

KEY:
Yellow highlighted text = cross references
Grey highlighted text = paragraphs from initial issuance rule that aren't changing and will not be published in the program components rule, but are included here to orient the reader
*** = language in that paragraph remains the same
**** = some language is skipped, look at instructions for the section for more details.

DRAFT PROGRAM COMPONENTS RULE

5/19/2010

Disclaimer: These draft regulations will be reorganized and/or revised as they go through the agency review process. Additional issues may arise as the program is reviewed by NMFS. Amendments 20 & 21 to the Groundfish FMP, have not yet been approved or implemented by NMFS. NMFS and the Council staff are currently working on implementation issues.

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter VI are proposed to be amended as follows:

15 CFR Chapter IX

PART 902--NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 et seq.

2. Amend the table in § 902.1(b) under 50 CFR by:

a. Removing the entries and corresponding OMB numbers for §§ **XXXXXX**.

b. Adding new entries and corresponding OMB numbers for §§ 660.20, 660.25, 660.55, 660.113, 660.131, 660.213, 660.219, 660.313, 660.319, and 660.353.

The revisions and additions read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(b) Display.

CFR part or section where the	
information collection requirement is	Current OMB control number
located	(all numbers begin with 0648-)

50 CFR

660.113.....-0271
660.131.....-0243

660.20.....-0355
660.213.....-0271
660.219.....-0355
660.25.....-0203
660.313.....-0271
660.319.....-0355
660.353.....-0271
660.55.....-0352
660.55.....-0243

* * * * *

50 CFR Chapter VI
PART 660--FISHERIES OFF WEST COAST STATES

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

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

4. INSTRUCTION – In section 660.12, paragraph (f) is renumbered paragraph (g), and a new paragraph (f) is added to read as follows:

§ 660.12 General groundfish prohibitions. * * *

* * * * *

- (a) General. * * *
- (b) Reporting and recordkeeping. * * *
- (c) Limited entry fisheries. * * *
- (d) Limited entry permits. * * *
- (e) Groundfish observer program. * * *
- (f) Groundfish catch monitor program.

(1) Forcibly assault, resist, oppose, impede, intimidate, harass, sexually harass, bribe, or interfere with a catch monitor.

(2) Interfere with or bias the sampling procedure employed by a catch monitor, including either mechanically or manually sorting or discarding catch before sampling.

(3) Tamper with, destroy, or discard a catch monitor’s collected samples, equipment, records, photographic film, papers, or personal effects without the express consent of the catch monitor.

(4) Harass a catch monitor by conduct that:

- (i) Has sexual connotations,
- (ii) Has the purpose or effect of interfering with the catch monitor’s work performance,

and/or

(iii) Otherwise creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the nature of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5) Receive, purchase, or take custody, control, or possession of a delivery without catch monitor coverage when such coverage is required under § 660.140, subpart D.

(6) Fail to allow the catch monitor unobstructed access to catch sorting, processing, catch counting, catch weighing, or electronic or paper fish tickets.

(7) Fail to provide reasonable assistance to the catch monitor.

(8) Fail to provided notification of a delivery in person, by personal communications radio, or by telephone of planned facility operations, including the receipt of fish, at least 30 minutes and not more than 2 hours prior to the start of the planned operation, unless the catch monitor specifically requests other arrangements.

(9) Require, pressure, coerce, or threaten a catch monitor to perform duties normally performed by employees of the first receiver, including, but not limited to duties associated with the receiving of landing, processing of fish, sorting of catch, or the storage of the finished product.

(g) Vessel monitoring systems. * * *

3. INSTRUCTION- In section 660.13, paragraphs (d)(5)(iv)(A)(1) through (4), (7), and (8) are revised to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) Declaration reporting requirements. * * *

(5) Declaration reports.

(iv) * * *

(A) One of the following gear types must be declared:

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

(2) Limited entry fixed gear, shorebased IFQ

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

(4) Limited entry midwater trawl, Pacific whiting shorebased IFQ,

* * *

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

(6) Limited entry midwater trawl, Pacific whiting mothership sector,

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

(8) Limited entry demersal trawl, shorebased IFQ,

* * *

(B) [Reserved]

§660.14 Vessel Monitoring System (VMS) requirements. * * *

5. INSTRUCTION – In section 660.15, paragraphs (a) through (d) are revised to read as follows:

§ 660.15 Equipment requirements.

(a) Applicability. This section contains the equipment and operational requirements for scales used to weigh catch at sea, scales used to weigh catch at IFQ first receivers, computer hardware for electronic fish ticket software and computer hardware for electronic logbook software. All records described in this section must be retained as specified at § 660.113, subpart D, and made available upon request of NMFS staff or NMFS authorized personnel.

(b) Performance and technical requirements for scales used to weigh catch at sea.

(1) Scales approved by NMFS for MS and C/P coop programs. A scale used to weigh catch in the MS and C/P coop programs must meet the type evaluation and initial inspection requirements set forth in § 679.28(b)(1) and (2).

(2) Annual inspection. Once a scale is installed on a vessel and approved by NMFS for use, it must be inspected annually as described in § 679.28(b).

(3) Daily testing. Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described at described at §§ 660.150 in MP catch weighing section 660.160 CP catch weighing sections, subpart D.

Comment [jg1]: Does this work for gear switching?

(4) At-sea scale tests. To verify that the scale meets the maximum permissible errors (MPEs) specified in this paragraph, the vessel operator must ensure that vessel crew test each scale used to weigh catch at least one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) Belt scales. The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) Platform scales used for observer sampling on MSs, MS/CVs, and C/Ps. A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent.

(iii) Approved test weights. Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(c) Performance and technical requirements for scales used to weigh catch at IFQ first receivers. Scale requirements in this paragraph are in addition to those requirements set forth by the State in which the scale is located, and nothing in this paragraph may be construed to reduce or supersede the authority of the State to regulate, test, or approve scales within the State. Scales used to weigh catch that are also required to be approved by the State must meet the following requirements:

(1) Verification of approval. The scale must display a valid State sticker indicating that the scale is currently approved in accordance with the laws of the state where the scale is located.

(2) Visibility. A first receiver must ensure that the scale and scale display are visible simultaneously.

(3) Printed scale weights. All scales must produce a printed record for each delivery, or portion of a delivery, weighed on that scale. During the catch monitoring plan approval process NMFS may determine that a scale not designed for automatic bulk weighing) be exempted from part or all of the printed record requirements. The printed record must include:

(i) The first receiver's name;

(ii) The weight of each load in the weighing cycle;

(iii) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;

(iv) The date and time the information is printed; and

(v) The name and registration or documentation number of the vessel making the landing.

The scale operator may write this information on the scale printout in ink at the time of printing.

(4) Inseason scale testing. Scales used to weigh Shorebased IFQ Program catch must meet inseason testing criteria specified at 660.140(k).

(5) Inseason testing criteria. To pass an inseason test, a catch monitor, NMFS staff or a NMFS-authorized agent must be able to verify the following:

(i) the scale display and printed information are clear and easily read under all conditions of normal operation;

(ii) the weight values are visible on the display until the value is printed; and

(iii) the scale does not exceed the maximum permissible errors specified in the following table:

Test Load in Scale Divisions	Maximum Error in Scale Divisions
(A) 0-500	1
(B) 501-2,000	2
(C) 2,001-4,000	3
(D) >4,000	4

(6) Automatic weighing systems. The automatic weighing system must prevent catch from passing over the scale or entering any weighing hopper unless the following criteria are met:

(i) No catch may enter a weighing hopper until the weighing cycle is complete and no catch can leave the hopper;

(ii) No catch may be cycled and weighed until if the weight recording element is operational;

(iii) No catch may enter a weighing hopper until the prior weighing cycle has been completed and the scale indicator has returned to a zero.

(d) Electronic fish tickets. IFQ first receivers using the electronic fish ticket software provided by Pacific States Marine Fish Commission are required to meet the hardware and software requirements below. Those IFQ first receivers who have NMFS-approved software compatible with the standards specified by Pacific States Marine Fish Commission for electronic fish tickets are not subject to any specific hardware or software requirements.

(1) Hardware and software requirements. (i) A personal computer with Pentium 75-MHz or higher. Random Access Memory (RAM) must have sufficient megabyte (MB) space to run the operating system, plus an additional 8 MB for the software application and available hard disk space of 217 MB or greater. A CD-ROM drive with a Video Graphics Adapter (VGA) or higher resolution monitor (super VGA is recommended).

(ii) Microsoft Windows 2000 (64 MB or greater RAM required), Windows XP (128 MB or greater RAM required) or later operating system.

(iii) Microsoft Access 2003 or newer.

(2) NMFS approved software standards and internet access. The IFQ first receiver is responsible for obtaining, installing, and updating electronic fish tickets software either provided by Pacific States Marine Fish Commission, or compatible with the data export specifications specified by Pacific States Marine Fish Commission and for maintaining internet access sufficient to transmit data files via email. Requests for data export specifications can be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115.

(3) Maintenance. The IFQ first receiver is responsible for ensuring that all hardware and software required under this subsection are fully operational and functional whenever they receive, purchase, or take custody, control, or possession of an IFQ landing.

(4) Improving data quality. Vessel owners and operators, IFQ first receivers, or shoreside processor owners, or managers may contact NMFS in writing to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Electronic Fish Ticket

Monitoring, National Marine Fisheries Service, Northwest Region Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA 98115.

6. INSTRUCTION – In section 660.16, paragraphs (d) and (e) are removed and paragraph (c) is revised to read as follows:

§ 660.16 Groundfish observer program.

* * * * *

(a) General. * * *

(b) Purpose. The purpose of the Groundfish Observer Program is to collect fisheries data ~~deemed by the Northwest Regional Administrator, NMFS, to be~~ necessary and appropriate for, among other relevant purposes, management, compliance monitoring, and research in the groundfish fisheries and for the conservation of living marine resources ~~and their habitat.~~

(c) Observer coverage requirements. The following table provides references to the paragraphs in the Pacific coast groundfish subparts that contain fishery specific requirements. Observer coverage required for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not be used to comply with observer coverage requirements for any other Pacific coast groundfish fishery in which that vessel may also participate.

<u>West Coast Groundfish Fishery</u>	<u>Regulation section</u>
(1) Shorebased IFQ Program- Trawl Fishery	§ 660.140, subpart D
(2) MS Coop Program- Whiting At-sea Trawl Fishery	§ 660.150, subpart D
(3) C/P Coop Program- Whiting At-sea Trawl Fishery	§ 660.160, subpart D
(4) Fixed Gear Fisheries	§ 660.216, subpart E
(5) Open Access Fisheries	§ 660.316, subpart F

7. INSTRUCTION – Section 660.17 is revised to read as follows:

§ 660.17 Catch monitors and catch monitor providers.

(a) Catch monitor certification. Catch monitor certification authorizes an individual to fulfill duties as specified by NMFS while under the employ of a certified catch monitor provider.

(b) Certification requirements. NMFS may certify individuals who:

(1) are employed by a certified catch monitor provider at the time of the issuance of the certification and qualified, as described at § 660.315 (e)(1)(i) through (viii) and have provided proof of qualifications to NMFS, through the certified catch monitor provider.

(2) have successfully completed NMFS-approved training.

(i) Successful completion of training by an applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by NMFS.

(ii) If a candidate fails training, he or she will be notified in writing on or before the last day of training. The notification will indicate: the reasons the candidate failed the training; whether the candidate can retake the training, and under what conditions. If a determination is made that the candidate may not pursue further training, notification will be in the form of an IAD denying certification, as specified under §XXXX of this section.

(3) Have not been decertified as an observer or catch monitor under provisions in § 660.XXX.

