

**NMFS DRAFT**

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket ;I.D. ]

RIN

Fisheries off the Pacific 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: Proposed rule; request for comments.

SUMMARY: NMFS proposes to amend the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP) to provide for an at-sea observer program on all limited entry and open access catcher vessels. This rule establishes notification requirements for vessels that may be required to carry observers, and establishes responsibilities and prohibited actions for vessels that are required to carry observers. This action is taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Pacific Coast Groundfish Fishery Management Plan (FMP).

DATES: Comments on this proposed rule must be received by [30 days after publishing this Federal Register notice]

ADDRESSES: Written comments should be sent to William Stelle,

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Jr., Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Comments also may be sent via facsimile (fax) to 206-526-6736. Comments will not be accepted if submitted via e-mail or Internet. Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) may be obtained from the Pacific Fishery Management Council (Council) by writing to the Council at 2130 SW Fifth Avenue, Suite 224, Portland OR 97201, or by contacting Don McIsaac at 503-326-6352, or may be obtained from William L. Robinson, Sustainable Fisheries, Northwest Region 1, 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, 206-526-6140; fax: 206-526-6736 and e-mail: bill.robinson@noaa.gov or Svein Fougner, Southwest Region, NMFS, 562-980-4000; fax: 562-980-4047 and e-mail: svein.fougner@noaa.gov.

ELECTRONIC ACCESS: This Federal Register rule also is accessible via the Internet at the Office of the Federal Register's website at [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html)

SUPPLEMENTARY INFORMATION: The U.S. groundfish fisheries off the Washington, Oregon, and California coasts are managed pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801-1883) and the Pacific Coast Groundfish FMP.

Regulations implementing the FMP appear at 50 CFR Part 660 Subpart G. General regulations for all U.S. fisheries are at 50 CFR Part 600 Subpart H.

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The Magnuson-Stevens Act at 16 U.S.C. 1853(b)(8) provides that an FMP may require that one or more observers (50CFR 600.10) be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery. The Pacific Coast Groundfish FMP provides that all fishing vessels operating in the groundfish fishery may be required to accommodate onboard observers for purposes of collecting scientific data. 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 discharge this responsibility.

With the exception of the mid-water trawl fishery for Pacific whiting, most groundfish vessels sort their catch at sea and discard species that are in excess of cumulative trip limits, unmarketable, in excess of annual allocations, or incidentally caught non-groundfish species. Landed or retained catch is monitored by individual state fish ticket programs in Washington, Oregon, and California. However, because a portion of the catch is discarded at sea, there is no opportunity for NMFS or the states to monitor total catch (retained plus discarded catch) at onshore processing facilities. This lack of information on at-sea discards has resulted in imprecise estimates of total catch and fishing mortality.

Discard information is needed to assess and account for

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total fishing mortality and to evaluate management measures, including rebuilding plans for overfished stocks. Discard estimates based on limited studies conducted in the mid-1980's, and information on species compositions in landings, are available for some groundfish species. For other species there is little or no discard information. During the past decade there have been significant reductions in cumulative trip limits, and trip limits have been applied to increasing numbers of species. In light of these changes in the regulatory regime, doubt has been raised about the old discard estimates, which were based on data collected in the 1980's. Accurate estimates of discards are essential to computing total catch, and thus are an important component of any fishery conservation and management program. If the discard estimates are too high, harvest allocations may be set too low; if discard estimates are too low, then harvest allocations may be set too high, and the long-term health of the stock may be jeopardized.

The Pacific Coast Groundfish FMP was developed by the Pacific Fishery Management Council (Council) and approved by NMFS in 1982. Since the early 1990's the Council has regarded at-sea observers as a viable means to collect much-needed data. The Council's Groundfish Management Team has continually stressed the need for an on-board observer program to accurately assess total catch. Observers have been placed on a voluntary basis aboard offshore catcher/processors and processing vessels in the Pacific whiting fishery since 1991. From 1995 to 1998 a small number of

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groundfish trawl vessels participating in the Oregon Enhanced Data Collection research project voluntarily carried observers to monitor trip limit induced discards and the bycatch of prohibited species. At its April 1999 meeting, the Council proposed development of an on-board observer program for all limited entry and open access vessels, with the goal of having a program ready for implementation in 2000, if funding became available.

