



FEDERAL REGISTER

Vol. 80

Tuesday,

No. 76

April 21, 2015

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 660

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program; Final Rule

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660**

[Docket No. 130503447–5336–02]

RIN 0648–BD30

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Trawl Rationalization Program; Catch Monitor Program; Observer Program

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

ACTION: Final rule.

SUMMARY: This action revises the Pacific Coast Groundfish Fishery regulations pertaining to certified catch monitors and observers required in the Shorebased Individual Fishery Quota Program, the Mothership Coop Program, the Catcher/Processor Coop Program, and for processing vessels in the fixed gear or open access fisheries. This action establishes permitting requirements for persons interested in providing certified catch monitors and observers; updates observer provider and vessels responsibilities relative to observer safety; and makes administrative changes to the observer and catch monitor programs. This action is needed to allow for the entry of new providers, to ensure observer safety provisions are clearly stated and consistent with national observer regulations, and to improve program administration.

DATES: *Effective date:* May 21, 2015.

ADDRESSES: NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is summarized in the Classification section of this final rule. NMFS also prepared an Initial Regulatory Flexibility Analysis (IRFA) for the proposed rule. Copies of the IRFA, FRFA and the Small Entity Compliance Guide are available from William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or by phone at 206–526–6150. Copies of the Small Entity Compliance Guide are available on the West Coast Region's Web site at <http://www.westcoast.fisheries.noaa.gov/>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by email to

OIRA_Submission@omb.eop.gov or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The proposed rule for this action was published on February 19, 2014 (79 FR 9592). This final rule removes regulations requiring vessels to obtain certified observers from providers permitted for the North Pacific Groundfish Observer Program, and establishes provider permitting requirements specific to the Pacific Coast groundfish fishery. Because some provider businesses in the Pacific Coast groundfish fishery provide both observers and catch monitors, a combined permitting process is being implemented at 50 CFR 660.18. There are two types of endorsements that will be associated with a provider permit; an observer endorsement and a catch monitor endorsement.

New providers may obtain permits through an application process. During the application process, persons, which includes individuals and entities, would specify which endorsement(s) they are seeking. Persons that provided observers and catch monitors in the 12 months prior to the effective date of this rule will be issued a provider permit without submitting an application. The existing record regarding performance and the ability to provide observer or catch monitor services will be adequate documentation. Existing providers will not be required to submit a new application unless they were seeking an additional endorsement. Existing providers will be permitted through December 31, 2015, unless there has been a change in ownership. To continue to provide services in 2016, existing providers will be required to apply for a provider permit by October 31, 2015, through the application process at § 660.18(b). A provider permit expires if it is not renewed and endorsements can be revoked when specific services have not been provided for a period of 12 consecutive months.

Observer and catch monitor providers contribute an important service by recruiting, hiring, and deploying motivated individuals to serve as observers and catch monitors. NMFS must ensure that observer providers meet minimum requirements so that this important service is consistently maintained. NMFS can issue permits to applicants who, among other considerations: Demonstrate that they understand the scope of the regulations they will be held to; document how they

will comply with those regulations; demonstrate that they have the business infrastructure necessary to carry out the job; are free from conflict of interest; do not have past performance problems on a Federal contract or any history of decertification as either an observer, catch monitor, catch monitor provider or observer provider; and are free from criminal convictions for certain offenses that could impact their ability to successfully carry out the role of application. Upon issuance of a provider permit, the holder must comply with all applicable regulations.

Provider permit applications from persons who do not hold a current provider permit may be submitted at any time during the year. Once a complete application is received, NMFS' review process would begin and take at least a month. Therefore, applicants should plan accordingly. Applications submitted after October 31 may not be processed until the following year because of the time required to review applications, issue permits, and allow for an appeals process. NMFS has discretion to either grant or deny issuance of a catch monitor or observer provider permit.

A permit issued to a catch monitor or observer provider will be effective until the permit expiration date of December 31 of that year, unless, in the meantime, an ownership change occurs that requires a new permit, or the permit is suspended, revoked, or voided. Unless they wish to no longer provide services, existing provider permit holders must annually reapply prior to the December 31 permit expiration date. To be guaranteed issuance by January 1 of a subsequent year, the application must be submitted by October 31. If an existing provider fails to reapply for the permit, it will expire on the permit expiration date.

This action also revises regulations pertaining to observer safety. Fishing vessel responsibilities relative to safety are being revised to ensure consistency with the National Observer Program provisions at §§ 600.725 and 600.746. The prohibitions at § 660.12(e) are being revised to clarify that a vessel required to carry an observer is prohibited from fishing (including processing) if NMFS, the observer provider, or the observer determines that the vessel is inadequate or unsafe. In addition, the observer provider responsibilities will require the use of a current Vessel Safety checklist for pre-cruise checks and for any safety-related findings to be submitted to the Observer Program. Minor regulatory changes in program administration and housekeeping measures are included in this action.

Response to Comments

NMFS received three comment letters on the proposed rule and took verbal comments on the proposed rule during the Pacific Fishery Management Council's (Council) March 2014 meeting. These comments are addressed here:

Comment 1: The definitions at § 660.11 define a catch monitor provider as "any person or commercial enterprise that is granted a permit by NMFS to provide certified catch monitors as required in § 660.140." This would preclude a public agency (state or municipality) from becoming a provider and is therefore too restrictive. Similarly, the conflict of interest limitations could be read to preclude harbor districts, coastal towns, states and similar entities from becoming observer or catch monitor providers. We recommend clarifying the conflict of interest limitations so that community members have the opportunity to monitor fishing activities in their own ports and so that harbor districts, coastal towns, states and similar entities may become certified providers.

Response: The regulations do not preclude a public agency, including harbor districts, coastal towns, states and similar entities, from being a permitted provider. The regulations will allow any "person" that meets the qualifying criteria to be permitted as a provider. The term "person" is defined in the regulations at § 660.11 and includes, "any federal, state, or local government." A public agency would not be precluded from being a provider.

The conflict of interest limitations do not prohibit catch monitors or observers from living in the same communities in which they work. However, the regulations do specify assignment limitations for both catch monitors and observers. Currently, a catch monitor may not be assigned to the same first receiver for more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS. Similarly, observers may not be deployed on the same vessel for more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

Comment 2: Other than allowing observer or catch monitor services, the limitations on conflict of interest for catch monitors, observers, and providers prohibit persons with a direct financial interest in the following: (A) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish; (B) Any business

involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or (C) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities. These restrictions are not limited to commercial fishing. Recreational fishers or someone working at Safeway could be prohibited from being a catch monitor, an observer, or a provider.

Response: The conflict of interest limitations for observers, catch monitors, and providers were intended to apply to commercial fishing activity, including commercial activity in the recreational fisheries (e.g. charters). The conflict of interest restrictions describe, in part, that a person must not have a direct financial interest in a vessel, or any business buying from or selling to a vessel. The term "fishing vessel" as defined in regulation at § 600.10 means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for: (1) Fishing; or (2) Aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, storage, refrigeration, transportation, or processing. Conflict of interest restrictions for observers are outlined at a national level in a policy directive (04-109-01) from August 2007 titled, "National Minimum Eligibility Standards for Marine Fisheries Observers." (http://www.st.nmfs.noaa.gov/Assets/Observer-Program/pdf/Eligibility_Procedural_Directive.pdf) The national conflict of interest requirements use similar language, including use of the term "vessel" on page 3. In addition, the term "vessel" and similar conflict of interest requirements have been in Pacific coast groundfish regulations for observers, catch monitors, and providers before the February 2014 proposed rule and, for observers, since well before the trawl rationalization program.

Comment 3: NMFS stated their intent to expand conflict of interest limitations for observer and catch monitor providers. NMFS appears intent on developing these limitations without Council guidance outside of this rulemaking process, this is concerning.

Response: NMFS disagrees with the commenter that actions are being developed without Council input. At the Council's April 2012 meeting, NMFS identified the intent to review observer regulations at § 660.140 (Shorebased IFQ Program), § 660.150

(Mothership Coop Program), § 660.160 (Catcher/processor Coop Program) and the catch monitor regulations (§§ 660.17, 660.18, and 660.140) and revise the regulations to be more clear or more consistent and to improve administration of the two programs (Agenda item I.4.c. NMFS Trailing Actions). In April 2012, the Council recommended that NMFS move forward with the proposed changes. During the development of provider permitting regulations, the issue regarding conflict of interest limitations for providers came to light. To provide adequate notice to the public, the proposed rule preamble specifically discussed the issue of narrowing the conflict of interest limitations for providers and requested public comment. In addition, the issue was brought forward at the Council's March 2014 meeting for further input from the Council.

Comment 4: The current conflict of interest provisions were developed by the Council to help facilitate procurement of observers. A central point of the proposed rule is about facilitating procurement of observers by expanding the pool of observer providers on the Pacific Coast. Therefore, it seems counter-intuitive for NMFS to suggest the need for additional constraints on observer providers that will hinder procurement of observers. Further, during the original deeming of Amendment 20, the Regulatory Deeming Workgroup specifically rejected the more expansive conflict of interest language that NMFS initially proposed at that time. NMFS agreed to go with the narrowed language which is currently in regulation. The conflict of interest provisions should not be expanded beyond those originally developed by the Council.

Response: In 2010, during the deeming of the Amendment 20 rulemaking, more restrictive conflict of interest limitations relative to individual observers and catch monitors were rejected by the Regulatory Deeming Workgroup. The workgroup expressed concern that excessively narrow limitations could affect the availability of individuals to serve as observers and catch monitors. Although the conflict of interest limitations for observers and catch monitors are currently inconsistent with the NMFS policy directive 04-109-01, NMFS did not propose to narrow the conflict of interest limitations for observers and catch monitors in this action. Rather, the rule proposed to narrow the conflict of interest limitations for observer providers. The Regulatory Deeming Workgroup did not specifically consider

the conflict of interest limitations for providers.

Providers are businesses that employ qualified individuals to serve as observers and catch monitors; arrange for their attendance in training and briefings; provide support while they are deployed; and ensure that they meet the obligations. NMFS believes that there is adequate availability of individuals, businesses, colleges, universities, state and local governments to serve as providers to supply personnel for field positions in their natural resource jobs. Because the pool of potential applicants is a broad group, there appears to be an adequate pool of applicants without including those persons with direct financial ties to the fishing industry. For the collection of independent unbiased data, it is important that provider businesses be companies dedicated to providing personnel for the collection of accurate, complete, and reliable marine and ecological data. Broadening the existing conflict of interest limitations to restrict providers from having a direct financial interest in any federal or state managed fisheries is not expected to hinder the procurement of qualified individuals to serve as observers or catch monitors.

Comment 5: The proposed rule includes language that goes far beyond what it takes to become an observer. The observer qualifications include CPR training and certification which are inappropriate. The educational requirements go beyond what is necessary to do the job. The observer qualification requirements conflict with the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act) which simply states that they must have the skills to do the job.

Response: As noted in the preamble of the proposed rule, only minor administrative changes are being made in the regulations pertaining to observer qualifications and certifications. The changes include removing and updating incorrect cross references and standardizing references to the Observer Program. Similar, if not identical, changes are being made in the regulations pertaining to observers in the Mothership and Catcher/Processor Coop Programs.

The proposed rule did not include the reconsideration of eligibility requirements currently in regulation for observers. Observer eligibility criteria are based on NMFS policy directive 04-109-01, National Minimum Eligibility Requirements for Marine Fisheries Observers. Observer safety training and first aid requirements are addressed in

policy directive 04-110-01. These directives are available on line at <http://www.nmfs.noaa.gov/op/pds/>. Changes to the national directives for minimum eligibility requirements and first aid are beyond the scope of this action.

Comment 6: The provision of observers and catch monitors by for-profit companies provides employment and secondary economic benefits to West Coast ports. However, for some vessels in remote and small fishing areas, securing an observer or a catch monitor from a traditional for-profit provider may be prohibitively costly or difficult. NMFS should allow non-traditional entities to serve as observers and catch monitors, provided that they meet the requirements for a permit. These applicants could include coastal towns, harbor districts, states and other similar entities. Many individuals affiliated with those groups may be familiar with West Coast groundfish species and the fishery, making them promising candidates for observers and catch monitors.

There are two issues that could constrain non-traditional entities from providing observers and catch monitors: educational requirements for observers/catch monitors, and the conflict of interest limitations. While we understand and support minimum requirements for observers/catch monitors, we encourage NMFS to reconsider the requirement for a Bachelor's degree specifically in the natural sciences. We believe this requirement inadvertently excludes a number of otherwise qualified individuals. As long as applicants are able to successfully complete the NMFS training course, and can demonstrate they have the scientific and statistical skills and knowledge necessary to complete required duties, we believe they should be allowed to serve as observers/catch monitors.

Response: As discussed in the response to Comments 1 and 2, non-traditional entities, such as coastal towns, harbor districts, and states, would not be prohibited from becoming a provider if they meet the qualifying criteria. As discussed in the response to Comment 5, the proposed rule did not include reconsideration of eligibility requirements currently in regulation for observers. Nor did the proposed rule include changes to the educational requirements for catch monitors. Observers and catch monitors have different educational requirements in the groundfish regulations, as specified at § 660.140(h)(5)(i) for IFQ observers and § 660.17(e)(1) for catch monitors. The minimum requirement for a

bachelor's degree in one of the natural sciences is specific to observers, not catch monitors. Observers are required, in part, to have a bachelor's degree in one of the natural sciences, with coursework in biological sciences, use of dichotomous keys, at least one math and statistics course, and relevant computer skills, all consistent with national policy. Catch monitors, on the other hand, are required, in part, to have a high school diploma, and a 2-year degree or 1-year of specialized experience.

Observer eligibility criteria are based on NMFS policy directive 04-109-01, National Minimum Eligibility Requirements for Marine Fisheries Observers. The purpose of the procedural directive was to establish national minimum eligibility standards for individuals admitted to and completing observer training. Quality observer data are essential for management decisions. Therefore, observers must meet minimum eligibility standards to help ensure professionalism, provide quality assurance, prevent conflicts of interest and promote agency credibility. These same national directives include conflict of interest limitations.

Comment 7: There are inconsistencies between sections of the regulations describing first aid and cardiopulmonary training required for observers and needed to maintain their certification. Observers in the Shorebased IFQ Program and on catcher vessels in the mothership fishery are required to complete a basic cardiopulmonary resuscitation/first aid course prior to the end of the West Coast Groundfish Observer training class and to maintain their certification they must hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

Response: The commenter is correct that there are inconsistencies between what must be successfully completed during the West Coast Groundfish Observer training classes to obtain the initial certification and what is required to maintain the certification. This final rule revises those sections to eliminate the inconsistencies. Each section will refer to a Red Cross or equivalent basic cardiopulmonary resuscitation/first aid certification.