(c) Catch monitor standards of behavior.

(1) Catch monitors must avoid any behavior that could adversely affect the confidence of the public in the integrity of the catch monitor program or of the government.

(2) Catch monitors must do the following:

(i) perform their assigned duties as described in manuals or other written instructions provided by NMFS.

(ii) accurately record the required data, write complete reports, and report accurately any observations of suspected violations of regulations.

(iii) must not disclose data and observations collected at the processing facility to any person except, NMFS OLE, or authorized officers or others as specifically authorized by NMFS.

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

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

(i) Identification of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and staff. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(ii) Contact information.

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

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

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

(iii) Prior experience. A statement identifying prior relevant experience in recruiting, hiring, deploying, and providing support for individuals in marine work environments in the groundfish fishery or other fisheries of similar scale.

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

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

(vi) A statement signed under penalty of perjury describing each owner and board member, officer, authorized agent, and staff indicating that they are free from conflict of interest as described under § 660.316 (c)

(2) Application review.

(i) The certification official, described in § 660.XXX, may issue catch monitor provider certifications upon determination that the application submitted by the candidate meets all requirements specified in § 660.XXX.

Comment [t2]: Add language to Grandfather in EFP providers for first year. Others will be certified for 2012. Fall back on N Pacific providers, too (for observers that could serve as CM).

Borrow from one for observer providers.

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

- (A) The applicant's ability to carry out the responsibilities and relevant experience;
- (B) Satisfactory performance ratings on any Federal contracts held by the applicant.
- (C) Absence of a conflict of interest.
- (D) Absence of relevant criminal convictions.

(3) Agency determination. The certification official will make a determination to approve or deny the application and notify the applicant by letter via certified return receipt mail, within 60 days of receipt of the application. Certification and decertification procedures that apply to catch monitor providers are specified in § 660.016.

(e) Catch monitor provider responsibilities.

(1) Provide qualified candidates to serve as catch monitors. To be qualified a candidate must:

- (i) Be a U.S. citizen or have authorization to work in the United States;
- (ii) Be at least 18 years of age;
- (iii) Have a high school diploma and;

(A) At least two years of study from an accredited college with a major study in natural resource management, natural sciences, earth sciences, natural resource anthropology, law enforcement/police science, criminal justice, public administration, behavioral sciences, environmental sociology, or other closely related subjects pertinent to the management and protection of natural resources, or;

(B) One year of specialized experience performing duties which involved communicating effectively and obtaining cooperation, identifying and reporting problems or apparent violations of regulations concerning the use of protected or public land areas, and carrying out policies and procedures within a recreational area or natural resource site.

(iv) Have a current and valid driver's license.

(v) Have had a background investigation and been found to have had no criminal or civil convictions that would affect their performance or credibility as a catch monitor.

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

(A) Physical fitness exams shall be conducted by a medical doctor who has been provided with a description of the job duties and work conditions and who provides a written conclusion regarding the candidate's fitness relative to the required duties and work conditions;

(B) Physical exams may include testing for illegal drugs;

(C) Candidates must have a minimum visual acuity of 20/100 corrected to 20/20 in at least one eye.

(vii) Have signed a statement under penalty of perjury indicating that they are free from conflict of interest as described under §660.316 (c)

(viii) Priority shall be given to qualified candidates who have and show proof of their knowledge of West Coast marine fish species, ability to effectively communicate in writing and orally, and have technical expertise in weights and measures.

(2) Standards. Provide to the candidate a copy of the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy.

(3) Contract. Provide to the candidate a copy of a written contract signed by the catch monitor and catch monitor provider that shows among other factors the following provisions for employment:

- (i) Compliance with the standards of conduct, responsibilities, conflict of interest standards and drug and alcohol policy;
- (ii) Willingness to complete all responsibilities of current deployment prior to performing jobs or duties which are not part of the catch monitor responsibilities.
- (iii) Commitment to return all sampling or safety equipment issued for the deployment.

8. INSTRUCTION – Section 660.18 is revised to read as follows:

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

(a) Certification official. The Regional Administrator (or a designee) will designate a NMFS catch monitor certification official who will make decisions on whether to issue or deny catch monitor certification pursuant to the regulations at § 660.17, subpart C.

(b) Agency determinations on certifications.

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

- (A) § 660.17 (X) for catch monitors; and
- (B) § 660.17 (X) for catch monitor providers

(2) Denial of a certification. The NMFS certification official will issue a written IAD identifying the reasons certification was denied and what requirements were deficient when the certification official determines that a candidate has irresolvable deficiencies in meeting the requirements for certification as specified in:

- (A) § 660.17 (X) for catch monitors; and
- (B) § 660.17 (X) for catch monitor providers

(3) Appeals. A candidate or applicant who receives an IAD that denies his or her certification may appeal pursuant to § 660.XXX. A candidate or applicant who appeals the IAD will not be issued an interim certification, and will not receive a certification unless the final resolution of that appeal is in the candidate's favor.

(c) Limitations on conflict of interest for catch monitors.

(1) Catch monitors must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, Alaska state waters, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

- (i) Any ownership, mortgage holder, or other secured interest in a vessel, shore-based or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish,
- (ii) Any business involved with selling supplies or services to any vessel, shore-based or floating stationary processing facility; or
- (iii) Any business involved with purchasing raw or processed products from any vessel, shore-based or floating stationary processing facilities.

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

Comment [jg3]: Add language to grandfather existing CM providers (from EFP) for first year of program. (see 660.17)

(3) May not serve as a catch monitors on any vessel or at any shoreside or floating stationary processing facility owned or operated where a person was previously employed.

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

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

(d) Limitations on conflict of interest for catch monitor providers. Catch monitor providers must not have a direct financial interest, other than the provision of observer or catch monitor services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

(e) Decertification.

(1) Decertification review official. The Regional Administrator (or a designee) will designate a decertification review official(s), who will have the authority to review certifications and issue IADs of decertification.

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

(i) Failed to satisfactorily perform the specifies duties and responsibilities;

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

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

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

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

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

(3) Issuance of IAD. Upon determination that decertification is warranted under § 660.316(c) or (d), the decertification official will issue a written IAD. The IAD will identify the specific reasons for the action taken. Decertification is effective 30 days after the date of issuance, unless there is an appeal.

(4) Appeals. A catch monitor or catch monitor provider who receives an IAD that revokes certification may appeal. The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or revoked, under the criteria in this section. An appeal must be filed with the Regional Administrator within 30 days of the IAD denying, or revoking the certification.

(i) Decisions on appeals of an IAD denying certification or decertifying will be made by the Regional Administrator (or designated official).

(ii) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal and

shall state the reasons for the decision. The Regional Administrator's decision is the final administrative decision of the Department of Commerce as of the date of the decision.

§ 660.20 Vessel and gear identification. * * *

§ 660.24 Limited entry and open access fisheries. * * *

9. INSTRUCTION – In section 660.25, paragraphs (b)(1)(i)(A) and (B) are removed and paragraph (e) is revised to read as follows:

§ 660.25 Permits.

(a) General. * * *

(b) Limited entry permit. * * *

(c) Quota share (QS) permit. * * *

(d) First receiver site license. * * *

* * * * *

(e) Coop permit.

(1) MS coop permit. A MS coop permit conveys a conditional privilege to a person to harvest a coop's allocation of designated species and species groups. A MS coop permit is not a limited entry permit. The provisions for the MS coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the MS Coop Program at § 660.150, subpart D.

(2) C/P coop permit. A C/P coop permit conveys a conditional privilege to a person to harvest a coop's allocation of designated species and species groups. A C/P coop permit is not a limited entry permit. The provisions for the C/P coop permit, including eligibility, renewal, change of permit ownership, fees, and appeals are described in the C/P Coop Program at § 660.160, subpart D.

* * * * *

(f) Permit fees. * * *

(g) Permit appeals process. * * *

(h) Permit sanctions. * * *

10. INSTRUCTION – Section 660.26 is removed.

§ 660.30 Compensation with fish for collecting resource information – EFPs. * * *

§ 660.40 Overfished species rebuilding plans. * * *

§ 660.50 Pacific coast treaty Indian fisheries. * * *

9. INSTRUCTION – In section 660.55, paragraphs (i)(2) is revised to read as follows:

§ 660.55 Allocations. * * *

(a) General. * * *

(b) Fishery harvest guidelines and reductions made prior to fishery allocations. * * *

(c) Trawl/Nontrawl allocations. * * *

(d) Commercial harvest guidelines for remaining groundfish species. * * *

(e) Limited Entry(LE)/Open Access (OA) allocations. * * *

(f) Catch accounting. * * *

(g) Recreational fisheries. * * *

(h) Sablefish allocations (north of 36° N. lat.). * * *

* * * * *

Comment [jg4]: Needs further revisions?

(i) Pacific whiting allocation. * * *

(1) * * *

(2) The commercial harvest guideline for Pacific whiting is allocated among three sectors, as follows: 34 percent for the C/P Coop Program; 24 percent for the MS Coop Program; and 42 percent for the Shorebased IFQ Program. No more than 5 percent of the Shorebased IFQ Program allocation may be taken and retained south of 42° N. lat. before the start of the primary Pacific whiting season north of 42° N. lat. Specific sector allocations for a given calendar year are found in Tables 1a and 2a of this subpart. Set asides for other species for the at-sea whiting fishery for a given calendar year are found in Tables 1d and 2d of this subpart.

Comment [jg5]: How do we need to revise this to implement for the IFQ fishery. Make it a per vessel limit using the vessel accounts?

* * * * *

(j) Fishery set-asides. * * *

(k) Exempted fishing permit set-asides. * * *

(l) Black rockfish harvest guideline. * * *

(m) Pacific halibut bycatch allocation. * * *

11. INSTRUCTION – In section 660.60, paragraph (d)(1), paragraph (h)(2), and paragraph (h)(5)(ii) are revised; and paragraphs (h)(5)(v) and (vi) are added to read as follows: § 660.60 Specifications and management measures.

(a) General. * * *

(b) Biennial actions. * * *

(c) Routine management measures. * * *

* * * * *

Comment [jg6]: Do we need to designate anything else as a "routine management measure"?

(d) Automatic actions. * * *

(1) Automatic actions are used in MS Coop Program and C/P Coop Program to:

(i) Close at-sea sectors of the fishery when a sector's Pacific whiting or non-whiting species with allocations are reached, or are projected to be reached;

(ii) Close all at-sea sectors or a single sector of the fishery when a bycatch limit is reached or projected to be reached;

(iii) Reapportion unused allocations of non-whiting groundfish species to other at-sea sectors of the Pacific whiting fishery.

(iv) Implement the Ocean Salmon Conservation Zone, described at § 660.131(c)(3), subpart D, when NMFS projects the Pacific whiting fishery may take in excess of 11,000 Chinook within a calendar year.

(v) Implement Pacific Whiting Bycatch Reduction Areas, described at § 660.131(c)(4) Subpart D, when NMFS projects a sector-specific bycatch limit will be reached before the sector's whiting allocation.

* * * * *

(e) Prohibited species. * * *

(f) Exempted Fishing Permits (EFP). * * *

(g) Applicability. * * *

(h) Fishery restrictions. * * *

(2) Landing. As stated at § 660.11, subpart C (in the definition of "Landing"), once the offloading of any species begins, all fish aboard the vessel are counted as part of the landing and must be reported as such. Transfer of fish at sea is prohibited under § 660.12, subpart C, unless a vessel is participating in the primary whiting fishery as part of the mothership or catcher/processor sectors, as described at § 660.131(a), subpart D. Catcher vessels in the

Comment [jg7]: Do we need to add further crossover provisions for gear switching? Crossover provisions at paragraph (h)(7).

mothership sector must transfer all catch from a haul to the same vessel registered to a MS permit prior to the gear being set for a subsequent haul. Catch may not be transferred to a tender vessel.

