

NMFS Items for Trailing Actions

This document includes items NMFS is bringing forward to be addressed through a future rulemaking for the Pacific Coast groundfish fishery that are in addition to the Council's list under this agenda item (Agenda Item I.4.a, Attachment 1). NMFS will implement these items through a rulemaking as time and workload allows. Some of these items are a result of the trawl rationalization program actions but affect others sectors as well (i.e., limited entry fixed gear).

1. Revise the first receiver site license application requirements, including site inspection and the expiration date.

NMFS is reviewing the first receiver site license application and issuance process to look for ways to make the process more efficient, to reduce costs of the program, and to decrease the burden on applicants.

NMFS suggests continuing to require an application for a first receiver site license each year (with an updated catch monitoring plan, current scale inspection dates, copy of a valid state buyer's license, and application fee), but only requiring a site inspection at least once every three years at the discretion of the NMFS-designated representative.

In addition, NMFS is considering changing the expiration date on the license from one year from the date of issuance to a specific date each year (e.g., June 30). This would reduce the costs of operating the program because the application review and any corresponding site inspections would largely occur at one time during the year. The Catch Monitor Program could more efficiently review applications (including catch monitoring plans) and could coordinate site inspections in geographic areas, reducing travel costs. Applications for a first receiver site license would continue to be available at any time during the year. However, licenses issued to new applicants (including any previous license holder that let their license lapse past its effective date) could be effective for a period of less than a calendar year (i.e. they would expire on June 30). If the applicant re-registers for their license in the following year in a timely manner and doesn't allow a lapse in their license beyond the effective date, then their license would be effective for an entire calendar year. Because license applications require review by the Fisheries Permits Office in addition the Catch Monitor Program and to stagger workload in the Fisheries Permits Office (limited entry permit renewals happen in the fall of the year), NMFS suggests that the expiration date for first receiver site licenses be June 30 each year.

An example of how the revised application process might work:

- *All site licenses would expire on June 30, regardless of issuance date.*
- *Timeline for re-registering applicants:*

1. *The Fisheries Permits Office would mail application (re-registration) packages on or about February 1 of each year;*
 2. *The Fisheries Permits Office would encourage that re-registration packages be submitted by applicants by April 15 to ensure a continuation of ability to receive landings, with no lapse between the expiring license and the new license;*
 3. *For all of the applications received by April 15, the Catch Monitor Program would schedule site inspection visits at least once every three years by location between approximately April 15-June 15, and do all of the inspections for licenses at that Port in the same trip. For applications received after April 15, NMFS would not guarantee that the licenses would be issued by July 1 (i.e., there may be a lapse in the effectiveness of their licenses).*
 4. *The NMFS-designated inspector would visit the sites at least once every third year (or more frequently at their discretion); if after the site inspection the catch monitoring plan requires revisions, the revised catch monitoring plan would be submitted to the Fisheries Permits Office by June 15th to ensure time to review and mail the license without a lapse.*
- *New entrants could continue to apply at any time. Licenses for new entrants would expire on the same timeline, June 30. Applicants with a lapse in license will be considered “new entrants” at the time they submit their application, and will be required to have a site inspection.*

NMFS is also suggesting revisions to the process to make license holders more accountable and make the requirements more enforceable. NMFS may require the buyer or designated contact as presented in Section A of the license application to be present at the site inspection. This would help ensure that the license holder, as the liable party, is aware of and accountable for any questions or concerns that might arise during the site inspection. In addition, NMFS may clarify the regulations at §660.140(f)(3)(iii)(C) to require the catch monitoring plan to have the applicant’s printed name, their contact information, signature, and the date. While the contact information is available on the license application, adding it to the catch monitoring plan itself would be useful because it would be readily available to the catch monitors working at the facilities. Catch monitors receive a copy of the catch monitoring plan, but do not have the license application.

2. *Revise the catch monitor certification requirements for briefings to be more broad. Currently, regulations on catch monitor certification state that certification is maintained if the catch monitor completes annual briefings. The regulatory language should be revised to include hake briefings, as well, which may occur outside the annual briefing.*

Suggested regulatory language: “Successfully complete ~~NMFS approved annual~~ any required briefings as prescribed by the catch monitor program.”