Comment 8: The proposed rule regulations require that any concerns about vessel safety be reported in writing to the Observer Program Office by the observer provider within 24 hours after the observer provider becomes aware of the information. Two commenters expressed concern about the timeliness of the vessel safety

information getting back to a vessel owner. The commenters requested that the regulations specify the time when a provider must notify a vessel owner about safety concerns, including an observer's refusal to board a vessel, starting from the time a problem is identified by the observer and ending when the vessel owner is notified of the situation.

Response: Every vessel that carries an observer is required to have a valid USCG Commercial Fishing Vessel Safety Decal that is valid for two years. Although a vessel may meet the requirements for a Vessel Safety Decal at the time of inspection, vessels can be out of compliance between inspections. Equipment can be removed from the vessel, damaged, or out of date. Prior to an observer embarking on the first trip and before the vessel may get underway with an observer aboard, the observer provider must ensure that the Observer Vessel Safety Checklist was completed, and that the vessel has a valid USCG Commercial Fishing Vessel Safety Decal. The provider must submit the Observer Vessel Safety Checklist to the Observer Program. The observers are encouraged to complete an Observer Vessel Safety Checklist as early as possible before the first trip and give the vessel time to correct any deficiencies. In addition, for the protection of observers, the current regulations state that vessels are required to maintain safe conditions, and comply with USCG and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel. Those measures include, but are not limited to, rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings. An observer may refuse to board or reboard a vessel, and may request a vessel to return to port if they believe it is operated in an unsafe manner or if they identify unsafe conditions.

Observers hired by permitted providers are required by regulations to report to NMFS when a vessel has uncorrected safety deficiencies, when an observer refuses to board or reboard a vessel, and when an observer requests to return to port due to unsafe conditions. Vessel owners employing observer services through a permitted provider hold a private contract with the provider. If a vessel owner wants observer safety concerns reported to them within a specific time frame, they are encouraged to work directly with the observer providers to build elements into their private business contract that addresses the concern. To address vessel safety issues before an observer is

scheduled to board a vessel, NMFS encourages the vessel owners to work directly with the USCG port personnel including safety inspectors who are available to assist individual vessel owners.

Comment 9: If an observer refuses to board a particular vessel, all of the preparation for going fishing is cost that is a loss for that vessel. There should be a regulatory provision to compensate the vessel's loss.

Response: With respect to permitted providers within the trawl fisheries, the relationship between the vessel and the permitted provider is a private business contract between the two entities. If the individual parties want provisions for compensating each other for losses relative to the fishing preparation costs or the observer's lost work time, the individual parties are encouraged to work together to build elements into their private business contract that addresses the concerns.

With respect to the limited entry fixed gear and open access harvesting vessels, Pacific States Marine Fish Commission holds contracts with observer providers and observers are obtained through the Observer Program Office, not directly from permitted providers. When there is a safety concern on limited entry fixed gear and open access harvesting vessel, NMFS notifies the vessel owner about the safety concerns. If the safety concern was not caused by the vessel or crew, a waiver may be issued and the vessel can go fish. In this case, the loss of fishing time is minimal. However, if an observer refuses a trip due to an issue with the vessel (unsafe conditions, harassment etc.), the Observer Program tends not to issue waivers and the vessel must correct the issue before an observer would be assigned to the vessel. In this case, NMFS believes that compensation would be inappropriate.

Comment 10: The proposed rule would require the submission of a permit renewal application every year in order to maintain certification as an observer provider. We believe this would be both unnecessary and overly burdensome. Providers and NMFS staff already have too many administrative responsibilities. New responsibilities should be considered only when they are truly worthwhile. This one may look good on paper, creating the impression that it somehow increases agency oversight, but in reality it will accomplish nothing. Once certified, we believe a company should remain so unless there is a change of ownership.

Response: The intended purpose of the annual renewal is to verify that the management, organization, and ownership structure of a permitted

provider is unchanged; to update provider contact information; and to assure that nothing has changed relative to the conflict of interest limitations or criminal convictions. Based on experience, NMFS believes the renewal process ensures that information required for issuance of a provider permit is maintained over time. If inconsistencies with the standards are found, the situation could be addressed and remedied in a timely manner.

The commenter is correct that annual renewals will be an additional burden on existing providers and NMFS. The burden was specifically considered and NMFS has determined that, at least initially, an annual check-in is needed to ensure that the conditions under which the original permits were issued continue to exist. To reduce the burden of the renewal process on the provider, partially pre-filled renewal forms will be provided. If all information is current, the burden on the provider is expected to be minimal.

At the beginning of the new provider permit requirements, it is important to collect the information through the renewal on an annual basis. After a few years, NMFS could evaluate whether the provider permit could remain valid over a longer period of time and a modification to the regulation is warranted. In addition, after three years, the burden of this collection will be reconsidered under the Paperwork Reduction Act and requiring less frequent renewals for provider permits could be considered.

Comment 11: The gear issued to observers has grown more technically advanced and increasingly expensive. The cost of NMFS-issued scales alone exceeds \$10,000. It is unreasonable to make providers or observers responsible for replacement costs of lost or damaged gear. Gear can be damaged through normal at-sea use, and one could argue that gear stolen from an observer's hotel room when the observer is on travel has been lost. It is unreasonable in either of these circumstances to hold the provider responsible for replacing the gear involved. Replacement should be restricted to those instances when gear is misplaced (*i.e.*, truly "lost") by the observer and when damage results from an observer's willful misconduct.

Response: When all of the gear is new, the specialized set of safety and sampling gear issued by NMFS to observers can exceed \$13,000. The motion-compensating scale alone is valued at approximately \$7,000. Current regulations require an observer provider to replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider.

All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office. NMFS believes there is a need to ensure that observers properly care for the gear in their possession. Although the regulations provide for the replacement of all lost or damage gear and equipment, to date the Observer Program has not required gear to be replaced when the gear was damaged and taken out of service due to normal wear or where the observer was not at fault for the gear being lost or stolen (*i.e.* stolen from a locked hotel room). However, observer providers have been asked to replace gear that was damaged or lost out of neglect by the observer (*i.e.* equipment stolen from an unlocked vehicle).

Comment 12: The Shorebased IFQ Program regulations currently limit an observer to 22 deployed days in a calendar month. This limit was established in 2011 prior to the start of the Shorebased IFQ Program. Based on our experience as an observer provider during the 2011–2013 period, we question why no changes were made in this rule. In our experience, we've often had to pull observers off vessels when they've had 19 or 20 deployed days in a month because their next trip would take them to a total of 23 or 24 days. The observers generally don't appreciate that they're being denied work for their own good, particularly in a program where work comes in fits and starts and they can't count on making up for lost earnings in subsequent months. For bottom trawl vessels, we'd suggest raising the limit to 24 days per month, and we'd suggest removing it entirely for vessels targeting Pacific whiting in the Shorebased IFQ Program. We believe that the 24 day per month standard would allow more people to work 22 days, which seems to be in the spirit of the regulations, because a provider would not need to pull an observer off a boat at 19 or 20 days out of an abundance of caution.

Regardless of the day specified in the deployment limit, as an observer provider we are not comfortable with waivers being confined to those situations listed in the regulation (long trips, or a shortage of observers due to illness or injury). For instance, an observer in Bellingham, Washington who has already had 21 deployed days in the month of July would be unable to board a vessel that was departing on July 30 for another trip, even though the first 18 hours of that trip would be running out to the fishing grounds. If the regulation as written were to be applied in this situation, we would be expected to send an observer from

Westport, Washington or Astoria, Oregon to cover the trip, adding significant travel costs to the vessel's bill, and our Bellingham observer would be left on the beach to contemplate the lost earnings. The rule should give NMFS the latitude to make common sense decisions in situations regardless of the limit on deployment days. The regulations should be revised to allow the Observer Program to issue waivers to allow observers to work more than the number of days in a calendar month specified in the deployment limit.

Response: The current regulations state that an observer must not be deployed for more than 22 days in a calendar month with some exceptions: when the Observer Program specifically issues a waiver in a situation where it is anticipated that a single trip will last over 20 days, or for issues with replacement observer availability due to illness or injury. Because the regulatory text that the commenter is referring to was included in the proposed rule only to revise minor administrative changes without substantive changes from the existing deployment limitations, NMFS believes that further analysis is necessary to determine if the 22 day deployment restriction should be revised and, if so, what would be an appropriate change. NMFS encourages the commenter to bring this issue forward through the Pacific Fishery Management Council process for further consideration.

The commenter also indicates that regardless of the 22 day deployment restriction, the range of exceptions for which waivers may be issued is too narrow and needs to be revised. In looking at the current regulatory text, NMFS agrees that the stated limits for when waivers may be issued is too narrow and does not accurately reflect current program policies. Therefore, this final rule revises the observer deployment limitations and workload regulations to add an allowance for the Observer Program to issue a waiver when it has been predetermined that the extended deployment is not likely to result in data delays or otherwise impact the overall duties and obligations of the observer.

Comment 13: If an observer provider is unable to provide observer coverage to a vessel that they have a contractual relationship with due to the lack of available observers, the observer provider must report it to the Observer Program at least four hours prior to the vessel's estimated embark time. As a provider, the requirement to notify NMFS at least four hours before the vessel's scheduled departure works well enough for processing vessels in the

Mothership and Catcher/processor Coop fisheries, but not for vessels in the Shorebased IFQ Program. For vessels in the Shorebased IFQ Program, we're most likely to have difficulty providing observer coverage to vessels that provide only four hour notice. The rule needs to anticipate these situations by stating providers will notify NMFS at least four hours in advance of a trip when an observer isn't available, unless the vessel provides less than four hour notice to the provider, in which case the provider is to notify NMFS as soon as practical after the situation arises.

Response: NMFS agrees the recommendation is consistent with the original intent of the regulations. The basis for the original regulations was that the observer provider was given adequate notice by the vessel. Therefore, the Shorebased IFQ Program regulations for catch monitor and observer providers are revised to reduce the burden on catch monitor or observer providers when less than four hour notice is given to the provider.

Comment 14: After initial issuance, an observer must keep their certification valid. In order to maintain the certification, an observer must meet the "minimum annual deployment period" of three months at least once every 12 months. If by "deployment period," the language means a period under contract, then we have no question on this subject. However, if by "deployment period" the intent is to say that to maintain the endorsement an observer must have at least 90 deployed days on vessels during a 12 month period that could be too restrictive particularly in ports in Southern California. Based on our experience as an observer provider in Central and Southern California in the 2011 to 2013 period, an observer would have to be under contract, on average, for 9 months out of every 12 months to reach a 90-deployed-day threshold. An observer who spent 6 months out of the year under contract and was deployed 60 days during those months should not be required to attend a full training prior to returning to work the following year.

Response: NMFS agrees with the commenter that regulatory language regarding a minimum annual deployment period for observers does not work for the Shorebased IFQ Program given the amount of variance in activity between ports. Observers in certain ports simply cannot accumulate the required number of days to maintain certification, yet they are perfectly capable of performing their duties. In addition, some ports already have difficulty getting observer coverage and are at more of a disadvantage as a result

of this restriction. After reviewing the number of sea days for all observers, as well as those in the Southern California ports of concern, the minimum annual deployment restriction is being revised in this final rule to a minimum of 45 days. In addition, the Observer Program will have the discretion to waive the 45 day requirement for individuals in good standing with less than 45 days on a case-by-case basis, but have less deployment days given their port assignments. The regulatory revisions reduce the training burden on individual observers and providers.

Comment 15: Limiting the hours of a catch monitor to 12 hours in any 24 hour period for work other than the summary and submission of catch monitor data poses a problem in remote ports. Offloads in Bellingham, Washington, for instance, can sometimes run longer than 12 hours. We only have a single Shorebased IFQ Program observer/catch monitor in Bellingham. At the start of an offload, there's no way to predict with certainty if the offload will run longer than 12 hours. As a catch monitor provider, a 12-hour limit is unworkable in Bellingham. In cases when an offload does exceed 12 hours, the regulation as written would force us to shut down the offload and send someone to Bellingham from either Westport, Washington or Astoria, Oregon to finish the last hour or two of work. In this case, the expense and disruption faced by the first receiver as a result of the work hour restriction is not justified. We're also confused as to why the work limits for catch monitors are expressed in terms of a number of hours "per 24-hour period." Using a "calendar day" would be a more common sense approach and is much easier to apply.

Response: The proposed rule changes were intended to address the late submission of catch monitor data and excessive work hours due to long offloads, particularly relative to Pacific whiting landings. The current regulations limit the working hours of each individual catch monitor to no more than 16 hours per calendar day, with maximum of 14 hours being work other than the summary and submission of catch monitor data. In addition, following a monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 6 hours break before they may resume monitoring. The proposed rule included a reduction in the working hours such that a catch monitor could not work more than 14 consecutive hours in any 24-hour period with a maximum of 12 hours being work other than the summary and submission of catch

monitor data. In addition, a break of at least 8 consecutive hours would have been required in the same 24-hour period.

In response to the issues identified by the commenter, changes have been made in the final rule. The term calendar day will continue to be used rather than 24-hour period. The increased burden to a provider to monitor a moving 24-hour period for a large number of individuals appears to outweigh the benefit over continuing to restrict work hours using a calendar day. The limit on working hours of each individual catch monitor will continue to be reduced from 16 to 14 hours; however, the number of hours for work other than the summary and submission of catch monitor data is being removed to provide flexibility. The catch monitor is still obligated to submit catch data within 24 hours of the completion of landing and the provider is responsible for assuring that the catch monitor obligations are met.

Comment 16: The requirement that observers have a physical exam once every twelve months should be revised to better fit the realities of providing observers and catch monitors for the Pacific Coast groundfish fisheries. In the North Pacific program, for instance, an observer is required to have a current physical exam within twelve months of starting a contract or cruise. Since deployments in the North Pacific program can last as long as 90 days, observers can often work for up to 15 months beyond the date of their most recent physical. On the Pacific Coast, since deployments are measured in days, not months, an annual physical requirement will often introduce unnecessary costs.

As an observer provider, typical contracts in the trawl fisheries last 12 to 14 months. Because observers get their pre-employment physical before they begin training, the regulation as written will require observers who decide against signing a second contract to get a physical exam during the final month or two of their employment so as to be able to finish their commitment. Changing the physical exam requirement to once every 15 months would better fit the way contracts run on the West Coast.