* * * * *

(5) Size limits, length measurement, and weight limits.

(ii) Weight limits and conversions. For species other than Pacific whiting and rockfish, the weight limit conversion factor established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit, QP, or other allocation. Weight conversions provided herein are those conversions currently in use by the States of Washington, Oregon, and California and may be subject to change by those states. Fishery participants should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official conversion factor. To determine the round weight, multiply the processed weight times the conversion factor.

* * * * *

(v) Pacific whiting. The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: for headed and gutted Pacific whiting (head removed just in front of the collar bone and viscera removed,) the conversion factor is 1.67; for headed and gutted Pacific whiting with the tail removed the conversion factor is 2.0.

(vi) Rockfish. The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed,) the conversion factor is 1.66; for headed and gutted, eastern cut (head removed just in behind the collar bone and viscera removed,) the conversion factor is 2.0.

* * * * *

§ 660.65 Groundfish harvest specifications. * * *

§ 660.70-99 Closed area - GCA's and EFH. * * *

Subpart D – West Coast Groundfish – Trawl Fisheries

§ 660.100 Purpose and Scope. * * *

12. INSTRUCTION – In section 660.111, the following definitions are removed: “Pacific whiting shoreside or shore-based fishery”, “Pacific whiting shoreside first receivers”, and “Pacific whiting shoreside vessel”. New definitions are added in alphabetical order for: “IFQ trip”, “Pacific whiting IFQ fishery”, “Pacific whiting IFQ trip”.

§ 660.111 Trawl fishery - definitions.

* * * * *

Accumulation limits refers to permits or QS and means XXXXXX

* * * * *

IFQ trip means a trip in which the vessel has a valid fishing declaration for any of the following: Limited entry midwater trawl, non-whiting shorebased IFQ; Limited entry midwater trawl, Pacific whiting shorebased IFQ; Limited entry bottom trawl, shorebased IFQ, not including demersal trawl; Limited entry demersal trawl, shorebased IFQ; or Limited entry fixed gear, shorebased IFQ.

* * * * *

Comment [blr8]: Need?

Pacific whiting IFQ fishery means the Shorebased IFQ Program fishery composed of vessels making Pacific whiting IFQ trips pursuant to the requirements at § 660.131 during the primary season fishery dates for the Shorebased IFQ Program.

Pacific whiting IFQ trip means a trip in which a vessel registered to a limited entry permit uses legal midwater groundfish trawl gear with a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5) during the dates that the Pacific whiting IFQ fishery primary season.

Usage limit refers to vessel QP or processed catch and means

Comment [blr9]: Need??

13. INSTRUCTION – In section 660.112, paragraph (f) is removed; paragraph (a)(2) is revised; paragraph (a)(4) is renumbered as (a)(5), and a new (a)(4) is added; paragraphs (b) through (e) are revised to read as follows:

§ 660.112 Trawl fishery - prohibitions. * * *

(a) General. * * *

(2) Sorting. It is unlawful for any person to fail to sort catch consistent with the requirements specified at § 660.130(d).

(4) Observers.

(i) Fish (including processing, as defined at § 600.10) in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program if NMFS determines the vessel is unsafe for an observer.

(ii) Fish in the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program without observer coverage.

(5) Fishing in conservation areas with trawl gear. * * *

(b) Shorebased IFQ program.

(1) General.

(i) Own or control by any means whatsoever an amount of QS that exceeds the Shorebased IFQ Program accumulation limits.

(ii) Fish in the Shorebased IFQ Program with a vessel that does not have a valid vessel account and has no deficits (negative balance) for any species/species group.

(iii) Have any IFQ species/species group catch (landings and discards) from an IFQ trip not covered by QP for greater than 30 days from the date of landing for that trip unless the overage is within the limits of the carryover provision specified at § 660.140, subpart D, in which case the vessel has 30 days after the QP for the following year are issued, whichever is greater.

(iv) Participate in fishing that is within the scope of the Shorebased IFQ Program from any vessel with an overage (catch not covered by QP) until the overage is covered, regardless of the amount of the overage.

(v) Use QP by vessels not registered to a limited entry trawl permit with a valid vessel account.

(vi) Use QP in an area or for species/species groups other than that for which it is designated.

(vii) Fish on a Pacific whiting IFQ trip with a gear other than legal midwater groundfish trawl gear.

(viii) Fish on a Pacific whiting IFQ trip without a valid declaration for limited entry midwater trawl, Pacific whiting shorebased IFQ, as specified at § 660.13(d)(5), subpart C.

(ix) Use midwater trawl gear to fish for Pacific whiting within an RCA outside the Pacific whiting IFQ fishery primary season as specified at § 660.XXX.

(xi) Dumping catch from a new haul until all catch from the previous haul is removed from the deck or stored in a location isolated from the new haul's catch.

(2) IFQ first receivers.

(i) Accept an IFQ landing without a valid first receiver site license.

(ii) Fail to sort fish received from a IFQ landing prior to first weighing after offloading as specified at § 660.XXX for the Shorebased IFQ Program.

(iii) Process, sell, or discard any groundfish received from an IFQ landing that has not been weighed on a scale that is in compliance with requirements at § 660.15, subpart C.

(iv) Transport catch away from the point of landing before that catch has been sorted and weighed by federal groundfish species or species group, and recorded for submission on an electronic fish ticket. (If fish will be trucked to a different location for processing, all sorting and weighing to federal groundfish species groups must occur before transporting the catch away from the point of landing).

(v) Receive for transport or processing an IFQ landing without first obtaining verification from vessel personnel that the vessel had an observer on the vessel as required by Federal regulation.

(vi) Process an IFQ landing without coverage by a catch monitor when one is required by regulations, unless NMFS has granted a written waiver specifically exempting the IFQ first receiver from the catch monitor coverage requirements.

(vii) Process catch without a NMFS accepted catch monitoring plan.

(viii) Mix catch from more than one IFQ landing prior to the catch being sorted and weighed.

(ix) Fail to comply with the IFQ first receiver responsibilities specified at § 660.140.

(x) Process, sell, or discard any groundfish received from an IFQ landing that has not been accounted for on an electronic fish ticket with the identification number for the vessel that delivered the fish.

(xi) Fail to submit, or submit incomplete or inaccurate information on any report, application, or statement required under this part.

(c) MS and C/P coop programs.

(1) Process Pacific whiting in the fishery management area during times or in areas where at-sea processing is prohibited for the sector in which the vessel fishes, unless:

(i) The fish are received from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C;

(ii) The fish are processed by a waste-processing vessel according to § 660.131(j), subpart D; or

(iii) The vessel is completing processing of Pacific whiting taken on board during that vessel's primary season.

(2) During times or in areas where at-sea processing is prohibited, take and retain or receive Pacific whiting, except as cargo or fish waste, on a vessel in the fishery management area that already has processed Pacific whiting on board. An exception to this prohibition is provided if the fish are received within the tribal U&A from a member of a Pacific Coast treaty Indian tribe fishing under § 660.50, subpart C.

(3) Operate as a waste-processing vessel within 48 hours of a primary season for Pacific whiting in which that vessel operates as a catcher/processor or mothership, according to § 660.131(j), subpart D.

(4) On a vessel used to fish for Pacific whiting, fail to keep the trawl doors on board the vessel, when taking and retention is prohibited under § 660.131(f), subpart D.

(5) Sort or discard any portion of the catch taken by a catcher vessel in the mothership sector before the catcher vessel observer completes sampling of the catch, with the exception of minor amounts of catch that are lost when the codend is separated from the net and prepared for transfer.

(d) MS coop program (coop and non-coop fisheries).

(1) Fish with a vessel in the mothership non-coop fishery that is not registered to a current MS/CV-endorsed limited entry trawl permit.

(2) Receive catch, process catch, or otherwise fish as a mothership vessel if that is not registered to a current MS permit.

(3) Fish with a vessel in the mothership sector, if that vessel was used to fish in the C/P fishery in the same calendar year.

(4) Fish in the MS Coop Program with a vessel that does not have has a valid VMS declaration for limited entry midwater trawl, Pacific whiting mothership sector, as specified at § 660.13(d)(5), subpart C.

(5) Transfer catch to a vessel that is not registered to a MS permit. (i.e. a tender vessel).

(6) Use a vessel registered to a limited entry permit with a trawl endorsement (with or without a MS/CV endorsement) to catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(7) Fish before all catch from a haul has been transferred to a single vessel registered to a MS permit.

(8) Transfer catch from a single haul to more than one permitted MS vessel.

(9) Fish for a MS coop with a vessel that is not identified on the MS coop permit or with a vessel that does not have permission from the coop to fish for that coop.

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

(11) Sort, process, or discard catch before the catch is weighed on a scale that meets the requirements of § 679.15(b), including the daily test requirements.

(12) Discard any catch from the codend or net (i.e. bleeding) before the observer has completed their data collection.

(13) Mix catch from more than a one haul before the observer completes their collection of catch for sampling.

(e) C/P coop program.

(1) Fish with a vessel in the catcher/processor sector that is not registered to a current C/P-endorsed limited entry trawl permit.

(2) Fish as a catcher/processor vessel in the same year that the vessel fishes as a catcher vessel in the mothership fishery.

(3) Fish in the C/P Coop Program with a vessel that does not have has a valid VMS declaration for limited entry midwater trawl, Pacific whiting catcher/processor sector, as specified at § 660.13(d)(5).

(4) Fish in the C/P Coop Program with a vessel that is not identified on the C/P coop permit.

Comment [jg10]: Or should this be in the coop agreement? Coop permit application?

Comment [jg11]: Coop agreement? Coop permit application?

(5) Fish in the C/P Coop Program without a valid scale inspection report signed by an authorized scale inspector on board the vessel.

(6) Sort, process, or discard catch before the catch is weighed on a scale that meets the requirements of § 679.15(b), including the daily test requirements.

(7) Discard any catch from the codend or net (i.e. bleeding) before the observer has completed their data collection.

(8) Mix catch from more than one haul before the observer completes their collection of catch for sampling.

14. INSTRUCTION – In section 660.113, paragraph (d) is removed; paragraphs (a) through (c) are renumbered as (b) through (d); and a new paragraph (a) is added to read as follows:

§ 660.113 Trawl fishery - recordkeeping and reporting. * * *

Comment [jg12]: This section needs work!

(a) General requirements.

(i) All records or reports required by this paragraph must: be maintained in English, be accurate, be legible, be based on local time, and be submitted in a timely manner as required in paragraph (e)(1)(iv) of this section.

(ii) Retention of Records. All records used in the preparation of records or reports specified in this section or corrections to these reports must be maintained for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of required reports specified in this section or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports must be maintained for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(b) Shorebased IFQ program.

(1) General.

(i) Any person with a limited entry groundfish permit or IFQ first receiver site license participating in the Shorebased IFQ Program must complete the mandatory economic data collection form.

(ii) Any person taking, retaining, and landing groundfish in the Shorebased IFQ Program must report their landings and discards through the electronic “?????” fish ticket report.

Comment [jg13]: This should be for vessels, first receivers are below in e-fish tix section

(2) Electronic vessel logbook. [Reserved]

(3) Gear switching declaration. [Reserved]

(4) Electronic fish ticket. The IFQ first receiver is responsible for compliance with all reporting requirements described in this paragraph.

Comment [jg14]: First receiver?

(i) Required information. All IFQ first receivers must provide the following types of information: date of landing, vessel that made the delivery, gear type used, first receiver, round weights of species landed listed by species or species group including species with no value, number of salmon by species, number of Pacific halibut, and any other information deemed

necessary by the Regional Administrator as specified on the appropriate electronic fish ticket form.

