DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 1511169999493–02]

RIN 0648–BF52

Fisheries off West Coast States; Pacific Coast Groundfish Fishery; Electronic Monitoring Program

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement an electronic monitoring (EM) program for two sectors of the limited entry trawl fishery, consistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and the Pacific Coast Groundfish Fishery Management Plan (FMP). The action allows catcher vessels in the Pacific whiting fishery and fixed gear vessels in the shorebased Individual Fishing Quota (IFQ) fishery to use EM in place of observers to meet the requirements of the Trawl Rationalization Program for 100-percent at-sea observer coverage. This action is necessary to increase operational flexibility and reduce monitoring costs for vessels in the trawl fishery by providing an alternative to observers. Data from the EM program will be used to debit discards of IFQ species from IFQs and mothership cooperative allocations. Through this action, NMFS has also approved and is implementing the following measures: An application process for interested vessel owners; performance standards for EM systems; requirements for vessel operators; a permitting process and standards for EM service providers; and, requirements for processors (first receivers) for receiving and disposing of prohibited and protected species from EM trips.

DATES: Effective July 29, 2019.

ADDRESSES: Copies of the regulatory amendment and analysis prepared by the Pacific Fishery Management Council (Council) are available from Chuck Tracy, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384. The Regulatory Impact Review (RIR), final environmental assessment (EA), and Final Regulatory Flexibility Analysis (FRFA) prepared for this action are accessible at *http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares/electronic_monitoring.html.* The FRFA assessing the impacts of the final measures adopted as originally proposed on small entities and describing steps taken to minimize any significant economic impact on such entities consists of the FRFA, preamble, and the summary of impacts and alternatives contained in the Classification section of this final rule and the regulatory amendment.

FOR FURTHER INFORMATION CONTACT: Melissa Hooper, Permits and Monitoring Branch Chief, phone: 206–526–4353, fax: 206–526–4461.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish FMP specifies management measures for over 90 different species of rockfish, flatfish, roundfish, sharks, skates, and other species, in federal waters off the West Coast states. Target species in the commercial fishery include Pacific hake (whiting), sablefish, dover sole, and rockfish, which are harvested by vessels using primarily midwater and bottom trawl gear, but also fish pots and hook and line. The trawl fishery is managed under a catch share program called the Trawl Rationalization Program, which was implemented through Amendments 20 and 21 to the FMP in January 2011. The Program consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting sectors) and cooperatives for the at-sea mothership and catcher/processor trawl fleets (whiting only). As part of the catch share program, Amendment 20 implemented requirements for 100-percent monitoring at-sea and dockside in order to ensure accountability for all landings and discards of allocated species. Catcher/processors and motherships are required to carry two observers at all times, depending on the length of the vessel, and catcher vessels are required to carry one observer, including while in port until all fish are offloaded. In addition, first receivers, which are processors that are licensed to receive IFQ landings, are required to have catch monitors to monitor 100-percent of IFQ offloads. Vessel owners and first receivers are responsible for obtaining and funding catch share observers and catch monitors as a necessary condition of their participation in the program. However, NMFS provided funds for the cost of observers for the first five years of the program to assist the industry in transitioning to the catch share program. The amount of these funds declined each year and ended in September 2015.

The Council developed this regulatory amendment to respond to concerns about the industry's ability to support observer costs and to implement EM as an alternative option to meet the 100-percent at-sea monitoring requirement in the fishery. As described in Chapter 2 of the EA, this action is necessary to increase operational flexibility; decrease incentives to fish in unsafe conditions; reduce monitoring costs; increase revenues; reduce the physical intrusiveness of the monitoring system; use the technology most suitable and cost effective for the monitoring system; and to maintain monitoring capabilities in small ports. This action specifies the detailed requirements necessary to implement an EM option for two components of the trawl fishery—catcher vessels using midwater trawl gear to target whiting in the mothership and shorebased sectors and trawl-permitted vessels using fixed gear to target other species in the shorebased sector. The Council has also developed EM regulations for the remaining two components of the shorebased IFQ fishery—vessels using bottom trawl and midwater trawl to target non-whiting species—which NMFS will propose in a separate rulemaking anticipated in mid-2019. A more extensive discussion of the development of the regulatory amendment and EM measures is available in the proposed rule (81 FR 61161; September 6, 2016) and is not repeated here.

Public comments were accepted on the proposed rule from September 6, 2016, through October 6, 2016. After review of public comments, NMFS has determined that the regulations are consistent with the goals and objectives of the Pacific Coast Groundfish FMP, and the requirements of the MSA and other applicable law. This determination is based on NMFS' review of the administrative record, including the Council's record, and NMFS' consideration of comments received during the comment period for the proposed rule. After considering the required statutory factors and the goals and objectives of the Pacific Coast Groundfish FMP, NMFS has determined that the Council's recommended EM program provides for an alternative method of meeting the monitoring requirements of the Trawl Rationalization Program that reduces the costs and operational burden of these requirements, while ensuring the best scientific information available for conservation and management.

Final Measures

This section summarizes the measures contained in this final rule. To

implement these measures NMFS revises the trawl fishery regulations in §§ 660.13, 660.19, 660.130, 660.140, and 660.150, to allow for vessel owners to use EM in place of an observer and establishes new regulations in §§ 660.600–660.604 governing the use of EM.

1. EM Program

NMFS determined that the proposed EM program for Pacific whiting catcher vessels in the shorebased and mothership sectors and fixed gear vessels in the shorebased sector of the groundfish fishery is consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable law because it increases operational flexibility and reduces costs for these vessels, while maintaining the best scientific information available for management. Vessel owners will be able to apply to NMFS to receive an exemption from the 100-percent observer coverage requirement, provided that they use an EM system and follow the catch handling, reporting, and other requirements of the EM program. Vessel owners authorized to use EM would be required to obtain an EM system from a NMFS-permitted service provider, as well as services to install and maintain the EM system, process and store EM data (*i.e.,* video imagery, sensor data, and other associated data files), and report EM summary data and compliance information to NMFS. Vessel owners have the choice of contracting with any NMFS-permitted service provider. Vessel operators would be required to submit a logbook reporting their discards of IFQ species. NMFS would use the logbook data to debit discards of IFQ species from IFQs and cooperative allocations, and use the EM summary data reports to audit the logbook data. EM data would also be used to monitor compliance with the requirements of the catch share program. NMFS' incremental costs to administer the EM program would be recoverable through Trawl Program cost recovery fees. The requirements of the program for vessel owners, operators, first receivers, and service providers, are described in more detail in the proposed rule (81 FR 61161; September 6, 2016) and are not repeated here.

According to NMFS' analysis, EM may save some shorebased whiting vessels as much as $27,777 a year on monitoring relative to human observers. Mothership catcher vessels and fixed gear vessels may save up to $5,900 and $7,575 annually, respectively. These savings would be expected to increase net revenues and improve profitability for these vessels, and the fishery overall, consistent with the goals and objectives of the FMP. EM would also increase operational flexibility for groundfish vessels by providing them the option to choose the tool that best suits their individual operations. For some vessels, EM may be preferable because it does not require accommodating or coordinating with an observer, particularly in small or remote ports where an observer may not be readily available. In this way, EM also reduces the logistical burden and adverse economic impacts of the 100-percent at-sea monitoring requirements on these vessels and their communities, consistent with National Standard 8 of the MSA.

The EM program maintains high quality information on discards of IFQ species for management decisions, while minimizing the costs of data collection requirements, consistent with National Standards 2 and 7 of the MSA. The EM program would continue to provide estimates of discards of IFQ species, which is necessary for maintaining accountability for total mortality of these species, as well as individual IFQ allocations. While EM cannot collect all the information collected by human observers, NMFS and the Council have made every effort to ensure consistent protocols between the human observer and EM programs, to ensure comparable quality, and allow their integration for management. To ensure that the EM Program continues to provide NMFS with the best scientific information available for management, NMFS and the Council have also established strict performance standards in the regulations for EM units, vessels, and providers. In addition, NMFS intends to maintain some level of NMFS' West Coast Groundfish Observer Program coverage on EM trips to continue to collect biological and other information that EM cannot collect. NMFS and the Council have also established retention rules that minimize the mortality of bycatch to the extent practicable consistent with National Standard 9 of the MSA, by allowing discarding of those species that can be identified on camera.

NMFS received some public comments expressing concern that the cost of EM data services (*i.e.,* video review, storage, and reporting) beginning in 2020 (now 2021) would undercut the cost savings of EM and requesting delay of these requirements to a later rulemaking. As NMFS addresses further in the response to these comments, EM is not a viable alternative to observers to meet the 100-percent at-sea monitoring requirement of the catch share program without analysis of the EM data and submission of reports to NMFS. Without these elements, the EM Program would not meet the goals and objectives of the Trawl Rationalization Program and, consequently, the Pacific Coast Groundfish FMP. NMFS understands the industry's concerns about the costs of monitoring overall and has committed to working with the Council to continue to find ways to improve the cost savings of the EM program, such as by reducing the amount of video reviewed to prepare EM summary reports, and the length of time that industry must store its EM data (specifically the video data), while still ensuring that the EM Program provides an appropriate alternative to observers. In addition, as explained in response to comment 2 below, NMFS has paid for EM video review and storage under the EM Exempted Fishing Permit (EFP) program, which has been testing camera systems and EM video data review protocols, and intends to continue to do so through 2020, subject to available appropriations. However, NMFS cannot commit to providing funds beyond 2020, because NMFS' funding is uncertain and subject to Congressional appropriations. To do so would also be inconsistent with NMFS' national Policy on Electronic Technologies and Fishery-Dependent Data Collection in which NMFS stated that it would not approve any EM program that created an unfunded cost of implementation or operation. For these reasons, NMFS determined that the data services requirements for EM vessels in this final rule are consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

2. Catch Retention Requirements

Through this final rule, NMFS is implementing a clarified definition of ''maximized retention'' for whiting vessels for the purposes of the EM program (see 50 CFR 660.604(p)(1)). Under the clarified definition, the following discards would be permitted on whiting trips as ''minor operational discards'': Mutilated fish, large animals (longer than 6 feet (1.8 meters) in length), fish inadvertently spilled from the codend during transfer to the mothership, damaged or mutilated fish picked from the gear or washed from the deck during cleaning, and fish vented from an overfull codend. Discards of invertebrates, trash, and debris, and discard events outside the control of the vessel operator would also be allowed. Minor operational discards would not include discards as a result from taking more catch than is necessary to fill the hold (a.k.a. ''topping off''), which would

continue to be prohibited. Minor operational discards would also not include discards of fish from a tow that was not delivered. This occurs when there is not enough catch worth delivering to a mothership or not of the desired species composition, sometimes called ''test tows'' or ''water tows.'' This clarified definition was not included in the version of the regulations deemed by the Council because the need for clarification occurred after deeming, so NMFS proposed the revised definition in the proposed rule as a technical change needed for clarity. NMFS specifically requested comment on this proposed definition but did not receive any comments opposing this revised definition.

NMFS determined this definition in the final regulations is necessary to implement the program because it minimizes discards in the whiting EM program, reduces uncertainty in the species composition of discards, and ensures data produced through the program is the best scientific information available for management. These discards are currently allowed if first sampled by an observer, but in an EM program, an observer would no longer be on board to sample the catch before discarding. In addition, as no catch from the haul would be delivered to either a mothership or a plant, there would be no species composition to extrapolate to the discarded weight. Because these tows can sometimes include overfished or endangered species, these discards will be prohibited under the EM program.

The proposal to clarify the definition of minor operational discards is also supported by the apparent failure of many of the whiting vessels participating in the EM EFP program to comply with the EFP discard requirements over the past year, resulting in a troubling increase in discards under the EFP. Through this final rule, NMFS is providing additional examples of allowable and prohibited discards to further clarify the definition. Additional examples of allowable discards include discards for verifiable safety reasons; opening a blow-out panel because the net is otherwise too large to bring up the stern ramp; on mothership (MS)/catcher vessel (CV) trips, loss of fish forward of where the codend is tied-off for transfer to the mothership; net bleeds/venting of overfull codend that is outside the vessel operator's control; damaged or mutilated fish picked from the gear or washed from the deck during cleaning up to 1,000 lb per haul; and discards due to mechanical failure (but not including failure of a catch sensor). Additional examples of prohibited discards include: A portion of a haul is retained and the remainder is discarded because there is not enough room in the hold; discard when more catch is taken than is necessary to fill the hold due to failure of a catch sensor; discarding the remainder of a haul by flushing the codend; large amounts of fish hosed off the deck, out the scuppers, or down the stern ramp, after a portion of the haul is retained. Thus, discarding an entire haul or discarding for marketability reasons, including discards of small fish, would also be prohibited. Whiting vessels may also not selectively discard non-whiting species (*e.g.,* rockfish, salmon) other than large marine organisms.

To assist vessel captains and crew with complying with the clarified definition, NMFS will provide further guidance in a compliance guide, EM program guidance documents, and the mandatory captain training. NMFS intends to continue to work with EM participants as appropriate to address any issues that may arise related to discard rules.

Through this final rule, NMFS is also implementing ''optimized retention'' for fixed gear vessels. Optimized retention was the Council's preferred alternative and would allow vessels to discard any species that could be differentiated on camera, except for salmon. NMFS requested comment on both maximized and optimized retention options in the proposed rule. NMFS received one public comment in favor of optimized retention for fixed gear vessels. As detailed further in the Comments and Responses section, The Nature Conservancy supported optimized retention for fixed gear vessels, because it was being practiced with success in the EM EFP program and would be more consistent with traditional operations and less disruptive to continue under the regulations.

NMFS agrees and is implementing the Council's preferred optimized retention for fixed gear vessels in this final rule, because it is more consistent with traditional fishing practices than maximized retention and therefore less burdensome for fixed gear vessels. Optimized retention is also consistent with the protocols used in the 2016–2018 EFP program and would be less confusing for EM vessels to maintain. In addition, updated data from the 2016 and 2017 EFPs in the final EA shows that optimized retention would not substantially increase uncertainty in catch estimates, because fixed gear trips continue to have low bycatch and discards. For these reasons, NMFS determined that optimized retention for fixed gear vessels is consistent with the goals and objectives of the FMP to minimize the burden of management requirements while providing the best scientific information available, as well as National Standards 2, 7, and 8 of the MSA. Allowing the discard of bycatch species that can be identified on camera would also minimize mortality of bycatch to the extent practicable, consistent with MSA National Standard 9.

NMFS revised the final regulations at § 660.604(p)(2) to reflect optimized retention accordingly. The proposed regulations contained the more restrictive maximized retention rules, which were deemed by the Council at its April 2016 meeting. NMFS further consulted with the Council at its April 2016 meeting about its intentions to propose and implement the Council's preferred alternative of optimized retention in the final rule, pending public comment and final data from the 2016 EM EFPs to support this alternative. As NMFS has determined that optimized retention is consistent with the Pacific Coast Groundfish FMP, the MSA, and other applicable law, NMFS has revised the final regulations to reflect the Council's preferred alternative.

