

and participate in the regulatory development process. As part of the information gathering process, EPA intends to issue an information collection request to the individual companies and plants which will seek site-specific information in these and other areas.

Administrative Requirements

Because this ANPR is not a rule or a proposed rule, the EPA has not prepared an economic impact analysis pursuant to section 317 of the CAA, a regulatory flexibility analysis pursuant to the Regulatory Flexibility Act, or a written statement under section 202 of the unfunded Mandates Act of 1995. Also, this ANPR does not contain any information collection requirements and, therefore, is not subject to the Paperwork Reduction Act.

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in standards that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

OMB has determined that this proposed advance notice of proposed rulemaking is a "significant regulatory action" because of novel legal or policy reasons. As such, this action was submitted to OMB for review.

Dated: September 8, 2000.

Carol M. Browner,
Administrator.

[FR Doc. 00-23644 Filed 9-13-00; 8:45 am]

BILLING CODE 6560-50-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-6869-3]

RIN 2060-AJ11

National Emission Standards for Hazardous Air Pollutants: Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; applicability stay.

SUMMARY: In this action, EPA is proposing a rule to stay the applicability of the national emission standards for hazardous air pollutants (NESHAP) for Secondary Aluminum Production, as applied to aluminum foundries and aluminum die casting facilities during the pendency of a separate rulemaking to adopt alternate MACT requirements for these sources. The EPA intends to take final action concerning this proposed stay at the same time as it proposes to remove aluminum foundries and aluminum die casting facilities from the present secondary aluminum standard and to adopt alternate MACT requirements deemed necessary and appropriate for these sources.

In an advance notice of proposed rulemaking (ANPR) published elsewhere in this **Federal Register**, EPA is announcing its intention to propose amendments to the NESHAP for Secondary Aluminum Production to remove aluminum foundries and aluminum die casting facilities from those standards and to make a new determination concerning maximum achievable control technology (MACT) requirements for major sources and area sources in these industries.

DATES: *Comments.* Comments must be received on or before October 16, 2000.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A-2000-35, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460. We request that a separate copy of each public comment be sent to the contact person listed below (see **FOR FURTHER INFORMATION CONTACT**).

Docket. Docket No. A-2000-35 is available for public inspection and

copying from 8:30 a.m. to 5:30 p.m., Monday through Friday (except for Federal holidays), at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M-1500, Ground Floor, 401 M Street SW, Washington, DC 20460. A reasonable fee may be charged for copying docket items.

FOR FURTHER INFORMATION CONTACT: For information concerning this proposed rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541-1084, Santiago.Juan@EPA.gov.

SUPPLEMENTARY INFORMATION:

Comments

Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect(TM) version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A-2000-35. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Juan Santiago, U.S. EPA, c/o OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 740B, Durham, NC 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Regulated Entities

The regulated category and entities affected by this action include:

Category	NAICS Code	SIC Code	Examples of regulated entities
Industry	331521 331524	3363 3365	Aluminum die casting facilities. Aluminum foundry facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that the Agency is now aware could potentially be affected by this action. If you have questions regarding the applicability of this proposed stay to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline

The information presented in this preamble is organized as follows:

- I. What are we proposing?
- II. Why are we taking this action?
- III. Whom would this stay affect?
- IV. What related actions is EPA undertaking?
- V. What are the administrative requirements for this stay?
- A. Executive Order 12866, Regulatory Planning and Review
- B. Executive Order 13132, Federalism
- C. Executive Order 13084, Consultation and Coordination with Indian Tribal Governments
- D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
- E. Unfunded Mandates Reform Act of 1995
- F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C 601 *et seq.*
- G. Paperwork Reduction Act
- H. National Technology Transfer and Advancement Act

I. What are we proposing?

Aluminum foundries and aluminum die casting facilities are subject to the current NESHAP for Secondary Aluminum Production, 40 CFR part 63, subpart RRR. We are proposing to stay the applicability of subpart RRR to sources in the aluminum foundry and aluminum die casting industries during the pendency of a new rulemaking to remove these sources from subpart RRR and to adopt alternate MACT requirements deemed necessary and appropriate for such sources.