Response: The current regulations relative to physical examinations for an observer requires that the physician's statement be submitted to the Observer Program Office prior to certification and must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The proposed regulations had removed the clause which read "The physician's

statement expires 12 months after the physical exam occurred and a new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement." However, the proposed rule specifically requested public comment on the modification. Physical examinations and requirements of the physician statements are currently being reviewed by the National Observer Program. Modifications will not be made at this time. Future changes would be proposed following completion of the National Observer Program review.

Comment 17: The proposed regulations require observer candidates be registered 10 business days in advance of trainings and briefings. As a provider, we register candidates as soon as they are hired, which is almost always far earlier than the regulations require, but the Pacific Coast fisheries are still dynamic and difficult to predict. We suggest requiring candidates to be registered 5 business days in advance of a training is more realistic, as it is not uncommon that changing fishing plans from the fleet lead us to adjust our training plans just a week or so prior to the start of a training or briefing.

Response: The current regulations required registration information to be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled training or briefing session. The proposed rule would increase the minimum submission time to be 10 business days. NMFS understands the concern and would be willing to consider late submissions. However, the Observer Program would retain the authority to refuse a submission received less than 10 days before the start of the training or briefing.

Comment 18: The commenter recommended removing the current requirement that observer providers on the Pacific Coast be permitted to provide coverage in the North Pacific groundfish fishery. That requirement may limit the available number of Pacific Coast providers thereby limiting competition and driving up costs.

Response: NMFS agrees with the commenter. The Pacific Coast Groundfish provider permits would replace the requirement for observer providers to hold a valid permit issued by the North Pacific observer program in 2010.

Comment 19: The proposed rule is inaccurate relative to the cease fishing reports for the Mothership Coop Program at § 660.150(c)(4)(ii), in the Catcher/processor Coop Program at

§ 660.160(c)(5), and in Trawl Fishery—Recordkeeping and Reporting at § 660.113(c)(4). Cease fishing reports regarding reapportionment of non-whiting allocations are not mandatory. The provision notes two potential triggers for reapportionment of non-whiting—attainment of the mothership sector whiting allocation or notification by participants that they do not intend to harvest remaining allocation. As such, a cease fishing report would only be required if and when the participants in the sector collectively determine not to conduct any more harvesting activities for the year and instruct the designated coop manager accordingly. This paragraph could be clarified to avoid confusion by inserting “If participants in the sector do not intend to harvest the sector’s remaining allocation,” at the beginning of the following sentence: “The designated coop manager, or in the case of an inter-coop, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.”

Similarly, the proposed rule would move the prohibition against “Fail[ing] to submit cease fishing reports” from § 660.12 (General Prohibitions) to § 660.112 (Trawl Fishery Prohibitions). However, cease fishing reports in the trawl rationalization program are not mandatory but rather are contingent on a determination by participants in the sector that they do not intend to harvest their remaining allocations. These prohibitions should be deleted, not moved.

Response: The commenter is correct that cease fishing reports specified at §§ 660.150(c)(4)(ii) and 660.160(c)(5) are required if and when the participants in the sector collectively determine not to conduct any more harvesting activities for the year and instruct the designated coop manager accordingly. NMFS is changing several sections of the regulations to reflect this. NMFS agrees that the commenter’s suggested change to cease fishing report requirements at §§ 660.150(c)(4)(ii) and 660.160(c)(5) would further clarify the regulations and is making the change in this final rule. In addition, the prohibition that was proposed to be moved from § 660.12(e)(7) to § 660.112(a)(3)(iv) is being removed from the regulations in this final rule. Finally, this final rule clarifies the recordkeeping and reporting requirements at § 660.113(c)(4) and (d)(4) on cease fishing reports.

Comment 20: The Mothership Coop Program also references cease fishing reports in the subparagraph describing responsibilities of mothership vessels participating in the fishery,

§ 660.150(b)(1)(ii)(A). This provision is incorrect, as the reference to which it cites contains no requirement for the owner and operator of a mothership vessel to submit a cease fishing report. “Cease fishing reports” should be deleted from this provision. *Response:* The commenter is correct that submission of cease fishing reports is not the responsibility of the vessel, but rather a responsibility of the coop manager. The requirement is being removed from § 660.150(b)(1)(ii)(A), as well as § 660.160(b)(1)(ii)(A).

Finally, a comment was submitted to the North Pacific Fishery Management Council and the Pacific Council after the close of the comment period. The president of Alaskan Observers, Inc., submitted to the Pacific Council a copy of a letter dated March 25, 2014, that was addressed to the North Pacific Fishery Management Council. The letter requested action to revise regulations that require observer providers to demonstrate proof of insurance coverage to cover claims under the Jones Act, General Maritime Law, and the U.S. Longshore and Harbor Worker’s Compensation Act. This issue is currently under evaluation by NMFS, and to the extent the agency’s conclusions may affect the Pacific Coast groundfish observer program regulations, NMFS will notify the Pacific Council, as appropriate.

Changes From the Proposed Rule

The term “person” is defined at § 660.11 to mean “any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).” In reviewing the definition for person, it was discovered that the cross reference to 46 U.S.C. 12102(a) is incorrect and is therefore being revised to 46 U.S.C. 12103(b). In addition, use of the term “anyone” in the proposed rule regulations was replaced with “any person” to clarify the regulations because “person” is defined.

The definition for observer provider and catch monitor provider being added at § 660.11 included the term “commercial enterprise”. Commercial enterprise is an undefined term that is not needed because it is already included within the definition of “person.” Therefore, the term commercial enterprise is removed from the definition for observer and catch monitor provider.

As described in the response to comments, the scope of the conflict of interest limitations relative to observer and catch monitor providers is being revised. Under the new provisions, providers must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries.

Inconsistencies between sections of the regulations in the type of first aid and cardiopulmonary training that is being required for observers during training and to maintain their certification are being standardized, as described in the response to comments. Each section will refer to a Red Cross or equivalent basic cardiopulmonary resuscitation/first aid certification. The following sections were modified: §§ 660.140(h)(5)(ii)(B)(3), 660.140(h)(6)(vi)(F), 660.150(j)(4)(ii)(B)(2)(iii), and 660.150(j)(5)(vi)(B)(6).

Modifications to the physical fitness examinations and requirements of the physician statements at §§ 660.17(e)(1)(vii)(A), 660.140(h)(5)(xi)(B), and 660.150(j)(5)(xi)(B)(2) will not be revised at this time. Therefore, the language has been removed or changed to reflect the current regulations. Physical fitness provisions in all observer programs are being reviewed by the National Observer Program. Changes will be reconsidered after their National Observer Program report on physical fitness provisions is complete.

As described in the response to comments, the range of exceptions for which waivers relative to observer deployment limitations for the Shorebased IFQ Program are revised to add an allowance for the Observer Program to issue a waiver when it has been predetermined that the extended deployment is not likely to result in data delays or otherwise impact the overall duties and obligations of the observer.

At § 660.140(h)(2) on vessel responsibilities, NMFS added a cross reference to § 660.140(h)(1)(ii) on observer deployment which requires the vessel to be in port within 36 hours of the last haul sampled by the observer if an observer is unable to perform their duties for any reason.

The catch monitor and observer providers must report to the Observer Program at least four hours prior to the vessel’s estimated embark time if an observer isn’t available. For consistency with the original intent of the regulations, the regulatory text at §§ 660.17(f)(5) and 660.140(h)(5)(v) is being amended to reduce the burden on

catch monitor or observer providers for the Shorebased IFQ Program when less than four hour notice is given to the provider.

As described in the response to comments, the minimum annual deployment restrictions are being revised for the Shorebased IFQ Program and observers on catcher vessels in the mothership sector. NMFS believes that observers in certain ports cannot accumulate the required number of days to maintain certification, yet they are capable of performing their duties. Therefore, the restriction is being reduced from 90 days to 45 days, with the Observer Program having discretion to consider individuals with less than 45 days on a case-by-case basis.

The proposed rule required registration information to be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled catch monitor or observer training or briefing session. Consistent with the response to comments, the language is being revised to consider late submissions on a case-by-case basis.

Cease fishing reports for the Mothership Coop Program at § 660.150(c)(4)(ii) and in the Catcher/processor Coop Program at § 660.160(c)(5), in the recordkeeping and reporting requirements at § 660.113(c)(4) and (d)(4), and in §§ 660.150(b)(1)(ii)(A) and 660.160(b)(1)(ii)(A) are being revised to remove regulatory errors relative to the requirements for the submission of Mothership and Catcher/processor Coop cease fishing reports by coop managers. In addition, the prohibition on failure to submit cease fishing reports proposed at § 660.112(a)(3)(iv) is removed in the final rule as well as the current regulation reference to cease fishing reports at § 660.12(e)(7).

Relative to the work hour limitations for catch monitors at § 660.140(i)(3), the term 24-hour period is replaced with calendar day. Other sections in the regulations in this final rule clarified “day” by adding “calendar day.” The limit on working hours of each individual catch monitor will continue to be 14 hours per calendar day; however the number of hours for work other than the summary and submission of catch monitor data is removed.

Changes were made to § 660.18(b)(2) on the application process to make paragraphs more clear and consistent. Several paragraphs in § 660.18(b)(2) were revised to make the following list consistent among paragraphs, “owners, board members, and officers if a corporation, authorized agents, and employees.” Section 660.18(c)(1) was

also revised to reflect similar language. In the final rule, the order of paragraphs (b)(2)(ii) and (iii) in § 660.18 were switched to reflect a more logical flow in the application requirements: contact information followed by description of management. Section 660.18(b)(2)(vi) and (vii) from the proposed rule were combined to simplify the required applicant statement in the provider permit application regarding: conflict of interest, criminal convictions, Federal contracts, and previous decertifications. Section 660.18(b)(2)(vi) was also revised to allow an authorized agent to sign under penalty of perjury instead of every owner, board member, officer, authorized agent, and employee. This reduces the number of signatures required for business entities and the time required to complete the application, consistent with the Paperwork Reduction Act.

Changes from the proposed rule were made to § 660.18(c) on the application evaluation to make paragraphs more consistent with § 660.18(b) on the application process and to make it more clear. Section 660.18(c)(2) was changed to more accurately reflect § 660.18(b)(2). The list of specific criminal convictions was removed from § 660.18(c)(2) to simplify regulation because any criminal conviction could be evaluated whether listed or not. Section 660.18(c)(2) was changed by removing the words “absence of” and adding the words “review of” to give the review board flexibility in their evaluation of applications by reviewing the provided information and statements regarding conflict of interest, criminal convictions, Federal contracts, and previous decertifications.

Section 660.18(c)(3) was changed to add to the limitations on the conflict of interest for providers regarding not accepting gratuity, gift, favor, entertainment, loan, or anything of monetary value. This is a standard approach to conflict of interest requirements that affected industry members are already familiar with. It is consistent with other sections of the Pacific Coast groundfish regulations on conflict of interest for observers and catch monitors as well as Alaska requirements on conflict of interest at § 679.52(c)(4) on observer provider permitting and responsibilities.

Because the final rule published later than originally planned, § 660.18(c)(4) on existing providers changed from the proposed rule. In the final rule, existing providers are permitted through December 31, 2015, unless there has been a change in ownership. To continue to provide services in 2016, existing providers will be required to

apply for a provider permit through the application process at § 660.18(b).

Section 660.18(d) on agency determinations was changed from the proposed rule to clarify the process and more closely align with other Pacific coast groundfish permit and licensing processes. The final rule language describes the initial administrative determination (IAD) and appeals process. This process may change in the future to remove the IAD and appeals process and just go straight to final decision because these types of permits are discretionary. However, for this new Pacific coast groundfish provider permit process, NMFS will use a more consistent approach with an IAD and appeal. Similarly, this final rule changes § 660.18(f) on expiration of provider permits to describe an IAD and appeals process.

Section 660.18(e) is revised from the proposed rule to add that permit holders must reapply annually, similar to the Shorebased IFQ Program first receiver site license. This final rule changes § 660.18(g) on provider permit renewals or re-registrations. It changes the date by which NMFS Fisheries Permits Office will annually mail out provider permit applications from October 1 to September 15 to align with mailing out other groundfish permit renewals, such as limited entry and quota share permits. It also changes the date by which those applications must be returned to NMFS from November 30 to October 31. Section 660.18(g)(3) on information providers must submit before their renewal/re-registration is removed. This information on the total number of individual catch monitors and observers that attended training, attended briefings, and were deployed is already provided to NMFS through requirements at §§ 660.17, 660.140, 660.150, and 660.160 and is not necessary to be provided again with the application.

In order to parallel other regulations for the Pacific coast groundfish fishery on non-transferable permits, such as quota share permits and first receiver site license, § 660.18(h) was changed from the proposed rule. This paragraph now not only reflects that the provider permit and endorsement are non-transferable, but it also explains that there cannot be changes in ownership. If there is a change in ownership of the person (including entities) holding the provider permit, the permit is void and they must apply for a new provider permit.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the MSA, the NMFS has

determined that this rule is consistent with the Groundfish FMP, the Magnuson-Stevens Act, and other applicable law.

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

A final regulatory flexibility analysis (FRFA) was prepared and incorporates the initial regulatory flexibility analysis (IRFA). A summary of the significant issues raised by the public comments in response to the IRFA, and NMFS responses to those comments, and a summary of the analyses completed to support the action are addressed. NMFS also prepared a Regulatory Impact Review (RIR) for this action. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA, per the requirements of 5 U.S.C. 604(a) follows:

The SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. The size criteria changed between the IRFA and FRFA for this action (see 79 FR 33647, effective July 14, 2014). A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$20.5 million (previously \$19 million) for all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.5 million (previously \$7 million). For purposes of rulemaking, NMFS is also applying the \$20.5 million standard to catcher processors (C/Ps) because they are involved in the commercial harvest of finfish. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. A small governmental jurisdiction is a government of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000. There are no specific SBA defined size criteria for observer providers. The NMFS Alaska Region has employed the \$7.0 million in gross annual receipts size

standard based on SBA standards associated with firms engaged in placing technical employees. (See: http://alaskafisheries.noaa.gov/analyses/observer/ririrfa_soc_observer_0209.pdf)

This rule affects current and future businesses that supply observers for monitoring fishing and processing activities on a vessel at-sea and catch monitors who observe and document offloads at first receiver/processing plants on shore. The rule revises the Pacific coast groundfish fishery regulations pertaining to certified catch monitors and observers required in the Shorebased IFQ Program, the MS Coop Program, the C/P Coop Program, and for processing vessels in the fixed gear or open access fisheries. The rule establishes permitting requirements for persons interested in providing certified catch monitors and observers; updates observer provider and vessels responsibilities relative to observer safety; and makes administrative changes to the observer and catch monitor programs. The rule is needed to allow for the entry of new providers, to ensure observer safety provisions are clearly stated and consistent with national observer regulations, and to improve program administration.