3. Revise renewal process for limited entry permits, vessel accounts, and QS permits to start by September 15th each year.

NMFS recommends moving the date by which permit renewal notices are mailed from September 1st to the 15th for several reasons. Moving the date will allow NMFS’ Permits Office to complete any pending transfers (changes in vessel registration or permit ownership) for the start of the September 1 cumulative limit period before sending out permit renewal notices. This will reduce the burden on the Permits Office sending out revised notices due to last minute transfer requests. In addition, moving the date allows more time for submitted EDC forms, which are due to NMFS by September 1, to be reviewed for completeness by NMFS. A complete EDC form is a prerequisite for permit and vessel account renewal in the trawl rationalization program. Finally, it would result in less time that NMFS holds submitted renewal checks before depositing them at the start of the October 1 fiscal year. This is consistent with the FMP at 11.2.12 (2) which states “notice of upcoming [limited entry permit] renewal periods will be sent by September 15 each year...” The FMP should be reviewed to see if any changes to the FMP are needed to reflect this change for the renewal process for limited entry permits, vessel accounts, and QS permits.

4. Remove the end-of-the-year ban on QP transfers between vessel accounts.

QP transfers between vessel accounts are prohibited from December 15-31 in order to allow any needed end-of-the-year account reconciliation. However, over 2011 and through the PIE 1 rule (effective January 1, 2012), NMFS developed and implemented an end-of-the-year account reconciliation process that doesn’t occur during December 15-31, but occurs early the following year once more complete data is available. Therefore, NMFS is considering removing the prohibition at §660.140(e)(3)(iii)(B) on QP transfers between vessel accounts during December 15-31.

5. Implement certification and decertification requirements for observer providers.

Current regulations allow any observer provider permitted in the North Pacific fishery to deploy observers in the West Coast groundfish fishery. This was done to expedite implementation of the trawl rationalization program for January 2011. For 2013 (two years since implementation of the program), NMFS suggests implementation of a certification and decertification process for observer providers. This will provide a process for new providers to enter the program as well as a process to decertify providers that do not comply with the regulations. This change will also require existing providers since 2011 to apply for a certification. NMFS will review and revise regulations accordingly, including regulations at §660.140(h)(4) on the application process to become an observer provider. Currently, the same companies are both the catch monitor providers and observer providers. In an effort to reduce complexity in the

regulations, where appropriate, NMFS will align these new requirements with the existing certification and decertification requirements for catch monitor providers at §§660.17 and 660.18 (listed below).

§ 660.17 Catch monitors and catch monitor service providers.

(d) Catch monitor provider certification. Persons seeking to provide catch monitor services under this section must obtain a catch monitor provider certification from NMFS.

(1) Applications. Persons seeking to provide catch monitor services must submit a completed application by mail to the NMFS Northwest Region, Permits Office, ATTN: Catch Monitor Coordinator, 7600 Sand Point Way, NE, Seattle, WA 98115. An application for a catch monitor provider permit shall consist of a narrative that contains the following:

(i) Identification 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 staff. 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.

(ii) Contact information.

(A) The owner's permanent mailing address, telephone, and fax numbers.

(B) The business mailing address, including the physical location, e-mail address, telephone and fax numbers.

(C) Any authorized agent's mailing address, physical location, e-mail address, telephone and fax numbers. An authorized agent means a person appointed and maintained within the United States who is authorized to receive and respond to any legal process issued in the United States to an owner or employee of a catch monitor provider.

(iii) Prior experience. A statement identifying 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.

(iv) Ability to perform or carry out responsibilities of a catch monitor provider. A description of the applicant's ability to carry out the responsibilities of a catch monitor provider is set out under paragraph (e) of this section.

(v) A statement describing any criminal convictions of each owner and board member, officer, authorized agent, and staff; a list of Federal contracts held and related performance ratings; and, a description of any previous decertification actions that may have been taken while working as an observer or observer provider.

(vi) A statement describing each owner and board member, officer, authorized agent, and staff indicating that they are free from conflict of interest as described under §660.18(d).

(2) Application review.

