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## **Title 50 - Wildlife and Fisheries**

### **Chapter VI - Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce**

#### **Part 660 - Fisheries off West Coast States**

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

**Source:** 61 FR 34572, July 2, 1996, unless otherwise noted.

#### **Part 660 Fisheries off West Coast States**

##### **Subpart J West Coast Groundfish Electronic Monitoring Program**

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**Editorial Note:** Nomenclature changes to part 660 appear at 67 FR 65906, Oct. 29, 2002.

#### **Subpart J - West Coast Groundfish Electronic Monitoring Program**

**Source:** 84 FR 31160, June 28, 2019, unless otherwise noted.

## § 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.

Link to an amendment published at 87 FR 59713, Oct. 3, 2022.

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.

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**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 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.

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

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

**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.

**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 § 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 § 660.603.
- (18) Fish without an observer when a vessel is required to carry an observer under subpart J of this part if:

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- (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.

Link to an amendment published at 87 FR 59713, Oct. 3, 2022.

- (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. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM service provider permits for the first year of the Program. 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. Once NMFS begins accepting applications, 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.

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- (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):

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- (A) Contact information for a primary point of contact for program operations in season;
  - (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:

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- (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



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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:

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- (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.

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- (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,

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(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.

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- (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 § 660.603(m)(6), or as authorized by the owner or operator of the vessel.

[84 FR 31160, June 28, 2019, as amended at 85 FR 74614, Nov. 23, 2020; 86 FR 55527, Oct. 6, 2021]

## § 660.604 Vessel and first receiver responsibilities.

Link to an amendment published at 87 FR 59714, Oct. 3, 2022.

- (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)).

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- (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, and then a final application that includes an EM system certification and a vessel monitoring plan (VMP). NMFS will only review complete applications. NMFS will issue a public notice at least 90 calendar days prior to when it will begin accepting applications for EM Authorizations for the first year of the Program. Once NMFS begins accepting applications, vessel owners that want to have their EM 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 EM 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.

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- (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;

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- (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.



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- (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) 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.
  - (3) 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,

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- (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

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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.

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- (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.

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- (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 in paragraphs (p)(1)(i) through (v) of this section.
    - (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 non-ESA-listed seabirds, and fish species longer than 6 ft (1.8 m) in length) may be discarded. For any ESA-listed seabirds that are brought on board, vessel operators must follow any relevant instructions for handling and disposition under § 660.21(c)(1)(v).
    - (iii) Crabs, starfish, coral, sponges, and other invertebrates may be discarded.
    - (iv) Trash, mud, rocks, and other inorganic debris may be discarded.
    - (v) 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.

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- (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)(v).
- (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 -**

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- (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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86 FR 55527, Oct. 6, 2021]