(ii) Submissions. The IFQ first receiver must:

(A) Sort all fish, prior to first weighing, by species or species groups as specified at § 660.370 (h)(6)(iii).

(B) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at §660.XXX and the vessel identification number.

(C) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at §660.XXX;

(D) Install, use, and update as necessary, any NMFS-approved software described at §660.XXX;

(E) Submit a completed electronic fish ticket for every IFQ landing no later than 24 hours after the date the fish are received, unless a waiver of this requirement has been granted under provisions specified at paragraph (e)(1)(vii) of this section.

(iii) Revising a submission. In the event that a data error is found, electronic fish ticket submissions may be revised by resubmitting the revised form. Electronic fish tickets are to be used for the submission of final data. Preliminary data, including estimates of fish weights or species composition, shall not be submitted on electronic fish tickets.

(iv) Retention of records. All records used in the preparation of electronic fish tickets or corrections to these reports must be maintained in the first receiver's office for a period of not less than three years after the date of landing and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS. Records used in the preparation of electronic fish tickets or corrections to these reports that are required to be kept include, but are not limited to, any written, recorded, graphic, electronic, or digital materials as well as other information stored in or accessible through a computer or other information retrieval system; worksheets; weight slips; preliminary, interim, and final tally sheets; receipts; checks; ledgers; notebooks; diaries; spreadsheets; diagrams; graphs; charts; tapes; disks; or computer printouts. All relevant records used in the preparation of electronic fish ticket reports or corrections to these reports must be maintained in the first receiver's office for a period of not less than three years after the date and must be immediately available upon request for inspection by NMFS or authorized officers or others as specifically authorized by NMFS.

(v) Waivers for submission. On a case-by-case basis, a temporary written waiver of the requirement to submit electronic fish tickets may be granted by the Assistant Regional Administrator or designee if he/she determines that circumstances beyond the control of a first receiver would result in inadequate data submissions using the electronic fish ticket system. The duration of the waiver will be determined on a case-by-case basis.

(vi) Reporting requirements when a temporary waiver has been granted. IFQ First receivers that have been granted a temporary waiver from the requirement to submit electronic fish tickets must submit on paper the same data as is required on electronic fish tickets within 24 hours of the date received during the period that the waiver is in effect. Paper fish tickets must be sent by facsimile to NMFS, Northwest Region, Sustainable Fisheries Division, 206-526-6736 or by delivering it in person to 7600 Sand Point Way NE, Seattle, WA 98115. The requirements for submissions of paper tickets in this paragraph are separate from, and in addition to existing state requirements for landing receipts or fish receiving tickets.

(c) MS coop program (coop and non-coop fisheries).

(1) Economic data collection.

(i) For the coop fishery, the designated coop manager listed in the coop agreement for the MS coop permit must complete the mandatory economic data collection form.

(ii) For the non-coop fishery, any person with a limited entry groundfish permit (MS/CV or mothership permit), must complete the mandatory economic data collection form provided by NMFS.

(2) NMFS-approved scales.

(i) Scale test report form. Mothership vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.150(X) for mothership vessels.

(ii) Printed scale reports. Specific requirements pertaining to printed scale reports and scale weight print outs are specified at § 660.150(X) for mothership vessels.

(iii) Retention of scale records and reports. The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or NMFS authorized personnel. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) Annual coop report.

(i) The designated coop manager for the mothership coop must submit an annual report. The complete annual coop report will contain information about the current year's fishery, including:

(A) the mothership sector's annual allocation of Pacific whiting and the permitted mothership coop allocation;

(B) the mothership coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) a description of the method used by the mothership coop to monitor performance of coop vessels that participated in the fishery;

(D) a description of any actions taken by the mothership coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) plans for the next year's mothership coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report must be submitted to the Pacific Fishery Management Council for their November meeting each year. A final report must be submitted to NMFS with by March 31 of the following year and before a coop permit is issued for the following year.

(4) Cease fishing report.

(5) Mandatory logbook. ~~XX~~production report, transfer logXX

(d) C/P coop program.

(1) Economic data collection. The designated coop manager listed in the coop agreement for the C/P coop permit must complete the mandatory economic data collection form by NMFS.

(2) NMFS-approved scales.

(i) Scale test report form. Catcher/processor vessel operators are responsible for conducting scale tests and for recording the scale test information on the at-sea scale test report form as specified at § 660.160(X) for C/P vessels.

Comment [bl15]: Is some type of mandatory reporting required or do we put voluntary reporting in reg. (PRA)

(ii) Printed scale reports. Specific requirements pertaining to printed scale reports and scale weight print outs are specified at § 660.160(X) for C/P vessels.

(iii) Retention of scale records and reports. The vessel must maintain the test report form on board until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or NMFS authorized personnel. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) Annual coop report.

(i) The designated coop manager for the C/P coop must submit an annual report. The complete annual coop report will contain information about the current year's fishery, including:

(A) the C/P sector's annual allocation of Pacific whiting;

(B) the C/P coop's actual retained and discarded catch of Pacific whiting, salmon, Pacific halibut, rockfish, groundfish, and other species on a vessel-by-vessel basis;

(C) a description of the method used by the C/P coop to monitor performance of cooperative vessels that participated in the fishery;

(D) a description of any actions taken by the C/P coop in response to any vessels that exceed their allowed catch and bycatch; and

(E) plans for the next year's C/P coop fishery, including the companies participating in the cooperative, the harvest agreement, and catch monitoring and reporting requirements.

(ii) The annual coop report must be submitted to the Pacific Fishery Management Council for their November meeting each year. A final report must be submitted to NMFS with by March 31 of the following year and before a coop permit is issued for the following year.

(4) Cease fishing report.

(5) Mandatory logbook. XXproduction report, transfer logXX

Comment [bl16]: Same as with MP -- Is some type of mandatory reporting required or do we put voluntary reporting in reg. (PRA)

15. INSTRUCTION –Section 660.116 is removed.

§ 660.116 Trawl fishery - observer requirements.

§ 660.120 Trawl fishery - crossover provisions. * * *

16. INSTRUCTION - In section 660.130, paragraph (a) and paragraph (d) are revised to read as follows:

§ 660.130 Trawl fishery - management measures.

(a) General. Limited entry trawl vessels include those vessels registered to a limited entry permit with a trawl endorsement, and to vessels registered to a MS permit. Most species taken in limited entry trawl fisheries will be managed with quotas (see § 660.140), allocations or set-asides (see § 660.150 or § 660.160), or cumulative trip limits (see trip limits in Tables 1 (North) and 1 (South) of this subpart), size limits (see § 660.60 (h)(5), subpart C), seasons (see Pacific whiting at § 660.131(b), subpart D), gear restrictions (see paragraph (b) of this section) and closed areas (see paragraph (e) of this section and §§ 660.70 through 660.79, subpart C). The trawl fishery has gear requirements and harvest limits that differ by the type of trawl gear on board and the area fished. Cowcod retention is prohibited in all fisheries and groundfish vessels operating south of Point Conception must adhere to CCA restrictions (see paragraph (e)(1) of this section and § 660.70, subpart C). The trip limits in Tables 1 (North) and 1 (South) of this subpart apply to vessels participating in the limited entry groundfish trawl fishery and may not

Comment [bl17]: Need to figure out what portions of existing management measures stay and how to revise.

be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive state commercial groundfish regulations relating to federally-managed groundfish.

* * * * *

(b) Trawl gear requirements and restrictions. * * *

(c) Cumulative trip limits and prohibitions by limited entry trawl gear type. * * *

(d) Sorting. Under § 660.12 (a)(8), subpart C, it is unlawful for any person to “fail to sort, prior to the first weighing after offloading, those groundfish species or species groups for which there is a trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY, if the vessel fished or landed in an area during a time when such trip limit, size limit, scientific sorting designation, quota, harvest guideline, or OY applied.” The states of Washington, Oregon, and California may also require that vessels record their landings as sorted on their state landing receipt.

(1) Species and areas.

(i) Coastwide. Widow rockfish, canary rockfish, darkblotched rockfish, yelloweye rockfish, shortbelly rockfish, black rockfish, blue rockfish, minor nearshore rockfish, minor shelf rockfish, minor slope rockfish, shortspine and longspine thornyhead, Dover sole, arrowtooth flounder, petrale sole, starry flounder, English sole, other flatfish, lingcod, sablefish, Pacific cod, spiny dogfish, other fish, longnose skate, and Pacific whiting;

(ii) North of 40°10' N. lat. POP, yellowtail rockfish;

(iii) South of 40°10' N. lat. Minor shallow nearshore rockfish, minor deeper nearshore rockfish, California scorpionfish, chilipepper rockfish, bocaccio rockfish, splitnose rockfish, Pacific sanddabs, cowcod, bronzespotted rockfish and cabezon.

(2) Sorting requirements for the shorebased IFQ program.

(i) Fish landed at IFQ first receivers (including shoreside processing facilities and buying stations that intend to transport catch for processing elsewhere) must be sorted, prior to first weighing after offloading from the vessel and prior to transport away from the point of landing, except as allowed in § 660.140(k) for the midwater Pacific whiting fishery.

(ii) All catch must be sorted to the species groups specified in paragraph (h)(6)(i)(A) of this section for vessels with limited entry permits. 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) Sorting requirements for the at-sea sectors of the Pacific whiting fishery.

(i) Pacific whiting at-sea processing vessels may use an accurate in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch, the catch must be sorted to the species groups specified in paragraph (h)(6)(i)(A) and all incidental catch (groundfish and non-groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ii) Catcher vessels in the MS sector. If sorting occurs on the catcher vessel, the catch must not be discarded from the vessel and the vessel must not resume fishing until the catcher vessel observer has obtained an accurate weight by species for the sorted catch.

* * * * *

(e) Groundfish conservation areas (GCAs) applicable to trawl vessels. * * *

16. INSTRUCTION - In section 660.131, paragraphs (a) through (c) and paragraphs (e) and (f) are revised; paragraphs (g), (h), and (k) are removed; paragraphs (i) and (j) are renumbered as paragraphs (g) and (h); and the new paragraph (g) is revised to read as follows: § 660.131 Pacific whiting fishery management measures.

(a) Sectors.

(1) The catcher/processor sector, or C/P Coop Program, is composed of catcher/processors which are vessels registered to a limited entry permit with a C/P endorsement.

(2) The mothership sector, or MS Coop Program, is composed of motherships and catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels registered to a MS permit, and catcher vessels are vessels registered to a limited entry permit with a MS/CV endorsement or vessels registered to a limited entry permit without a MS/CV endorsement if the vessel is identified as a member vessel of a permitted MS coop.

(3) The Pacific whiting IFQ fishery is composed of vessels that harvest Pacific whiting for delivery shoreside to IFQ first receivers during the primary season. Notwithstanding the other provisions of 50 CFR part 660, subpart C or D, a vessel that is 75 feet or less LOA that harvests Pacific whiting and, in addition to heading and gutting, cuts the tail off and freezes the Pacific whiting, is not considered to be processing fish. Such a vessel is subject to regulations and allocations for the Shoreside IFQ Program.

(b) Pacific whiting seasons.

(1) Primary seasons. The primary seasons for the Pacific whiting fishery are:

(i) For the Shorebased IFQ Program, Pacific whiting IFQ fishery, the period(s) of the large-scale target fishery is conducted after the season start date and ends when an vessel has no more whiting QP in their vessel account;

(ii) For catcher/processors, the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector; and

(iii) For vessels delivering to motherships, the period(s) when at-sea processing is allowed and the fishery is open for the mothership sector.