3. Video Data Retention

EM service providers will be required to maintain EM data and other vessel owner records for a minimum of three years (see § 660.603(m)(6)). This data storage would be part of the data services that a vessel owner receives from its EM service provider. Vessel owners would be responsible for these storage costs, along with the other services rendered by the EM provider, as a condition of the vessel owner's participation in the program. In the proposed rule, NMFS specifically requested comment on the length of time that a vessel owner must store its EM data through its EM provider. NMFS initially recommended a five-year retention period, based on the five-year statute of limitations for violations of the MSA, to ensure that the EM data and other records used to produce summary and compliance reports for NMFS are available to NMFS and authorized officers for inspection to evaluate the providers' and vessels' performance and to effectively administer the EM program and enforce the regulations. As indicated by public comment on the proposed rule and at Council meetings during development of this action, some industry members are concerned about the costs of storing such a large amount of video data, as well as the potential for enforcement personnel or other entities to access it for other purposes. They

would prefer the EM data be destroyed after one year, and only the summary reports resulting from the video review be retained. As a compromise, NMFS proposed and the Council supported a three-year retention period in the draft regulations. However, the Council also recommended that NMFS review this requirement before implementation to determine if it can be reduced. NMFS specifically requested comment on whether a one, three, or five year, retention period is appropriate for EM data.

NMFS received two public comments stating that EM data should only be retained for a few months to one year. The commenters asserted that information of value would be extracted from the EM data in the initial analysis and any additional value of retaining the video further was low. As NMFS discusses further in its response to these comments, at this time NMFS believes that the three-year retention period proposed by the Council and NMFS strikes the right balance between minimizing the costs of the EM program and ensuring that vessel owners' EM data is available to NMFS and its authorized officers to inspect or obtain for review for data quality assurance and compliance and enforcement. NMFS believes that, in the future, a shorter video retention period may be appropriate, once all the protocols have been established to extract the necessary information from the EM data before it is destroyed and the costs and benefits of different retention periods have been weighed by the Council and NMFS. However, at this time, the groundfish EM program is still in its early stages and NMFS and the Council are still developing the video sampling and auditing protocols and timelines. These protocols would factor heavily into NMFS' and the Council's analysis of the costs and benefits of different retention periods. NMFS understands the Council's and industry's concerns regarding the cost of storing EM data (specifically the video data) and the desire to minimize the costs of the EM program. NMFS has committed to working with the Council to evaluate whether shorter retention periods may be feasible in the future, and is in the process of developing a national policy on the minimum time that EM data must be retained. However, at present, NMFS believes that a three-year retention period is necessary to ensure that the EM data is available for NMFS to inspect to evaluate the providers' and vessels' performance and to effectively administer the EM program and enforce the regulations. Therefore, NMFS determined the three-year retention requirement in the proposed regulations is consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

4. Switching Between Observers and EM

NMFS is waiving the limit on the number of times whiting vessels may switch between EM and observers in the same calendar year, because NMFS has determined that it is not necessary for purposes of observer deployment. The regulations implemented through this rule (§ 660.604(m)) limit the number of times whiting vessels may switch between EM and observers, in order to limit disruption to observer deployments. These regulations allow NMFS to waive this requirement, with prior notice, if NMFS determines that it is not necessary for purposes of observer deployment. NMFS has determined that information that will be gathered in the annual application process for EM vessels and the pre-trip declaration to the observer program is all the information that is needed to plan observer deployments at this time. NMFS reserves the right to reinstitute the limit on switching for whiting vessels, with prior notice, should it become necessary. If reinstituted, a whiting vessel would be limited to changing its monitoring declaration twice in the same calendar year. Additional revisions may be made if the EM system has malfunctioned and the vessel operator has chosen to carry an observer; or subsequently, the EM system has been repaired; and upon expiration or invalidation of the vessel's EM Authorization. NMFS requested comment on the two-change limit in the proposed rule but no comments were received.

5. Additional Corrections

NMFS identified a number of corrections and clarifications to the proposed regulations that were needed to clarify the regulations and to achieve the objectives of the FMP. NMFS consulted with the Council on these changes, as allowed by section 304(b)(3) of the MSA, through an exchange of letters dated October 24 and November 5, 2018 and May 23 and 30, 2019.

In 50 CFR 660.604(p)(2), NMFS revised the fixed gear retention rules to be consistent with the Seabird Avoidance Program at 50 CFR 660.21. The proposed regulations required fixed gear vessels to discard seabirds. While this is correct for pot vessels, longline vessels are required by the Seabird Avoidance Program to retain short-tailed albatross carcasses and turn them over to the U.S. Fish and Wildlife Service. Therefore, NMFS has revised the final retention rules for fixed gear vessels to reference and not contradict the requirements of the Seabird Avoidance Program.

In 50 CFR 660.604(e)(3)(iii)(H), NMFS changed the requirement that a vessel monitoring plan (VMP) include measurements for bins and baskets to include other tools, because some species are measured using a length board and length-weight regression rather than volumetric estimates.

NMFS also revised the regulations governing the transmission and handling of EM data throughout 50 CFR 660.603 and 660.604 to reference EM data more generally, rather than hard drives specifically, to allow for other types of technology to be used to transmit EM data in the future (*e.g.,* satellite, WiFi). NMFS discussed this change with the Council at its June 2018 meeting.

In 50 CFR 660.603(b) and 660.604(e), NMFS also revised the renewal procedures for vessel authorizations and provider permits to clarify the effective date and conditions under which authorizations and permits may expire. The proposed regulations were not clear that EM authorizations and provider permits have an expiration date and that vessels and providers must apply to renew them. This is in contrast to VMPs, which will be living documents that are effective unless changed. A renewal requirement for EM Authorizations is necessary for NMFS to maintain up-to-date information on an individual's eligibility to continue to participate in the program. To address EM service providers' desire for stability in planning, NMFS has made EM provider permits effective for two years instead of one.

In 50 CFR 660.603(i), NMFS has removed the requirement for EM providers to maintain insurance coverage under the Jones Act and the U.S. Longshore and Harbor Workers' Compensation Act. NMFS proposed requiring insurance to cover potential claims by EM provider employees under these Acts. However, after further review, NMFS has determined that these Acts do not apply to EM service providers and technicians and, therefore, are unnecessary.

NMFS revised 50 CFR 660.13 to be consistent with changes made to VMS declarations by the final rule that revised trawl gear requirements in the Pacific Coast Groundfish regulations (83 FR 62269, December 3, 2018).

NMFS added definitions for ''EM data'' and ''EM datasets'' and accordingly revised the regulations throughout to clarify the difference

between different types of raw and summary EM data, and different types of EM program records.

NMFS revised 50 CFR 660.603(l) to clarify that EM service providers must provide NMFS information, rather than support, that may be used in litigation and enforcement action, in response to a public comment.

NMFS clarified the terminology used to describe those with the authority to access and obtain EM data and other records, and other technical and litigation information to be consistent in 50 CFR 660.603(l), m(6), and (n)(3), and 660.604(o) and (t).

NMFS revised 50 CFR 660.603(n)(3) in response to a public comment to make clear that a vessel owner or authorized representative may authorize the EM service provider to the release of the vessel owner's EM data.

NMFS revised 50 CFR 660.600(b) and 660.603(b)(1)(vii), (k) and (m), to centralize the defined purpose of the EM program and reduce repetition throughout, and to clarify how the EM Program Guidelines and EM Program Manual will be used to evaluate EM service provider and vessel plans and performance.

NMFS revised the regulations at 50 CFR 660.603(a), (b)(5)(iii), (h)(2), (m), (m)(1), (m)(5)–(6), (n) and (n)(1) to clarify the role of EM service providers in the EM Program as the contracted agents of participating vessel owners.

NMFS revised 50 CFR 660.600(a), 660.603(m), and 660.604(b)(7), to implement third party EM service provider data services (*i.e.,* video review, reporting, and data storage) beginning January 1, 2021, consistent with the updated timeline discussed by the Council at its April 2019 meeting. NMFS proposed the revised timeline, and the Council agreed, to provide additional time to NMFS and the Council to work on the EM program guidelines and to prepare for implementation of third party video review. In addition, NMFS was able to locate funding to support PSMFC to continue to review video from the EM EFP through 2020. Vessels may continue to participate in the EM EFP Program through 2019. The Council is scheduled to renew the EM EFP through 2020 at their September 2019 meeting.

Finally, NMFS made a number of other minor revisions to clarify the prohibitions at 50 CFR 660.602 and to correct typos throughout the regulations.

Comments and Responses

NMFS received a total of four comments on the proposed rule during the public comment period. Letters were received from two environmental organizations, one EM service provider, and one member of the public. One of the same environmental organizations and some members of the fishing industry submitted two additional letters to the NMFS West Coast Regional Administrator and the Council at the April 2017 Council meeting commenting further on the proposed rule. Although these letters were received outside of the public comment period, we have addressed them in this final rule. Four comments generally supported the EM program. One of the comments did not address the proposed measures and thus it is not included here. Where possible, responses to similar comments on the proposed measures have been consolidated.

Comment 1: Environmental Defense Fund (EDF) generally supported implementing the EM program because it would reduce the costs of monitoring.

Response: NMFS agrees with EDF that EM provides a lower-cost option for vessel owners to meet the 100-percent at-sea observer coverage requirements of the catch share program and has approved the EM program for whiting and fixed gear vessels through this final rule. According to the economic analysis, a shorebased whiting vessel may save an estimated $27,777 per year, an MS/CV vessel $5,900 per year, and a fixed gear vessel $7,575 per year, compared to the cost of using an observer. These savings would increase net revenues for these vessels and the fishery overall, consistent with the Council's objectives for the program. The EM program also increases operational flexibility for vessel owners, by providing an alternative to observers for meeting the monitoring requirements of the catch share program. Having the option to use EM or an observer allows vessel owners to choose the tool that is the most cost effective and suitable for their individual operation. Although the cost savings relative to observers may be smaller for some vessels, some vessel owners may choose to use EM in order to avoid carrying another person onboard, or because it gives them the flexibility to depart on trips without carrying an observer, which may not be available at the desired time, particularly in some remote ports. NMFS finds that the EM program reduces the burden from the 100-percent at-sea monitoring requirement of the catch share program and increases profitability and flexibility for participating vessels, and it is consistent with the goals and objectives of the FMP, the MSA, and other applicable laws.

Comment 2: The Nature Conservancy (TNC) and a letter from groundfish industry representatives, consisting of the California Groundfish Collective, Oregon Trawl Commission, Fort Bragg Groundfish Association, Half Moon Bay Groundfish Marketing Association, Morro Bay Community Quota Fund, the EM Fixed Gear EFP, and an individual commercial fisherman, supported implementing EM as a lower-cost monitoring option, but opposed requiring industry to procure video review, data storage, and reporting services from third party service providers in this rulemaking and instead requested these requirements be postponed to a later rulemaking. TNC and the California Groundfish Collective et al. commented that requiring industry to bear these costs now would undercut the cost-savings of EM and should be delayed until the costs of the program requirements can be reduced and/or industry is able to find a way to defray the costs of the program, such as by securing rights to access and sell their EM data. They noted that for bottom trawl vessels EM is approximately equal to the cost of observers and EM only provides a small amount of savings for fixed gear vessels. The California Groundfish Collective et al. want to defer third party video review to maintain Pacific States Marine Fisheries Commission (PSMFC) as a video reviewer, because they believe it is less costly than a private sector service provider.

Response: NMFS disagrees with the commenters about delaying requirements to a later rulemaking. As NMFS has previously stated in discussions on this issue at the September and November 2015 and April 2016 Council meetings, excluding requirements for participants to procure video review, data storage, and reporting services from this rulemaking would not be consistent with the goals and objectives of the Trawl Rationalization Program and the Pacific Coast Groundfish FMP and, therefore, is not a reasonable alternative. A vessel's raw EM data (*e.g.* imagery, sensor data, and other associated data files) cannot be used by NMFS for catch accounting. Without the required analysis and reporting, the EM data would not be a usable substitute for observer data and the EM Program would not be an equivalent alternative to human observers for meeting the 100-percent at-sea monitoring requirements of the catch share program. Therefore, the requirement for participants to procure services to analyze the vessel's EM data and report EM summary data to NMFS

cannot be severed and postponed to a separate rulemaking.

Furthermore, NMFS has determined that a vessel owner that chooses EM in lieu of a human observer must be responsible for the cost of processing of his or her EM data and delivery of summary data to NMFS. NMFS has paid these costs under the EM EFP program, which has been testing camera systems and EM video data review protocols, and intends to continue to do so through 2020. Thereafter, vessel owners who choose to participate in the EM program will be responsible for paying for analysis and storage of their EM data and for delivery of the vessel owner's summary data to NMFS. NMFS would continue to pay for its costs to administer components of the EM program, including the agency's review of any EM data selected for secondary evaluation or compliance and enforcement purposes, and the storage costs of any EM data that NMFS obtains and makes part of its records for these purposes. NMFS cannot commit to providing funds to pay for the industry's portion of the video review and storage beyond 2020 because NMFS funding is uncertain and subject to Congressional appropriation and to do so would be inconsistent with NMFS' own Policy on Electronic Technologies and Fishery Dependent Data Collection. As NMFS has stated at Council meetings on this issue, and in the preamble to the proposed rule and this final rule, the analysis and storage of the vessel owner's EM data is the vessel owner's responsibility. Industry-funded, third party video review is needed beginning in 2021 if the program is to continue and provide a viable alternative to observers. As with the observer and catch monitor programs, when appropriations were available NMFS provided funds to assist with testing cameras and protocols. However, after the EM funds are expended in 2020, industry must assume its share of the EM program costs as it did with observer and catch monitor costs in 2015. Therefore, NMFS determined that the requirements for third-party data services in this final rule are consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

Regarding the modest savings for some vessels, the EM program is not a panacea for all fishing operations. As has been shown by NMFS' cost analyses, the amount of savings relative to using observers is largely driven by the number of days fished due to the high initial fixed costs of EM. Vessels fishing more sea days see a greater savings from EM because the fixed costs of equipment, installation, and field services are spread among more sea days, creating a lower average sea day rate. For vessels that fish comparatively few sea days, EM has high initial and annual costs that may not be worth the investment and using an observer may actually be cheaper. However, as described in the response to Comment 1, EM can provide substantial cost savings for some vessels, even after NMFS' funding has ended. For those vessels for whom cost savings are marginal, EM may provide other benefits that may make it preferable to an observer, such as flexibility in scheduling trips and not having to accommodate another person onboard. Although EM may not be the most cost effective option for everyone, NMFS believes this should not preclude making an EM option available for those it may benefit. For these operations, the EM program is consistent with the objectives of the FMP and the MSA, to increase flexibility, minimize costs, and avoid adverse economic impacts from monitoring requirements. In addition, NMFS and the Council are continuing to work to identify ways to reduce the costs of the EM program to increase benefits for all participants, such as by reducing the amount of video reviewed and stored. Therefore, NMFS determined the EM program recommended by the Council is consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

Finally, with respect to delaying the regulations in order to maintain PSMFC as a video reviewer, NMFS stated to the Council in its supplemental NMFS report at the September 2017 Council meeting that PSMFC may obtain a permit as a third party EM service provider from NMFS, same as any other third party provider through the regulations. The regulations do not preclude PSMFC from continuing to conduct video review on industry's behalf after 2020 and, therefore, no change or delay to the regulations is needed.