(i) The certification official, described in §660.18(a), may issue catch monitor provider certifications upon determination that the application submitted by the candidate meets all requirements specified in paragraph (d)(2)(ii) of this section.

(ii) Issuance of the certification will, at a minimum, be based on the completeness of the application, as well as the following criteria:

(A) The applicant's ability to carry out the responsibilities and relevant experience;

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

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

(3) Agency determination. The certification official will make a determination to approve or deny the application and notify the applicant by letter via certified return receipt mail, within 60 days of receipt of the application. Additional certification procedures are specified in §660.18, subpart C.

§660.18 Certification and decertification procedures for catch monitors and catch monitor providers.

(b) Agency determinations on certifications.

(1) Issuance of certifications —Certification may be issued upon determination by the certification official that the candidate has successfully met all requirements for certification as specified in:

(i) §660.17(b) for catch monitors; and

(ii) §660.17(d) for catch monitor providers.

(2) Denial of a certification. The NMFS certification official will issue a written determination identifying the reasons for denial of a certification.

6. Clarify that the processor obligation could be to more than one MS permit.

Given that the Council recommended and NMFS implemented a provision in the MS Coop Program to allow multiple MS/CV endorsements and their associated catch history assignments to be registered to a single limited entry trawl permit (PIE 1 rule, 76 FR 74725, published on December 1, 2011), NMFS may revise regulations on the processor obligation to clarify that a permit with multiple MS/CV endorsements may obligate each endorsement and associated catch history assignment to an MS permit. For example, a trawl permit with 2 MS/CV endorsements could obligate each endorsement to a different MS permit.

This clarification is a logical extension of allowing multiple endorsements to be registered to a single permit and of the regulations at §660.150(c)(2)(i)(A) on annual MS sector sub-allocations and at (g)(2)(iv)(D) on multiple MS/CV endorsements that allow a permit with multiple MS/CV endorsements to be registered to more than one coop or to both the coop and non-coop fishery.

Therefore, regulations at §660.150(c)(7)(i) on processor obligations may be revised as follows:

(i) Processor obligation. Through the annual MS/CV-endorsed limited entry permit renewal process, the MS/CV-endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch

history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated for each MS/CV endorsement and associated catch history assignment(~~the obligation may not be split among MS permits~~).

In addition, regulations at §660.150(g)(2)(iv)(D) may need to be revised to clarify the process for a permit with multiple MS/CV endorsements that intends to participate in the non-coop fishery. The coop permit application may not be the best avenue to notify NMFS of non-coop fishery participation. Therefore, regulations at §660.150(g)(2)(iv)(D) may be revised as follows:

(D) A limited entry trawl permit with multiple MS/CV endorsement registrations may be simultaneously registered to more than one coop or to both a coop(s) and non-coop fishery. In such cases, as part of the coop permit application process, specified at paragraph (d)(iii) of this section, the permit owner must specify on the coop permit application form which MS/CV endorsement and associated CHA is specifically registered to a particular coop ~~or to the non-coop fishery~~.

7. Review and revise observer program regulations.

The observer program regulations at §660.140 (Shorebased IFQ Program), §660.150 (MS Coop Program), and §660.160 (C/P Coop Program) will be reviewed and revised to make the regulations more clear or more consistent and to improve the program. NMFS will also review the catch monitor program regulations at §§660.17, 660.18, and 660.140 to determine if similar changes should be made for consistency.

For consistency, the requirement for a physician statement should be reviewed. It appears that a cross-reference should be at §660.150(j)(5)(iv)(A)(2) for MS and at §660.160(g)(5)(iv)(B) for C/P, however, the cross-reference is missing – the regulations do not appear to have an ongoing certification requirement, which, for C/P, would be at §660.160(g)(6)(iii)(B), currently “Reserved”. Missing requirement for signed and dated physician’s statement.

For the Shorebased IFQ Program, the changes listed below are being considered (deletions are in ~~strikeout~~ and insertions are underlined). The MS Coop Program and C/P Coop Program observer requirements will be reviewed to make similar changes, if needed.