No significant issues were raised by the public comments in response to the IRFA. Some comments questioned whether public agencies (state or municipal), towns, harbor districts, and other similar entities could be providers (*i.e.* small businesses, small organizations, small governmental jurisdictions) and how the conflict of interest restrictions relate. No changes were made based on these comments, but NMFS clarified that these entities are not precluded from becoming a provider. Other comments questioned the need for annual provider permit renewals, stating that these would be unnecessary and burdensome. No changes were made in the final rule, but NMFS clarified that the intended purpose of the annual renewal is to verify that the management, organization, and ownership structure of a permitted provider is unchanged; to update provider contact information; and to assure that nothing has changed relative to the conflict of interest limitations or criminal convictions. To reduce the burden of the renewal process on the provider, NMFS will partially pre-fill renewal forms with previous information that was provided. Other comments were on minimum advance notice when an observer is unavailable, minimum deployment time to maintain valid observer certification, maximum work hours for catch monitors, and less advance notice to

NMFS of observer candidates for training. Based on these comments, NMFS made some changes to increase flexibility. For more information, see the "Response to Comments" section of the final rule, specifically comments 1, 2, 4, 6, 10, 13, 14, 15, and 17.

The Pacific coast groundfish fishery currently has permitted five observer provider companies: Alaskan Observers, Inc.; NWO, Inc.; Saltwater Observers, Inc.; TechSea International; and MRAG Americas, Inc. (MRAG). The principal activity of most of these companies has been to provide observers for Alaska groundfish fisheries in the North Pacific, but they also provide observers for other fisheries such as the Pacific coast groundfish fishery. Regulations require observers in all sectors and catch monitors at first landings/processing sites. Therefore, this rule affects participants in the following: Shorebased IFQ Program, Mothership Coop (MS) Program, and Catcher-Processor (C/P) Coop Program. Two companies, Alaskan Observers, Inc. and Saltwater Observers, Inc are providing observers and monitors for the Shorebased IFQ Program. The other sectors may be using the other companies as they typically also fish off Alaska. For 2015, there are 147 shoreside vessel accounts, 34 mothership-endorsed limited entry permits, 6 mothership permits, 10 catcher-processor permits, and 43 shorebased first receiver site licenses. Taking into account cross participation, multiple accounts, and affiliation between entities, NMFS estimates that there are fishery-related entities indirectly affected by these proposed regulations as they need to acquire observers for their vessels and monitors for their shoreside processing plants. Of these entities, NMFS estimates that 107 are "small" businesses. The rule directly affects the five providers currently permitted to operate in the fishery. NMFS considers these all small businesses (75 FR 69016, November 10, 2010).

The recordkeeping and reporting requirements for this rule include a provider permit application process and a vessel safety checklist. For the provider permit application process, new providers will have to apply for a provider permit and request to have an observer endorsement or a catch monitor endorsement or both. The five existing providers currently operating in the fishery, all of which are small businesses, will be grandfathered in for the first year. All providers will have to reapply annually to continue providing services in future years. Annual renewal ensures that the business information is

current and the permit holder continues to meet the eligibility criteria. For the vessel safety checklist, observers must complete the vessel safety checklist before their first trip on the vessel and the provider must submit the checklist to NMFS Observer Program. The provider must also verify that the vessel has a valid USCG Commercial Fishing Vessel Safety Decal. Professional skills necessary are basic reading and writing skills, as well as an understanding of the required information for the application, checklist, and other requirements specified in regulation.

There are no significant alternatives that accomplish the stated objectives of applicable statutes and that minimize the impact of the rule on small entities. This rule is largely administrative in nature. The benefits of these regulations include more understandable and less complex regulations and the potential for increased provider companies in the fishery. Additional companies may lower costs to fishing vessels and processors and alleviate logistical/scheduling issues with providing observers and monitors to the various ports.

While there were no other significant alternatives for NMFS to consider, NMFS did take steps to minimize impacts on small entities. To minimize operational impacts, existing provider companies will be issued a provider permit for the first year without submission of an application. Provider permit renewal applications will be pre-filled to the extent possible. Also, to reduce complexity and streamline the permitting process, a single, combined permit application process for catch monitor and observer providers was created. The permit application procedures would be similar to those used in the North Pacific Groundfish Fishery Observer Program and the Pacific coast groundfish catch monitor provider certification process.

This rule contains a new collection-of-information requirement subject to review under the Paperwork Reduction Act (PRA) and which was approved under OMB 0648–0619 and 0648–0500. The estimated public reporting burden for OMB collection 0648–0619, provider permit applications, is an average of 10 hours per response, annual renewal of provider permits is estimated to average 2 hours per response, and appeals of permits that have been expire after a period of 12 continuous months during which no observers or catch monitors are deployed average four hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection information. NMFS estimates the public reporting burden for OMB collection 0648–0500, the submission of vessel safety checklists, averages 5 minutes per response. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

Pursuant to Executive Order 13175, this rule was developed after meaningful collaboration with tribal officials from the area covered by the Groundfish FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Pacific Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council's jurisdiction. The regulations do not require the tribes to change from their current practices.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: April 13, 2015.

Samuel D. Rauch III,

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

For the reasons stated in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.11:

■ a. Add definitions, in alphabetical order, for “Catch Monitor Program or Catch Monitor Program Office”, “Catch monitor provider” and “Observer provider”.

■ b. Revise the definitions for “Observer Program or Observer Program Office”, “Person” and “Sustainable Fisheries Division or SFD”.

The additions and revisions read as follows:

§ 660.11 General definitions.

* * * * *

Catch Monitor Program or Catch Monitor Program Office means the Catch Monitor Program Office of the West Coast Region, National Marine Fisheries Service.

Catch monitor provider means any person that is granted a permit by NMFS to provide certified catch monitors as required in § 660.140.

* * * * *

Observer Program or Observer Program Office means the Observer Program Office of the Northwest Fisheries Science Center, National Marine Fisheries Service, Seattle, Washington. Branch offices within the Observer Program include the West Coast Groundfish Observer Program and the At-sea Hake Observer Program.

Observer provider means any person that is granted a permit by NMFS to provide certified observers as required at §§ 660.140, 660.150, 660.160, 660.216 or 660.316.

* * * * *

Person, as it applies to limited entry and open access fisheries conducted under, subparts C through F of this part means any individual, corporation, partnership, association or other entity (whether or not organized or existing under the laws of any state), and any Federal, state, or local government, or any entity of any such government that is eligible to own a documented vessel under the terms of 46 U.S.C. 12103(b).

* * * * *

Sustainable Fisheries Division or SFD means the Assistant Regional Administrator of the Sustainable Fisheries Division, West Coast Region, NMFS, or a designee.

* * * * *

■ 3. In § 660.12, revise paragraphs (e)(6) through (9) to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

(6) Fish when a vessel is required to carry an observer under subparts C through G of this part if:

(i) The vessel is inadequate for observer deployment as specified at § 600.746 of this chapter;

(ii) The vessel does not maintain safe conditions for an observer as specified at §§ 660.140(h), 660.150(j), or 660.160(g); or

(iii) NMFS, the observer provider, or the observer determines the vessel is inadequate or unsafe pursuant to vessel responsibilities to maintain safe conditions as specified at §§ 660.140(h), 660.150(j), or 660.160(g).

(7) 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.

(8) Fail to meet the vessel responsibilities and observer coverage requirements specified at §§ 660.140(h),

660.150(j), 660.160(g), 660.216, or 660.316,

(9) Fail to meet the observer provider responsibilities specified at §§ 660.140(h), 660.150(j), 660.160(g), 660.216 or 660.316.

* * * * *

■ 4. In § 660.16, revise paragraph (a) and the table in paragraph (c), and add paragraphs (d) and (e) to read as follows:

§ 660.16 Groundfish observer program.

(a) *General.* Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with observer requirements specified in this section and within §§ 660.140, 660.150, 660.160, 660.216, or 660.316.

* * * * *

(c) * * *

| West coast groundfish fishery | Regulation section | Observer program branch office |
|---|--------------------|--|
| (1) Shorebased IFQ Program—Trawl Fishery | § 660.140(h) | West Coast Groundfish. |
| (2) MS Coop Program—Whiting At-sea Trawl Fishery | § 660.150(j). | At-sea Hake. West Coast Groundfish. |
| (i) Motherships | | At-sea Hake. |
| (ii) Catcher Vessels | | West Coast Groundfish. |
| (3) C/P Coop Program—Whiting At-sea Trawl Fishery | § 660.160(g) | At-sea Hake. |
| (4) Fixed Gear Fisheries | § 660.216. | West Coast Groundfish. West Coast Groundfish. |
| (i) Harvester vessels | | West Coast Groundfish. |
| (ii) Processing vessels | | West Coast Groundfish. |
| (5) Open Access Fisheries | § 660.316. | West Coast Groundfish. West Coast Groundfish. |
| (i) Harvester vessels | | West Coast Groundfish. |
| (ii) Processing vessels | | West Coast Groundfish. |

(d) *Observer certifications and responsibilities.* For the Shorebased IFQ Program see § 660.140(h), for the MS Coop Program see § 660.150(j), and, for the C/P Coop Program see § 660.160(g).

(e) *Application process to become an observer provider.* See § 660.18.

■ 5. In § 660.17:

- a. Revise the section heading;
- b. Remove paragraphs (b) and (d);
- c. Redesignate paragraphs (a), (c), and (e) as (d), (e), and (f) respectively.
- d. Revise newly redesignated paragraphs (d), (e), (f)(1)(vii), (f)(2), (f)(4) through (6), (f)(8)(i)(B), (C), and (F), (f)(9)(ii), (f)(11) through (13); and
- e. Add paragraphs (a) through (c), and (g).

The revisions and additions read as follows.

§ 660.17 Catch monitor program.

(a) *General.* The first receiver site license holder, the first receiver site license authorized representative, facility operators and managers are jointly and severally responsible for the first receiver being in compliance with catch monitor requirements specified in this section and at § 660.140 (i).

(b) *Purpose.* The purpose of the Catch Monitor Program is to, among other related matters, confirm that the IFQ landings are accurately sorted, weighed and reported on electronic fish tickets.

(c) *Catch monitor coverage requirements.* Catch monitor coverage requirements for the Shorebased IFQ Program are specified at § 660.140(i).

(d) *Catch monitor certification and responsibilities.* Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS

while under the employ of a catch monitor provider.

(1) *Catch monitor training certification.* A training certification signifies the successful completion of the training course required to obtain catch monitor certification. This certification expires when the catch monitor has not been deployed and performed sampling duties as required by the Catch Monitor Program Office for a period of time, specified by the Catch Monitor Program, after his or her most recent debriefing. The certification is renewed by successful completion of the training course.

(2) *Catch Monitor Program annual briefing.* Each catch monitor must attend a briefing prior to his or her first deployment within any calendar year subsequent to a year in which a training certification is obtained. To maintain a certification, a catch monitor must successfully complete any required briefing specified by the Catch Monitor Program. All briefing attendance, performance, and conduct standards required by the Catch Monitor Program must be met prior to any deployment.

(3) *Catch monitor certification requirements.* NMFS may certify individuals who:

- (i) Are employed by a catch monitor provider at the time of the issuance of the certification and qualified, as described at paragraph (f)(1)(i) through (viii) of this section and have provided proof of qualifications to NMFS, through the catch monitor provider.
- (ii) Have successfully completed catch monitor certification training.

(A) Successful completion of training by an applicant consists of meeting all

attendance and conduct standards; meeting all performance standards for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Catch Monitor Program.

(B) 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.

(iii) Have not been decertified as an observer or catch monitor under provisions in §§ 660.17(g), and 660.140(h)(6), 660.150(j)(5), 660.160(g)(5) or 679.53(c) of this chapter.

(4) *Maintaining the validity of a catch monitor certification.* After initial issuance, a catch monitor must keep their certification valid by meeting all of the following requirements specified below:

(i) Successfully perform their assigned duties as described in the Catch Monitor Manual or other written instructions from the Catch Monitor Program.

(ii) Accurately record their data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to conservation of marine resources or their environment.

(iii) Consistent with NOAA data confidentiality guidance, not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized state or OLE officer, NMFS or the Catch Monitor Program; and, not disclose data and observations made at

a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers an authorized state or OLE officer, NMFS or the Catch Monitor Program.

(iv) Successfully complete any required briefings as prescribed by the Catch Monitor Program.

(v) Successful completion of a briefing by a catch monitor 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 briefing requirements established by the Catch Monitor Program.

(vi) Successfully meet all debriefing expectations including catch monitor performance standards and reporting for assigned debriefings.

(vii) Submit all data and information required by the Catch Monitor Program within the program's stated guidelines.

(viii) Have been deployed as a catch monitor within the 12 months prior to any required briefing, unless otherwise authorized by the Catch Monitor Program.

(e) *Catch monitor standards of behavior.* Catch monitors must do the following:

(1) Perform authorized duties as described in training and instructional manuals or other written and oral instructions provided by the Catch Monitor Program.

(2) Accurately record and submit the required data, which includes fish species composition, identification, sorting, and weighing information.

(3) Write complete reports, and report accurately any observations of suspected violations of regulations.

(4) Returns phone calls, emails, text messages, or other forms of communication within the time specified by the Catch Monitor Program.

(5) Not disclose data and observations made on board a vessel to any person except the owner or operator of the observed vessel, an authorized officer, NMFS or the Catch Monitor Program; and not disclose data and observations made at a first receiver to any person other than the first receiver site license holder, the first receiver site license authorized representative, facility operators and managers an authorized officer, NMFS or the Catch Monitor Program.

(f) * * *

(1) * * *

(vii) Have had health and physical fitness exams and been found to be fit for the job duties and work conditions;

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions. A signed and dated statement from a licensed physician that he or she has physically examined a catch monitor or catch monitor candidate. The statement must confirm that, based on that physical examination, the catch monitor or catch monitor candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the catch monitor or catch monitor candidate from performing his or her duties satisfactorily. The physician's statement must be submitted to the Catch Monitor Program office prior to certification of a catch monitor. The physical exam must have occurred during the 12 months prior to the catch monitor's or catch monitor candidate's deployment. The physician's statement expires 12 months after the physical exam occurred and a new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(B) Copies of "certificates of insurance," that names the Catch Monitor Program Coordinator as the "certificate holder," shall be submitted to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(1) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(2) States Worker's Compensation as required.