Observers are a uniformly trained group of qualified technicians. They are stationed aboard vessels to gather conservation and management data that is too burdensome for vessel personnel to collect, and which would otherwise not be available for managing the fisheries or assessing interactions with non-groundfish species. The purposes of this rulemaking are to establish the obligations of vessels that will be required to carry observers; to safeguard the observers' well-being; and to provide for sampling conditions necessary for an observer to follow scientific sampling protocols and thereby maintain the integrity of observer data collections. Nationwide regulations addressing vessels with conditions that are unsafe or inadequate for purposes of carrying an observer are found at 50 C.F.R. 600.746. Nationwide regulations applicable to observers are also found under "General Prohibitions" at 50 C.F.R. 725(r), (s), (t), and (u).

### BIOLOGICAL IMPACTS

These proposed regulations will have no direct biological or physical impacts on the environment. However, promulgation of

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these regulations is expected to provide, in the long term, a positive biological effect. Data collected by observers will improve the quantity and quality of data available for stock assessments. It will also provide fisheries managers with information needed to minimize the risks of overfishing groundfish and non-groundfish species, and to develop effective rebuilding plans for depleted stocks.

### SOCIO-ECONOMIC IMPACTS

If the program receives \$2 million of funding annually, it is expected that 15-20 observers could be deployed each year. It is NMFS's intention, providing funds are available, to provide for observer training and the direct costs of deploying observers including salaries, payroll taxes, employment insurance, medical insurance, pension, and travel costs. The observers' employer will provide protection and indemnity insurance to cover bodily injury or property damage claims that may result from actions of the observer. Observers will be employed directly by NMFS or through an NMFS procurement contract.

Each vessel within the sector(s) of the groundfish fleet designated for coverage would be required to keep NMFS or its designated agent informed of its fishing schedule, including anticipated departure dates and times. Additional time would be required in port for selected vessels to arrange for the required observer coverage. Vessels that are selected to carry an observer would be responsible for providing living quarters and food equivalent to that which is provided to the crew. Some of

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the smallest groundfish vessels may find that crew members are displaced because limited bunk space must be allocated to the observer.

Observers may be expected to perform multiple duties including estimating total catch, sampling for catch and discard species composition, collecting biological data and specimens, and collecting data on interactions with non-groundfish species, the operation and characteristics of the vessel and fishing effort. To allow the observer to follow sampling protocols, vessels will need to provide adequate sampling facilities and unobstructed access to catch. This may result in minimal increased handling time if sorting of the catch needs to be slowed or centralized to allow an observer to collect samples. Space requirements for analyzing and storing samples may reduce the available work and storage space for vessel activities. It is likely that the smallest groundfish vessels would be most affected by space requirements. However, without minimal sample space, data quality cannot be assured. If it is determined that a class of vessel is too small to accommodate an observer, alternative sampling or monitoring methods may need to be considered by NMFS.

The safety, health, and well-being of observers while stationed aboard fishing vessels is of the utmost importance. If this proposed rule is implemented, observer health and safety provisions at 50 CFR 600.725 and 600.746 will apply. Should a vessel fail to meet the requirements at 50 CFR 600.746, the

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vessel would not be permitted to fish until NMFS determined that the safety requirements were met and the required observer was aboard. The trip-limit management regime, currently used in most Pacific Coast groundfish fisheries, generally applies over one or 2-month periods. Therefore, lost catch opportunity is unlikely if the vessel is delayed. However, in derby style fisheries, such as the three-tiered sablefish fishery, lost catch opportunity may result if the vessel is delayed. Advance planning will allow vessels to correct minor problems without delaying the fishing trip.

### CLASSIFICATION

#### MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

(MAGNUSON ACT). I have determined that this rule is necessary for conservation and management and is consistent with the Magnuson-Stevens Act.

ESSENTIAL FISH HABITAT (EFH). This action is not expected to disturb the ecological balance nor result in an identifiable increase in adverse impacts on EFH, including physical, chemical, or biological alterations of the substrate, and loss or injury to benthic organisms.