Comment 3: TNC and the California Groundfish Collective et al. further commented that the final rule should be delayed because the economic analysis underestimated the cost of the program to the fleet and did not analyze a significant alternative, which would have considered deferring requirements for industry to procure third party video review services until confidentiality requirements could be revised to allow industry to sell their EM data. They stated that the economic analysis failed to account for costs that NMFS would continue to perform after the program transitions to industry-funded, third party video review and the cost of scientific observer coverage that NMFS intends to maintain on EM trips, which may be passed on to harvesters through cost recovery fees. The California Groundfish Collective et al. commented that the economic analysis was based on PSMFC's costs, a quasi-government, non-profit entity, which are not representative of and likely underestimate the costs of private sector service providers. They further argued that private sector, third party provider costs cannot be estimated because some components of the program, such as sampling rates, remain unspecified. TNC also asserted that the economic analysis should have evaluated the affordability of EM and observers relative to vessel revenues, rather than simply comparing the costs of the two options.

Response: NMFS believes the commenters are misunderstanding the assumptions used in the economic analysis. Contrary to the commenters' assertions, the analysis did include NMFS' costs to administer the program once it transitions to third party video review and the amount of this cost that would be expected to be recovered from industry through cost recovery fees. Pages 8–10 of the draft RIR/IRFA and final RIR/FRFA describe NMFS' anticipated duties and costs when the program transitions to third party video review, including a table on page 10 that shows the expected change in cost recovery fees as a result—no change for the shorebased sector, which is already at the 3-percent limit allowed by the MSA, and an increase of approximately 0.02-percent for the mothership sector. The estimated change to the cost recovery fee for the mothership sector was not included in the estimated EM sea day rate used to compare to the observer sea day rate in earlier tables, which may be the source of confusion. The change to the cost recovery fee was not included in the estimated EM sea day rate, because the portion of the cost recovery fee from NMFS' costs to administer the observer program are not included in the observer sea day rate and so including it in the EM sea day rate would not have been appropriate for comparison.

The cost to NMFS for maintaining scientific observer coverage on EM trips was not included in the estimated costs of the EM program, because NMFS intends to cover these costs itself as it did prior to the beginning of the Trawl Program. This is consistent with NMFS' policy of not recovering the portion of its costs for administering the catch share observer program that corresponds to the level of coverage NMFS provided

to the fleet prior to the beginning of the Trawl Program.

Regarding third party service provider costs, NMFS disagrees that the economic analysis does not capture the likely costs to industry from third party video review services. NMFS made estimates of these costs based on the actual costs of the EM EFP program since 2015, which are summarized as the video review and data storage costs in tables on pages 7 and 8 of the RIR/FRFA and Table 17 in the final EA (available at *regulations.gov,* see **ADDRESSES**). Although it is not known what exact fees third party providers will charge for these services, NMFS used various assumptions in the economic analysis to provide an estimate of these costs to industry based on the best scientific information available. While private sector service providers may charge higher fees than PSMFC, the economic analysis also contained conservative assumptions about the amount of video that would need to be reviewed and stored. These conservative assumptions were necessary to capture the range of potential sampling rates, and resulting costs, for video review and data storage to industry. For example, NMFS' analysis assumed that 100 percent of EM data would be reviewed and stored. This level of review and storage is not expected to continue into the future as the program transitions to the logbook audit model, so these costs were likely an overestimate of the actual costs to industry. Although PSMFC may be able to carry out these duties at a lower cost than a private sector service provider, private sector providers will likely be conducting the video review and storage at lower rates once a logbook audit protocol is implemented. NMFS also assumed that EM units would need to be replaced every 3 years, rather than 5 or 10 years as has been seen in some programs, likely overestimating the annual, amortized equipment costs. Therefore, NMFS anticipates that even if it has underestimated the overhead costs or video review costs charged by providers, the total costs estimated have captured the total costs of the program to industry.

NMFS disagrees with the commenters that the economic analysis was deficient because it did not examine the affordability of monitoring relative to vessel revenues for different components of the fishery. NMFS believes that the commenters have misunderstood the purpose of the action, which was to evaluate making EM an option for meeting monitoring requirements of the catch share program, compared to observers. The objective of the action was not to revisit the requirement for 100-percent at-sea observer coverage and whether it is affordable or justifiable; a decision that was analyzed and made in Amendment 20. Therefore, it would not have been appropriate to analyze the affordability of the EM and observer programs, relative to less or no monitoring, because those are not alternatives under consideration in this action. Instead, NMFS' analysis compared the cost and other aspects of EM relative to observers, because this action is offering a choice between the two and the decision for NMFS and the Council is whether having a choice is of greater benefit than not having a choice. In addition, TNC's analysis focused in part on differences in revenues for bottom trawl vessels depending on target species, because NMFS' economic analysis included bottom trawl vessels. However, EM for bottom trawl vessels is not part of this rulemaking, but will be considered in a separate rulemaking. NMFS' economic analysis included bottom trawl vessels for purposes of apportioning those costs from the EM EFP program to each gear type for the analysis. NMFS has added language to the final RIR/FRFA to clarify this point.

NMFS disagrees that deferring industry-funded, third party video review to a later rulemaking is a significant alternative that should have been analyzed in the RIR/IRFA. See response to Comment 2 for a detailed explanation. With regard to vessel owner access to EM data, see response to Comment 4.

Comment 4: TNC commented that the requirement for EM service providers to maintain the confidentiality of the EM data was too restrictive and would not allow EM vessels to extract additional economic value from the EM data that might be used to offset the costs of the EM program. TNC requested that NMFS revise the proposed regulations at § 660.603(n)(3) to explicitly allow vessel owners to have rights to control access to their EM data.

Response: Proposed § 660.603(n)(3) was not intended to affect vessel owners' ability to access or authorize release of EM data collected on board their vessels or other related records. NMFS considers EM data and related records that a vessel owner stores with its EM service provider as owned by the vessel owner. In response to comments, NMFS has revised § 660.603(n)(3) to clarify that an EM service provider and its employees may release a vessel's EM data and related records to other persons if authorized by the vessel owner or their authorized representative. Note that vessel owners' rights with respect to their data does not affect the authority of NMFS or its authorized officers to obtain EM data or other records directly from an EM service provider for the purposes specified in the regulations. See §§ 660.603(m)(6), (n)(3). EM data and records that NMFS receives from the EM service provider will be handled consistent with section 402(b) of the MSA, the Federal Records Act (FRA), the Freedom of Information Act (FOIA), and other applicable law. EM data that NMFS does not receive from the EM data provider are not records for purposes of the FRA or FOIA.

NMFS has also made other minor edits to simplify or clarify the text, including deleting the phrase ''consistent with the MSA.'' NMFS has concluded that the rule overall is consistent with the MSA; it is not necessary to reiterate that in a subparagraph of the regulatory text.

Comment 5: Two commenters commented that the length that EM data (specifically video data) must be retained by the EM service provider should be shorter than 3 years. An EM service provider commented that EM datasets should not be retained for more than a few months, except where compliance issues are identified, due to the costs of archiving large video datasets. He further stated that the data of interest is the fishery activities which are already extracted from the initial video review. He cited the Canadian EM program as an example, where datasets are generally deleted about a month after they are processed unless a compliance issue is identified, in which case the full video is turned over to the government. EDF commented that the video imagery should be held for one year, because the catch data extracted from the video review will be held permanently and the need to review past imagery is likely low. EDF further commented that the standards for record retention should not be higher than for vessels carrying observers, or for vessels in other fisheries.

Response: NMFS disagrees with the commenters that the EM data should be held for a few months to one year at this time. It is not reasonable to compare the current groundfish EM program to the Canadian EM program where protocols are well established and the program has demonstrated performance over many years. The current groundfish EM program is in its early stages and not all the protocols and associated timelines have been established. NMFS and the Council are still developing sampling protocols for the video review that would be expected to influence how much video would need to be archived

and for how long. For example, at this time, PSMFC is only reviewing video imagery from gear retrievals during which time most discarding occurs and only reviews other parts of the video ad-hoc, such as when compliance issues are suspected. This additional review may not occur until after the end of the season. In some cases, errors may be found or video review protocols may be changed, that would require reviewers to re-review parts of video already analyzed. The costs and benefits of the retention period must take into account the sampling schemes developed for the video review and NMFS and the Council must weigh the risks and uncertainty introduced by deleting video that has not been reviewed. NMFS understands the cost burden of this requirement to industry and has committed to work with the Council to evaluate shorter retention periods. The cost of storing video data is a problem facing all EM programs, and NMFS has made it a priority to develop a national policy for the minimal retention of EM data (especially the video imagery) by service providers. NMFS agrees that in the future, it may be possible to delete the EM data more quickly after the review once protocols are well established and the costs and benefits of different retention periods have been weighed and looks forward to working with the Council and other stakeholders on developing options. At this time, NMFS believes that a retention period of three years is necessary to ensure that EM data is available for inspection for NMFS to evaluate providers' and vessels' performance and to effectively administer the EM program and enforce the regulations.

NMFS also believes a three-year retention period is necessary to preserve NMFS' ability to establish a national policy for minimum video data retention. NMFS is currently developing a draft national policy for retention of video imagery from EM programs, which is expected to be finalized in the next year or two. It is important that video imagery from the groundfish EM program not be deleted before NMFS can finalize this policy. If the final policy is different from the three year retention period in this final rule, NMFS intends to revise the groundfish regulations to be consistent with the final national policy through a proposed and final rulemaking at that time.

Comment 6: An EM service provider commented on the proposed requirement for EM service providers to provide support to NMFS, free of charge to NMFS (see § 660.603(l)). The EM service provider commented that such a blanket, open-ended requirement would be impossible to manage or budget and difficult to recoup through fees charged to industry and, therefore, unfair to the EM service providers. The EM service provider also stated that the potential costs of this requirement were not addressed in the economic impacts analysis and that this was a major oversight. The EM service provider stated that NMFS should instead pay for service requests.

Response: EM service providers will provide services to vessel owners with whom they have contracts. In addition, though, EM service providers need to have permits from NMFS. As a condition of their permits, NMFS clarifies in the final rule at § 660.603(l) that, upon request, EM service providers must provide information—not litigation support—to the agency regarding their EM systems and related data issues. NMFS may use such information for litigation, including enforcement cases. As a condition of their permits, EM service providers will be required to respond to and remedy technical issues identified by NMFS, such as recovery of corrupt data, and provide NMFS software to view and analyze the EM data to evaluate providers' and vessels' performance and to effectively administer the EM program and enforce the regulations. Vessels participating in the fishery using EM, and their contracted EM service providers, gain a benefit from the EM program. Therefore, it is reasonable for NMFS to require EM service providers to provide NMFS with information, respond to issues NMFS identifies with vessels' EM systems and data, and to provide NMFS with the proprietary tools to evaluate that data, at no additional expense to NMFS. NMFS maintains similar requirements in the regulations for vessel monitoring system (VMS) service providers (see § 600.1508).

NMFS did estimate the cost and time burden to providers from these requirements as part of the Paperwork Reduction Act (PRA) package that accompanied this rule, which was summarized in the Classification section of the proposed rule and this final rule. As part of estimating the burden of reporting and recordkeeping requirements of the proposed regulations, NMFS estimated that each service provider would receive no more than 10 requests from NMFS each year for the information listed in § 660.603(l). The largest time burden would be associated with responding to inquiries from NMFS following-up on data summaries, analyses, reports, and operational issues with vessel representatives. Most inquiries would be short phone conversations to quality assure/quality check trip data at approximately 15 minutes per trip. Some trips may require more extensive inquiries if an EM system malfunction or compliance issue occurred, potentially up to 25 hours. Assuming 90 percent of trips require some follow-up at 15 minutes per trip and 10 percent of trips require more extensive investigation (25 hours/trip) results in a total annual burden of 4,778 hours ((175 trips $\times$ 25 hours/trip) + (1,575 trips $\times$ 15 minutes/trip)). This information was summarized in the Classification section of the preamble to the proposed rule and again in this final rule. These costs were also assumed to be included in the field services and data services costs for third party service providers in the RIR/FRFA, which were based on the number of such inquiries seen in the EM EFP program to which service providers and PSMFC have responded.

Comment 7: One commenter commented on the level of video review specified in the proposed regulations at § 660.603(m)(1). EDF commented that more detail was needed on the conditions under which the review rate would be reduced in order to provide guidance to industry and service providers and incentives for industry to comply. EDF also commented that the 100-percent review rate and 50-percent audit rate used in the analysis was too high and the costs outweighed any benefits from this level of review.

Response: NMFS believes the commenter may be misunderstanding the purpose of the 100-percent review rate and 50-percent audit rate in the economic analysis. The regulations at § 660.603(m)(1) specify that the EM service provider must conduct the video review according to a sampling scheme established by NMFS but does not provide a specific rate in the regulations. As the commenter noted, it is important to maintain flexibility in the regulations, given that the audit rate may change over time based on program and fleet performance, to ensure that the EM program continues to provide the best scientific information available for catch accounting and monitoring compliance. NMFS used a 100-percent review rate in the analysis only to provide a high-end estimate of a potential range of costs to the industry. Although PSMFC, on behalf of NMFS, is reviewing 100 percent of the fishing activity at this time, NMFS is working with the Council to develop an alternate review rate with the objective of auditing the logbooks, which would be the primary source of discard information, that would be based on fleet performance. NMFS does not

anticipate requiring EM service providers to review 100 percent of the video all the time, but this number was simply provided to capture the highest possible cost of video review for the purpose of analysis. Similarly, NMFS anticipates its rate of review to audit the provider's review, *i.e.,* the EM summary reports, would be less than 50 percent. NMFS used 50 percent in the analysis because sometimes NMFS may need to review additional video from some providers, more than the standard audit rate, such as if an error is discovered that affects multiple vessels or trips. Therefore, 50 percent was only intended as a high-end estimate of the range of potential costs to industry and is likely an overestimate of actual audit costs.

Comment 8: The Nature Conservancy commented in support of optimized retention rules for fixed gear vessels, because fixed gear vessels have been fishing under optimized retention in the EFP and to return to maximized retention now would be confusing for captains and crew. Optimized retention is less disruptive to fishing operations because it is what captains and crew are used to doing when an observer is onboard. Maximized retention would require vessels to change practices and update their vessel monitoring plans. Optimized retention rules were developed collaboratively with industry in the EFP and not implementing them would undermine confidence in the EFP process. Optimized retention has worked well in the EFPs and provides more flexibility to vessels and the Council to adapt the program over time.

Response: NMFS agrees and has implemented optimized retention for fixed gear vessels in this final rule. The proposed regulations contained maximized retention, although optimized retention was the Council's final preferred alternative, because EFP data on optimized retention was not available at the time of the Council's final action in April 2016. However, NMFS also proposed and solicited comment on optimized retention in the preamble to the proposed rule in order to enable us to implement optimized retention in the final rule, if supported by updated EFP results. This approach was discussed with and approved by the Council at its April 2016 meeting.