II. Why are we taking this action?

The EPA promulgated the NESHAP for the Secondary Aluminum Production source category on March 23, 2000 (65 FR 15690). As promulgated, these standards apply to major and area source aluminum foundries and aluminum die casting facilities, except for those facilities that melt no materials other than clean charge and materials generated within

the facility and that also do not operate a thermal chip dryer, sweat furnace or scrap dryer/delacquering kiln/decoating kiln.

The EPA based the NESHAP for aluminum foundries and aluminum die casting facilities, as well as its assessment of the economic impacts on small businesses in these industry segments, on information pertaining to representative facility practices in these industry segments. We believed that the information in the record supporting our NESHAP for secondary aluminum production facilities was representative of the operations and range of emissions at aluminum die casting facilities and aluminum foundries and sufficient to support the MACT requirements we adopted in those standards for them, although we did not have emissions data on dioxin and furan emissions specifically measured at aluminum foundries and die casting facilities.

However, affected aluminum foundry operators and die casters have expressed the view that the information and assumptions upon which we relied when we promulgated the Secondary Aluminum Production NESHAP may be incomplete or may not adequately represent the processes and emissions at such facilities. Accordingly, EPA made a commitment as part of the NESHAP for the Secondary Aluminum Production source category to initiate a formal process to collect further information from the facilities in these industries on the activities in which they engage and the potential of these activities to contribute to HAP emissions. EPA also published that, after evaluating this information, it would make a new determination concerning MACT requirements for both major sources and area sources in these industries. EPA has since entered into a settlement agreement in *American Foundrymen's Society, et al. v EPA*, Civ. No. 00-1208 (D.C. Cir.) that effectuates this commitment in the preamble to the NESHAP for the Secondary Aluminum Production source category.

The EPA intends to undertake a new rulemaking to remove aluminum foundries and aluminum die casting facilities from subpart RRR and to make a new determination concerning alternate MACT requirements deemed necessary and appropriate for these sources in the context of a separate source category. We intend to collect further information from these facilities

using our authority under CAA section 114 and to make a new determination concerning the MACT floor and any MACT requirements deemed necessary and appropriate for these facilities based on this information. Our intention to proceed with this new MACT rulemaking is expressly contingent on our ability to collect information concerning the processes employed at these facilities and the associated emissions, sufficient both to fully support establishment of a separate MACT floor for such facilities and to resolve any remaining questions regarding the practicality, cost, and efficacy of potential emission controls.

In this action, EPA is proposing a rule to stay the applicability of subpart RRR to aluminum foundries and aluminum die casting facilities during the pendency of the rulemaking to make a new determination concerning alternative MACT requirements for these facilities. We intend to take final action concerning this proposed stay at the same time as we propose to remove aluminum foundries and aluminum die casting facilities from subpart RRR and to adopt alternative MACT requirements deemed necessary and appropriate for these facilities.

The EPA is proposing this applicability stay because it would make no sense to require major and area sources at aluminum foundries and aluminum die casting facilities to continue to plan for compliance with the existing provisions of subpart RRR once EPA has made a new determination of MACT requirements for these facilities and has proposed to remove these facilities from subpart RRR. Assuming that the information collection process can proceed expeditiously, we believe that a new MACT floor for these facilities can be determined and alternate MACT requirements deemed necessary and appropriate for affected sources can be proposed before any facility would be legally obligated to comply with the substantive controls required by subpart RRR.

Any proposed rule to adopt an alternative NESHAP for aluminum foundries and die casters will provide affected facilities with a reasonable amount of time after the effective date of the promulgated standards, and in no event less than one year, to come into compliance with the final standards.

Aluminum foundries and die casters will also have a reasonable amount of time to come into compliance with the existing NESHAP for secondary aluminum production should EPA elect not to issue a proposed rule to remove aluminum foundries and die casters from 40 CFR part 63, subpart RRR.

III. Whom would this stay affect?

When finalized, this proposed stay would affect those aluminum die casting facilities and aluminum foundry facilities to which 40 CFR part 63, subpart RRR, presently applies.

Specifically, this proposed stay would affect existing aluminum die casting facilities and aluminum foundry facilities that meet either, or both, of the following descriptions:

- Facilities that melt materials other than clean charge and other than materials generated within the facility;
- Facilities that operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln.