E.O. 12866 - As required by NEPA and E.O. 12866, an Environmental Assessment/Regulatory Impact Review describing the background, purpose and need for action, management action alternatives, biological and socio-economic characteristics of the affected environment and the biological and socio-economic impacts of the alternatives was prepared for this proposed rule. It has been



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determined to be not significant for purposes of E.O. 12866. REGULATORY FLEXIBILITY ANALYSIS (RFA) - Because this proposed rule may have requirements that would have a significant economic impact on a substantial number of small entities, an Initial Regulatory Flexibility Analysis (IRFA) has been prepared. The IRFA is intended to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The number of vessels affected by this proposed rule will depend on the coverage approach that is chosen. If 20 observers are deployed annually, the number of vessels that could potentially carry an observer is estimated to range between 60 (3% of all small entities), if each observer samples only one limited entry vessel over an entire cumulative trip limit period, and 967 (46% of all small entities), if observers sample all open access and limited entry vessel trips at random. The costs to the individual vessel are expected to range between \$157 and \$4444, depending on the coverage strategy and the number of days fished per year. The upper value is an extreme that would only occur for vessels that fished every day of the year and carried an observer at all times.

It is most likely that the open access and limited entry groundfish fleets will be divided into sectors based on criteria such as gear type, fishing period, geographical location, or fishing strategy. Each sector may be required to have a different level of observer coverage. Sectors with the greatest

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annual catch of groundfish or those that most frequently interact with priority species, for which there is a serious need for information, could be required to have a substantially higher proportion of observer coverage than the other sectors.

The analysis assumes that only vessels that carry an observer would bear the burden. Among the 2,116 vessels in the open access and limited entry groundfish fisheries that could be selected to bear the cost to carry an observer, there are substantial differences in terms of the annual ex-vessel value of their catch.

PAPERWORK REDUCTION ACT (PRA) - This proposed rule contains a collection-of-information subject to the PRA. A description of information will be submitted to the OMB for review and approval. Under this rulemaking vessels would be required to submit information that would be used to coordinate and conduct effective and efficient deployment of observers. No new forms are proposed with this rulemaking. 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.

ENDANGERED SPECIES ACT (ESA) - 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 impacts of the groundfish fishery on Sacramento

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River winter chinook, Snake River fall chinook, Snake River spring/summer chinook, Central Valley spring chinook, California coastal chinook, Puget Sound chinook, lower Columbia River chinook, upper Willamette River chinook, upper Columbia River Spring chinook, Hood Canal summer run chum, Columbia River Chum, Central California coastal coho, Oregon coastal coho, Snake River sockeye, Ozette Lake sockeye, southern California steelhead, south-central California steelhead, central California coast steelhead, upper Columbia River steelhead, Snake River Basin steelhead, lower Columbia River steelhead, California Central Valley steelhead, upper Willamette River steelhead, middle Columbia River steelhead, Umpqua River cutthroat trout, and the southwest Washington/Columbia cutthroat trout. The biological opinions 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 rule is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these Biological Opinions, additional consultations on these species are not required for this action.

The Assistant Administrator for Fisheries, NOAA, has initially determined that this action is consistent with the FMP, the National Standards and other provisions of the Magnuson-Stevens Act.

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List of Subjects

50 CFR Part 600, Subpart G

Fisheries

Dated: \_\_\_\_\_

\_\_\_\_\_  
[signature - type in title of person authorized to sign]

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For the reasons set out in the preamble, 50 CFR Part 600, Subpart G, is amended as follows:

50 CFR Chapter VI

Part 600, Subpart G - Pacific Coast Groundfish Fisheries

1. The authority citation for Subpart G continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In section 660.302 the following definitions are added.

660.302 Definitions

\* \* \* \* \*

Active sampling unit means a portion of the groundfish fleet in which an observer coverage plan is being applied.

Vessel manager means a person or group of persons whom the vessel owner has given authority to oversee all or a portion of groundfish fishing activities aboard the vessel.

3. In section 660.306, subsection (y) is added as follows:

660.306 Prohibitions.

\* \* \* \* \*

(y) Groundfish Observer Program.

(1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an observer.

(2) Interfere with or bias the sampling procedure employed by an observer, including either mechanically or physically sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard an observer's collected samples, equipment, records, photographic film, papers,

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or personal effects without the express consent of the observer.

(4) Harass an observer by conduct that: (i) has sexual connotations, (ii) has the purpose or effect of interfering with the observer's work performance, and/or (iii) otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Fish for, land, or process fish without observer coverage when a vessel is required to carry an observer under section 660.360(d)(ii).

(6) Require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members, including, but not limited to, cooking, washing dishes, standing watch, vessel maintenance, assisting with the setting or retrieval of gear, or any duties associated with the processing of fish, from sorting the catch to the storage of the finished product.

(7) Fail to provide departure or cease fishing reports specified at 660.360(c)(2).

(8) Fail to meet the vessel responsibilities specified at 660.360(d).