(3) Commercial General Liability.

* * * * *

(2) *Catch monitor conduct and behavior.* A catch monitor provider must develop and maintain a policy addressing conduct and behavior for their employees that serve as catch monitors.

(i) The policy shall address the following behavior and conduct regarding:

(A) Catch monitor use of alcohol;

(B) Catch monitor, possession, or distribution of illegal drugs; and

(C) Sexual contact with personnel off the vessels or processing facility to which the catch monitor is assigned, or with any vessel or processing plant personnel who may be substantially

affected by the performance or non-performance of the catch monitor's official duties.

(ii) A catch monitor provider shall provide a copy of its conduct and behavior policy to each observer candidate and to the Catch Monitor Program by February 1 of each year.

* * * * *

(4) *Catch monitors provided to a first receiver.* (i) Must have a valid catch monitor certification;

(ii) Must not have informed the catch monitor provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (f)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and

(iii) Must have successfully completed all Catch Monitor Program required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under § 660.140(i)(1). An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request for catch monitor coverage from a first receiver for whom the catch monitor provider is in a contractual relationship due to the lack of available catch monitors, the catch monitor provider must report it to NMFS at least four hours prior to the expected assignment time, unless the first receiver provides less than four hour notice to the provider, in which case the provider is to notify the Catch Monitor Program as soon as practical after the situation arises.

(6) *Ensure that catch monitors complete duties in a timely manner.* Catch monitor providers must ensure that catch monitors employed by that catch monitor provider do the following in a complete and timely manner:

(i) Submit to NMFS all data, logbooks and reports as required under the Catch Monitor Program deadlines.

(ii) Report for his or her scheduled debriefing and complete all debriefing responsibilities.

* * * * *

(8) * * *

(j) * * *

(B) Has Internet access for Catch Monitor Program communications and data submission;

(C) Remains available to OLE and the Catch Monitor Program until the completion of the catch monitors' debriefing.

* * * * *

(F) While under contract with a catch monitor provider, each catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that have an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

* * * * *

(9) * * *

(ii) Not exceed catch monitor assignment limitations and workload as outlined in § 660.140(i)(3)(ii).

* * * * *

(11) *Maintain communications with the Catch Monitor Program office.* A catch monitor provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(i) *Catch monitor training, briefing, and debriefing registration materials.* This information must be submitted to the Catch Monitor Program at least 10 business days prior to the beginning of a scheduled catch monitor certification training or briefing session. Submissions received less than 10 business days prior to the beginning of a scheduled catch monitor certification training or briefing session will be approved by the Catch Monitor Program on a case-by-case basis.

(A) Training registration materials consist of the following:

(1) Date of requested training;

(2) A list of catch monitor candidates that includes each candidate's full name (*i.e.*, first, middle and last names), date of birth, and gender;

(3) A copy of each candidate's academic transcripts and resume;

(4) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(B) Briefing registration materials consist of the following:

(1) Date and type of requested briefing session;

(2) List of catch monitors to attend the briefing session, that includes each

catch monitor's full name (first, middle, and last names);

(C) The Catch Monitor Program will notify the catch monitor provider which catch monitors require debriefing and the specific time period the catch monitor provider has to schedule a date, time, and location for debriefing. The catch monitor provider must contact the Catch Monitor Program within 5 business days by telephone to schedule debriefings.

(1) Catch monitor providers must immediately notify the Catch Monitor Program when catch monitors end their contract earlier than anticipated.

(2) [Reserved]

(ii) *Catch monitor provider contracts.*

If requested, catch monitor providers must submit to the Catch Monitor Program a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the catch monitor provider and those entities requiring catch monitor services under § 660.140(i)(1). Catch monitor providers must also submit to the Catch Monitor Program upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to catch monitor compensation or salary levels) between the catch monitor provider and the particular entity identified by the Catch Monitor Program or with specific catch monitors. The copies must be submitted to the Catch Monitor Program via email, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts a catch monitor provider has with:

(A) First receivers required to have catch monitor coverage as specified at paragraph § 660.140(i)(1); and

(B) Catch monitors.

(iii) *Change in catch monitor provider management and contact information.*

A catch monitor provider must submit to the Catch Monitor Program any change of management or contact information as required at § 660.18(h).

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide the Catch Monitor Program with an updated list of deployments per Catch Monitor Program protocol.

Deployment information includes provider name, catch monitor last name, catch monitor first name, trip start date, trip end date, status of catch monitor, vessel name and vessel identification

number, date monitored offload, and first receiver assignment.

(v) *Informational materials.* Catch monitor providers must submit to NMFS, if requested, copies of any information developed and used by the catch monitor providers and distributed to first receivers, including, but not limited to, informational pamphlets, payment notification, and description of catch monitor duties.

(vi) *Other reports.* Reports of the following must be submitted in writing to the Catch Monitor Program by the catch monitor provider via fax or email address designated by the Catch Monitor Program within 24 hours after the catch monitor provider becomes aware of the information:

(A) Any information regarding possible catch monitor harassment;

(B) Any information regarding any action prohibited under § 660.12(f);

(C) Any catch monitor illness or injury that prevents the catch monitor from completing any of his or her duties described in the catch monitor manual; and

(D) Any information, allegations or reports regarding catch monitor conflict of interest or breach of the standards of behavior described in catch monitor provider policy.

(12) *Replace lost or damaged gear.*

Lost or damaged gear issued to a catch monitor by NMFS must be replaced by the catch monitor provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Catch Monitor Program.

(13) *Confidentiality of information.* A catch monitor provider must ensure that all records on individual catch monitor performance received from NMFS under the routine use provision of the Privacy Act 5 U.S.C. 552a or as otherwise required by law remain confidential and are not further released to any person outside the employ of the catch monitor provider company to whom the catch monitor was contracted except with written permission of the catch monitor.

(g) Certification and decertification procedures for catch monitors.

(1) *Catch monitor certification official.* The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor certification.

(2) *Agency determinations on catch monitor certifications—(i) Issuance of certifications.* Certification may be issued upon determination by the catch monitor certification official that the candidate has successfully met all

requirements for certification as specified in § 660.17(d).

(ii) *Denial of a certification.* The catch monitor certification official will issue a written determination identifying the reasons for denial of a certification.

(3) *Limitations on conflict of interest for catch monitors.* (i) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, 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:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

(ii) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who either conducts activities that are regulated by NMFS or has interests that may be substantially affected by the performance or nonperformance of the catch monitor's official duties.

(iii) May not serve as a catch monitor at any shoreside or floating stationary processing facility owned or operated where a person was previously employed in the last two years.

(iv) May not solicit or accept employment as a crew member or an employee of a vessel, or shoreside processor while employed by a catch monitor provider.

(v) Provisions for remuneration of catch monitors under this section do not constitute a conflict of interest.

(4) *Catch monitor decertification—(i) Catch monitor decertification review official.* The Regional Administrator (or a designee) will designate a catch monitor decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

(ii) *Causes for decertification.* The catch monitor decertification official may initiate decertification proceedings when it is alleged that any of the following acts or omissions have been committed:

(A) Failed to satisfactorily perform the specified duties and responsibilities;

(B) Failed to abide by the specified standards of conduct;

(C) Upon conviction of a crime or upon entry of a civil judgment for:

(1) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties and responsibilities specified in this section;

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

(3) Commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of catch monitors.

(iii) *Issuance of IAD.* Upon determination that decertification is warranted, the catch monitor decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(iv) *Appeals.* A certified catch monitor who receives an IAD that suspends or revokes his or her catch monitor certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

■ 6. Revise § 660.18 to read as follows:

§ 660.18 Observer and catch monitor provider permits and endorsements.

(a) *Provider permits.* Persons seeking to provide observer or catch monitor services must obtain a provider permit from NMFS before providing certified catch monitors or certified observers for the Shorebased IFQ Program, the MS Coop Program, the C/P Coop Program, or for processing vessels in the fixed gear or open access fisheries. There are two types of endorsements for provider permits, an observer endorsement and a catch monitor endorsement. Provider permits must have at least one endorsement and it must be appropriate for the services being provided. Provider permits are obtained through an application process and must be renewed annually to remain valid in the following year. A provider permit and associated endorsements expire if not renewed or if services have not been provided for 12 consecutive months.

(b) *Application process to become an observer or catch monitor provider—(1) New provider applications.* An applicant seeking a provider permit may submit an application at any time during the calendar year. Any provider permit issued during a given year will

expire on December 31. Application forms must be submitted by mail to the West Coast Region Fisheries Permits Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115. Only complete applications will be considered for approval by the review board.

(2) *Contents of provider application.* A complete application for a provider permit shall contain the following:

(i) An indication of which endorsement the applicant is seeking: observer provider, catch monitor provider, or both endorsements. A single application may be used to apply for both endorsements.

(ii) Applicant contact information.

(A) Legal name of applicant organization. If the applicant organization is United States business entity, include the state registration number.

(B) The primary business mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(iii) Description of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and employees. List all office locations and their business mailing address, business phone, fax number, and email addresses. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(iv) A narrative statement describing relevant direct or indirect prior experience or qualifications the applicant may have that would enable them to be a successful provider.

(A) For applicants seeking an observer provider endorsement, the applicant should describe experience in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(B) For applicants seeking a catch monitor provider endorsement, a narrative statement should identify prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

(v) A narrative description of the applicant's ability to carry out the required responsibilities and duties as described at §§ 660.140(h), 660.150(j), and 660.160(g) for observer providers

and/or § 660.17(f) for catch monitor providers.

(vi) A statement signed under penalty of perjury by an authorized agent of the applicant about each owner, or owners, board members, and officers if a corporation, authorized agents, and employees, regarding:

(A) Conflict of interest as described in § 660.18 (c)(3),

(B) Criminal convictions,

(C) Federal contracts they have had and the performance rating they received on the contract, and

(D) Previous decertification action while working as an observer, catch monitor, observer provider, or catch monitor provider.

(vii) NMFS may request additional information or clarification from the applicants.

(c) *Application evaluation.* Complete applications will be forwarded to Observer Program and/or the Catch Monitor Program for review and evaluation.

(1) A provider permit application review board will be established and be comprised of at least three members. The review board will evaluate applications submitted under paragraph (a) of this section. If the applicant is an entity, the review board also will evaluate the application criteria for each owner, board member, officer, authorized agent, and employee.

(2) The provider permit application will, at a minimum, be evaluated on the following criteria:

(i) The applicant's ability to carry out the responsibilities and relevant experience and qualifications.

(ii) Review of any conflict of interest as described in § 660.18(c)(3).

(iii) Review of any criminal convictions.

(iv) Satisfactory performance ratings on any Federal contracts held by the applicant.

(v) Review of any history of decertification as an observer, catch monitor, observer provider, or catch monitor provider.

(3) *Limitations on conflict of interest for providers.* (i) Providers must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

(B) Any business involved with selling supplies or services to any vessel, first receiver, shorebased or floating stationary processing facility; or

(C) Any business involved with purchasing raw or processed products from any vessel, first receiver, shorebased or floating stationary processing facilities.

(ii) Providers must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of the provider.

(4) *Existing providers.* Businesses that provided observers and/or catch monitors in the 12 months prior to May 21, 2015 will be issued a provider permit without submission of an application. This permit will be effective through December 31, 2015.

(i) Providers who deployed catch monitors in the Shorebased IFQ Program in the 12 months prior to May 21, 2015 will be issued a provider permit with a catch monitor provider endorsement effective through December 31, 2015, except that a change in ownership of an existing catch monitor provider after January 1, 2015, requires a new permit application under this section.

(ii) Providers who deployed certified observers in the Pacific Coast groundfish fishery in the 12 months prior to May 21, 2015 will be issued a provider permit with an observer provider endorsement effective through December 31, 2015, except that a change in ownership of an existing observer provider after January 1, 2015, requires a new permit application under this section.

(iii) To receive a provider permit for 2016 and beyond, the existing providers must follow the provider permit renewal process set forth in this section.

(d) *Agency determination on an application.*

(1) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will be the provider permit and any associated endorsements. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(2) *Appeal.* The applicant may appeal the IAD consistent with the observer, catch monitor, and provider appeals process defined at § 660.19.

(e) *Effective dates.* The provider permit will be valid from the effective

date identified on the permit until the permit expiration date of December 31. Provider permit holders must reapply annually by following the application process specified in paragraph (b) of this section.

(f) *Expiration of the provider permit—*

(1) *Expiration due to inactivity.* After a period of 12 continuous months during which no observers or catch monitors are deployed by the provider in the Pacific coast groundfish fishery, NMFS will issue an IAD describing the intent to expire the provider permit or to remove the appropriate endorsement(s) and the timeline to do so. A provider that receives an IAD may appeal under § 660.19. The provider permit and endorsements will remain valid until a final agency decision is made or until December 31, whichever is earlier.

(2) *Expiration due to failure to renew.* Failure to renew annually will result in expiration of the provider permit and endorsements on December 31.

(3) *Obtaining a new permit or endorsement following an expiration or voided permit.* A person holding an expired or void permit or endorsement may reapply for a new provider permit or endorsement at any time consistent with § 660.18(b).

(g) *Provider permit renewal process.* To maintain a valid provider permit, provider permit holders must reapply annually prior to the permit expiration date.

(1) NMFS will mail a provider permit application form to existing permit holders on or about September 15 each year.

(2) Providers who want to have their permits effective for January 1 of the following calendar year must submit their complete application form to NMFS by October 31. If a provider fails to renew the provider permit, the provider permit and endorsements will expire on December 31.

(h) *Change of provider permit ownership and transfer restrictions.* Neither a provider permit nor the endorsements are transferable. Ownership of a provider permit cannot be registered to another individual or entity. The provider permit owner cannot change, substitute, or add individuals or entities as owners of the permit (*i.e.*, cannot change the legal name of the permit owner(s) as given on the permit). Any change in ownership of the provider permit requires the new owner(s) to apply for a provider permit, and is subject to approval by NMFS.

(i) *Provider permit sanctions.*

Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(j) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal replacement, and appeals.

■ 7. Add § 660.19 to read as follows:

§ 660.19 Appeals process for catch monitors, observers, and provider permits.