Optimized retention is consistent with what has been practiced in the EFP since 2016 and would be less disruptive to captains and crew to maintain. In addition, it would provide maximum flexibility in vessel operations and allow captains and crew to maintain operations more closely between trips with EM and trips with observers. Optimized retention has been practiced successfully in the EFP and would not undermine data quality relative to maximized retention protocols, as shown in updated information in the final EA. Optimized retention would also minimize discard mortality, by minimizing the amount of catch that must be retained. In this way, optimized retention best meets the Council's objectives for this action to provide flexibility and reduce monitoring costs to the fleet while maintaining data quality and accountability. Therefore, NMFS determined that optimized retention for fixed gear vessels in this final rule is consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

Comment 9: EDF commented in support of the halibut discard mortality rate (DMR) method in the rule for whiting and fixed gear vessels, but commented that a different approach is needed for bottom trawl trips, where Pacific halibut is encountered more frequently and can constrain fishing for target species caught with it.

Response: NMFS agrees that the halibut DMRs are appropriate for whiting and fixed gear and has approved this measure in the final rule. The DMRs in use in the EM program have been approved by the International Pacific Halibut Commission (IPHC) and represent the best available scientific information for estimating mortality in these fleets. NMFS, the IPHC, and Council have been working on alternative methods for estimating mortality in the bottom trawl fleet, which were implemented in 2018 in the EFPs and will be addressed in a separate rulemaking for EM regulations for bottom trawl and non-whiting midwater trawl vessels.

Comment 10: EDF commented that NMFS should put EM information, such as forms, applications, etc. online on the vessel account system website where vessels already access their personal account information.

Response: NMFS agrees and intends to post links to applications forms, etc. on its website along with its other permit applications. Currently, the vessel account system presents information to the user on IFQ account balances, etc., but does not allow the user to upload documentation, as in the case of signed applications or Vessel Monitoring Plans. NMFS is interested in moving to online forms for all its permit renewals and will include EM forms if it does. NMFS is in the process of developing an online system for vessel owners to review their EM summary and compliance reports and plans to make this available to EM vessels as soon as possible.

Changes From the Proposed Rule

NMFS has made the following changes from the proposed rule. NMFS revised the regulations to incorporate optimized retention for fixed gear vessels (see Item 2 in the preamble). NMFS also revised the fixed gear retention regulations at § 660.604(p)(2) to be consistent with the Seabird Avoidance Program (see Item 5 in the preamble). NMFS also clarified the regulations governing VMPs and submission and handling of EM data to use more general language that would encompass a range of tools that may be used. NMFS also clarified the regulations governing EM service provider and EM vessel owner applications to make clear under what circumstances EM certifications expire and must be renewed (see Item 5 of the preamble). NMFS removed the requirement for EM service providers to have insurance for potential claims filed by their employees under the Jones Act and the U.S. Longshore and Harbor Workers' Compensation Act, because we determined that these acts do not apply to EM providers. Finally, NMFS made a number of other minor clarifications to the regulations in the final rule, as described in Item 5.

Classification

The Administrator, West Coast Region, has determined that the approved measures in this final rule are consistent with the Pacific Coast Groundfish FMP, MSA, and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

As discussed below in the FRFA, this rule is anticipated to result in cost savings and is a deregulatory action under E.O. 13771.

This final rule does not contain policies with federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS prepared a FRFA under section 603 of the Regulatory Flexibility Act (RFA), which incorporates the initial regulatory flexibility analysis (IRFA). A summary of any 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 below. NMFS also prepared an RIR for this action. A copy of the RIR and FRFA are available from NMFS (see **ADDRESSES**), and per the requirements of 5 U.S.C. 604(a), the text of the FRFA follows:

Final Regulatory Flexibility Analysis

As applicable, section 604 of the RFA requires an agency to prepare a FRFA after being required by that section or any other law to publish a general notice of proposed rulemaking and when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code. The following paragraphs constitute the FRFA for this action.

This FRFA incorporates the IRFA, a summary of any significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. Analytical requirements for the FRFA are described in the RFA, section 604(a)(1) through (6). FRFAs contain:

1. A statement of the need for, and objectives of, the rule;

2. A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;

4. A description and an estimate of the number of small entities to which the rule will apply, or an explanation of why no such estimate is available;

5. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and

6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

The ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (*e.g.,* user group, gear type, geographic area), that segment will be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objective of This Final Rule

A description of the reasons why this action is being taken, and the objectives of and legal basis for this final rule, is contained in the preambles to the proposed rule and this final rule and is not repeated here.

Summary of Significant Issues Raised in Public Comments

NMFS published the proposed rule on September 6, 2016 (81 FR 61161). An IRFA was prepared and summarized in the Classification section of the preamble to the proposed rule. The comment period on the proposed rule ended on October 6, 2016. NMFS received 6 comment letters on the proposed rule. Two comments raised significant issues with respect to the economic analysis, asserting that NMFS' analysis was deficient because it did not consider a significant alternative and did not include some future costs. The Chief Counsel for Advocacy of the SBA did not file any comments on the IRFA or the proposed rule. NMFS' response to all comments received on the proposed rule, including those that raised significant issues or commented on the economic analyses summarized in the IRFA can be found in the ''Comments and Responses'' section of this rule and is not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

This regulatory amendment impacts mainly commercial harvesting entities engaged in the groundfish limited entry trawl fishery. Although this action proposes an EM program for only two components of the limited entry trawl fishery—the Pacific whiting fishery and the fixed gear shorebased IFQ fishery—any limited entry trawl vessel may participate in these components, provided they comply with its requirements, and therefore may be eligible to use EM. In addition, vessels deploying EM are likely to be a subset of the overall trawl fleet, as some vessels would likely choose to continue to use observers. However, as all trawl vessels could potentially use EM in the future, this IRFA analyzes impacts to the entire trawl fleet.

A general description of the limited entry trawl fishery and catch share program is contained in the preamble to this section. Most recent permit information indicates that there are approximately 175 limited entry trawl permits. According to information from the Northwest Fishery Science Center Economic Data Collection Program, in 2014, the fourth year of the catch share program, there were 102 catcher vessels that participated in the West Coast Groundfish Trawl Catch Share program. Catcher vessels generated $85 million in income and 954 jobs from deliveries of fish caught in the catch share program. Catcher vessels spent an average of 62 days fishing in the catch share program and spent an average of 80 additional days fishing in non-catch share fisheries. West Coast catcher vessels deliver to ports in Washington, Oregon, California, and at-sea; the two ports with the highest landings in 2014 were Astoria and Newport, both in Oregon. An average of 2.4 crew members worked aboard each West Coast catcher vessel, each earning an average compensation of $54,500. In 2014, 31 percent of vessels were owner-operated at least part of the year. The average ex-vessel revenue per vessel from participation in the catch share program was $646,000. Average variable cost net revenue (ex-vessel revenue minus variable costs) per vessel was $256,000 from participation in the catch share program, and the fleet-wide variable cost net revenue was $26.2 million. Average total cost net revenue (ex-vessel revenue minus variable costs and fixed costs) per vessel was $127,000 and the fleet-wide total cost net revenue was $12.9 million (Northwest Fisheries Science Center (NWFSC), 2014; *http://www.pcouncil.org/wp-content/uploads/2016/06/G5b_NMFS_Rpt4_MS_ElecVer_JUN2016BB.pdf*). It should be noted that some industry members have questioned the results of economic data collection (EDC) data which is based on cost-earnings surveys where all participants are required to respond to. However, NMFS' NWFSC economists conduct extensive QA/QC of the data and it represents the best available scientific information on costs in the fishery.

With respect to monitoring costs, the NWFSC 2014 EDC report states the following: ''One other change resulting from the implementation of the catch share program was a shift to 100% observer coverage with partial industry funding. Prior to catch shares, there was approximately 20% observer coverage, paid for by NMFS'' (page 16 of the

report *https://www.nwfsc.noaa.gov/research/divisions/fram/documents/EDC_Catcher_Vessel_Report_October_2016.pdf*). The report noted that in order to lessen the cost of transitioning to the required 100-percent observer coverage, catcher vessels received a maximum of $328.50 per day in 2011 and 2012, $256 per day in 2013, $216 per day in 2014, and $108 per day in 2015 with NMFS funding ending in 2015. Catcher vessels spent on average $14,400 on observer coverage (excluding the NMFS funding) while operating in the catch share program in 2014. Note that in 2011, observer costs represented 0.6 percent of total vessel operational costs, and this increased to 2.8 percent in 2014. Currently the industry is paying about $500 per day for observers.

This rule would apply to those entities that elect to use EM in lieu of observers. In 2015, a total of 36 vessels participated in the EM EFP program. This total includes 20 vessels that participated in the Pacific whiting fishery (11 that participated in both the shorebased and mothership sectors, 9 that fished only in mothership) and 7 fixed gear vessels. This is likely an underestimate of the number of vessels that would use EM in the future. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. For for-hire fishing and fish processing entities, the Small Business Administration (SBA) defines a small business as one that is: Independently owned and operated; not dominant in its field of operation; has annual receipts not in excess of $7.0 million in the case of for-hire fishing entities; or if it has fewer than 500 employees in the case of fish processors, or 100 employees in the case of fish dealers. When applying for their permits, entities were asked to classify themselves as a small business based on the finfish standard of $20.5 million. Only 5 indicated that they were ''large'' businesses and thus would continue to be large businesses under the $11.0 million standard. In 2015, ex-vessel revenues for all west coast fisheries for the remaining vessels ranged from $1,000 to $1.4 million. In 2014, ''other fisheries revenue'' collected on these vessels ranged from $0 to $5.0 million. Based on these ranges, NMFS concludes that the remaining vessels would be considered ''small'' even after factoring in the possibility of the vessels participating in Alaska fisheries.

Impacts of the Action on Small Entities

This action allows vessels in the groundfish fishery to use EM in place of observers, and the no action alternative, which would not create an EM option. The proposed regulatory amendment also considered several sub-options for design elements within the preferred alternative, which are described in the accompanying EA and summarized in the preamble to the proposed rule and are not repeated here. This final rule implements the Council's preferred alternative as originally proposed.

This final rule is presenting a choice to fishermen—they can either continue to pay for 100-percent observer coverage or elect to pay for EM (*i.e.,* equipment, maintenance, and video review). Using 2015 EFP cost estimates developed jointly by PSMFC and NMFS, NMFS developed a model for assessing the vessel, fleet, and government costs from the preferred alternative. The results indicate economic impacts on small entities from the preferred alternative would be positive as these entities would have a choice between hiring an observer and using EM. The current cost of an observer is approximately $500 per day. Presumably, vessel owners would choose between using an observer or EM based on relative costs and operational flexibility. NMFS estimates indicate fixed gear vessels will save approximately $98 per day, mothership catcher vessels $159 per day, and shoreside vessels $330, using EM. Vessels that participated in the EFPs already own EM systems (most whiting vessels and approximately half of the fixed gear vessels), so they may see a greater cost savings compared to new entrants, until such time that the cameras need to be replaced. Annual vessel estimates show fixed gear and mothership catcher vessels saving $3,000 to $4,000 and shoreside whiting vessels saving $24,000 per year, relative to the cost of observers. Annual fleet estimates show similar results.

In addition to the direct costs of the program, vessel owners would be responsible for reimbursing NMFS for its incremental costs for administering the EM program. NMFS collects cost recovery fees to cover the incremental costs of management, data collection, and enforcement of the trawl rationalization program. Fees are limited to a maximum of 3 percent of ex-vessel revenues. NMFS' incremental costs for administering the shorebased sector already exceed 3 percent, so the shorebased sector would not be likely to see a change in fees from the preferred alternative in the short term. The mothership sector fees are currently below 3 percent of ex-vessel revenue, so NMFS would be able to recover this sector's portion of EM program costs by increasing the fees.

As mentioned in the preamble to this final rulethe, NMFS intends to fund PSMFC to conduct the video review through 2020, contingent on available funding, while the standards and protocols for third party service providers are developed. The requirement for industry to fund the video review would take effect in 2021. When video review responsibilities shift to third party providers, NMFS' responsibilities would be reduced to oversight and quality assurance, which may include auditing the service providers' video review results. To conservatively estimate government costs and corresponding fee increases, NMFS assumes that service providers would review 100 percent of the video and that NMFS would audit 50 percent of the video. Government costs include video review and storage costs for trips that NMFS reviewed as part of its audit or for enforcement purposes, as well as program management costs, statistician costs, database management, and overhead. With the full transition in 2021, NMFS estimates the government costs would be approximately $286,000 per year. Under current fee rates, only the portion of the costs related to the mothership catcher vessel fleet would be recouped by the cost recovery fee, which would result in an increase of 0.02 percent. NMFS estimates that compared to the costs of observers, the preferred alternative would still present a lower cost option for whiting and fixed gear vessels.

Under Alternative 2, seven sub-options were developed to address various aspects of program design. These sub-options are summarized in the preamble to the proposed rule. Generally speaking, the Council's sub-options would either have no effect on the overall cost of the program (sub-options A2, D1, E1), reduce the cost of the program (sub-options E1, B1), or provide industry additional flexibility (sub-options C2, F1, G1-Fixed Gear, G2-Whiting).

Measures Proposed To Mitigate Adverse Economic Impacts of the Final Rule

There are no significant alternatives to the final rule that would accomplish the stated objectives and that minimize any significant economic impact of the final

rule on small entities. Alternatives that were considered and rejected, and the reason the Council or NMFS rejected them, are summarized in Section 3.3 of the EA. The other sub-options considered, and the reasons the Council and NMFS did not propose them, are summarized in the preamble to the proposed rule. As fishermen would be given a choice between two alternative monitoring systems (observers versus EM), this rule is likely to have positive effects on small entities. NMFS believes that the preferred alternative for this rule would not have a significant impact when comparing small versus large businesses in terms of disproportionality and profitability given available information. These regulations are likely toreduce fishing costs for both small and large businesses. Nonetheless, NMFS has prepared this FRFA. The final rule and alternatives are described in detail in the Council's regulatory amendment and the accompanying EA and RIR/IRFA, and the preamble to the proposed rule (see **ADDRESSES**).

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements

The final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement will be submitted to OMB for approval. The final rule does not duplicate, overlap, or conflict with any other Federal rules.

This final rule adjusts notification requirements for groundfish vessels using EM and first receivers receiving catch from EM trips. Vessels will now be required to declare the type of monitoring they will use on a given trip—observer or EM. This change is necessary to provide vessels the flexibility to switch between different types of monitoring, depending on what is most cost effective and efficient for their operation at that time, while allowing NMFS to track which fleets vessels are participating in. This change would only add additional potential answers to an existing question and not affect the number of entities required to comply with the declaration requirement (OMB Control Number 0648–0573). Therefore, this change is not be expected to increase the time or cost burden associated with this requirement. Similarly, the requirement for EM vessels to notify the observer program before each trip would be in place of the existing notification to an individual vessel's observer provider when using a catch share observer, and is not expected to increase the time or cost burden associated with the existing notification requirements approved under OMB Control Number 0648–0593. The requirement for first receivers to report protected and prohibited species landings was previously approved under OMB Control Number 0648–0619 and this action is not expected to change the time or cost burden or number of entities associated with this requirement.