4. Section 660.360 is added as follows:

660.360 Groundfish Observer Program.

(a) General. The owner of a vessel subject to this part

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must ensure that the vessel operator and vessel manager comply with this section. The vessel owner, operator, and vessel manager are jointly and severally responsible for such compliance.

(b) Purpose. The purpose of the Groundfish Observer Program is to allow observers to collect fisheries data deemed by the Northwest Regional Administrator to be necessary and appropriate for management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources and their habitat.

(c) Observer coverage requirements.

(1) At-sea processors. [reserved]

(2) Catcher vessels. For the purposes of this section catcher vessels include all vessels using open access and limited entry gear that take, retain, or land groundfish at a processor(s) as defined at 50 CFR 660.302. When NMFS notifies the vessel owner, operator, permit holder, or the vessel manager of any requirement to carry an observer, the vessel may not take, retain, possess or land any groundfish without carrying an observer.

(i) Departure report. Not less than 24 hours before departing on a fishing trip, the owner, operator, or vessel manager of each vessel that is required to carry an observer, or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit, must provide NMFS or its designated agent with notification as specified by NMFS.

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(ii) Cease fishing report. Not less than 24 hours after ceasing the taking and retaining of groundfish with limited entry or open access gear in order to leave the fishery management area or to fish for species not managed under the Pacific Coast Groundfish Fishery Management Plan, the owner, operator, or vessel manager of each vessel that is required to carry an observer or that is operating in a segment of the fleet that NMFS has identified as an active sampling unit must provide NMFS or its designated agent with notification as specified by NMFS.

(3) Waiver. The Northwest Regional Administrator may provide written notification to the vessel owner stating that a determination has been made to temporarily waive coverage requirements because of circumstances that are deemed to be beyond the vessel's control.

(d) Vessel Responsibilities. An operator of a vessel required to carry one or more observer(s) must:

(1) Accommodations and food.

(i) At-sea processors. [reserved]

(ii) Catcher vessels. Provide accommodations and food that are equivalent to those provided to the crew.

(2) Safe conditions. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at 600.725 and 600.746.

(3) Observer Communications. Facilitate observer



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communications by:

(i) Observer use of equipment. Allow observer(s) to use the vessel's communication equipment and personnel, on request, for the entry, transmission, and receipt of work-related messages, at no cost to the observer(s) or the United States or designated agent.

(ii) Communication equipment requirements for at-sea processing vessels. [reserved]

(4) Vessel position. Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(5) Access. Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(6) Prior notification. Notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer, unless the observer specifically requests not to be notified.

(7) Records. Allow observer(s) to inspect and copy any state or federal logbook maintained voluntarily or as required by regulation.

(8) Assistance. Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not

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limited to:

- (i) Measuring decks, codends, and holding bins.
- (ii) Providing the observer(s) with a safe work area.
- (iii) Collecting bycatch when requested by the observer(s).
- (iv) Collecting and carrying baskets of fish when requested by observer(s).
- (v) Allowing observers to collect biological data and samples when the procedure will not decrease the value of a significant portion of the catch.
- (vi) Providing adequate space for storage of biological samples.
- (9) At-sea transfers to or from processing vessels.  
[reserved]
- (e) Procurement of observers services by at-sea processing vessels. [reserved]
- (f) Certification of observers in the at-sea processing vessels. [reserved]
- (g) Certification of observer contractors for at-sea processing vessels. [reserved]
- (h) Suspension and decertification process for observers and observer contractors in the at-sea processing vessels.  
[reserved]
- (i) Release of observer data in the at-sea processing vessels. [reserved]
- (j) Sample station and operational requirements.

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(1) Observer sampling station. This subsection contains the requirements for observer sampling stations. The vessel owner must provide an observer sampling station that complies with this subsection so that the observer can carry out required duties.

(i) Accessibility. The observer sampling station must be available to the observer at all times.

(ii) Location. The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iii) Minimum work space aboard at-sea processing vessels. [reserved]

(iv) Table aboard at-sea processing vessels. [reserved]

(v) Scale hanger aboard at-sea processing vessels. [reserved]

(vi) Diverter board aboard at-sea processing vessels.  
[reserved]

(vii) Other requirement for at-sea processing vessels.  
[reserved]

(2) Requirements for bins used to make volumetric estimates on at-sea processing vessels. [reserved]

(3) Operational requirements for at-sea processing vessels.  
[reserved]