(a) *Allowed appeals.* This section describes the procedure for appealing IADs described at §§ 660.17(g), 660.18(d) and (f), 660.140(h), 660.150(j), and 660.160(g) for catch monitor decertification, observer decertification and provider permit expirations due to inactivity. Any person whose interest is directly and adversely affected by an IAD may file a written appeal. For purposes of this section, such person will be referred to as the “applicant.”

(b) *Appeals process.* In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs will be made in writing by the Regional Administrator or designee acting on behalf of the Secretary of Commerce and will state the reasons therefore.

(1) *Submission of appeals.* (i) The appeal must be in writing and comply with this paragraph.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206–526–6426; or delivered to National Marine Fisheries Service at the same address.

(2) *Timing of appeals.* The appeal must be filed within 30 calendar days after the IAD is issued. The IAD becomes the final decision of the Regional Administrator or designee acting on behalf of the Secretary of Commerce if no appeal is filed within 30 calendar days. The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(3) *Address of record.* The address used by the applicant in initial correspondence to NMFS concerning the application will be the address used by NMFS for the appeal. Notifications and correspondence associated with all actions affecting the applicant will be mailed to the address of record unless the applicant provides NMFS, in writing, an address change. NMFS bears no responsibility if NMFS sends a notification or correspondence to the address of record and it is not received because the applicant’s actual address

has changed without notification to NMFS.

(4) *Statement of reasons for appeals.*

Applicants must submit a full written statement in support of the appeal, including a concise statement of the reasons the IAD determination has a direct and adverse effect on the applicant and should be reversed or modified. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(5) *Decisions on appeals.* The Regional Administrator or designee will issue a final written decision on the appeal which is the final decision of the Secretary of Commerce.

■ 8. In § 660.60, revise paragraph (c)(1)(iv) to read as follows:

§ 660.60 Specifications and management measures.

* * * * *

(c) * * *

(1) * * *

(iv) *List of IFQ species documented on Observer Program reporting form.* As specified at § 660.140(h)(1)(i), to be exempt from observer coverage while docked in port depends on documentation of specified retained IFQ species on the Observer Program reporting form. The list of IFQ species documented on the Observer Program form may be modified on a biennial or more frequent basis under routine management measures § 660.60(c)(1).

* * * * *

■ 9. In § 660.112:

■ a. Revise paragraph (a)(4);

■ b. Remove paragraph (b)(1)(xiii).

■ c. Redesignate paragraphs (b)(1)(xiv), (b)(1)(xv), (b)(1)(xvi), and (b)(1)(xvii) as (b)(1)(xiii), (b)(1)(xiv), (b)(1)(xv), and (b)(1)(xvi), respectively, and revise newly redesignated paragraphs (b)(1)(xiii) and (b)(1)(xiv); and

■ d. Revise paragraphs (d)(12), (d)(14) and (d)(15).

The revisions read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(4) *Observers.* (i) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if the vessel is inadequate or unsafe for observer deployment as described at § 660.12(e).

(iii) Fail to maintain observer coverage in port as specified at § 660.140(h)(1)(i).

* * * * *

(b) * * *

(1) * * *

(xiii) Discard or attempt to discard IFQ species/species group at sea unless the observer has documented or estimated the discards.

(xiv) Begin a new fishing trip until all fish from an IFQ landing have been offloaded from the vessel, consistent with § 660.12(a)(11).

* * * * *

(d) * * *

(12) Sort or discard any portion of the catch taken by a catcher vessel in the MS Coop Program before the catcher vessel observer completes sampling of the catch, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (*i.e.*, a maximized retention fishery).

* * * * *

(14) Take deliveries without a valid scale inspection report signed by an authorized scale inspector on board the MS vessel.

(15) Sort, process, or discard catch delivered to MS vessels before the catch is weighed on a scale that meets the requirements of § 660.15(b), including the daily test requirements.

* * * * *

■ 10. In § 660.113, revise paragraphs (c)(4) and (d)(4) to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * * *

(c) * * *

(4) *Cease fishing report.* If required, as specified at § 660.150(c)(4)(ii), the designated coop manager, or, in the case of an inter-coop agreement, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

* * * * *

(d) * * *

(4) *Cease fishing report.* If required, as specified at § 660.160(c)(5), the designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year.

* * * * *

■ 11. In § 660.140:

■ a. Revise paragraphs (b)(2)(iv), (b)(2)(vi), (b)(2)(viii), (h)(1), (h)(2) introductory text, (h)(2)(i)(B), and (h)(2)(ii)(B);

■ b. Add paragraph (h)(2)(xi); and

■ c. Revise paragraphs (h)(3) through (4), (h)(5)(ii)(B)(1) and (3), (h)(5)(iii)(D), (h)(5)(iv)(A) and (B), (h)(5)(v), (h)(5)(vii)(A)(2) through (5), (h)(5)(ix) introductory text, (h)(5)(xi) through (xv), (h)(6)(i), (h)(6)(iii)(A), (h)(6)(v) through

(ix), (i)(2), (i)(3)(ii), (j)(2)(ii) through (iv), (j)(3)(i), and (j)(4).

The revisions and addition read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(b) * * *
(2) * * *

(iv) Provide unrestricted access to all areas where fish are or may be sorted or weighed to catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers at any time when a delivery of IFQ species, or the processing of those species, is taking place.

* * * * *

(vi) Retain and make available to catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers, all printed output from any scale used to weigh catch, and any hand tally sheets, worksheets, or notes used to determine the total weight of any species.

* * * * *

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area described paragraph (i) of this section.

* * * * *

(h) * * *

(1) *Observer coverage requirements—*
(i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

(A) Any vessel participating in the Shorebased IFQ Program:

(1) Must carry a certified observer on any fishing trip from the time the vessel leaves port and until the completion of landing (until all catch from that fishing trip has been offloaded—see landing at §§ 660.11 and 660.60(h)(2)).

(2) Must carry an observer at any time the vessel is underway in port, including transit between delivery points when fish is offloaded at more than one IFQ first receiver.

(3) Is exempt from the requirement to maintain observer coverage as specified in this paragraph while remaining docked in port when the observer makes available to the catch monitor an Observer Program reporting form documenting the weight and number of bocaccio, yelloweye rockfish, canary rockfish, and cowcod retained during that trip and which documents any discrepancy the vessel operator and observer may have in the weights and number of the overfished species, unless modified inseason under routine management measures at § 660.60(c)(1).

(B) Any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea

processing must carry two certified observers, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer deployment limitations and workload.* If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer. An observer must not be deployed for more than 22 calendar days in a calendar month, except for when a waiver has been issued by the Observer Program. The Observer Program may issue waivers to the observer provider to allow observers to work more than 22 calendar days per month in the following circumstances:

(A) When it's anticipated that one trip will last over 20 days.

(B) When a replacement observer is not available due to injury or illness.

(C) When the Observer Program has predetermined that the extended deployment is not likely to result in data delays or otherwise impact the overall duties and obligations of the observer.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be immediately reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) *Vessel responsibilities.* As specified at § 660.140(h)(1)(ii), if an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer. An operator and/or crew of a vessel required to carry an observer must provide:

(i) * * *

(B) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or designee.

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46

U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, and statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (h)(1) of this section must arrange for observer services from an observer provider, except that:

(i) Vessels are required to procure observer services directly from the Observer Program 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 an observer provider.

(ii) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) *Application to become an observer provider.* See § 660.18.

(5) * * *

(ii) * * *

(B) * * *

(1) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

* * * * *

(3) That every observer successfully completes a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification course prior to the end of the West Coast Groundfish Observer Training class.

(iii) * * *

(D) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) * * *

(A) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph

(h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

* * * * *

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents an observer from performing his or her duties or where an observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to NMFS at least four hours prior to the vessel's estimated embarking time, unless the vessel provides less than four hour notice to the provider, in which case the provider is to notify NMFS as soon as practical after the situation arises.

* * * * *

(vii) * * *

(A) * * *

(2) Has a check-in system in which the observer is required to contact the observer provider each time they depart and return to port on a vessels.

(3) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(5) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(i) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(ii) Otherwise, each observer between vessels, while still under contract with an observer provider, shall be provided with accommodations in accordance with the contract between the observer

and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodation must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay.

Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes a current observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program. One of the following acceptable means of verification must be used to verify the decal validity:

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session. Submissions received less than 10 business days prior to a West Coast groundfish observer certification training or briefing session will be approved by the Observer Program on a case-by-case basis.

(1) Training registration materials consist of the following:

(i) Date of requested training;

(ii) A list of observer candidates that includes each candidate's full name (i.e., first, middle and last names), date of birth, and gender;

(iii) A copy of each candidate's academic transcripts and resume;

(iv) A statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions;

(v) Length of each observer's contract.

(2) Briefing registration materials consist of the following:

(i) Date and type of requested briefing session;

(ii) List of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names);

(iii) Length of each observer's contract.

(3) *Debriefing.* The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the Observer Program within 5 business days by telephone to schedule debriefings.

(i) Observer providers must immediately notify the observer program when observers end their contract earlier than anticipated.

(ii) [Reserved]

(B) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement expires 12 months after the physical exam occurred and a new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(C) *Certificates of insurance.* Copies of "certificates of insurance," that name the Northwest Fisheries Science Center Observer Program manager as the "certificate holder," shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(1) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(2) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(3) States Worker's Compensation as required.

(4) Commercial General Liability.

(D) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (h)(1)(i) of this section. Observer providers must also submit to the Observer Program Office, upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via email, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(1) Vessels required to have observer coverage as specified at paragraph (h)(1)(i) of this section; and

(2) Observers.

(E) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program Office any change of management or contact information as required at § 660.18(h).

(F) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(G) *Observer status report.* Observer providers must provide NMFS with an updated list of observer trips per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

(H) *Other information.* Observer providers must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment

notification, description of observer duties, etc.

(I) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act U.S.C. 552a or as otherwise required by law remain confidential and are not further released to any person outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including, but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish;

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products

from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from any person who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or non-performance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers.

(A) The policy shall address the following behavior and conduct regarding:

(1) Observer use of alcohol;

(2) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and;

(3) 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.

(B) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: observers, observer candidates and the Observer Program Office.

* * * * *

(6) * * *

(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification requirements as designated under paragraph (h)(6)(iii) of this section.

* * * * *

(iii) * * *

(A) *Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an permitted observer provider at the time of the of the certification is issued;

(2) Have provided, through their observer provider:

(j) Information identified by NMFS at § 679.52 (b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer candidate education and health standards as specified in § 679.52 (b) of this chapter; and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. 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.

(iv) Have not been decertified under paragraph (h)(6)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

* * * * *

(v) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (h)(6)(iii) of this section. The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification.

(A) *West Coast Groundfish Observer Program training endorsement.* A 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 training once more.

(B) *West Coast Groundfish Observer Program annual general endorsement.* 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 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) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment, as defined by the Observer Program, after receiving a training endorsement or annual general

endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(B) 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) 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 an authorized officer or NMFS.

(D) Successfully complete any required trainings or briefings as prescribed by the Observer Program.

(E) Successful completion of briefing 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 briefing for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Hold a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification.

(G) Successfully meet Observer Program performance standards reporting for assigned debriefings or interviews.

(H) Submit all data and information required by the Observer Program within the program's stated guidelines.

(I) Meet the minimum annual deployment period of 45 days every 12 months. On a case-by case basis, the Observer Program may consider waiving the 45 day requirement.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska

state waters, 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:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based or floating stationary processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based or floating stationary processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.*

Observers must:

(A) Perform their duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) Accurately record their sampling data, write complete reports, and report accurately any observations of suspected violations of regulations relevant to the conservation of marine resources of their environment.

(C) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification—*
(A) *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 IAD of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* In addition to any other supported basis connected to an observer's job performance, the suspension and decertification official may initiate suspension or decertification proceedings against an observer:

(1) When it is alleged that the observer has not met applicable standards, including any of the following:

- (i) Failed to satisfactorily perform duties as described or directed by the Observer Program; or
- (ii) Failed to abide by the standards of conduct for observers, including conflicts of interest;
- (2) 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.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, 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. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

(i) * * *
(2) *Procurement of catch monitor services.* Owners or managers of each IFQ first receiver must arrange for catch monitor services from a catch monitor provider prior to accepting IFQ landings.

(3) * * *
(ii) Unless alternative arrangements are approved by the Catch Monitor Program Office, the working hours of each individual catch monitor will be limited as follows: the time required for a catch monitor to conduct monitoring duties must not exceed 14 consecutive hours in a calendar day. Following a

monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 8 hours break before they may resume monitoring.

* * * * *
(j) * * *
(2) * * *
(ii) *Printed record.* All scales identified in the catch monitoring plan accepted by NMFS during the first receiver site license application process, must produce a printed record as specified at § 660.15(c).

(iii) *Scales that may be exempt from printed report.* An IFQ first receiver that receives no more than 200,000 pounds of groundfish in any calendar month will be exempt from the requirement to produce a printed record provided that:

- (A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required;
- (B) The first receiver ensures that all catch is weighed; and
- (C) The catch monitor, NMFS staff, or authorized officer can verify that all catch is weighed.

(iv) *Retention of printed records.* An IFQ first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made consistent with § 660.113(a)(2).

* * * * *
(3) * * *
(i) *General.* Ensure that all IFQ landings are sorted and weighed as specified at § 660.130(d) and in accordance with an approved catch monitoring plan.

* * * * *
(4) *Scale tests.* All testing must meet the scale test standards specified at § 660.15(c).

- * * * * *
- 12. In § 660.150:
 - a. Revise paragraphs (b)(1)(ii)(A) through (C), (c)(4)(ii), (j)(1)(i), (j)(1)(ii)(A), (j)(1)(iii), (j)(2)(i)(A), (j)(2)(i)(B)(2), (j)(2)(ii) introductory text, (j)(2)(ii)(B), (j)(2)(iii), (j)(2)(ix)(A) introductory text, and (j)(2)(x) introductory text;
 - b. Add paragraph (j)(2)(xi);
 - c. Revise paragraphs (j)(3), (j)(4) and (j)(5); and
 - d. Remove paragraph (j)(6).

The revisions and addition read as follows:

§ 660.150 Mothership (MS) Coop Program.
* * * * *

(b) * * *
(1) * * *
(ii) *MS vessel responsibilities.* The owner and operator of a MS vessel must:
(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified

at § 660.13(d); and, maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, and cost recovery.

(B) *Observers.* As specified at paragraph (j) of this section, procure observer services, maintain the appropriate level of coverage, and meet the vessel responsibilities.