This final rule also requires vessel owners to submit an application to NMFS to be approved to use EM in place of an observer. This application includes an application form, the purchase or lease and installation of an EM system, a VMP, and attendance of a mandatory training session. The time burden associated with these requirements is estimated to be approximately 10 hours per vessel owner to prepare and submit the application package, install the EM system, and attend training. The training would be given via webinar to maximize convenience and minimize travel costs for vessel captains. The cost of an EM system and installation is estimated at $12,000 per vessel. Approximately half the active vessels in the fleet have already received EM units through their participation in the EFPs and would not need to purchase a new unit to participate in the program. Vessel owners would likely have to purchase new EM units every 5–10 years, depending on the life of the equipment. Vessel owners would also be responsible for maintaining the EM units in good working order, likely through a service contract with a NMFS-permitted EM service provider. NMFS estimates the annual average cost burden per vessel from this requirement to be approximately $5,600.

If denied an EM Authorization, vessel owners would be able to appeal NMFS' decision through the existing appeal process at § 660.25(g). NMFS estimates the time burden associated with preparing and submitting an appeal to be approximately 4 hours per entity, with a cost of $3.00 for copies and postage. Vessel owners would be able to make modifications to their VMPs during the year by submitting a request and amended VMP to NMFS. These requests would be made electronically via email and, therefore, would not be expected to have a cost burden associated with them. NMFS estimates the time burden associated with this requirement from preparing and submitting the request to be 0.5 hours per request per entity.

Vessel owners would be required to renew their EM authorization annually. This is necessary to ensure that the vessel owners' contact information, VMPs, and fishing plans remain up to date. Industry participants raised concerns with the time burden associated with having to complete the application process each year, as was proposed in an earlier draft of the regulations. To address these concerns, NMFS is proposing to instead provide vessel owners with pre-filled renewal forms and their current VMPs to review and certify as correct in a simplified renewal process. NMFS estimates a time burden of approximately 0.5 hours per entity to review and return the pre-filled package.

Vessel operators would be required to complete and submit a logbook for each trip, with an estimated time burden of 10 minutes per submission. The logbooks are provided by NMFS and state agencies, so the cost of requirement mainly derives from postage at $0.46 per submission. To eliminate duplication, NMFS would allow vessel operators to submit a state logbook that contains all the required information. Vessel operators would also be required to submit the EM data to the vessels' EM service providers using a method that provides a return receipt. This is necessary for NMFS and vessel operators to be able to track submissions. This requirement has an average cost of $15.00 per submission and a time burden of 10 min to retrieve and package the hard drive for mailing.

EM service providers would be required to apply to receive a permit from NMFS to provide EM services for vessels. EM service providers would be required to submit an application to NMFS that includes an application form, an EM Service Plan that describes how they plan to provide services, and statements of prior experience and qualifications. If requested, the EM service provider may also be required to provide NMFS copies of contracts with vessel owners and standard operating procedures and manuals describing their operations in more detail. In an earlier draft of the regulations, NMFS proposed requirements very similar to those for observer service providers, with minimal requirements for the provider and NMFS training and certifying individual observers. However, at the November 2015 Council meeting EM service providers commented that different service providers may have different models and that the observer model is not appropriate for EM services providers. Some EM service providers may employ less highly trained analysts to initially review video and a biologist to verify species identification, whereas another service provider may employ highly

trained biologists to do it all. They recommended that the regulations provide more flexibility for different business models. This final rule contains an expanded application process, incorporating an EM Service Plan, to provide the flexibility that service providers seek. The addition of an EM Service Plan allows NMFS to consider different business models proposed by different providers as meeting the EM program requirements. However, this requires EM service providers to prepare and submit a detailed service plan and other documents, in order to provide NMFS with sufficient information to evaluate them. NMFS estimates the time and cost burden associated with preparing and submitting the permit application to be 47 hours and $30 (for copies and postage). Most likely much of this information would be submitted electronically. If requested by NMFS, EM service providers would be required to provide NMFS two EM units and two copies of any software for EM data analysis for a minimum of 90 days for evaluation. Due to their use by NMFS, the value of the EM units may depreciate and the EM service providers may not be able to resell the EM units for their full value. NMFS estimates the EM providers would be able to recoup 50 percent of the EM unit value at approximately $5,000 per unit. This results in a total cost associated with this requirement at $10,215 per provider (including $215 in materials and postage to send the equipment to NMFS).

An EM service provider would be able to appeal a permit decision to NMFS following the procedures at § 660.19. NMFS estimates the time and cost burden of preparing and submitting an appeal to be 4 hours and $5 per entity. EM service providers would be able to make modifications to their EM Service Plans during the year by submitting a request and amended EM Service Plan to NMFS via email (2 hours per submission). EM service providers would be required to renew their permits annually. At the April 2016 Council meeting, EM service providers requested a longer effective period to provide more stability for planning for future fishing years. In response to that request, this final rule contains an abbreviated renewal process in which NMFS would provide pre-filled renewal forms and the current EM Service Plan for the EM service provider to review and certify. This would reduce the time burden for EM service providers, while ensuring NMFS has up-to-date information. NMFS has also revised the final regulations to make provider permits effective for 2 years. NMFS estimates the annual time and cost burden of the renewal to be 1 hour and $5 per entity.

EM service providers would be responsible for providing technical assistance and maintenance services to their contracted EM vessels. EM service providers would be required to provide technical support to vessels at sea, with an annual time burden of approximately 7 hours per entity. Under the terms of their permit, EM service providers and their employees would also be required to report instances of non-compliance by vessel owners and intimidation or harassment of EM technicians to NMFS. The estimated burden for reporting these events is 30 minutes per report (18 hours per entity per year). Employees of EM service providers have to respond to inquiries by NMFS staff or authorized officers on technical or compliance issues with an estimated burden of 1 hour per trip (350 hours per entity per year).

On behalf of their contracted vessels, EM service providers would also be responsible for reviewing vessels' videos from trips, preparing and submitting vessels' catch data and compliance reports to NMFS, and providing feedback to vessel operators on their catch handling, camera views, etc. NMFS would prepare burden estimates for these requirements for OMB approval and public comment through a **Federal Register** notice in 2020 or earlier.

Public reporting burden for these requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the West Coast Regional Office (see **ADDRESSES**), and the guide will be included in a public notice sent to all members of the groundfish email group. To sign-up for the groundfish email group, click on the ''subscribe'' link on the following website: *http://www.westcoast.fisheries.noaa.gov/publications/fishery_management/groundfish/public_notices/recent_public_notices.html.* The guide and this final rule will also be available on the West Coast Region's website (see **ADDRESSES**) and upon request.

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 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

Pursuant to Executive Order 13175, this rule was developed after meaningful collaboration with tribal officials from the area covered by the FMP. Under the MSA at 16 U.S.C. 1852(b)(5), one of the voting members of the 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: June 18, 2019.

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 § 660.13, revise paragraph (d)(4)(ii) through (iv) to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(4) * * *

(ii) A declaration report will be valid until another declaration report revising the existing gear, monitoring, or fishery, declaration is received by NMFS OLE. The vessel operator must send a new declaration report before leaving port on a trip that meets one of the following criteria:

(A) A gear type that is different from the gear type most recently declared for the vessel will be used, or

(B) A monitoring type that is different from the monitoring type most recently declared for the vessel will be used, or

(C) A vessel will fish in a fishery other than the fishery most recently declared.

(iii) During the period of time that a vessel has a valid declaration report on file with NMFS OLE, it cannot fish with a gear and monitoring type other than a gear type and monitoring type declared by the vessel or fish in a fishery other than the fishery most recently declared.

(iv) Declaration reports will include: The vessel name and/or identification number, gear type, and monitoring type where applicable, (as defined in paragraph (d)(5)(iv)(A) of this section). Upon receipt of a declaration report, NMFS will provide a confirmation code or receipt to confirm that a valid declaration report was received for the vessel. Retention of the confirmation code or receipt to verify that a valid declaration report was filed and the declaration requirement was met is the responsibility of the vessel owner or operator. Vessels using nontrawl gear may declare more than one gear type with the exception of vessels participating in the Shorebased IFQ Program (*i.e.* gear switching), however, vessels using trawl gear may only declare one of the trawl gear types listed in paragraph (d)(5)(iv)(A) of this section on any trip and may not declare nontrawl gear on the same trip in which trawl gear is declared.

(A) One of the following gear types or sectors, and monitoring type where applicable, must be declared:

(*1*) Limited entry fixed gear, not including shorebased IFQ,

(*2*) Limited entry groundfish non-trawl, shorebased IFQ, observer,

(*3*) Limited entry groundfish non-trawl, shorebased IFQ, electronic monitoring,

(*4*) Limited entry midwater trawl, non-whiting shorebased IFQ,

(*5*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, observer,

(*6*) Limited entry midwater trawl, Pacific whiting shorebased IFQ, electronic monitoring,

(*7*) Limited entry midwater trawl, Pacific whiting catcher/processor sector,

(*8*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership), observer,

(*9*) Limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel), electronic monitoring,

(*10*) Limited entry bottom trawl, shorebased IFQ, not including demersal trawl,

(*11*) Limited entry demersal trawl, shorebased IFQ,

(*12*) Non-groundfish trawl gear for pink shrimp,

(*13*) Non-groundfish trawl gear for ridgeback prawn,

(*14*) Non-groundfish trawl gear for California halibut,

(*15*) Non-groundfish trawl gear for sea cucumber,

(*16*) Open access longline gear for groundfish,

(*17*) Open access Pacific halibut longline gear,

(*18*) Open access groundfish trap or pot gear,

(*19*) Open access Dungeness crab trap or pot gear,

(*20*) Open access prawn trap or pot gear,

(*21*) Open access sheephead trap or pot gear,

(*22*) Open access line gear for groundfish,

(*23*) Open access HMS line gear,

(*24*) Open access salmon troll gear,

(*25*) Open access California Halibut line gear,

(*26*) Open access Coastal Pelagic Species net gear,

(*27*) Other gear,

(*28*) Tribal trawl, or

(*29*) Open access California gillnet complex gear.

* * * * *

■ 3. In § 660.19, revise paragraph (a) 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), 660.160(g), 660.603(b)(3) for catch monitor decertification, observer decertification, provider permit expirations due to inactivity, and EM service provider permit denials. 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.''

* * * * *

■ 4. In § 660.130, revise paragraphs (d)(2)(ii) and (d)(3)(ii) to read as follows:

§ 660.130 Trawl fishery—management measures.

* * * * *

(d) * * *

(2) * * *

(ii) *Catcher vessels.* All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those engaged in maximized retention while declared into a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch, unless otherwise allowed under the EM Program requirements at § 660.604 of subpart J. Prohibited species must be sorted according to the following species groups: Dungeness crab, Pacific halibut, Chinook salmon, other salmon. Non-groundfish species must be sorted as required by the state of landing.

(3) * * *

(ii) If sorting occurs on a catcher vessel in the MS Co-op Program, the catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch, or unless otherwise allowed under the EM Program requirements at § 660.604 of subpart J.

* * * * *

■ 5. In § 660.140, revise paragraph (g)(1) and add paragraph (h)(1)(i)(A)(*4*) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(g) * * *

(1) *General.* Shorebased IFQ Program vessels may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. With the exception of vessels on a declared Pacific whiting IFQ trip and engaged in maximized retention, and vessels fishing under a valid EM Authorization in accordance with § 660.604 of subpart J, prohibited and protected species must be discarded at sea; Pacific halibut must be discarded as soon as practicable and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-IFQ species and non-groundfish species may be discarded at sea, unless otherwise required by EM Program requirements at § 660.604 of subpart J. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer or EM system.

* * * * *

(h) * * *

(1) * * *

(i) * * *

(A) * * *

(*4*) Is exempt from the requirement to carry an observer if the vessel has a

valid EM Authorization and is fishing with EM under § 660.604 of subpart J.
* * * * *

■ 6. In § 660.150, revise paragraphs (i) and (j)(1)(i)(B) to read as follows:

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

(i) *Retention requirements.* Catcher vessels participating in the MS Co-op Program may discard minor operational amounts of catch at sea if the observer or EMS has accounted for the discard (*i.e.,* a maximized retention fishery).

(j) * * *

(1) * * *

(i) * * *

(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, unless the catcher vessel has a valid EM Authorization and is fishing with EM under § 660.604 of subpart J.
* * * * *

■ 7. Add subpart J to part 660 read as follows:

Subpart J—West Coast Groundfish Electronic Monitoring Program

Sec.
660.600 Applicability.
660.601 Definitions.
660.602 Prohibitions.
660.603 Electronic monitoring provider permits and responsibilities.
660.604 Vessel and first receiver responsibilities.

Subpart J—West Coast Groundfish Electronic Monitoring Program

§ 660.600 Applicability.

(a) *General.* This subpart contains requirements for vessels using EM in lieu of observers, as authorized under § 660.140(h)(1)(i) (Shorebased IFQ Program) and § 660.150(j)(1)(i) (MS Co-op Program), and requirements for EM service providers. Vessel owners, operators, and managers are jointly and severally liable for a vessel's compliance with EM requirements under this subpart. This subpart also contains requirements for a first receiver receiving catch from a trip monitored by EM (*see* § 660.604(u)). The table below provides references to the sections that contain vessel owner, operator, first receiver, and service provider responsibilities.

West coast groundfish fishery	Section
(1) Limited entry trawl fishery:	
(i) Vessel owners	660.604
(ii) Vessel operators	660.604
(iii) First receivers	660.604
(iv) Service providers	660.603
(2) [Reserved].	

(b) *EM program purpose.* The purpose of the EM program is to provide NMFS with the best scientific information available to determine individual accountability for catch (including discards) of IFQ species and compliance with requirements of the Shorebased IFQ Program (§ 660.140) and MS Co-op Program (§ 660.150). NMFS will develop EM Program Guidelines, which will document best practices and other information that NMFS will use to evaluate proposed service and vessel monitoring plans submitted by EM service providers and vessel owners under this subpart, and to evaluate the performance of EM service providers and vessels, in meeting the requirements of this subpart to achieve the purpose of the EM program. NMFS will develop the EM Program Guidelines in consultation with the Council and publish notice of their availability in the **Federal Register**. NMFS will maintain the EM Program Guidelines on its website and make them available to vessel owners and operators and EM service providers to assist in developing service plans and vessel monitoring plans that comply with the requirements of this subpart and meet the purpose of the EM program.

§ 660.601 Definitions.

These definitions are specific to this subpart. General groundfish definitions are found at § 660.11, subpart C, and trawl fishery definitions are found at § 660.111, subpart D.

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

Discard control point means the location on the vessel designated by a vessel operator where allowable discarding may occur.

Discard event means a single occurrence of discarding of fish or other species.

Electronic Monitoring or *EM* consists of the use of an electronic monitoring system (EMS) to passively monitor fishing operations through observing or tracking.

Electronic Monitoring Authorization means the official document provided by NMFS that allows a vessel with a limited entry trawl permit to use electronic monitoring under the provisions of this subpart.

Electronic Monitoring System Certification Form means the official document provided by NMFS, signed by a representative of a NMFS-permitted electronic monitoring service provider that attest that an EM system and associated equipment meets the performance standards defined at § 660.604(j) of this subpart, as required by § 660.604(e)(3)(i).

EM data means the information output of the Electronic Monitoring System (*e.g.,* imagery, sensor data, and other associated data files).

EM dataset means a collection of EM data from a single EM trip or group of EM trips.

EM data processing means the review, interpretation, and analysis of EM data and associated meta data.

EM Program means the Electronic Monitoring Program of the West Coast Region, National Marine Fisheries Service.