(2) Before and after the primary seasons. ~~Before and after the primary seasons, trip landing or frequency limits may be imposed under § 660.60(c). The sectors are defined at §660.60(a).~~

(3) Different primary season start dates. North of 40°30' N. lat., different starting dates may be established for the catcher/processor sector, the mothership sector, and in the Pacific whiting IFQ fishery for vessels delivering to IFQ first receivers north of 42° N. lat. and vessels delivering to IFQ first receivers between 42° through 40°30' N. lat.

(i) Procedures. The primary seasons for the whiting fishery north of 40°30' N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

(ii) Criteria. The start of a primary season may be changed based on a recommendation from the Council and consideration of the following factors, if applicable: Size of the harvest guidelines for whiting and bycatch species; age/size structure of the whiting population; expected harvest of bycatch and prohibited species; availability and stock status of prohibited species; expected participation by catchers and processors; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

Comment [b18]: What goes here? May only fish for groundfish on IFQ trips ?

(iii) Primary whiting season start dates and duration. After the start of a primary season for a sector of the whiting fishery, the season remains open for that sector until the quota is taken or a bycatch limit is reached and the fishery season for that sector is closed by NMFS. The starting dates for the primary seasons for the whiting fishery are as follows:

- (A) Catcher/processor sector—May 15.
- (B) Mothership sector—May 15.
- (C) Shorebased IFQ program, Pacific whiting IFQ fishery.
 - (1) North of 42° N. lat.— June 15;
 - (2) Between 42°–40°30' N. lat.— April 1; and
 - (3) South of 40°30' N. lat.— April 15.

(4) Trip limits in the whiting fishery. The “per trip” limit for whiting before and after the regular (primary) season for the shore-based sector is announced in Table 1 of this subpart, and is a routine management measure under § 660.60(c). This trip limit includes any whiting caught shoreward of 100–fm (183–m) in the Eureka, CA area. The “per trip” limit for other groundfish species before, during, and after the regular (primary) season are announced in Table 1 (North) and Table 1 (South) of this subpart and apply as follows:

(i) During the groundfish cumulative limit periods both before and after the primary whiting season, vessels may use either small and/or large footrope gear, but are subject to the more restrictive trip limits for those entire cumulative periods.

(ii) If, during a primary whiting season, a whiting vessel harvests a groundfish species other than whiting for which there is a midwater trip limit, then that vessel may also harvest up to another footrope-specific limit for that species during any cumulative limit period that overlaps the start or end of the primary whiting season.

(c) Closed areas. Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program, or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the following portions of the fishery management area: * * * * *

(d) Eureka Area Trip Limits. * * *

(e) At-sea processing. Whiting may not be processed at sea south of 42°00' N. lat. (Oregon-California border), unless by a waste-processing vessel as authorized under paragraph (g) of this section.

(f) Time of day. Vessels fishing in the Pacific whiting primary seasons for the Shorebased IFQ Program, MS Coop Program or C/P Coop Program shall not target Pacific whiting with midwater trawl gear in the fishery management area south of 42°00' N. lat. between 0001 hours to one-half hour after official sunrise (local time). During this time south of 42°00' N. lat., trawl doors must be on board any vessel used to fish for whiting and the trawl must be attached to the trawl doors. Official sunrise is determined, to the nearest 5° lat., in The Nautical Almanac issued annually by the Nautical Almanac Office, U.S. Naval Observatory, and available from the U.S. Government Printing Office.

(g) Bycatch reduction and full utilization program for at-sea processors (optional). If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (g)(1) of this section are met. For purposes of this program, “fishing day” means a 24-hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's

Comment [b19]: Can paragraph (4) be deleted? I assume that nothing needs to be said beyond what is stated in each fishery's allocation sections. Is that correct?

Comment [b20]: GC - Much of this is not longer applicable since trip limits no longer exist and all CPs and MSs will be required to carry 2 obs. Do we just leave for now or update in some way?

DEEMING- Flag to industry as a deeming question

observer data, if available. Changes to the number of observers required for a vessel to fish under in the bycatch reduction program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

(1) Conditions. Conditions for participating in the voluntary full utilization program are as follows:

(i) All catch must be made available to the observers for sampling before it is sorted by the crew.

(ii) Any retained catch in excess of cumulative trip limits must either be: Converted to meal, mince, or oil products, which may then be sold; or donated to a bona fide tax-exempt hunger relief organization (including food banks, food bank networks or food bank distributors), and the vessel operator must be able to provide a receipt for the donation of groundfish landed under this program from a tax-exempt hunger relief organization immediately upon the request of an authorized officer.

(iii) No processor or catcher vessel may receive compensation or otherwise benefit from any amount in excess of a cumulative trip limit unless the overage is converted to meal, mince, or oil products. Amounts of fish in excess of cumulative trip limits may only be sold as meal, mince, or oil products.

(iv) The vessel operator must contact the NMFS enforcement office nearest to the place of landing at least 24 hours before landing groundfish in excess of cumulative trip limits for distribution to a hunger relief agency. Cumulative trip limits and a list of NMFS enforcement offices are found on the NMFS, Northwest Region homepage at www.nwr.noaa.gov.

(v) If the meal plant on board the whiting processing vessel breaks down, then no further overages may be retained for the rest of the cumulative trip limit period unless the overage is donated to a hunger relief organization.

(vi) Prohibited species may not be retained.

(vii) Donation of fish to a hunger relief organization must be noted in the transfer log (Product Transfer/Offloading Log (PTOL)), in the column for total value, by entering a value of "0" or "donation," followed by the name of the hunger relief organization receiving the fish. Any fish or fish product that is retained in excess of trip limits under this rule, whether donated to a hunger relief organization or converted to meal, must be entered separately on the PTOL so that it is distinguishable from fish or fish products that are retained under trip limits. The information on the Mate's Receipt for any fish or fish product in excess of trip limits must be consistent with the information on the PTOL. The Mate's Receipt is an official document that states who takes possession of offloaded fish, and may be a Bill of Lading, Warehouse Receipt, or other official document that tracks the transfer of offloaded fish or fish product. The Mate's Receipt and PTOL must be made available for inspection upon request of an authorized officer throughout the cumulative limit period during which such landings occurred and for 15 days thereafter.

(h) Processing fish waste at sea. A vessel that processes only fish waste (a "waste-processing vessel") is not considered a whiting processor and therefore is not subject to the allocations, seasons, or restrictions for catcher/processors or motherships while it operates as a waste-processing vessel. However, no vessel may operate as a waste-processing vessel 48 hours immediately before and after a primary season for whiting in which the vessel operates as a

catcher/processor or mothership. A vessel must meet the following conditions to qualify as a waste-processing vessel:

(1) The vessel makes meal (ground dried fish), oil, or minced (ground flesh) product, but does not make, and does not have on board, surimi (fish paste with additives), fillets (meat from the side of the fish, behind the head and in front of the tail), or headed and gutted fish (head and viscera removed).

(2) The amount of whole whiting on board does not exceed the trip limit (if any) allowed under § 660.60(c), subpart C, or Tables 1 (North) or 1 (South) in subpart D.

(3) Any trawl net and doors on board are stowed in a secured and covered manner, and detached from all towing lines, so as to be rendered unusable for fishing.

(4) The vessel does not receive codends containing fish.

(5) The vessel's operations are consistent with applicable state and Federal law, including those governing disposal of fish waste at sea.

16. INSTRUCTION - In section 660.140, paragraphs (a), (b), (d)(2), (d)(3), (d)(5), (d)(7), and paragraphs (e) through (m) are revised to read as follows:

§ 660.140 Shorebased IFQ Program.

(a) General. The Shorebased IFQ Program requirements in § 660.140 will be effective beginning January 1, 2011, except for paragraphs (d)(4), (d)(6), and (d)(8) of this section, which are effective immediately. The IFQ Program applies to qualified participants in the Pacific Coast Groundfish fishery and includes a system of transferable QS for most groundfish species or species groups and trip limits or set-asides for the remaining groundfish species or species groups. In addition to the requirements of this section, the shorebased IFQ program is subject to the following groundfish regulations of subparts C and D:

(1) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish observer program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(2) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

(3) The shorebased IFQ fishery may be restricted or closed as a result of projected overages within the Shorebased IFQ Program, the MS Coop Program, or the C/P Coop Program. As determined necessary by the Regional Administrator, area restrictions, season closures, or other measures will be used to prevent the trawl sector in aggregate or the individual trawl sectors (Shorebased IFQ, MS Coop, or C/P Coop) from exceeding an OY, or formal allocation specified in the PCGFMP or regulation at § 660.55, subpart C, or §§ 660.140, 660.150, or 660.160, subpart D.

(b) Participation requirements and responsibilities.

(1) QS permit owners.

(2) IFQ vessels.

(i) Vessels must be registered to a groundfish limited entry permit, endorsed for trawl gear.

Comment [jg21]: Needs developed

(ii) Vessels must be registered to a vessel account.

(iii) To fish in the Shorebased IFQ Program, any vessel must have a valid vessel account. A valid vessel account is an account established for the vessel for a specific calendar year with at least one pound of QS for any species and has no deficits (negative balance) for any species/species group.

(iv) All IFQ species/species group catch (landings and discards) must be covered by QP within 30 days of the date of landing for that IFQ trip unless the overage (catch not covered by QP) is within the limits of the carryover provision at XXX.XXX, in which case the vessel may declare out of the IFQ fishery for the year in which the overage occurred and has 30 days after the QP for the following year are issued.

(v) Any vessel with an overage (catch not covered by QP) is prohibited from fishing that is within the scope of the Shorebased IFQ Program until the overage is covered, regardless of the amount of the overage.

(vi) Vessels are subject to limits on the amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, on the amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit). These amounts are specified at 660.XXX.

(vii) Vessel must use one of the groundfish gears listed at XXgear switching sectionXXX.

(viii) Vessels that are registered to MS/CV endorsed permits may be used to fish in the Shorebased IFQ program if the vessel has a valid vessel account.

(ix) In the same calendar year, a vessel registered to a trawl endorsed limited entry permit with no MS/CV or C/P endorsements may be used to fish in the shorebased IFQ program if the vessel has a valid vessel account, and to fish in the mothership sector for a permitted MS coop as agreed upon with the MS coop.

(3) IFQ first receivers.

(c) IFQ species and allocations. * * *

(1) IFQ species. * * *

(2) IFQ program allocations. * * *

* * * * *

(d) QS permits and QS accounts.

(1) General. * * *

(2) Eligibility and registration.

(i) Eligibility. Only the following persons are eligible to own QS permits:

(A) a United States citizen, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities);

(B) a permanent resident alien, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities); or

(C) a corporation, partnership, or other entity established under the laws of the United States or any State, that is eligible to own and control a U.S. fishing vessel with a fishery endorsement pursuant to 46 USC 12113 (general fishery endorsement requirements and 75 percent citizenship requirement for entities). However, there is an exception for any entity that owns a mothership that participated in the west coast groundfish fishery during the allocation

Comment [jg22]: Needs developed

Comment [jg23]: Need to add IFQ management areas. See March 2010, E.6.b, NMFS Report 1, #16.

period and is eligible to own or control that U.S. fishing vessel with a fishery endorsement pursuant to sections 203(g) and 213(g) of the AFA.

Comment [jg24]: This revision based on April 2010 Council motion.

(ii) Registration. A QS account must be registered with the NMFS SFD Permits Office. A QS account will be established with the issuance of a QS permit. The QS permit owner may designate other persons that can access the QS account by submitting a request in writing to NMFS.

But only applies to QS and MS permit?

All other LE permits (except MS permit) have different eligibility requirements at 660.25(b).

(3) Renewal, change of permit ownership, and transfer.