(C) *Catch weighing requirements.* The owner and operator of a MS vessel must: Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b);

* * * * *
(c) * * *
(4) * * *

(ii) *Between the mothership and catcher/processor sectors.* The Regional Administrator may make available for harvest to the catcher/processor sector of the Pacific whiting fishery, the amounts of the mothership sector's non-whiting catch allocation remaining when the Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation. If participants in the sector do not intend to harvest the sector's remaining allocation, the designated coop manager, or in the case of an inter-coop, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the Mothership sector Pacific whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take in to consideration the best available data on total projected fishing impacts. Reapportionment between permitted MS coops and the non-coop fishery within the mothership sector will be in proportion to their original coop allocations for the calendar year.

* * * * *
(j) * * *
(1) * * *

(i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS.

(A) *MS vessels.* Any vessel registered to an MS permit 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to an MS permit shorter than 125 ft (38.1 m) LOA must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(B) *Catcher vessels.* Any vessel delivering catch to any MS vessel must carry one certified observer each day that the vessel is used to take groundfish.

(ii) * * *

(A) *MS vessels.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

* * * * *

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(i) * * *

(A) *MS vessels.* Provide accommodations and food that are equivalent to those provided for officers, engineers, foremen, deck-bosses or other management level personnel of the vessel.

(B) * * *

(2) Accommodations and food for trips of 24 hours or more must be equivalent to those provided for the crew and must include berthing space, a space that is intended to be used for sleeping and is provided with installed bunks and mattresses. A mattress or futon on the floor or a cot is not acceptable if a regular bunk is provided to any crew member, unless other arrangements are approved in advance by the Regional Administrator or designee.

(ii) *Safe conditions.* MS vessels and catcher vessels must:

* * * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) *Computer hardware and software.* MS vessels must:

(A) Provide hardware and software pursuant to regulations at § 679.51(e)(iii)(B) of this chapter.

(B) Provide the observer(s) access to a computer required under paragraph (j)(2)(iii)(A) of this section, and that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the MS vessel has installed the most recent release of NMFS data entry software or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (j)(2)(iii) of this section and that is used by observers to enter and transmit data, is fully functional and operational. “Functional” means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (j)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

(ix) * * *

(A) *MS vessels.* To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

* * * * *

(x) *Transfer at sea.* Observers may be transferred at-sea between MS vessels, between MS vessels and C/P vessels, or between a MS vessel and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

(3) *Procurement of observer services—*

(i) *MS vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

(A) Vessels are required to procure observer services directly from the Observer Program 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 an observer provider.

(B) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(ii) *Catcher vessels.* Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from an observer provider, except that:

(A) Vessels are required to procure observer services directly from the

Observer Program 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 an observer provider.

(B) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) *Observer provider responsibilities.*

(i) Provide qualified candidates to serve as observers. Observer providers must provide qualified candidates to serve as observers. To be qualified, a candidate must have:

(A) A Bachelor’s degree or higher from an accredited college or university with a major in one of the natural sciences;

(B) Successfully completed a minimum of 30 semester hours or equivalent in applicable biological sciences with extensive use of dichotomous keys in at least one course;

(C) Successfully completed at least one undergraduate course each in math and statistics with a minimum of 5 semester hours total for both; and

(D) Computer skills that enable the candidate to work competently with standard database software and computer hardware.

(ii) *Hiring an observer candidate—*(A) *MS vessels.* (1) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (*i.e.* The At-Sea Hake Observer Program’s Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office’s Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(2) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer’s deployment with the following clauses:

(i) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician’s statement as required as a qualified observer candidate that

would prevent him or her from performing their assigned duties.

(B) *Catcher vessels.* (1) Provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties, for example, the West Coast Groundfish Observer Program's sampling manual. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(2) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties; and

(iii) That the observer successfully completes a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification course prior to the end of the Observer Program Training class.

(iii) *Ensure that observers complete duties in a timely manner—(A) MS vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Submit to NMFS all data, logbooks, and reports as required by the observer manual;

(2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(3) Return all sampling and safety gear to the Observer Program Office;

(4) Submit all biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s); and

(5) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(B) *Catcher vessels.* An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Submit to NMFS all data, logbooks, and reports and biological samples as required under the Observer Program policy deadlines;

(2) Report for his or her scheduled debriefing and complete all debriefing responsibilities;

(3) Return all sampling and safety gear to the Observer Program Office; and

(4) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel—(A) MS vessels.* Observers provided to MS vessels:

(1) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(2) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(3) Must have successfully completed all NMFS required training and briefing before deployment.

(B) *Catcher vessels.* Observers provided to catcher vessels:

(1) Must have a valid West Coast Groundfish observer certification with the required endorsements;

(2) Must have not informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement (required in paragraph (j)(4)(xi)(B)(2) of this section) that would prevent him or her from performing his or her assigned duties; and,

(3) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents an observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least four hours prior to the vessel's estimated embarking time.

(vi) *Provide observer salaries and benefits.* An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract.

(vii) *Provide observer deployment logistics—(A) MS vessels.* An observer provider must provide to each of its observers under contract:

(1) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(2) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(3) An observer under contract may be housed on a vessel to which he or she is assigned:

(i) Prior to their vessel's initial departure from port;

(ii) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(iii) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(iv) An observer under contract who is between vessel assignments must be provided with shoreside accommodations pursuant to the terms of the contract between the observer provider and the observers. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(B) *Catcher vessels.* An observer provider must ensure each of its observers under contract:

(1) Has an individually assigned mobile or cell phones, in working order, for all necessary communication. An observer provider may alternatively compensate observers for the use of the observer's personal cell phone or pager for communications made in support of, or necessary for, the observer's duties.

(2) Has a check-in system in which the observer is required to contact the

observer provider each time they depart and return to port on a vessel.

(3) Remains available to OLE and the Observer Program until the conclusion of debriefing.

(4) Receives all necessary transportation, including arrangements and logistics to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(5) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(i) An observer under contract may be housed on a vessel to which he or she is assigned: Prior to their vessel's initial departure from port; for a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or for a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(ii) Otherwise, each observer between vessels, while still under contract with an observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under the contract with the observer, the accommodations must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations that has an assigned bed for each observer that no other person may be assigned to for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) *Observer deployment limitations*—(A) *MS vessels*. Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

(1) Deploy an observer on the same vessel more than 90 days in a 12-month period;

(2) Deploy an observer for more than 90 days in a single deployment;

(3) Include more than four vessels assignments in a single deployment, or

(4) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(B) *Catcher vessels*. Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal*. An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety Decal as required under paragraph (j)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

(x) *Maintain communications with observers*. An observer provider must have an employee responsible for observer activities on call 24 hours a day to handle emergencies involving observers or problems concerning observer logistics, whenever observers are at sea, in transit, or in port awaiting vessel reassignment.

(xi) *Maintain communications with the Observer Program Office*. An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Motherships*—(1) *Training and briefing registration materials*. The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session.

(i) *Registration materials*. Registration materials consist of the date of requested training or briefing with a list of observers including each observer's full name (*i.e.*, first, middle and last names).

(ii) *Projected observer assignments*. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that include the observer's name; vessel, gear type, and vessel/processor code; port of embarkation; and area of fishing.

(2) *Observer debriefing registration*. The observer provider must contact the At-Sea Hake Observer Program within 5 business days after the completion of an

observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(3) *Observer provider contracts*. If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(i) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(ii) Observers.

(4) *Change in observer provider management and contact information*. Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

(5) *Other reports*. Reports of the following must be submitted in writing to the At-Sea Hake Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(iv) Any observer illness or injury that prevents the observer from completing

any of his or her duties described in the observer manual; and

(v) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(B) *Catcher vessels.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(1) *Observer training, briefing, and debriefing registration materials.* This information must be submitted to the Observer Program Office at least 10 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session. Submissions received less than 10 business days prior to a West Coast groundfish observer certification training or briefing session will be approved by the Observer Program on a case-by-case basis.

(i) Training registration materials consist of the following: Date of requested training; a list of observer candidates that includes each candidate's full name (*i.e.*, first, middle and last names), date of birth, and gender; a copy of each candidate's academic transcripts and resume; a statement signed by the candidate under penalty of perjury which discloses the candidate's criminal convictions; and length of observer contract.

(ii) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); and length of observer contract.

(iii) The Observer Program will notify the observer provider which observers require debriefing and the specific time period the observer provider has to schedule a date, time, and location for debriefing. The observer provider must contact the Observer Program within 5 business days by telephone to schedule debriefings. Observer providers must immediately notify the Observer Program when observers end their contract earlier than anticipated.

(2) *Physical examination.* A signed and dated statement from a licensed physician that he or she has physically examined an observer or observer candidate. The statement must confirm that, based on that physical examination, the observer or observer candidate does not have any health problems or conditions that would jeopardize that individual's safety or the safety of others while deployed, or prevent the observer or observer candidate from performing his or her

duties satisfactorily. The statement must declare that, prior to the examination, the physician was made aware of the duties of the observer and the dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement expires 12 months after the physical exam occurred and a new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.

(3) *Certificates of insurance.* Copies of "certificates of insurance," that names the Northwest Fisheries Science Center Observer Program manager as the "certificate holder," shall be submitted to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify the following coverage provisions and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(i) Maritime Liability to cover "seamen's" claims under the Merchant Marine Act (Jones Act) and General Maritime Law (\$1 million minimum).

(ii) Coverage under the U.S. Longshore and Harbor Workers' Compensation Act (\$1 million minimum).

(iii) States Worker's Compensation as required.

(iv) Commercial General Liability.

(4) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (j)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the

request. Signed and valid contracts include the contracts an observer provider has with:

(i) Vessels required to have observer coverage as specified at paragraph (j)(1)(i) of this section; and

(ii) Observers.

(5) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information as required at § 660.18(f).

(6) *Biological samples.* The observer provider must ensure that biological samples are stored/handled properly prior to delivery/transport to NMFS.

(7) *Observer status report.* Observer providers must provide NMFS with an updated list of observer trip per Observer Program protocol. Trip information includes observer provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number.

(8) *Other information.* An observer provider must submit to NMFS, if requested, copies of any information developed and used by the observer providers distributed to vessels, such as informational pamphlets, payment notification, description of observer duties, etc.

(9) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under § 660.12(e); § 660.112(a)(4); or § 600.725(o), (t) and (u) of this chapter;

(iii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(iv) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(v) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act under 5 U.S.C. 552a or as otherwise required by law remain confidential and are not further released to any person outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* Observer providers must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from any person who conducts fishing or fish processing activities that are regulated by NMFS in the Pacific coast or North Pacific regions, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;
(B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and

(C) 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.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to: observers, observer candidates and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 of this chapter or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) *Observer certification and responsibilities—(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 (j)(6)(iii) 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 certifications and endorsements.

(iii) *Certification requirements—(A) Initial certification.* NMFS may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company permitted pursuant to § 660.16 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.52(b) of this chapter; and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. 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.

(iv) Have not been decertified under paragraph (j)(5)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

(B) [Reserved]

(iv) *Denial of a certification.* The NMFS observer certification official will issue a written determination denying observer certification if the candidate fails to successfully complete training, or does not meet the qualifications for certification for any other relevant reason.

(v) *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 at paragraph (j)(6)(iii) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *MS vessels—(1) North Pacific Groundfish Observer Program 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.

(2) *North Pacific Groundfish Observer Program 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.

(3) *North Pacific Groundfish Observer Program 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.

(4) *At-Sea Hake Observer Program 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:

(i) Have a valid North Pacific groundfish observer certification;

(ii) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment; successfully complete any required briefings as prescribed by the Observer Program; and comply with all of the other requirements of this section.

(B) *Catcher vessels.* The following endorsements as prescribed by the Observer Program must be obtained in addition to observer certification, in order for an observer to deploy.

(1) *West Coast Groundfish Observer Program training endorsement.* A 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 training once more.

(2) *West Coast Groundfish Observer Program annual general endorsement.* 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 training certification 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.

(3) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment, as defined by the Observer Program, after receiving a training endorsement or annual general endorsement, must complete all applicable debriefing requirements specified by the Observer Program. A deployment endorsement is issued to

observers who meet the performance standards specified by the Observer Program. A deployment endorsement must be obtained prior to any subsequent deployments for the remainder of that calendar year. If a deployment endorsement is not issued, certification training must be repeated.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) *MS vessels.* (1) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(2) 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.

(3) 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 an authorized officer or NMFS.

(4) Successfully complete any required briefings as prescribed by the At-Sea Hake Observer Program.

(5) Successful completion of briefing 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 briefing requirements established by the Observer Program.

(6) Successfully meet all debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(7) Submit all data and information required by the Observer Program within the program's stated guidelines.

(B) *Catcher vessels.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(1) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(2) 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.

(3) 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 an authorized officer or NMFS.

(4) Successfully complete any required trainings or briefings as prescribed by the Observer Program.

(5) Successful completion of briefing 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 briefing requirements established by the Observer Program.

(6) Hold current a Red Cross (or equivalent) basic cardiopulmonary resuscitation/first aid certification.

(7) Successfully meet all expectations in all debriefings including reporting for assigned debriefings or interviews and meeting program standards.

(8) Submit all data and information required by the observer program within the program's stated guidelines.

(9) Meet the minimum annual deployment period of 45 days every 12 months. On a case-by case basis, the Observer Program may consider waiving the 45 day requirement.

(vii) *Limitations on conflict of interest.* Observers:

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, 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:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

(B) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from any person who either conducts activities that are regulated by NMFS in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel or at any shore-based or floating

stationary processor owned or operated by a person who employed the observer in the last two years.

(D) May not solicit or accept employment as a crew member or an employee of a vessel or shore-based or floating stationary processor while employed by an observer provider.

(E) Provisions for remuneration of observers under this section do not constitute a conflict of interest.

(viii) *Standards of behavior.*

Observers must:

(A) Perform their assigned duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) 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) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(D) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification—*
(A) *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 IADs of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(1) When it is alleged that the observer has not met applicable standards, including any of the following:

(i) Failed to satisfactorily perform duties of observers as specified in writing by the NMFS Observer Program; or

(ii) Failed to abide by the standards of conduct for observers, including conflicts of interest;

(2) 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.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, 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. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

* * * * *

■ 13. In § 660.160:

- a. Revise paragraphs (b)(1)(ii) introductory text, (b)(1)(ii)(A), (b)(1)(ii)(C), (c)(5), (g)(1), (g)(2)(ii)(B), (g)(2)(iii), (g)(2)(ix) introductory text, and (g)(3);
- b. Add paragraph (g)(2)(xi);
- c. Remove paragraph (g)(4);
- d. Redesignate paragraphs (g)(5) and (g)(6) as (g)(4) and (g)(5), respectively;
- e. Revise newly redesignated paragraphs (g)(4)(ii), (g)(4)(iii)(A) and (E), (g)(4)(iv) and (v), (g)(4)(vii), (g)(4)(ix), (g)(4)(xi) through (xvi), (g)(5)(i) and (ii), (g)(5)(iii)(A)(2), (g)(5)(v)(D), (g)(5)(vi), (g)(5)(vii)(A), and (g)(5)(viii) and (ix).