EM Service Plan means the document required under § 660.603 that describes in detail how the EM service provider will provide EM services.

EM service provider means any person, including their employees or agents, that is granted a permit by NMFS to provide EM services for vessels as required under § 660.603 and § 660.604.

Electronic Monitoring System or *EMS* means a data collection tool that uses a software operating system connected to an assortment of electronic components, including video recorders, to create a collection of data on vessel activities.

EM technician means an employee of the EM service provider that provides support for EM systems and technical assistance.

EM trip means any fishing trip for which electronic monitoring is the declared monitoring type.

Initial Administrative Determination (IAD) means a formal, written determination made by NMFS on an application or permit request that is subject to an appeal within NMFS.

Non-trawl shorebased IFQ vessel means a vessel on a declared limited entry groundfish non-trawl, shorebased IFQ trip.

Pacific whiting fishery refers to the Pacific whiting primary season fisheries described at § 660.131. The Pacific whiting fishery is composed of vessels participating in the C/P Co-op Program, the MS Co-op Program, or the Pacific whiting IFQ fishery.

Pacific whiting IFQ fishery is composed of vessels on Pacific whiting IFQ trips.

Pacific whiting IFQ trip means a trip in which a vessel uses midwater groundfish trawl gear during the dates of the Pacific whiting primary season to target Pacific whiting, and Pacific

whiting constitutes 50 percent or more of the catch by weight at landing as reported on the state landing receipt. Vessels on Pacific whiting IFQ trips must have a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ.

Shorebased IFQ Program or *Shorebased IFQ sector,* refers to the fishery described at § 660.140, subpart D, and includes all vessels on IFQ trips.

Vessel Monitoring Plan (*VMP*) means the document that describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the performance standards and purpose of the EM Program.

§ 660.602 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to:

(a) *Electronic monitoring program.*— (1) Make a false or inaccurate/incorrect statement on an application for issuance, renewal, or changes to an EM Authorization or NMFS-accepted VMP.

(2) Fish for or land fish from a trip without electronic monitoring or observer coverage when a vessel is required to carry electronic monitoring or an observer under §§ 660.140(h) or 660.150(j).

(3) Fish for or land fish from a trip taken under electronic monitoring without a valid EM Authorization and NMFS-accepted vessel monitoring plan onboard, and a valid gear and monitoring declaration with NMFS OLE as required by § 660.604(c)(1) and § 660.604(m).

(4) Fail to comply with the terms of a NMFS-accepted VMP.

(5) Fail to notify the NMFS West Coast Groundfish Observer Program at least 48-hours prior to departing port of the vessel operator's intent to take a trip under EM, as required by § 660.604(n).

(6) Fail to conduct a pre-departure test of the EM system prior to departing port as required by § 660.604(l)(2).

(7) Fish on an EM trip without a fully functional EM system, unless authorized by a NMFS-accepted VMP as required by § 660.604(l)(3).

(8) Fail to make the EM system, associated equipment, logbooks, EM data, and other records available for inspection immediately upon request by NMFS, its agent, or authorized officers, as required by §§ 660.604(o) and 660.604(t).

(9) Discard species other than those allowed to be discarded as specified at § 660.604(p).

(10) Fail to handle fish and other marine organisms in a manner that enables the EM system to record it as required by § 660.604(r).

(11) Fail to submit complete and accurate logbook(s) and EM data for each EM trip as specified at § 660.604(s),

(12) Tamper with, disconnect, damage, destroy, alter, or in any way distort, render useless, inoperative, ineffective, or inaccurate any component of the EM system or associated equipment.

(13) Assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with an EM service provider, EM field services staff, or EM data processing staff.

(14) Interfere with or bias the sampling procedure employed by EM data processing staff including either mechanically or manually sorting or discarding catch outside of camera view or inconsistent with the NMFS-accepted VMP.

(15) Fail to meet the vessel owner or operator responsibilities specified in section 660.604.

(16) Fail to meet the first receiver responsibilities specified at § 660.604(u).

(17) Fail to meet the EM service provider responsibilities specified in section § 660.603.

(18) Fish without an observer when a vessel is required to carry an observer under subpart J 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 § 660.604(n);

(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 § 660.604(n);

(19) Fail to meet the vessel responsibilities and observer coverage requirements specified at § 660.604(n).

(b) [Reserved]

§ 660.603 Electronic monitoring provider permits and responsibilities.

(a) *General.* This section contains requirements for EM service providers providing EM services, pursuant to contracts with vessel owners whose vessels operate in the Shorebased IFQ Program (§ 660.140) or the MS Co-op Program (§ 660.150) and use EM under this subpart. A person must obtain a permit and endorsement as provided under § 660.603(b) in order to be an EM service provider. An EM service provider must:

(1) Operate under a NMFS-accepted EM Service Plan (*see* § 660.603(b)(3)(vii)).

(2) Provide and manage EM systems, field services, and technical assistance as required under § 660.603(k);

(3) Provide technical and litigation information to NMFS or its agent (*see* § 660.603(l)).

(4) Provide technical support to contracted fishing vessels 24-hours per day, seven days per week, and year-round as provided under § 660.603(k)(4);

(5) Provide EM data processing, reporting, and record retention services to contracted vessels using EM (*see* § 660.603(m)).

(6) Comply with data integrity and security requirements, including requirements pertaining to hard drives and data files containing EM data, (*see* § 660.603(n)).

(b) *Provider permits.* To be an EM service provider, a person must obtain an EM service provider permit and endorsement by submitting an application to the NMFS West Coast Region Fisheries Permit Office. A person may meet some requirements of this section through a partnership or subcontract with another entity, in which case the application for an EM service provider permit must include information about the partnership. An applicant may submit an application at any time. If a new EM service provider, or an existing EM service provider seeking to deploy a new EMS or software version, submits an application by June 1, NMFS will issue a new permit by January 1 of the following calendar year. Applications submitted after June 1 will be processed as soon as practicable. NMFS will only process complete applications. Additional endorsements to provide observer or catch monitor services may be obtained under § 660.18.

(1) *Contents of provider application.* To be considered for an EM service provider permit and endorsement, the service provider must submit a complete application that includes the following information. The same information must be included for any partners or subcontractors if the applicant intends to satisfy any of the EM service provider requirements through a partnership or contractual relationship with another entity.

(i) Certify that the applicant meets the following eligibility criteria:

(A) The EM service provider and its employees do not have a conflict of interest as defined at § 660.603(h), and,

(B) The EM service provider is willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted EM Service Plan.

(ii) Applicant's contact information.

(iii) Legal name of applicant organization. If the applicant organization is a United States business

entity, include the state registration number.

(iv) 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.

(v) A narrative statement describing prior relevant experience in providing EM services, technical support, or fishery data analysis services, including recruiting, hiring, training, deploying, and managing of individuals in marine work environments and of individuals working with fishery data, in the groundfish fishery or other fisheries of similar scale.

(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 § 660.603(h),

(B) Criminal convictions,

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

(D) Any previous history of decertification or permit sanction action while working as an observer, catch monitor, observer provider, catch monitor provider, or electronic monitoring provider.

(vii) *EM Service Plan.* An EM Service Plan that describes in detail how the applicant will provide EM services for vessels. To ensure that the EM Program achieves its purpose, NMFS will develop EM Program Guidelines (*see* § 660.600(b)) and use them to evaluate proposed EM Service Plans. NMFS may consider alternative, but equivalent, methods proposed by EM service providers and vessel owners in their plans to meet the requirements of this subpart, if they achieve the purpose of the EM program. An EM Service Plan must include descriptions of the following (using pictures and diagrams where appropriate):

(A) Contact information for a primary point of contact for program operations inseason;

(B) A plan for provision of services including communications, service locations, response timelines, and procedures for services, repairs, technical support, and other program services;

(C) Procedures for hiring and training of competent program staff to carry out EM field services and data services, including procedures to maintain the skills of EM data processing staff in:

(*1*) Use of data processing software;

(*2*) Species identification;

(*3*) Fate determination and metadata reporting requirements;

(*4*) Data processing procedures;

(*5*) Data tracking; and,

(*6*) Reporting and data upload procedures.

(D) Procedures for tracking hard drives and/or data files throughout their use cycle, including procedures to ensure the integrity and security of hard drives or data files in transit, and for removing EM data from hard drives or other medium before returning them to the field;

(E) Procedures for data processing, including tracking of EM datasets throughout their processing cycle and documenting any access and modifications;

(F) Procedures for correction and resubmission of EM summary data reports and other reports that NMFS has determined are not of sufficient quality to meet the purpose of the EM program, as described at § 660.603(m)(5), and to ensure that future reports are sufficient for use by NMFS.

(G) Policies on data access, handling, and release to prevent unauthorized disclosure of EM data and other records specified in this section by the EM provider as required under § 660.603(n);

(H) Procedures for retention of records as required under § 660.603(m)(6);

(I) Identifying characteristics of the EMS to be deployed and the video review software to be used in the fishery, including but not limited to: Manufacturer, brand name, model name, model number, software version and date, firmware version number and date, hardware version number and date, monitor/terminal number and date, pressure sensor model number and date, drum rotation sensor model number and date, and GPS model number and date.

(J) EM system and software specifications, including a narrative statement describing how the EM system and associated equipment meets the performance standards at § 660.604(j).

(K) EM video review software specifications, including a narrative statement describing how the software meets the EM Program Guidelines and will provide NMFS with data to achieve the purpose of the EM Program as defined at § 660.600(b).

(viii) Provide NMFS the following, if requested:

(A) Two EM system units loaded with software for a minimum of 90 calendar days for testing and evaluation.

(B) Thorough documentation for the EM system, including: User manuals, any necessary interfacing software, performance specifications, technical support information, and tamperproof or tamper evident features.

(C) The results of at-sea trials of the EM system.

(D) Two copies of video review and analysis software for a minimum of 90 calendar days for testing and evaluation.

(E) Thorough documentation for the video review and analysis software, including: User manuals, performance specifications, and technical support information.

(F) Descriptions of database models and analysis procedures for EM data and associated meta data to produce required reports.

(2) *Application evaluation.* NMFS may request additional information or revisions from the applicant until NMFS is satisfied that the application is complete. Complete applications will be forwarded to the EM Program for review and evaluation by the EM provider permit review board. 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. NMFS will evaluate the application based on the EM Program Guidelines (*see* § 660.600(b)) and the following criteria:

(i) The applicant's relevant experience and qualifications;

(ii) Review of any conflict of interest as described in § 660.603(h);

(iii) Review of any criminal convictions;

(iv) Review of the proposed EM Service Plan, including evaluation of EM equipment and software;

(v) Satisfactory performance ratings on any federal contracts held by the applicant;

(vi) Review of any history of decertification or permit sanction as an observer, catch monitor, observer provider, catch monitor provider, or EM service provider; and,

(vii) Review of any performance history as an EM service provider.

(3) *Agency determination on an application.* Based on a complete application, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an initial administrative determination (IAD). If the application is approved, the IAD will serve as the EM service

provider's permit and endorsement. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at § 660.19.

(4) *Effective dates.* The provider permit is valid from the effective date identified on the permit until the permit expiration date of December 31 of the following year. Provider permit holders must renew biennially by following the renewal process specified in paragraph (f) of this section.

(5) *Expiration of the provider permit.*—(i) *Expiration due to inactivity.* After a period of 24 continuous months during which no EM services are provided 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 the permit expiration date, whichever is earlier.

(ii) *Expiration due to failure to renew.* Failure to renew biennially will result in expiration of the provider permit and endorsements on the permit expiration date.

(iii) *Invalidation due to lapse in eligibility.* NMFS may invalidate an EM service provider permit if NMFS determines that the EM service provider no longer meets the eligibility criteria defined at paragraph (b)(1)(i) of this section. NMFS will first notify the EM service provider of the deficiencies in writing and the EM service provider must correct the deficiencies following the instructions provided. If the deficiencies are not resolved upon review of the first trip following the notification, NMFS will notify the EM service provider in writing that the provider permit is invalid and that the EM service provider is no longer eligible to provide EM services for vessels for the remainder of that calendar year. The EM service provider may reapply for an EM service provider permit and endorsement for the following calendar year.

(iv) *Obtaining a new permit or endorsement following an expiration or invalidated permit.* A person holding an expired or invalidated permit or endorsement may reapply for a new provider permit or endorsement at any time consistent with paragraph (b) of this section.

(c) *Changes to a NMFS-accepted EM Service Plan.* An EM service provider may make changes to a NMFS-accepted EM Service Plan by submitting a revised plan or plan addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A plan addendum must contain:

(1) The date and the name and signature of an authorized agent of the EM service provider;

(2) Address, telephone number, fax number and email address of the person submitting the addendum;

(3) A complete description of the proposed EM Service Plan change.

(d) *Change of provider permit ownership and transfer restrictions.* If an EM service provider changes ownership during the term of an EM service provider permit, the new owner must apply for a new provider permit.

(e) *Provider permit sanctions.* Procedures governing sanctions of permits are found at subpart D of 15 CFR part 904.

(f) *Renewing a provider permit.* To maintain a valid provider permit, provider permit holders must reapply biennially prior to the permit expiration date. NMFS will mail a provider permit application form to existing permit holders on or about July 15 of the year that the permit is due to expire. 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 September 1. If a provider fails to renew the provider permit, the provider permit and endorsements will expire on the permit expiration date.

(g) *Fees.* NMFS may charge a fee to cover administrative expenses related to issuance of permits including initial issuance, renewal, replacement, and appeals.

(h) *Limitations on conflict of interest for providers and employees.*—(1) EM service providers and their employees must not have a direct financial interest, other than the provision of observer, catch monitor, EM, or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

(i) 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;

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

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

(2) EM service providers and their employees must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, employment, 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 provider's contractual duties.

(3) The EM service provider may not employ any person to handle hard drives or EM data from a vessel by which the person was previously employed in the last two years.

(4) Provisions of contracts or agreements for remuneration of EM services under this section do not constitute a conflict of interest.

(i) *Insurance.* The EM service provider must maintain sufficient commercial liability insurance to cover bodily injury and property damage caused by their employees while on a contracted vessel and State Worker's Compensation insurance. The EM service provider shall provide copies of these insurance policies to the vessel owner, operator, or vessel manager, when requested.

(j) *Warranties.* None of the provisions of this section are intended to preclude any state or federal statutes or regulations governing warranties.

(k) *Field and technical support services.* The EM service provider must provide and manage EM systems, installation, maintenance and technical support, as described below and according to a NMFS-accepted EM Service Plan, which is required under § 660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at § 660.600(b).

(1) At the time of installation, the EM service provider must:

(i) Install an EM system that meets the performance standards under § 660.604(j);

(ii) Ensure that the EM system is set up, wires run, system powered, and tested with the vessel in operation;

(iii) Brief the vessel operator on system operation, maintenance, and procedures to follow for technical support or field service;

(iv) Provide necessary information for the vessel operator to complete the VMP, such as images and diagrams of camera views and vessel layout, specific information about system settings, and designated discard control points; and,

(v) Complete an EM System Certification Form for the vessel owner.

(2) The EM service provider must communicate with vessel operators and NMFS to coordinate service needs, resolve specific program issues, and provide feedback on program operations.