(i) Renewal. The holder of a QS permit must renew the QS permit by December 31 of each year. Failure to renew a QS Permit will result in the suspension of the associated QS account until such time that the permit is renewed. A completed ownership interest form is required as part of renewal of a QS permit.

(ii) Change of permit ownership and transfer.

(A) Restriction on the transfer of ownership for QS permits. A QS permit cannot be transferred to another individual or entity. The QS permit owner cannot change or add additional individuals or entities as owners of the permit. Any change to the owner of the QS permit requires the new owner to apply for a QS permit.

(B) Restriction on the transfer of QS between QS permits/QS accounts. After the second year of the trawl rationalization program, QS permit owners may transfer QS to another QS permit owner. For the purposes of transfer, QS is transferred as a percent and is highly divisible. During the first 2 years after implementation of the program, QS cannot be transferred to another QS Permit owner. However, NMFS will allow for the transfer of QS during the first two years on a limited basis and only when the action is directed by a U.S. court that directs the reassignment of QS as part of a legal proceeding.

(C) Restriction on the transfer of QP from a QS account to a vessel account.

(iii) Effective Date.

(A) A QS permit is effective on the date approved by NMFS and remains in effective until the end of the calendar year, unless XXXX.

Comment [jg25]: Finish

(B) Transfer of QS between QS permits/QS accounts is effective on the date approved by NMFS.

Comment [jg26]: or should this be the next calendar year? QP wouldn't be issued on the transfer until the next calendar year.

(C) Transfer of QP from a QS account to a vessel account is effective on the date approved by NMFS.

(4) Accumulation limits.-- (i) QS and IBO control limits. * * *

(ii) Ownership - individual and collective rule. * * *

(iii) Control. * * *

(iv) Trawl identification of ownership interest form. * * *

(v) Divestiture. * * *

* * * * *

(5) Appeals. An appeal to a QS permit or QS account action follows the same process as the general permit appeals process is defined at § 660.25(g), subpart C.

(6) Fees. * * *

* * * * *

(7) Cost recovery. A QS permit owner will not be responsible to pay cost recovery fees. Vessel account owners will be required to pay all cost recovery fees based on the annual usage of QPs as specified at paragraph (e)(7) of this section.

(8) Application requirements and initial issuance for QS permit and QS. * * *

* * * * *

(e) Vessel accounts.

(1) General. QP will have the same species/species groups and area designations as the QS from which it was issued. Annually, QS (expressed as a percent) are converted to QP (expressed as a weight). QPs are required to cover catch of all groundfish (landings and discards) by limited entry trawl vessels, except for:

(i) Gear exception. Vessels with a limited entry trawl permit using the following gears would not be required to cover groundfish catch with QP: open access exempted trawl, gear types defined in the coastal pelagic species PCGFMP, gear types defined in the highly migratory species PCGFMP, salmon troll, crab pot, and limited entry fixed gear when the vessel also has a limited entry permit endorsed for fixed gear and has declared that they are fishing in the limited entry fixed gear fishery.

(ii) Species exception. QP are not required for the following species, longspine thornyheads south of 34°27 N. lat., minor nearshore rockfish (north and south), black rockfish (coastwide), California scorpionfish, cabezon, kelp greenling, shortbelly rockfish, and “other fish” (as defined at § 660.11, subpart C, under the definition of “groundfish”). For these species, trip limits remain in place as specified in the trip limit tables at **Table 1 (North) and Table 1 (South) of this subpart.**

(2) Eligibility and registration.

(i) Eligibility. To be registered a vessel account, a person must own a vessel and that vessel must be registered to a groundfish limited entry permit endorsed for trawl gear.

(ii) Registration. A vessel account must be registered with the NMFS SFD Permits Office. A vessel account may be established at any time during the year. An eligible vessel owner must request in writing that NMFS establish a vessel account. The request must include the vessel name; USCG vessel registration number (as given on USCG Form 1270); the vessel owner name; if the vessel owner is a business entity, then include the name of the authorized representative that may act on behalf of the entity; business address, phone number, fax number, and email. Any change in the legal name of the vessel owner will require the new owner to register with NMFS for a vessel account. In addition, the vessel owner may designate other persons that can access the vessel account by submitting a request in writing to NMFS.

(3) Renewal, change of account ownership, and transfer of QP. [Reserved]

(4) Accumulation limits. Vessels are subject to limits on the amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, on the amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit). These amounts are as follows:

Comment [jg27]: Needs developed

Species Category	QP Vessel Limit (Annual Limit)	Unused QP Vessel Limit (Daily Limit)
Nonwhiting Groundfish Species	3.2%	
Lingcod - coastwide	3.8%	
Pacific Cod	20.0%	
Pacific whiting (shoreside)	15.0%	
Sablefish		
N. of 36° (Monterey north)	4.5%	
S. of 36° (Conception area)	15.0%	
PACIFIC OCEAN PERCH	6.0%	4.0%
WIDOW ROCKFISH *	8.5%	5.1%
CANARY ROCKFISH	10.0%	4.4%
Chilipepper Rockfish	15.0%	
BOCACCIO	15.4%	13.2%
Splitnose Rockfish	15.0%	
Yellowtail Rockfish	7.5%	
Shortspine Thornyhead		
N. of 34°27'	9.0%	
S. of 34°27'	9.0%	
Longspine Thornyhead		
N. of 34°27'	9.0%	
COWCOD	17.7%	17.7%
DARKBLOTCHED	6.8%	4.5%
YELLOWEYE	11.4%	5.7%
Minor Rockfish North		
Shelf Species	7.5%	
Slope Species	7.5%	
Minor Rockfish South		
Shelf Species	13.5%	
Slope Species	9.0%	
Dover sole	3.9%	
English Sole	7.5%	
Petrals Sole	4.5%	
Arrowtooth Flounder	20.0%	
Starry Flounder	20.0%	
Other Flatfish	15.0%	
Other Fish	7.5%	
Pacific Halibut	14.4%	5.4%

* If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at limit will be 1.5 times the control limit.

(5) Carryover. [Reserved]

(6) Appeals. An appeal to a vessel account action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

Comment [jg28]: Needs developed

(7) Fees. The Regional Administrator is authorized to charge fees for administrative costs associated with the vessel accounts consistent with the provisions given at § 660.25(f), subpart C.

(8) Cost recovery. Vessel account owners will be required to pay all cost recovery fees based on the annual usage of QPs. Cost recovery fees will not be collected until further cost recovery regulations are implemented by NMFS.

(f) First receiver site license.

(1) General. Any IFQ first receiver that receives IFQ landings must have been issued a valid first receiver site license. The first receiver site license authorizes the holder to receive purchase, or takes custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel.

(2) Issuance.

(i) First receiver site licenses will only be issued to a person registered to a valid fish buyer's license issued by the state of Washington, Oregon, or California.

(ii) A first receiver may apply for a first receiver site license at any time during the calendar year.

(iii) A first receiver site license is valid until the end of the calendar year. IFQ first receivers must reapply for a first receiver site license each year and whenever a change in the ownership occurs.

(3) Application process. Persons interested in being licensed as an IFQ first receiver must submit a complete application for a first receiver site license. NMFS will only consider complete applications for approval. A complete application includes:

(i) State fish buyer's license. A copy of the valid fish buyer's license issued by the state in which they operate.

(ii) Contact information.

(A) The name of the first receiver,

(B) The physical location of the first receiver, including the street address where the IFQ landings will be received and/or processed.

(C) The name and phone number of the plant manager and any other authorized representative who will serve as a point of contact with NMFS.

(iii) A NMFS –accepted catch monitoring plan. All first receivers must prepare and operate under a NMFS-accepted catch monitoring plan. NMFS will not issue a site license to a processor that does not have a current, NMFS accepted catch monitoring plan.

(A) Catch monitoring plan approval process. NMFS will accept a catch monitoring plan if it meets all the requirements specified in **paragraph (C) of this section**. The site must be inspected by NMFS staff or a NMFS authorized representative prior to acceptance to ensure that the processor conforms to the elements addressed in the catch monitoring plan. NMFS will complete its review of the catch monitoring plan within 14 working days of receiving a complete catch monitoring plan and conducting a **catch monitoring plan inspection**. If NMFS does not accept a catch monitoring plan for any reason, a new or revised catch monitoring plan may be submitted.

(B) Arranging an inspection. The time and place of a catch monitoring plan inspection must be arranged by submitting a written request for an inspection to NMFS, Northwest Region at NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115. NMFS will schedule an inspection within ten working days after receiving a complete application for an inspection. The inspection request must include:

Comment [jg30]: Is this supposed to be plant inspection?

(1) Name and signature of the person submitting the application and the date of the application;

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

(3) A proposed catch monitoring plan detailing how the processor will meet each of the performance standards in paragraph (d)(3) of this section.

(C) Contents of a catch monitoring plan.

(1) Catch sorting. Describe the amount and location of all space used for sorting catch, the number of staff assigned to catch sorting and the maximum rate that catch will flow through the sorting area.

(2) Monitoring for complete sorting. Detail how processor staff will ensure that sorting is complete and what steps will be taken to prevent unsorted catch from entering the factory or other areas beyond the location where catch sorting and weighing can be monitored from the observation area.

(3) Scales used for weighing IFQ landings. Identify each scale that will be used to weigh IFQ landings by serial number and describe where it is located and what it will be used.

(4) Scale testing procedures. For each scale identified in the catch monitoring plan, describe the procedures the plant will use to test the scale; list the test weights and equipment required to test the scale; list where the test weights and equipment will be stored; and list the plant personnel responsible for conducting the scale testing.

(5) Printed record. Identify all scales that will be used to weigh IFQ landings that cannot produce a complete printed record as specified at § 660.140 (X)(X). State how the scale will be used, and how the plant intends to produce a complete record of the total weight of each delivery.

(6) Weight monitoring. The catch monitoring plan must detail how it will ensure that all catch is weighed and the process will meet the catch weighing requirements specified at § 660.140(X). If a catch monitoring plan proposes the use of totes in which IFQ species will be weighed, or a deduction for the weight of ice, the catch monitoring plan must detail how the process will be accurately accounted for the weight of ice and/or totes.

(7) Delivery point. Each catch monitoring plan must identify a specific delivery points where catch is removed from an IFQ vessel. If the catch is pumped from the hold of a catcher vessel or a codend, the delivery point will be the location where the pump first discharges the catch. If catch is removed from a vessel by brailing, the delivery point normally will be the bin or belt where the brailer discharges the catch.

(8) Observation area. A description of the observation area, where a catch monitor may monitor the flow of fish during a delivery, including: access to the observation area, the flow of fish, and lighting used during periods of limited visibility.

(9) Lockable cabinet. The location of a secure, dry, and lockable cabinet or locker for the exclusive use of the catch monitor, NMFS staff or NMFS authorized personnel.

(10) Plant liaison. The catch monitoring plan must identify the designate a plant liaison.

(11) First receiver diagram. The catch monitoring plan must be accompanied by a scale drawing of the plant showing:

- (i) The delivery point;
- (ii) The observation area;
- (iii) The lockable cabinet;
- (iv) The location of each scale used to weigh catch; and
- (v) Each location where catch is sorted.

(D) Catch monitoring plan changes. NMFS will accept a catch monitoring plan if it meets the performance standards specified in paragraph (C) of this section. For the site license to remain in effect through the calendar year, an owner or manager must notify NMFS in writing of any and all changes made in IFQ first receiver operations or layout that do not conform to the catch monitoring plan.