The revisions and addition read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(b) * * *

(1) * * *

(ii) *C/P vessel responsibilities.* The owner and operator of a C/P vessel must:

(A) *Recordkeeping and reporting.* Maintain a valid declaration as specified at § 660.13(d); maintain records as specified at § 660.113(a); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, and cost recovery.

* * * * *

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must ensure that all catch is weighed in its round form on a NMFS-approved scale

that meets the requirements described in § 660.15(b).

* * * * *

(c) * * *

(5) *Non-whiting groundfish species reapportionment.* The Regional Administrator may make available for harvest to the mothership sector of the Pacific whiting fishery, the amounts of the catcher/processor sector's non-whiting catch allocation remaining when the catcher/processor sector reaches its Pacific whiting allocation or participants in the catcher/processor sector do not intend to harvest the remaining sector allocation. If participants in the sector do not intend to harvest the sector's remaining allocation, the designated coop manager must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the catcher/processor sector Pacific whiting allocation has been harvested, the Regional Administrator may contact the designated coop manager to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts.

* * * * *

(g) * * *

(1) *Observer coverage requirements—*
(i) *Coverage.* The following observer coverage pertains to certified observers obtained from an observer provider permitted by NMFS. Any vessel registered to a C/P-endorsed limited entry trawl permit that is 125 ft (38.1 m) LOA or longer must carry two certified observers, and any vessel registered to a C/P-endorsed limited entry trawl permit that is shorter than 125 ft (38.1 m) LOA must carry one certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(ii) *Observer workload.* The time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period.

(iii) *Refusal to board.* Any boarding refusal on the part of the observer or vessel must be reported to the Observer Program and OLE by the observer provider. The observer must be available for an interview with the Observer Program or OLE if necessary.

(2) * * *

(ii) * * *

(B) Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I,

a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311. Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter.

(iii) *Computer hardware and software.* C/P vessels must:

(A) Provide hardware and software pursuant to regulations at § 679.51 (e)(iii)(B) of this chapter.

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the C/P vessel has installed the most recent release of NMFS data entry software, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D) Ensure that the communication equipment required in paragraph (g)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

* * * * *

(ix) *Sampling station and operational requirements for C/P vessels.* This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the following requirements:

* * * * *

(xi) *Housing on vessel in port.* During all periods an observer is housed on a vessel, the vessel operator must ensure that at least one crew member is aboard.

(3) *Procurement of observer services.* Owners of vessels required to carry observers under paragraph (g)(1) of this section must arrange for observer services from an observer provider permitted by NMFS, except that:

(i) Vessels are required to procure observer services directly from the Observer Program 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 an observer provider.

(ii) Vessels are required to procure observer services directly from the Observer Program and an observer provider when NMFS has determined and given notification that the vessel must carry NMFS staff and/or individuals authorized by NMFS, in addition to an observer provided by an observer provider.

(4) * * *

(ii) *Hiring an observer candidate.* (A) The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (i.e. The At-Sea Hake Observer Program's Observer Manual) prior to hiring an observer candidate. Observer job information is available from the Observer Program Office's Web site at <http://www.nwfsc.noaa.gov/research/divisions/fram/observer/index.cfm>.

(B) The observer provider must have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(1) That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the Observer Program;

(2) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties.

(iii) * * *

(A) Submit to NMFS all data, logbooks and reports as required by the observer manual;

* * * * *

(E) Immediately report to the Observer Program Office and the OLE any refusal to board an assigned vessel.

(iv) *Observers provided to vessel.* Observers provided to C/P vessels:

(A) Must have a valid North Pacific groundfish observer certification with required endorsements and an At-Sea Hake Observer Program endorsement;

(B) Must not have informed the observer provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement that would prevent him or her from performing his or her assigned duties; and

(C) Must have successfully completed all NMFS required training and briefing before deployment.

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment as requested pursuant to the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified under paragraph (g)(1) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the observer provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the observer provider must report it to the Observer Program at least four hours prior to the vessel's estimated embarking time.

* * * * *

(vii) *Provide observer deployment logistics.* An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to and from the location designated for an observer to be interviewed by the Observer Program; and

(B) Lodging, per diem, and any other services necessary to observers assigned to fishing vessels.

(1) An observer under contract may be housed on a vessel to which he or she is assigned:

(i) Prior to their vessel's initial departure from port;

(ii) For a period not to exceed 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(iii) For a period not to exceed 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

(2) [Reserved]

(C) An observer under contract who is between vessel assignments must be provided with shoreside accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is providing accommodations, it must be at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be

assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

* * * * *

(ix) *Verify vessel's Commercial Fishing Vessel Safety Decal.* An observer provider must ensure that the observer completes an observer vessel safety checklist, and verify that a vessel has a valid USCG Commercial Fishing Vessel Safety decal as required under paragraph (h)(2)(ii)(B) of this section prior to the observer embarking on the first trip and before an observer may get underway aboard the vessel. The provider must submit all vessel safety checklists to the Observer Program, as specified by Observer Program policy. One of the following acceptable means of verification must be used to verify the decal validity:

(A) The observer provider or employee of the observer provider, including the observer, visually inspects the decal aboard the vessel and confirms that the decal is valid according to the decal date of issuance; or

(B) The observer provider receives a hard copy of the USCG documentation of the decal issuance from the vessel owner or operator.

* * * * *

(xi) *Maintain communications with the Observer Program Office.* An observer provider must provide all of the following information by electronic transmission (email), fax, or other method specified by NMFS.

(A) *Observer training and briefing.* Observer training and briefing registration materials must be submitted to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the following: The date of requested training or briefing with a list of observers including each observer's full name (*i.e.*, first, middle and last names).

(B) *Observer debriefing registration.* The observer provider must contact the Observer Program within 5 business days after the completion of an observer's deployment to schedule a date, time and location for debriefing. Observer debriefing registration information must be provided at the time of debriefing scheduling and must include the observer's name, cruise number, vessel name(s) and code(s), and requested debriefing date.

(C) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office

a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

(1) Vessels required to have observer coverage as specified at paragraph (g)(1) of this section; and

(2) Observers.
(D) *Change in observer provider management and contact information.* Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, email address, and address.

(E) *Other reports.* Reports of the following must be submitted in writing to the Observer Program Office by the observer provider via fax or email address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under §§ 660.12(e), 660.112 or 600.725(o), (t) and (u) of this chapter;

(3) Any concerns about vessel safety or marine casualty under 46 CFR 4.05–1(a)(1) through (7);

(4) Any observer illness or injury that prevents the observer from completing any of his or her duties described in the observer manual; and

(5) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described in observer provider policy.

(xii) *Replace lost or damaged gear.* Lost or damaged gear issued to an observer by NMFS must be replaced by the observer provider. All replacements must be provided to NMFS and be in accordance with requirements and

procedures identified in writing by the Observer Program Office.

(xiii) *Maintain confidentiality of information.* An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act 5 U.S.C. 552a or other applicable law remain confidential and are not further released to any person outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(xiv) *Limitations on conflict of interest.* An observer provider must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

(1) Any ownership, mortgage holder, or other secured interest in a vessel or shoreside processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel or shoreside processors participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington, or

(3) Any business involved with purchasing raw or processed products from any vessel or shoreside processor participating in a fishery managed pursuant to an FMP in the waters off the coasts of Alaska, California, Oregon, and Washington.

(B) Must assign observers without regard to any preference by representatives of vessels other than when an observer will be deployed.

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from any person who conducts fishing or fish processing activities that are regulated by NMFS, or who has interests that may be substantially affected by the performance or nonperformance of the official duties of observer providers.

(xv) *Observer conduct and behavior.* An observer provider must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs in violation of applicable law; and

(C) 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.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to observers, observer candidates, and the Observer Program Office.

(xvi) *Refusal to deploy an observer.* Observer providers may refuse to deploy an observer on a requesting vessel if the observer provider has determined that the requesting vessel is inadequate or unsafe pursuant to those regulations described at § 600.746 of this chapter or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) * * *

(i) *Applicability.* Observer certification authorizes an individual to fulfill duties as specified in writing by the Observer Program Office while under the employ of an observer provider and according to certification endorsements as designated under paragraph (g)(5)(iii) 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 certifications and endorsements.

(iii) * * *

(A) * * *

(2) Have provided, through their observer provider:

(i) Information set forth at § 679.52(b) of this chapter regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in § 679.52(b) of this chapter; and

(iii) Have successfully completed NMFS-approved training as prescribed by the Observer Program. 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.

(iv) Have not been decertified under paragraph (g)(5)(ix) of this section, or pursuant to § 679.53(c) of this chapter.

* * * * *

(v) * * *

(D) *At-Sea Hake Observer Program 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) Have a valid North Pacific groundfish observer certification.

(2) Receive an evaluation by NMFS for his or her most recent deployment that indicated that the observer's performance met Observer Program expectations for that deployment;

(3) Successfully complete any required briefings as prescribed by the Observer Program; and

(4) Comply with all of the other requirements of this section.

(vi) *Maintaining the validity of an observer certification.* After initial issuance, an observer must keep their certification valid by meeting all of the following requirements specified below:

(A) Successfully perform their assigned duties as described in the observer manual or other written instructions from the Observer Program.

(B) 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) 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 an authorized officer or NMFS.

(D) Successfully complete any required briefings as prescribed by the At-Sea Hake Observer Program.

(E) Successful completion of briefing 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 briefing requirements established by the Observer Program.

(F) Successfully meet all debriefing expectations including meeting Observer Program performance standards reporting for assigned debriefings or interviews.

(G) Submit all data and information required by the Observer Program within the program's stated guidelines.

(vii) * * *

(A) Must not have a direct financial interest, other than the provision of observer services or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the

waters off the coast of Alaska, Alaska state waters, 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:

(1) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,

(2) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or

(3) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

* * * * *

(viii) *Standards of behavior.* Observers must:

(A) Perform their assigned duties as described in the observer manual or other written instructions from the Observer Program Office.

(B) 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) Not disclose collected data and observations made on board the vessel to any person except the owner or operator of the observed vessel, an authorized officer, or NMFS.

(ix) *Suspension and decertification—*

(A) *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 IADs of observer certification suspension and/or decertification.

(B) *Causes for suspension or decertification.* The suspension/decertification official may initiate suspension or decertification proceedings against an observer:

(1) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the Observer Program; or failed to abide by the standards of conduct for observers (including conflicts of interest);

(2) Upon conviction of a crime or upon entry of a civil judgment for: 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 Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(C) *Issuance of an IAD.* Upon determination that suspension or decertification is warranted, 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. Decertification is effective 30 calendar days after the date on the IAD, unless there is an appeal.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes the observer certification may appeal the determination within 30 calendar days after the date on the IAD to the Office of Administrative Appeals pursuant to § 660.19.

* * * * *

■ 14. In § 660.216, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.216 Fixed gear fishery—observer requirements.

(a) *Observer coverage requirements—*
(1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer Program, any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from a permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than four hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (*i.e.*, trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting and processing 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.

(d) *Waiver.* The West Coast Regional Administrator (or designee) 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.

(e) * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid

certificate of inspection pursuant to 46 U.S.C. 3311.

(3) * * *

(i) *Observer use of equipment.* Allowing 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), the observer provider or NMFS.

* * * * *

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

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

(2) *Location.* The observer sampling station must be located within four meters 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.

■ 15. In § 660.316, revise paragraphs (a) through (d), (e)(2), (e)(3)(i), and (f) to read as follows:

§ 660.316 Open access fishery—observer requirements.

(a) *Observer coverage requirements—*
(1) *Harvesting vessels.* When NMFS notifies the owner, operator, permit holder, or the manager of a harvesting vessel of any requirement to carry an observer, the harvesting vessel may not be used to fish for groundfish without carrying an observer.

(2) *Processing vessels.* Unless specified otherwise by the Observer Program, any vessel 125 ft (38.1 m) LOA or longer that is engaged in at-sea processing must carry two certified observers procured from a permitted observer provider, and any vessel shorter than 125 ft (38.1 m) LOA that is engaged in at-sea processing must carry one certified observer procured from a permitted observer provider, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish. Owners of vessels required to carry observers under this paragraph must arrange for observer services from a permitted observer provider except when the Observer Program has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in addition to or in lieu of an observer provided by a permitted observer provider.

(b) *Notice of departure—basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a harvesting vessel that has been notified by NMFS that it is required to carry an observer, or that is operating in an active sampling unit, must notify NMFS (or its designated agent) of the vessel's intended time of departure. Notice will be given in a form to be specified by NMFS.

(1) *Optional notice—weather delays.* A harvesting vessel that anticipates a delayed departure due to weather or sea conditions may advise NMFS of the anticipated delay when providing the basic notice described in paragraph (b) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel must provide an additional notice of departure not less than four hours prior to departure, in order to enable NMFS to place an observer.

(2) *Optional notice—back-to-back fishing trips.* A harvesting vessel that intends to make back-to-back fishing trips (*i.e.*, trips with less than 24 hours between offloading from one trip and beginning another), may provide the basic notice described in paragraph (b) of this section for both trips, prior to making the first trip. A vessel that has

given such notice is not required to give additional notice of the second trip.

(c) *Cease fishing report.* Within 24 hours of ceasing the taking and retaining of groundfish, vessel owners, operators, or managers must notify NMFS or its designated agent that fishing has ceased. This requirement applies to any harvesting or processing 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.

(d) *Waiver.* The West Coast Regional Administrator (or designate) 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.

(e) * * *

(2) *Safe conditions.* Maintain safe conditions on the vessel for the protection of observer(s) including adherence to all USCG and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel, and provisions at §§ 600.725 and 600.746 of this chapter. Have on board a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR chapter I and 46 CFR chapter I, a

certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) * * *

(i) *Observer use of equipment.* Allowing 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), observer provider or NMFS.

* * * * *

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

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

(2) *Location.* The observer sampling station must be located within four meters 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.

[FR Doc. 2015-08814 Filed 4-20-15; 8:45 am]

BILLING CODE 3510-22-P