For the purposes of this proposed stay, aluminum die casting facility means a facility that receives molten aluminum or melts solid aluminum, such as aluminum ingots, billets, and/or scrap, and pours or injects the molten metal into a permanent die to produce a casting. Aluminum foundry facility means a facility that receives molten aluminum or melts solid aluminum, such as aluminum ingots, billets, and/or scrap, and pours molten metal into a mold to produce a casting.

IV. What related actions is EPA undertaking?

In an ANPR published elsewhere in this **Federal Register**, EPA is announcing its intention to propose amendments to the Secondary Aluminum Production NESHAP, 40 CFR part 63, subpart RRR, to remove aluminum foundries and aluminum die casting facilities from that NESHAP and to make a new determination concerning MACT requirements for major sources and area sources in these industries.

In order to gather information supporting the new determination concerning alternate MACT requirements for aluminum foundries and aluminum die casting facilities, we intend to collect additional information from individual companies and facilities on site-specific operating practices, emissions, emission control devices, emission control costs and applicable regulations, utilizing our authority under CAA section 114. The EPA will seek approval for this information collection effort from the Office of Management and Budget

(OMB) pursuant to the provisions of the Paperwork Reduction Act.

V. What Are the Administrative Requirements for This Stay?

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has determined that this proposed rule is a "significant regulatory action" because of novel legal or policy reasons. As such, this action was submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the

process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's proposed stay will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because State and local governments do not own or operate any sources that would be subject to his proposed stay. Thus, the requirements of section 6 of the Executive Order do not apply to today's action.

C. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed stay does not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate sources subject to this proposed stay. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's action.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. Today's proposed stay is not subject to Executive Order 13045 because it is based on technology performance, not health or safety risks. Furthermore, this proposed rule has been determined not to be "economically significant" as defined under Executive Order 12866.

E. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating

an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least-costly, most cost effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the proposed stay does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the Secondary Aluminum Production NESHAP for any year has been estimated to be approximately \$76.7 million (65 FR 15690, March 23, 2000), and today's proposed stay does not add new requirements that would increase this cost. Thus, today's proposed stay is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this proposed stay contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's proposed stay is not subject to the requirements of section 203 of the UMRA.

F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act

or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed stay on small entities, a small entity is defined as: (1) A small business in SIC code 3363 or 3365 that has as many as 500 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed stay on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The EPA has determined that none of the small entities will experience a significant impact because the proposed stay imposes no additional regulatory requirements on owners or operators of affected sources.

G. Paperwork Reduction Act

The OMB has approved the information collection requirements contained in the Secondary Aluminum Production NESHAP under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control No. 2060-0433. An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1894.01), and a copy may be obtained from Sandy Farmer by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, NW, Washington DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. Today's proposed stay of the NESHAP will not increase the information collection burden estimates made previously.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (March 7, 1996), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods,

sampling and analytical procedures, and business practices) that are developed or adopted by one or more voluntary consensus bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The proposed stay does not involve the proposal of any new technical standards or incorporate by reference existing technical standards.

Dated: September 8, 2000.

Carol M. Browner,
Administrator.

[FR Doc. 00-23643 Filed 9-13-00; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket 000301054-0227-02; I.D. 053000D]

RIN 0648-AN27

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: 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 observation program on all limited entry and open access catcher vessels. This proposed rule would require vessels in the groundfish fishery to carry observers when notified by NMFS or its designated agent; establish notification requirements for vessels that may be required to carry observers, and establish responsibilities and define prohibited actions for vessels that are required to carry observers. The at-sea observation program is intended to improve estimates of total catch and fishing mortality.

DATES: Comments on this proposed rule must be received by October 16, 2000.

ADDRESSES: Send comments to William Stelle, 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/Initial Regulatory Flexibility Analysis (IRFA) 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, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to the NMFS address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 00503 (Attn: NOAA Desk Officer). Send comments regarding any ambiguity or unnecessary complexity arising from the language used in this rule to William Stelle, Jr.

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 proposed 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>.

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 (Magnuson-Stevens 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. The Magnuson-Stevens Act at 16 U.S.C. 1853(b)(8) provides that an FMP may require that one or more observers (50 CFR 600.10) be carried onboard a vessel of the United States engaged in fishing for species that are subject to the FMP, 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 on board 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 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 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 processing vessels (catcher/processors and motherships) in