(E) Changing an accepted catch monitoring plan. An owner and manager may change an approved catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the specified in requirements of paragraph (X) of this section. Depending on the nature and magnitude of the change requested, NMFS may require an additional catch monitoring plan inspections. A catch monitoring plan addendum must contain:

- (1) Name and signature of the person submitting the addendum;
- (2) Address, telephone number, fax number and email address (if available) of the person submitting the addendum;
- (3) A complete description of the proposed catch monitoring plan change.

(4) Initial administrative determination. For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a first receiver site license. If disapproved, the IAD will provide the reasons for this determination.

(5) Effective date. The first receiver site license is effective upon approval by NMFS and will be effective until December 31 of the same year.

(6) Reissuance in subsequent years. Existing license holders must reapply by December 31. If the existing license holder fails to reapply by December 31, the first receiver's site license will expire and they will not be authorized to receive or process groundfish IFQ species. Any applications received after November 30 may not be approved for a first receiver site license by January 1 of the following year. If a first receiver applies for and is issued a first receiver site license after September 1 in a given year, NMFS will send an application form for the subsequent year when issuing the site license for the current year.

(7) Change in ownership of an IFQ first receiver. If there are any changes to the owner of a first receiver registered to a first receiver site license during a calendar year, the first receiver site license is void. The new owner of the first receiver must apply to NMFS for a first receiver site license. A first receiver site license is not transferrable by the license holder to any other person.

(8) Fees. The Regional Administrator is authorized to charge fees for administrative costs associated with processing the application consistent with the provisions given at § 660.25(f), subpart C.

(9) Appeals. If NMFS does not accept the first receiver site license application through an IAD, the applicant may appeal the IAD consistent with the general permit appeals process is defined at § 660.25(g), subpart C.

(g) Retention requirements (whiting and non-whiting vessels).

(1) IFQ species. [Reserved]

Comment [jg31]: Needs developed

(2) Pacific halibut IBQ. [Reserved]

Comment [jg32]: Needs developed

(3) Pacific whiting IFQ fishery. [Reserved]

Comment [jg33]: Needs developed

(h) Observer Requirements.

(1) General.

(2) Coverage requirements.

(i) Any vessel fishing in the Shorebased IFQ Program is required to carry a NMFS-certified observer including any trip.

(ii) The observer deployment limitations and workload. The time required for the observer to complete sampling duties aboard a vessel must not exceed 16 consecutive hours in each 24-hour period. An observer must not be deployed for more than 22 calendar days in a calendar month and given the time necessary to enter data as per observer program protocol.

(iii) Any boarding refusal on the part of the observer or vessel is reported to the observer program and NMFS OLE observer compliance coordinator by the observer provider and observer. Observer must be available for an interview with the observer program or OLE if necessary.

(3) Vessel responsibilities.

(i) Accommodations and food.

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

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

(ii) Safe conditions.

(A) 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. 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.

(B) Have on board: a valid Commercial Fishing Vessel Safety Decal issued within the past 2 years or at a time interval consistent with current USCG regulations or policy that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(3) Computer hardware and software. [Reserved]

Comment [jg34]: Needs developed

(iv) Vessel position. Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) Access. 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.

(vi) Prior notification. Notify observer(s) at least 15 minutes before fish are brought on board to allow sampling the catch.

(vii) Records. Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(viii) Assistance. Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

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

(B) Providing a designated working area on deck for the observer(s) to collect, sort and store catch samples. As much as 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.

(C) Collecting samples of catch.

(D) Collecting and carrying baskets of fish.

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

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

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

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

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

(3) Procurement of observer services.

(i) Owners of vessels required to carry observers under paragraph (a)(1) of this section must arrange for observer services from an Observer provider permitted by the North Pacific Groundfish Observer Program under 50 CFR 679.50 i, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

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

(4) Observer provider responsibilities. Observer providers must:

(i) Provide qualified candidates to serve as observers.

(A) To be qualified, a candidate must have:

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

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

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

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

(ii) Prior to hiring an observer candidate, the observer provider must:

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

(B) For each observer employed by an observer provider, either a written contract or a written contract addendum must exist that is signed by the observer and observer provider prior

to the observer's deployment and that contains the following provisions for continued employment:

- (1) That all the observer's in-season catch messages between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;
- (2) The observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury since submission of the physician's statement as required as a qualified observer candidate that would prevent him or her from performing their assigned duties;
- (3) Ensure that every observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.
- (4) NMFS may reject a candidate for training if the candidate does not meet the minimum qualification requirements as outlined by NMFS Minimum Eligibility Standards for observers listed above in **paragraph XX**.
 - (iii) Ensure that observers complete duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:
 - (A) Submit to NMFS all data, logbooks and reports and biological samples as required under the observer program policy deadlines.
 - (B) Report for his or her scheduled debriefing and complete all debriefing responsibilities; and
 - (C) Return all sampling and safety gear to the Observer Program Office at the termination of their contract.
 - (iv) Provide vessels only observers:
 - (A) With a valid West Coast Groundfish observer certification;
 - (B) Who have not informed the provider prior to the time of embarkation that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in **paragraph XX** of this section that would prevent him or her from performing his or her assigned duties; and
 - (C) Who have successfully completed all NMFS required training and briefing before deployment.
 - (v) Respond to industry requests for observers. An observer provider must provide an observer for deployment as requested by vessels to fulfill vessel requirements for observer coverage under **sections XX of this section**. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage due to the lack of available observers by the estimated embarking time of the vessel, the provider must report it to NMFS, at minimum, 4 hours prior to the vessel's estimated embarking time.
 - (vi) Provide observer salaries and benefits. An observer provider must provide to its observer employees salaries and any other benefits and personnel services in accordance with the terms of each observer's contract. The provider must also confirm that its observers are compensated with salaries that meet or exceed the U.S. Department of Labor guidelines for marine fishery observers. Observers shall be compensated as Fair Labor Standards Act non-exempt employees. Observer providers shall provide any other benefits and personnel services in accordance with the terms of each observer's contract or employment status.
 - (vii) Provide observer deployment logistics.

(A) An observer provider must ensure each of its observers under contract:

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

(2) Calls into the NMFS deployment hotline upon departing and arriving into port for each trip to leave the following information: observer name, phone number, vessel departing on, expected trip end date and time.

(3) Remains available to NMFS Office for Law Enforcement and NMFS Observer Program until the conclusion of debriefing.

(4) Receive all necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

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

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

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

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

(3) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(C) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

(D) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, or other shoreside accommodations for the duration of each period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(viii) Observer deployment limitations and workload. Not deploy an observer on the same vessel more than 45 calendar days in a 12-month period. Not exceed observer deployment limitations and workload as outlined in paragraph (h)(ii) above.

(ix) Verify vessel's safety decal. An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph XX of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

(xi) Maintain communications with the observer program office. An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) Observer training and briefing registration materials. This information must be submitted to the Observer Program Office at least 7 business days prior to the beginning of a scheduled West Coast groundfish observer certification training or briefing session.

(1) Training registration materials consist of the following:

(i) Date of requested training;

(ii) A list of observer candidates. The list must include each candidate's full name (i.e., first, middle and last names), date of birth, and sex;

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

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

(2) Briefing registration materials consist of the following:

(i) Date and type of requested briefing session and briefing location; and

(ii) List of observers to attend the briefing session. Each observer's full name (first, middle, and last names) must be included.

(iii) Projected observer assignments. Prior to the observer's completion of the training or briefing session, the observer provider must submit to the Observer Program Office a statement of projected observer assignments that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation ("home port").

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

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

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

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

(3) States Worker's Compensation as required.

(4) Commercial General Liability.

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

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

(2) Observers.

(E) Change in observer provider management and contact information. Except for changes in ownership addressed under paragraph XX of this section, an observer provider must submit notification of any other change to the information submitted on the provider's permit application under paragraphs XX of this section. Within 30 days of the effective date of such change, this information must be submitted by fax or mail to the Observer Program Office at the address listed in paragraph XX of this section.

(F) Boarding refusals. The observer service provider must report to NMFS any trip that has been refused by an observer within 24 hours of the refusal.

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

(H) Observer status report. Each week, observer providers must provide NMFS with an updated list of contact information for all observers that includes the observer's name, mailing address, e-mail address, phone numbers, port of embarkation ("home port"), fishery deployed the previous week and whether or not the observer is "in service", indicating when the observer has requested leave and/or is not currently working for the provider.

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

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

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under XX or §600.725(o), (t) and (u);

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

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

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

(xii) Replace lost or damaged gear. An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) Maintain confidentiality of information. An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(ivx) Must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the West Coast Groundfish fishery managed under an FMP for the waters off the coasts of Washington, Oregon, and California, including, but not limited to,

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

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

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

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

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

(vx) Must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers.

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

(1) Observer use of alcohol;

(2) Observer use, possession, or distribution of illegal drugs and;

(3) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

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

(vix) Refuse to deploy an observer on a requesting vessel if the observer service provider has determined that the requesting vessel is inadequate or unsafe pursuant to those described at §600.746 or U.S. Coast Guard and other applicable rules, regulations, statutes, or guidelines pertaining to safe operation of the vessel.

(5) Observer certification and responsibilities.

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

(ii) Observer certification official. The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(iii) Certification requirements.

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

(1) Are employed by an observer provider company permitted pursuant to 50 CFR 660.120 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at **50 CFR 660.120** regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer candidate education and health standards as specified in **50 CFR 660.120 and**

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

(B) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(C) Have not been decertified under **paragraph XX of this section**, or pursuant to **50 CFR 660.120**.

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

(v) Issuance of an initial observer certification. An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification.

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

(A) Successfully perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office including calling into the NMFS deployment hotline upon departing and arriving into port each trip to leave the following information: observer name, phone number, vessel name departing on, date and time of departure and date and time of expected return.

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

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

(D) Successfully complete NMFS-approved annual briefings as prescribed by the West Coast Groundfish Observer Program.

(E) Successful completion of briefing by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other briefing requirements established by the Observer Program.

(F) Hold current basic cardiopulmonary resuscitation/first aid certification as per American Red Cross Standards.

(G) Successfully meet all expectations in all debriefings including reporting for assigned debriefings.

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

(I) Meet the minimum annual deployment period of 3 months at least once every 12 months.

(J) Limitations on conflict of interest. Observers:

(1) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

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

(3) May not serve as observers on any vessel or at any shore-based or floating stationary processing facility owned or operated by a person who previously employed the observers.

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

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

(vii) ~~Probation and decertification. NMFS has the authority to review observer certifications and issue observer certification probation and/or decertification as described in NMFS policy found on the NMFS website specified in paragraph XX of this section.~~

(viii) Issuance of decertification. Upon determination that decertification is warranted under **paragraph XX of this section**, NMFS shall issue a written decision to decertify the observer to the observer and approved observer providers, ~~via certified mail at the observer's~~

~~most current address provided to NMFS~~. The decision shall identify whether a certification is revoked and shall identify the specific reasons for the action taken. Decertification is effective immediately as of the date of issuance, unless the decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions. Decertification is the final decision of NMFS and the Department of Commerce and may not be appealed.

(i) [Reserved]

(j) Catch monitor requirements for IFQ first receivers.

(1) Catch monitor coverage requirements. A catch monitor is required be present at each IFQ first receiver whenever an IFQ landing is received, unless the first receiver has been granted a written waiver from the catch monitor requirements by NMFS.

(2) Procurement of catch monitor services. Owners or managers of each IFQ first receiver must arrange for catch monitor services from a certified catch monitor provider prior to accepting IFQ landings. IFQ first receivers are responsible for all associated costs including training time, debriefing time, and lodging while deployed.

(3) Catch monitor safety.

(i) Each IFQ first receiver must adhere to all applicable rules, regulations, or statutes pertaining to safe operation and maintenance of a processing and/or receiving facility.