(3) The EM service provider must provide maintenance and support services, including maintaining an EM equipment inventory, such that all deployed EM systems perform according to the performance standards at § 660.604(j) and that field service events are scheduled and carried out with minimal delays or disruptions to fishing activities.

(4) The EM service provider must provide technical assistance to vessels, upon request, in EM system operation, the diagnosis of the cause of malfunctions, and assistance in resolving any malfunctions. Technical support must be available 24-hours per day, seven days per week, and year-round.

(5) The EM service provider must submit to NMFS reports of requests for technical assistance from vessels, including when the call or visit was made, the nature of the issue, and how it was resolved.

(l) *Technical assistance and litigation information.* As a requirement of its permit, the EM service provider must provide the following to NMFS or authorized officers, upon request.

(1) Assistance in EM system operation, diagnosing and resolving technical issues, and recovering corrupted or lost data.

(2) Responses to inquiries related to data summaries, analyses, reports, and operational issues with vessel representatives.

(3) Technical and expert information, if the EM system/data are being admitted as evidence in a court of law. All technical aspects of a NMFS-approved EM system may be analyzed in court for, inter alia, testing procedures, error rates, peer review, technical processes and general industry acceptance. To substantiate the EM system data and address issues raised in litigation, an EM service provider must provide information, including but not limited to:

(i) If the technologies have previously been subject to such scrutiny in a court of law, a brief summary of the litigation and any court findings on the reliability of the technology.

(ii) [Reserved]

(4) All software necessary for accessing, viewing, and interpreting the data generated by the EM system, including maintenance releases to correct errors in the software or enhance the functionality of the software.

(5) Notification NMFS within 24 hours after the EM service provider becomes aware of the following:

(i) Any information, allegations, or reports regarding possible harassment of EM provider staff;

(ii) Any information, allegations, or reports regarding possible EM system tampering;

(iii) Any information, allegations, or reports regarding any action prohibited under §§ 660.12(f) or 660.602(a)(13); or,

(iv) Any information, allegations or reports regarding EM service provider staff conflicts of interest.

(6) Notification to NMFS of any change of management or contact information or a change to insurance coverage.

(7) A copy of any contract between the service provider and entities requiring EM services;

(8) Proof of sufficient insurance as defined in paragraph (i);

(9) Copies of any information developed and used by the EM service provider and distributed to vessels, including, but not limited to, informational pamphlets, payment notifications, and description of EM service provider duties; and,

(10) EM data and associated meta data, and other records specified in this section.

(m) *Data services.* For vessels with which it has a contract (see § 660.604(k)), the EM service provider must provide and manage EM data processing, reporting, and record retention services, as described below and according to a NMFS-approved EM Service Plan, which is required under § 660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, and such that the EM Program achieves its purpose as defined at § 660.600(b).

(1) The EM service provider must process vessels' EM data according to a prescribed coverage level or sampling scheme, as specified by NMFS, and determine an estimate of discards for each trip using standardized estimation methods specified by NMFS. NMFS will maintain manuals for EM data processing protocols on its website.

(2) The EM service provider must ensure that its data processing staff are fully trained in:

(i) Use of data processing software;

(ii) Species identification;

(iii) Fate determination and metadata reporting requirements;

(iv) Data processing procedures;

(v) Data tracking; and,

(vi) Reporting and data upload procedures.

(3) The EM service provider must track hard drives and EM datasets throughout their cycles, including documenting any access and modifications. EM data must be removed from hard drives or other medium before returning them to the field.

(4) The EM service provider must communicate with vessel operators and NMFS to coordinate data service needs, resolve specific program issues, and provide feedback on program operations. The EM service provider must provide feedback to vessel representatives, field services staff, and NMFS regarding:

(i) Adjustments to system settings;

(ii) Changes to camera positions;

(iii) Advice to vessel personnel on duty of care responsibilities;

(iv) Advice to vessel personnel on catch handling practices; and,

(v) Any other information that would improve the quality and effectiveness of data collection on the vessel.

(5) On behalf of vessels with which it has a contract (see § 660.604(k)), the EM service provider must submit to NMFS EM summary reports, including discard estimates, fishing activity information, and meta data (*e.g.,* image quality, reviewer name), and incident reports of compliance issues according to a NMFS-accepted EM Service Plan, which is required under § 660.603(b)(1)(vii), and as described in the EM Program Manual or other written and oral instructions provided by the EM Program, such that the EM program achieves its purpose as defined at § 660.600(b). If NMFS determines that the information does not meet these standards, NMFS may require the EM service provider to correct and resubmit the datasets and reports.

(6) *Retention of records.* Following an EM trip, the EM service provider must maintain all of a vessel's EM data and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these reports, for a period of not less than three years after the date of landing for that trip. EM data and other records must be stored such that the integrity and security of the records is maintained for the duration of the retention period. The EM service provider must produce EM data and other records immediately upon request by NMFS or an authorized officer.

(n) *Data integrity and security.* The EM service provider must ensure the integrity and security of vessels' EM data and other records specified in this section. The EM service provider and its employees:

(1) Must not handle or transport hard drives or other medium containing EM data except to carry out EM services

required by this section in accordance with a NMFS-accepted EM Service Plan.

(2) Must not write to or modify any EM hard drive or other medium that contains EM data before it has been copied and catalogued.

(3) Must not release a vessel's EM data and other records specified in this section (including documents containing such data and observations or summaries thereof) except to NMFS and authorized officers as provided in section § 660.603(m)(6), or as authorized by the owner or operator of the vessel.

§ 660.604 Vessel and first receiver responsibilities.

(a) *General.* This section lays out the requirements for catcher vessels to obtain an exemption to use EM in place of 100-percent observer coverage required by the Shorebased IFQ Program (§ 660.140(h)(1)(i)) and MS Co-op Program (§ 660.150(j)(1)(i)(B)). Requirements are also described for first receivers receiving landings from EM trips.

(b) *Vessel Owner Responsibilities.* To use EM under this section, vessel owners must:

(1) Obtain an EM Authorization from the NMFS West Coast Region Fisheries Permit Office (*see* § 660.604(e));

(2) Install an EM system using a NMFS-permitted EM service provider that meets performance standards under § 660.604(j);

(3) Have a signed EM system certification form (*see* § 660.604(e)(3)(i));

(4) Have a NMFS-accepted vessel monitoring plan (*see* § 660.604(e)(3)(iii));

(5) Ensure that the vessel operator attends a mandatory EM orientation session provided by the NMFS West Coast Region EM Program (NMFS may waive this requirement on a case-by-case basis, such as when the vessel operator has prior EM experience);

(6) Maintain logbooks and other records for three years and provide them to NMFS or authorized officers for inspection (*see* § 660.604(t)).

(7) Obtain EM data processing, reporting, and recordkeeping services from a NMFS-permitted EM service provider (*see* § 660.604(k)).

(c) *Vessel Operator Responsibilities.* To use EM under this section, vessel operators must:

(1) Maintain a valid EM Authorization and NMFS-accepted vessel monitoring plan onboard the vessel at all times that the vessel is fishing on an EM trip or when fish harvested during an EM trip are onboard the vessel;

(2) Ensure that the EM system is installed, operated, and maintained consistent with performance standards (*see* § 660.604(l));

(3) Comply with a NMFS-accepted vessel monitoring plan (*see* § 660.604(e)(3)(iii);

(4) Make declaration reports to OLE prior to leaving port (*see* § 660.604(m));

(5) Provide advance notice to the NMFS WCGOP at least 48 hours prior to departing port (*see* § 660.604(n));

(6) Comply with observer requirements, if NMFS notifies the vessel owner, operator, or manager that the vessel is required to carry an observer (*see* § 660.604(n));

(7) Ensure retention and handling of all catch as provided under §§ 660.604(p) and 660.604(r); and

(8) Comply with recordkeeping, reporting, and inspection requirements (*see* §§ 660.604(o), (s) and (t)).

(d) *First receiver responsibilities.* First receivers receiving catch from trips taken under EM must follow special disposition and sorting requirements for prohibited and protected species (*see* § 660.604(u)).

(e) *Electronic Monitoring Authorization.* To obtain an EM Authorization, a vessel owner must submit an initial application to the NMFS West Coast Region Fisheries Permit Office, then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. A vessel owner may submit an application at any time. Vessel owners that want to have their Authorizations effective for January 1 of the following calendar year must submit their complete application to NMFS by October 1. Vessel owners that want to have their Authorizations effective for May 15 must submit their complete application to NMFS by February 15 of the same year.

(1) *Initial application.* To be considered for an EM Authorization, the vessel owner must submit a completed application form provided by NMFS, signed and dated by an authorized representative of the vessel, and meet the following eligibility criteria:

(i) The applicant owns the vessel proposed to be used;

(ii) The vessel has a valid Pacific Coast Groundfish limited entry, trawl-endorsed permit registered to it;

(iii) If participating in the mothership sector, the vessel has a valid MS/CV endorsement;

(iv) The vessel is participating in the Pacific whiting IFQ fishery, mothership sector, or the Shorebased IFQ sector using groundfish non-trawl gear;

(v) The vessel is able to accommodate the EM system, including providing sufficient uninterrupted electrical power, suitable camera mounts, adequate lighting, and fittings for hydraulic lines to enable connection of a pressure transducer;

(vi) The vessel owner and operator are willing and able to comply with all applicable requirements of this section and to operate under a NMFS-accepted VMP.

(2) *Review of initial application.* Based on a complete initial application, if NMFS determines that the applicant meets the eligibility criteria in paragraph (e)(1) of this section, NMFS will notify the applicant in writing that the initial application has been accepted for further consideration. An applicant who receives such notice may install an EM system on his or her vessel and proceed with submission of a final application as provided under paragraph (e)(3) of this section. If an initial application has not been accepted, NMFS will provide the applicant an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at § 660.25(g).

(3) *Final application.* A final application must be complete and must include:

(i) *EM system certification.* A certification form, provided by NMFS, signed by a representative of a NMFS-permitted EM service provider that attests that an EM system and associated equipment that meets the performance standards at paragraph (k) of this section was installed on the vessel, that the system was tested while the vessel was underway, and that the vessel operator was briefed on the EM system operation and maintenance. NMFS will maintain a list of permitted EM service providers on its website.

(ii) *Tentative fishing plan.* A description of the vessel owner's fishing plans for the year, including which fishery the vessel owner plans to participate in, from what ports, and when the vessel owner intends to use EM and observers. This information is for purposes of planning observer deployments and is not binding.

(iii) *Vessel monitoring plan.* A complete vessel monitoring plan for the vessel that accurately describes how fishing operations on the vessel will be conducted and how the EM system and associated equipment will be configured to meet the performance standards at paragraph (k) of this section. NMFS will develop EM Program Guidelines containing best practices and templates and make them available on NMFS' website to assist vessel owners in developing VMPs (*see* § 660.600(b)). NMFS may consider alternative, but equivalent, methods proposed by EM service providers and vessel owners in their plans to meet the requirements of

this subpart, if they achieve the purpose of the EM program. An EM service provider may prepare and submit a VMP on behalf of the applicant. The VMP must include descriptions of the following (using pictures and diagrams where appropriate):

(A) General vessel information including the vessel name, hull number, gear type(s), home port, captain name, and target fishery or sector;

(B) The coordinates of the home port box, if a geo-referenced port box will be used to trigger data collection;

(C) A diagram of the vessel layout with measurements of the deck and denoting the location of any designated discard control points;

(D) The number and location of cameras and with images of corresponding views;

(E) The location of lighting, control center, GPS, sensors, monitor, and other EM equipment;

(F) Frame rates, image resolution, frequency of data logging, sensor trigger threshold values, and other EM system specifications;

(G) The location and procedures for any catch handling, including designated discard control points within camera view, procedures for sorting and measuring discards, the number of crew sorting catch, and what steps will be taken to ensure that all catch remains in camera view;

(H) The measurements of all bins, baskets, compartments, and other tools that will be used to calculate estimates of weight;

(I) The detailed steps that will be taken to minimize the potential for EM system malfunctions and the steps that will be taken, when malfunctions occur, to ensure the adequate monitoring of catch;

(J) The name, address, phone number, and email address of a primary point of contact for vessel operations;

(K) The name, address, and phone number of the vessel's EM service provider, and contact information for a primary point of contact at the EM service provider;

(L) The name, address, phone number, and signature of the applicant, and the date of the application; and,

(M) Any other information required by NMFS.

(iv) Any updates to information submitted in the initial application, including updates to proposed, self-enforcing agreements, if applicable (*see* paragraph (e)(5) of this section).

(4) *Review of final application.* NMFS may request additional information or revisions from the applicant until NMFS is satisfied that the application is complete. Based on a complete application, if NMFS determines that the applicant has met the requirements of this section, NMFS will issue an IAD and an EM Authorization. If the application is denied, the IAD will provide an explanation of the denial in writing. The applicant may appeal NMFS' determination following the process at § 660.25(g). NMFS will evaluate an application based on the EM Program Guidelines (*see* § 660.600(b)) and the following criteria, at a minimum:

(i) Review of the vessel owner's and operator's eligibility based on the eligibility criteria at paragraph (e)(1);

(ii) Review of the proposed VMP; and,

(iii) Review of the proposed self-enforcing agreement, if applicable.

(5) *Self-enforcing agreement.* In the future, through a proposed and final rulemaking, NMFS may allow for and provide requirements related to the use of voluntary self-enforcing agreements. This agreement would allow a group of eligible vessels to encourage compliance with the requirements of this section through private, contractual arrangements. If such arrangements are used, participating vessel owners must submit the proposed agreement to NMFS for review and acceptance as part of the application process as provided under paragraphs (e)(1) and (3) of this section. The existence of a self-enforcing agreement among EM vessels does not foreclose the possibility of independent enforcement action by NMFS OLE or authorized officers.

(f) *Changes to a NMFS-accepted VMP.* A vessel owner may make changes to a NMFS-accepted VMP by submitting a revised plan or plan addendum to NMFS in writing. NMFS will review and accept the change if it meets all the requirements of this section. A VMP addendum must contain:

(1) The date and the name and signature of the vessel owner;

(2) Address, telephone number, fax number and email address of the person submitting the addendum;

(3) A complete description of the proposed VMP change.

(g) *Change in ownership of a vessel.* If a vessel changed ownership, the new owner must apply for a new EM Authorization.

(h) *Effective dates.*—(1) The EM Authorization is valid from the effective date identified on the Authorization until the expiration date of December 31. EM Authorization holders must renew annually by following the renewal process specified in paragraph (e) of this section. Failure to renew annually will result in expiration of the EM Authorization and endorsements on the Authorization expiration date.

(2) *Invalidation due to lapse in eligibility.* NMFS may invalidate an EM Authorization if NMFS determines that the vessel, vessel owner, and/or operator no longer meets the eligibility criteria specified at paragraph (e)(1) of this section. NMFS would first notify the vessel owner of the deficiencies in writing and the vessel owner must correct the deficiencies following the instructions provided. If the deficiencies are not resolved upon review of the first trip following the notification, NMFS will notify the vessel owner in writing that the EM Authorization is invalid and that the vessel is no longer exempt from observer coverage at §§ 660.140(h)(1)(i) and 660.150(j)(1)(i)(B) for that authorization period. The holder may reapply for an EM Authorization for the following authorization period.

