participated in the fishery.

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.

Approximately seven WOC groundfish catcher-processors and five mothership processors will be affected by this interim final rule. 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, therefore, the vessels are not considered small businesses. In 1998 the average catcher-processor and mothership operations gross revenue exceeded \$15,000,000.

Between 15 and 20 at-sea catcher vessels participate in the mothership sector of the fishery annually. These companies are all assumed to be small businesses. This rulemaking is not expected to have any direct impacts on catcher vessels and minimal or no direct impact on the business that they conduct with the mothership processors because they fall under the comprehensive observer program. A separate rule published on April 24, 2001 (66 FR 20609), established an observer program for catcher vessels in the groundfish fishery off Washington, Oregon, and California

Projected reporting, recordkeeping and compliance requirements include the process by which an observer could appeal decertification. This is a narrative document that is voluntarily submitted by observers and would not require special skills or training. This interim final 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.

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

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 other aspects of the collection-of-information to NMFS Northwest Region at the ADDRESSES above and e-mail to David Rostker e-mail at David_Rostker@omb.gov, or fax to 202-395-7285.

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.

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

NMFS issued Biological Opinions 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 spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette 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, southern California). During the 2000 Pacific whiting season, the whiting fisheries exceeded the chinook bycatch amount specified in the Pacific whiting fishery Biological Opinion's (whiting BO) (December 15, 1999) incidental take statement estimate of 11,000 fish, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting BO, NMFS determined in a letter dated April 25, 2002, that a re-initiation of the 1999 whiting BO was not required. NMFS has concluded that implementation of the FMP for the Pacific Coast groundfish fishery 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. This action is within the scope of these consultations.

This interim final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council. These representatives agreed with the provisions that apply to tribal vessels. Therefore this action is consistent with the requirements of Executive Order 13175.

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: May 28, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, NMFS amends 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.

* * * * *

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 to read 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. In § 660.360, paragraphs (c)(1), (d)(1)(i), (d)(3)(ii), (iii), (d)(9)(e), and (f) are added; paragraphs (g), (h), and (i) are removed; paragraph (j) is redesignated as paragraph (g); and newly redesignated paragraphs (g)(1)(iii) through (vii) are added to read 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, 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 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(i)(2)(x)(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)(x)(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. The observer can renew the endorsement by successfully completing certification training once more.

(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:

(i) 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;

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

(iii) 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 weigh 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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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134-4135-01; I.D. 052704B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions #2 and #3 - Adjustments of the Commercial Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rescission of automatic closures; request for comments.

SUMMARY: NMFS announces that the commercial fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, which was closed on May 5, was modified to reopen May 15 and close at midnight on May 18, 2004, with the provision that no vessel may possess, land, or deliver more than 125 chinook for the entire 4 day open period (Inseason Action #2); and to reopen May 24 through midnight on May 26, 2004, with the provision that no vessel may possess, land, or deliver more than 70 chinook for the entire 3 day open period (Inseason Action #3). These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Inseason Action #2 - Reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours local time (l.t.), May 15, 2004, until 2359 hours l.t., May 18, 2004; and Inseason Action #3 - reopening the area from the U.S.-Canada Border to Cape Falcon, OR effective 0001 hours l.t., May 24, 2004, until 2359 hours l.t., May 26, 2004; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2004 annual management measures. Comments will be accepted through June 22, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115-0070; or faxed to 206-526-6376; or Rod McLinnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4132; or faxed to 562-980-4018. Comments can also be submitted via e-mail at the 2004oceansalmonIA#2-#3.nwr@noaa.gov address, or through the internet at the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.