- *§660.140(h)(5)(ii)(B)(1) regarding observer contracts:
(1) That all the observer's in-season messages and catch reports required to be sent while deployed are delivered to the Observer Program Office as specified by written Observer Program instructions; That the observer will return all phone calls, emails, text messages, or other forms of communication within the time specified by the observer program;*

- §660.140 (h)(5)(vii)(A) on provide observer deployment logistics:
 - (A) An observer provider must ensure each of its observers under contract:
 - (1) Has an individually assigned mobile or cell phone, 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) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: observer name, phone number, vessel departing on, expected trip end date and time.~~
 - (23) Remains available to NOAA Office for Law Enforcement and the Observer Program until the conclusion of debriefing.
 - (34) Receives all necessary transportation, including arrangements and logistics, ~~of observers~~ to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to/from the ~~debriefing~~ location designated for an observer to be interviewed by the observer program ~~when a deployment ends for any reason~~; and
 - (45) Receives lodging, per diem, and any other services necessary to observers assigned to fishing vessels.* * *

- §660.140 (h)(5)(ix) on verify vessel's safety decal:

This should be changed to require providers to verify that each of their observers completes the pre-deployment vessel safety orientation. Something along the lines of: Ensure observer completes a vessel orientation, including ensuring the US Coast Guard Vessel Safety Inspection Decal is current, prior to embarking on the first trip on all/any vessels.

- §660.140 (h)(5)(xi)(A)(1) on observer training, briefing, and debriefing registration materials:
 - (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) 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 includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and~~
 - (vii) Length of each observer's contract.

- §660.140 (h)(5)(xi)(A)(2) on observer training, briefing, and debriefing registration materials:
 - (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) 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 includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port"); and~~
- ~~(iiiiv) Length of each observer's contract.~~
- §660.140 (h)(5)(xi)(B) on physical examination:
 (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 will expire 12 months after the physical exam occurred. A new physical exam must be performed, and accompanying statement submitted, prior to any deployment occurring after the expiration of the statement.~~
 - §660.140 (h)(5)(xi)(G) on observer status report:
 (G) Observer status report. ~~Each Tuesday, o~~Observer providers must provide NMFS with an updated list of observer deployment per observer program protocol. Deployment information includes provider name, observer last name, observer first name, trip start date, trip end date, status of observer, vessel name, and vessel identification number. ~~contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service", indicating when the observer has requested leave and/or is not currently working for the provider.~~
 - §660.140 (h)(6)(v) on issuance of an observer certification:
 The observer program is reviewing observer post-training deployment timelines to assess if any enhancements and improved standards can be realized through redrafting of the observer certification regulations.
 - §660.140 (h)(6)(vi) on maintaining the validity of an observer certification:
 Revise (D) to read: (D) Successfully complete any required NMFS approved annual briefings as prescribed by the West Coast Groundfish Observer Program.
 Revise (G) to read: (G) Successfully meet all expectations in all debriefings including

reporting for assigned debriefings or interviews and meeting program standards.
Add (J) to read: (J) Pass a fish identification test once every 12 months.
Add (K) to read: (K) Pass safety training once every 12 months.

- *§660.140 (h)(6)(viii) on standards of behavior:
Delete (B) because it is not a 'standard of behavior', is already part of observer program protocol and is already stated within previous regulatory sections.
~~(B) Immediately report to the Observer Program Office and the NOAA OLE any time they refuse to board a vessel.~~*
8. *Review use of term “permit holder” in regulations and consider changing to “vessel owner.”
In regulation, the term “permit holder” is the owner of a vessel registered to a limited entry permit. While this term is defined as such in regulation, it has caused some confusion with the regulated public. In some cases, the regulated public has used the term permit owner and permit holder interchangeably, which is not accurate. In an effort to make the regulations more clear, NMFS will review the regulations and, where appropriate, consider changing the term “permit holder” to “vessel owner” or “owner of a vessel registered to a limited entry permit.”*
 9. *Revise the process for a permit holder (vessel owner) to change their vessel ownership. Regulations at §660.25(b)(4)(iv) do not clearly describe the process for a permit holder (vessel owner) to request a change in vessel ownership. NMFS will revise these regulations to clarify the process for a vessel owner to request a change in vessel ownership through the Fisheries Permits Office. The request will include a requirement for a copy of the new vessel registration documentation (USCG or state).*