(iii) *Obtaining a new EM Authorization following an expiration or invalidation.* A vessel owner holding an expired or invalidated authorization may reapply for a new EM Authorization at any time consistent with paragraph (e) of this section.

(i) *Renewing an EM Authorization.* To maintain a valid EM Authorization, vessel owners must renew annually prior to the permit expiration date. NMFS will mail EM Authorization renewal forms to existing EM Authorization holders each year on or about: September 1 for non-trawl shorebased IFQ vessels and January 1 for Pacific whiting IFQ and MS/CV vessels. Vessel owners who want to have their Authorizations effective for January 1 of the following calendar year must submit their complete renewal form to NMFS by October 15. Vessel owners who want to have their EM Authorizations effective for May 15 of the following calendar year must submit their complete renewal form to NMFS by February 15.

(j) *EM System Performance Standards.* The specifications (*e.g.,* image resolution, frame rate, user interface) and configuration of an EM system and associated equipment (*e.g.,* number and placement of cameras, lighting) used to meet the requirements of this section must be sufficient to:

(1) Allow easy and complete viewing, identification, and quantification, of catch items discarded at sea, including during low light conditions;

(2) Continuously record vessel location (latitude/longitude coordinates), velocity, course, and sensor data (*i.e,* hydraulic and winch activity);

(3) Allow the identification of the time, date, and location of a haul/set or discard event;

(4) Record and store image data from all hauls/sets and the duration that fish are onboard the vessel until offloading begins;

(5) Continuously record and store raw sensor data (*i.e.,* GPS and gear sensors) for the entire fishing trip;

(6) Prevent radio frequency interference (RFI) with vessel monitoring systems (VMS) and other equipment;

(7) Allow the vessel operator to test and monitor the functionality of the EM system prior to and during the fishing trip to ensure it is fully functional;

(8) Prevent tampering or, if tampering does occur, show evidence of tampering; and,

(9) Provide image and sensor data in a format that enables their integration for analysis.

(k) *EM data services.* A vessel owner with a valid EM Authorization must obtain EM data processing, reporting, and record retention services from a NMFS-permitted EM service provider, as described at § 660.603(m). If the vessel owner changes EM service providers, the vessel owner must ensure the continuity of EM data retention for the entire duration of the required retention period as specified § 660.603(m)(6). NMFS will maintain a list of permitted EM service providers on its website.

(l) *EM system operation and maintenance.* The EM system must be recording imagery and sensor data at all times that fish harvested during an EM trip are onboard the vessel until offloading begins. For the purposes of this section, a fully functional EM system is defined as an EM system and associated equipment that meets the performance standards listed in paragraph (j) of this section.

(1) *Duties of care.* The operator of a vessel with a valid EM Authorization must maintain the EM system in good working order, including:

(i) Ensuring the EM system is powered continuously during the fishing trip;

(ii) Ensuring the system is functioning for the entire fishing trip and that camera views are unobstructed and clear in quality, such that the performance standards listed in paragraph (j) of this section are met; and,

(iii) Ensuring EM system components are not tampered with, disabled, destroyed, operated or maintained improperly.

(2) *Pre-departure test.* Prior to departing port, the operator of a vessel with a valid EM Authorization must turn the EM system on and conduct a system function test following the instructions from the EM service provider. The vessel operator must verify that the EM system has adequate memory to record the entire trip and that the vessel is carrying one or more spare hard drives with sufficient capacity to record the entire trip.

(3) *EM system malfunctions.* The operator of a vessel with a valid EM Authorization is prohibited from fishing on an EM trip without a fully functional EM system, unless an alternate arrangement has been specified in the NMFS-accepted VMP. In the event of an EM system malfunction, the vessel operator may voluntarily obtain observer coverage and revise the vessel's declaration following the process at § 660.13(d)(4), in which case the vessel operator is no longer exempt from the observer requirements at §§ 660.140(h) and 660.150(j).

(m) *Declaration reports.* The operator of a vessel with a valid EM Authorization must make a declaration report to NMFS OLE prior to leaving port following the process described at § 660.13(d)(4). A declaration report will be valid until another declaration report revising the existing gear or monitoring declaration is received by NMFS OLE. A vessel operator declaring a limited entry midwater trawl, Pacific whiting shorebased IFQ trip or limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip may only revise the existing monitoring declaration twice during the same calendar year. NMFS may waive this limitation with prior notice if it is determined to be unnecessary for purposes of planning observer deployments. Additional revisions may be made if the EM system has malfunctioned and the vessel operator has chosen to carry an observer, as allowed under paragraph (m)(3); or subsequently, the EM system has been repaired; and upon expiration or invalidation of the vessel's EM Authorization.

(n) *Observer requirements.* The operator of a vessel with a valid EM Authorization must provide advanced notice to NMFS, at least 48 hours prior to departing port, of the vessel operator's intent to take a trip under EM, including: vessel name, permit number; contact name and telephone number for coordination of observer deployment; date, time, and port of departure; and the vessel's trip plan, including area to be fished and gear type to be used. NMFS may waive this requirement for vessels declared into the Pacific whiting IFQ fishery or mothership sector with prior notice. If NMFS notifies the vessel owner, operator, or manager of any requirement to carry an observer, the vessel may not be used to fish for groundfish without carrying an observer. The vessel operator must comply with the following requirements on a trip that the vessel owner, operator, or manager has been notified is required to carry an observer.

(1) *Notice of departure basic rule.* At least 24 hours (but not more than 36 hours) before departing on a fishing trip, a vessel operator that has been notified by NMFS that his vessel 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.

(2) *Optional notice—weather delays.* A vessel operator 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 (n)(1) of this section. If departure is delayed beyond 36 hours from the time the original notice is given, the vessel operator must provide an additional notice of departure not less than 4 hours prior to departure, in order to enable NMFS to place an observer.

(3) *Optional notice—back-to-back fishing trips.* A vessel operator 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 a notice of departure as described in paragraph (n)(1) of this section for both trips, prior to making the first trip. A vessel operator that has given such notice is not required to give additional notice of the second trip.

(4) *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 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.

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

(6) *Accommodations and food.*—(i) Accommodations and food for trips less than 24 hours must be equivalent to those provided for the crew.

(ii) 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.

(7) *Safe conditions.*—(i) The vessel operator must maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, statutes, and guidelines pertaining to safe operation of the vessel, including, but not limited to rules of the road, vessel stability, emergency drills, emergency equipment, vessel maintenance, vessel general condition and port bar crossings, and provisions at §§ 600.725 and 600.746 of this chapter. An observer may refuse boarding or reboarding a vessel and may request a vessel to return to port if operated in an unsafe manner or if unsafe conditions are identified.

(ii) The vessel operator must 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.

(8) *Observer communications.* The vessel operator must facilitate observer communications by:

(i) 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) or the U.S. or designated agent; and

(ii) Ensuring that the vessel's communications equipment, used by observers to enter and transmit data, is fully functional and operational.

(9) *Vessel position.* The vessel operator must allow observer(s) access to the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(10) *Access.* The vessel operator must allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working deck, holding bins, sorting areas, cargo hold, and any other space that may be used to hold, process, weigh, or store fish at any time.

(11) *Prior notification.* The vessel operator must notify observer(s) at least 15 minutes before fish are brought on board, or fish and fish products are transferred from the vessel, to allow sampling the catch or observing the transfer.

(12) *Records.* The vessel operator must allow observer(s) to inspect and copy any state or federal logbook maintained voluntarily or as required by regulation.

(13) *Assistance.* The vessel operator must provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

(i) Measuring decks, codends, and holding bins.

(ii) Providing a designated safe working area on deck for the observer(s) to collect, sort and store catch samples.

(iii) Collecting samples of catch.

(iv) Collecting and carrying baskets of fish.

(v) Allowing the observer(s) to collect biological data and samples.

(vi) Providing adequate space for storage of biological samples.

(vii) Providing time between hauls to sample and record all catch.

(viii) Sorting retained and discarded catch into quota pound groupings.

(ix) Stowing all catch from a haul before the next haul is brought aboard.

(14) *Sampling station.* To allow the observer to carry out the required duties, the vessel operator must provide an observer sampling station that meets the following requirements so that the observer can carry out required duties.

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

(ii) The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch. To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(15) *Transfers at sea.* Observers may be transferred at-sea between a MS vessel and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels must:

(i) Ensure that transfers of observers at sea via small boat under its own power are carried out during daylight hours, under safe conditions, and with the agreement of observers involved.

(ii) Notify observers at least 3 hours before observers are transferred, such that the observers can finish any sampling work, collect personal belongings, equipment, and scientific samples.

(iii) Provide a safe pilot ladder and conduct the transfer to ensure the safety of observers during transfers.

(iv) Provide an experienced crew member to assist observers in the small boat in which any transfer is made.

(16) *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.

(o) *Inspection.* The operator of a vessel with a valid EM Authorization must make the EM system and associated equipment available for inspection immediately upon request by NMFS or any authorized officer.

(p) *Retention requirements.*—(1) *Pacific whiting IFQ and MS/CV vessels.* The operator of a vessel on a declared limited entry midwater trawl, Pacific whiting shorebased IFQ trip or limited entry midwater trawl, Pacific whiting mothership sector (catcher vessel or mothership) trip, EM trip must retain all fish until landing, with exceptions listed below.

(i) Minor operational discards are permitted. Minor operational discards include mutilated fish; fish vented from an overfull codend, fish spilled from the codend during preparation for transfer to the mothership; and fish removed from the deck and fishing gear during cleaning. Minor operational discards do not include discards that result when more catch is taken than is necessary to fill the hold or catch from a tow that is not delivered.

(ii) Large individual marine organisms (*i.e.,* all marine mammals, sea turtles, and seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded.

(iii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.

(iv) Trash, mud, rocks, and other inorganic debris may be discarded.

(iv) A discard that is the result of an event that is beyond the control of the vessel operator or crew, such as a safety issue or mechanical failure, is permitted.

(2) *Non-trawl shorebased IFQ.* A vessel operator on a declared limited entry groundfish non-trawl, shorebased IFQ trip must retain all salmon and must discard Dungeness crab caught seaward of Washington or Oregon, Pacific halibut, green sturgeon, eulachon, sea turtles, and marine mammals. All other catch may be discarded following instructions in the VMP, except as required by the Seabird Avoidance Program at § 660.21(c)(1).

(q) *Changes to retention requirements.* Retention requirements for non-trawl shorebased IFQ vessels have been designated as ''routine,'' which means

that they can be changed after a single Council meeting following the procedures described at § 660.60(c).

(r) *Catch handling.* The vessel operator of a vessel on an EM trip must ensure that all catch is handled in a manner that enables the EM system to record it and that is consistent with the specific catch handling instructions in the NMFS-accepted VMP.

(s) *Reporting requirements.*—(1) *Discard logbook.* The operator of a vessel with a valid EM Authorization must complete, submit, and maintain onboard the vessel an accurate federal discard logbook for each EM trip on forms supplied by or approved by NMFS. If authorized in writing by NMFS, a vessel owner or operator may submit reports electronically, for example by using a VMS or other media. A state logbook that contains all the required information may be submitted in place of a federal discard logbook. If operating an MS/CV vessel, the vessel operator must provide logbook information to the mothership observer by transmitting the logbook information via radio or email to the mothership at the completion of each haul.

(2) *Submission of logbooks.* Vessel operators must submit copies of the federal discard logbook and state retained logbook to NMFS or its agent within 24-hours of the end of each EM trip.

(3) *Submission of EM data.* Vessel operators must submit EM data to the vessel owner's contracted EM service provider using a method that documents time, date, and location of transmission and receipt. Deadlines for submission are as follows:

(i) *Pacific whiting IFQ vessels.* EM data from an EM trip must be submitted within 10 calendar days of the end of that EM trip.

(ii) *Mothership catcher vessels.* EM data from an EM trip must be submitted within 24-hours of the catcher vessel's return to port.

(iii) *Non-trawl shorebased IFQ vessels.* EM data from an EM trip must be submitted within 10 calendar days of the end of that EM trip.

(t) *Retention of records.* The operator of a vessel with a valid EM Authorization must maintain federal discard logbooks onboard the vessel until the end of the fishing year during which the EM trips were conducted, and make the report forms available to observers, NMFS staff, or authorized officers, immediately upon request. The vessel owner must maintain the federal discard logbooks and other records specified in this section, or used in the preparation of records or reports specified in this section or corrections to these reports, for a period of not less than three years after the date of landing from an EM trip. The vessel owner must make such records available for inspection by NMFS staff or authorized officers, immediately upon request.

(u) *First receiver requirements.* (1) *Prohibited species handling and disposition.* To ensure compliance with fishery regulations at 50 CFR part 300, subparts E and F, and part 600, subpart H; with the Pacific Salmon Fishery Management Plan; and with the Pacific Halibut Catch Share Plan; the handling and disposition of all prohibited species in EM trip landings are the responsibility of the first receiver and must be consistent with the following requirements:

(i) Any prohibited species landed at first receivers must not be transferred, processed, or mixed with another landing until the catch monitor has: Recorded the number and weight of salmon by species; inspected all prohibited species for tags or marks; and, collected biological data, specimens, and genetic samples.

(ii) No part of any prohibited species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any prohibited species may be allowed to reach commercial markets.

(iii) Prohibited species suitable for human consumption at landing must be handled and stored to preserve the quality. Priority in disposition must be given to the donation to surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(iv) The first receiver must report all prohibited species landings on the electronic fish ticket and is responsible for maintaining records verifying the disposition of prohibited species. Records on catch disposition may include, but are not limited to: Receipts from charitable organizations that include the organization's name and amount of catch donated; cargo manifests setting forth the origin, weight, and destination of all prohibited species; or disposal receipts identifying the recipient organization and amount disposed. Any such records must be maintained for a period not less than three years after the date of disposal and such records must be provided to NMFS or authorized officers immediately upon request.

(2) *Protected Species handling and disposition.* All protected species must be abandoned to NMFS or the U.S. Fish and Wildlife Service or disposed of consistent with paragraphs (u)(2)(i) and (ii) of this section. No part of any protected species may be retained for personal use by a vessel owner or crew member, or by a first receiver or processing crew member. No part of any protected species may be allowed to reach commercial markets.

(i) *Eulachon and green sturgeon.* Must be sorted and reported by species on electronic fish tickets and state landing receipts and may not be reported in unspecified categories. Whole body specimens of green sturgeon must be retained, frozen, stored separately by delivery, and labeled with the vessel name, electronic fish ticket number, and date of landing. Arrangements for transferring the specimens must be made by contacting NMFS Southwest Fisheries Science Center at 831–420–3903 within 72 hours after the completion of the offload.

(ii) *Seabirds, marine mammals, and sea turtles.* Albatross must reported to the U.S. Fish and Wildlife Service (541–867–4558 extension 237 or 503–231–6179 as soon as possible and directions for surrendering must be followed. Marine mammals and sea turtles must be reported to NMFS as soon as possible (206–526–6550) and directions for surrendering or disposal must be followed. Whole body specimens must be labeled with the vessel name, electronic fish ticket number, and date of landing. Whole body specimens must be kept frozen or on ice until arrangements for surrendering or disposing are completed. Unless directed otherwise, after reporting is completed, seabirds, marine mammals, and sea turtles may be disposed by incinerating, rendering, composting, or returning the carcasses to sea.

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