(ii) The working hours of each individual catch monitor will be limited as follows:

(A) An individual catch monitor shall not be required or permitted to work more than 16 hours per calendar day, with maximum of 14 hours being work other than the summary and submission of catch monitor data.

(B) Following monitoring shift of more than 10 hours, each catch monitor must be provided with a minimum 6 hours break before they may resume monitoring.

(4) IFQ landing notification requirements. Each IFQ first receiver must provide the catch monitor notification in person, by personal communications radio, or by telephone of the offloading schedule for each IFQ landing at least 30 minutes prior to, but not more than two hours before, offloading begins.

(5) Catch monitor access.

(i) Each IFQ first receiver must allow catch monitors free and unobstructed access to the catch throughout the sorting process and the weighing process.

(ii) The IFQ first receiver must ensure that there is an observation area available to the catch monitor that meets the following standards:

(A) Accessible to catch monitors, NMFS staff or NMFS-authorized agents at any time.

(B) The catch monitor must have an unobstructed view or otherwise be able to monitor the entire flow of fish between the delivery point and a location where all sorting has takes place and each species has been weighed. Adequate lighting must be provided during periods of limited visibility.

(iii) Each IFQ first receiver must allow catch monitors free and unobstructed access to any documentation required by regulation including fish tickets, scale printouts and scale test results.

(iv) Each IFQ first receiver must provide the catch monitors free and unobstructed access to a telephone line during the hours that Pacific whiting is being processed at the facility and 30 minutes after the processing of the last delivery each day.

Comment [jg35]: What's supposed to go here?

(6) Lockable cabinet. Each IFQ first receiver must provide a secure, dry, and lockable cabinet or locker with the minimum dimensions of two feet wide by two feet tall by two feet deep for the exclusive use of the catch monitor and NMFS staff or NMFS-authorized agents.

(7) Catch monitor liaison. Each IFQ first receiver must designate a plant liaison. The catch monitor liaison is responsible for:

- (A) Orienting new catch monitors to the facility;
- (B) Assisting in the resolution of catch monitoring concerns; and
- (C) Informing NMFS if changes must be made to the catch monitoring plan.

(8) Reasonable assistance. Each IFQ first receiver must provide reasonable assistance to the catch monitors to enable each catch monitor to carry out his or her duties. Reasonable assistance includes, but is not limited to: informing the monitor when bycatch species will be weighed, and providing a secure place to store equipment and gear.

(k) Catch weighing requirements.

(1) Catch monitoring plan. All first receivers must operate under a NMFS-accepted catch monitoring plan.

(2) Sorting and weighing IFQ landings.

(i) Approved scales. The owner of an IFQ first receiver must ensure that all IFQ species received from a vessel making an IFQ landing are weighed on a scale(s) that meets the requirements specified at [§ 660.15\(c\)](#).

(ii) Printed record. All scales identified in the catch monitoring plan approved by NMFS during the first receiver site license application process, must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, with the following exception: If approved by NMFS as part of the catch monitoring plan, scales not designed for automatic bulk weighing may be exempted from part or all of the printed record requirements. The printed record must include:

- (A) The first receiver's name;
- (B) The weight of each load in the weighing cycle;
- (C) The total weight of fish in each landing, or portion of the landing that was weighed on that scale;
- (D) The date the information is printed; and
- (E) The name and vessel registration or documentation number of the vessel making the delivery. The scale operator may write this information on the scale printout in ink at the time of printing.

(iii) Scales that may be exempt from printed report. A First Receiver that received no more than 200,000 pounds of groundfish in any calendar month during the prior calendar year will be exempted from the requirement to produce a printed record provided that:

- (A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required; and
- (B) The first receiver is able to ensure that all catch is weighed and that it is possible for a catch monitor, NMFS staff or NMFS-authorized agent to ensure that all catch is weighed.

(iv) Retention of printed records. A first receiver must maintain printouts on site until the end of the fishing year during which the printouts were made and make them available upon request by NMFS staff or NMFS authorized personnel for 3 years after the end of the fishing year during which the printout was made.

(v) Weight monitoring. A First Receiver must ensure that it is possible for the catch monitor, NMFS staff or NMFS-authorized agents to verify the weighing of all catch.

(vi) Catch sorting. All fish delivered to the plant must be sorted and weighed by species as specified at § 660.130 (X).

(vii) Complete sorting. Sorting and weighing must be completed prior to catch leaving the area that can be monitored from the catch monitor's observation area.

(viii) Pacific whiting. For Pacific Whiting taken with midwater trawl gear, IFQ first receivers may use a in-line conveyor or hopper type scale to derive an accurate total catch weight prior to sorting. Immediately following weighing of the total catch and prior to processing or transport away from the point of landing, the catch must be sorted to the species groups specified in paragraph (h)(6)(i)(A) and all incidental catch (groundfish and non groundfish species) must be accurately weighed and the weight of incidental catch deducted from the total catch weight to derive the weight of target species.

(ix) For all other IFQ landings the following weighing standards apply:

(A) An in-line conveyor or automatic hopper scale may be used to weigh the predominant species after catch has been sorted. Other species must be weighed in a manner that facilitates tracking of the weights of those species.

(B) IFQ species or species group may be weighed in totes on a platform scale capable of printing a label or tag and recording the label or tag information to memory for printing a report as specified XXXXXX. The label or tag must remain affixed to the tote until the tote is emptied. The label or tag must show the following information:

(1) The species or species group;

(2) The weight of the fish in the tote;

(3) The date the label or tag was printed.

(C) Totes and ice. No deduction may be made for the perceived weight of water or slime. This standard may be met by:

(1) Taring the empty or pre iced tote on the scale prior to filling with fish;

(2) Labeling each tote with an individual tare weight. This weight must be accurate within 500 grams (1 pound if scale is denominated in pounds) for any given tote and the average error for all totes may not exceed 200 grams (8 ounces for scales denominated in pounds);

(3) An alternate approach approved by NMFS. NMFS will only approve approaches that do not involve the estimation of the weight of ice or the weight of totes and allow NMFS staff or NMFS authorized personnel to verify that the deduction or tare weight is accurate.

(2) IFQ first receiver responsibilities relative to catch weighing and monitoring of catch weighing. The owner of an IFQ first receiver must:

(i) General.

(A) Ensure that all IFQ landings are sorted, and weighed as specified at § 660.XXX and in accordance with an approved catch monitoring plan.

(ii) Catch monitors, NMFS staff, and NMFS-authorized agents.

(A) Have a Catch Monitor on site the entire time an IFQ landing is being offloaded, sorted, or weighed.

(B) Notify the catch monitor of the offloading schedule as specified at § 660.140(j)(4).

(C) Provide catch monitors, NMFS staff, or a NMFS-authorized agent with unobstructed access to any areas where IFQ species are or may be sorted or weighed at any time IFQ species are being landed or processed.

(D) Allow catch monitors, NMFS personnel or a NMFS-authorized agent to observe the weighing of catch on the scale and to read the scale display at any time.

(E) Ensure that printouts of the scale weight of each delivery or offload are made available to catch monitors, NMFS staff or to NMFS-authorized agent at the time printouts are generated.

(3) Scale tests.

(i) All testing must meet the scale test standards specified at § 660.15(c).

(ii) Inseason scale testing. First receivers must allow, and provide reasonable assistance to a catch monitor, NMFS personnel or a NMFS-authorized agent to test scales used to weigh IFQ catch. A scale that does not pass an inseason test may not be used to weigh IFQ catch until the scale passes an inseason test or is approved for continued use by the weights and measures authorities of the state in which the scale is located.

(iv) Equipment failure. [Reserved]

(i) Any vessel registered to a trawl endorsed limited entry permit fishing for shorebased IFQ Program QP is exempt from the gear endorsement restrictions specified at 660.334 (b) if the following gears are used to harvest QP provided all fishing is conducted pursuant to the management measures specified of the gear:

(A) Limited entry longline gear, consistent with the provisions in Subpart E.

(B) Limited entry pot or trap gear, consistent with the provisions in Subpart E.

(ii) Any vessel registered to a trawl endorsed limited entry permit that fishes in the Shorebased IFQ Program would not be required to cover their groundfish catch with QP if the groundfish are caught with non-groundfish trawl gear; legal gear defined for the harvest of species managed under the coastal pelagic species FMP; legal gear defined for the harvest of species managed under the highly migratory species FMP; salmon troll; crab pot; or and LE fixed gear if the vessel also has a LE permit endorsed for fixed-gear (longline or fish pot) AND has a valid declaration as specified at 660.XXXX for the Limited Entry fixed-gear fishery.

(iii) The following species would be accepted from the QP requirement:

(A) longspine thornyheads south of 34°27' N latitude,

(B) minor nearshore rockfish (north and south),

(C) black rockfish (WOC),

(D) California scorpionfish,

(E) cabezon, kelp greenling,

(F) shortbelly rockfish, and

(G) spiny dogfish.

(l) Gear switching. [Reserved]

(m) Adaptive management program. [Reserved]

16. INSTRUCTION - In section 660.150, paragraphs (a)(3), (a)(4), (b) through (e), (f)(2) through (f)(4), (g)(2) through (g)(4), (h) through (k) are revised; and paragraph (l) is removed to read as follows:

§ 660.150 Mothership (MS) coop program.

* * * * *

(a) General. * * *

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and

Comment [jg36]: Needs developed

Comment [jg37]: This section is out of place

Comment [jg38]: Needs developed

Comment [jg39]: Needs a sentence explaining AMP generally and stating that further regulations will be developed to implement the program.

gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) Participation requirements and responsibilities.

(1) Mothership vessels.

(i) Mothership vessel participation requirements. A vessel is eligible to receive and process catch as a mothership in the MS coop program if:

(A) The vessel is registered to a MS permit.

(B) The vessel is not used to fish as a catcher vessel in the mothership sector of the Pacific whiting fishery in the same calendar year.

(C) The vessel is not used to fish as a C/P in the Pacific whiting fishery in the same calendar year.

(D) If the vessel is a bareboat charter **XXXXXX**

(E) ~~The vessel has not been under foreign registry and fished in the territorial waters or exclusive economic zones of other countries, as per Section 12102(e)(6) of the AFA.~~

(ii) Mothership vessel responsibilities. The owner and operator of a mothership vessel must:

(A) Recordkeeping and reporting. Maintain a valid declaration as specified at § 660.13(d), subpart C; and, maintain and submit all records and reports specified at § 660.113(c) including, economic data, scale tests records, and cease fishing declarations.

(B) Observers. Procure observer services as specified at § **660.XXX**, maintain the appropriate level of coverage as specified at § **660.XXX**, and meet the vessel responsibilities specified at § **660.XXX**.

(C) Catch weighing requirements.

(1) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § **660.15 (b)**, is tested as is required at § **660.XXX**, and is operated as required at § **660.XXX**;

(2) Provide a NMFS-approved platform scale and test weights that meet the requirements of described in section § **660.15 (b)** and that is tested as is required at § **660.XXX**.

(B) Centralized registry of ownership. **[Reserved]**

(2) Mothership catcher vessels.

(i) Mothership catcher vessel participation requirements.

(A) A vessel is eligible to harvest in the MS coop program if the following conditions are met:

(1) If the vessel is used to fish as a mothership catcher vessel for a permitted MS coop, the vessel is registered to a limited entry permit with a trawl endorsement and is listed on the MS coop permit.

(2) If the vessel is used to harvest fish in the non-coop fishery, the vessel is registered to a MS/CV endorsed limited entry permit.

(3) The vessel is not used to harvest fish or process as a mothership or catcher/processor vessel in the same calendar year.

Comment [jg40]: Needs developed

(4) The vessel does not catch more than 30 percent of the Pacific whiting allocation for the mothership sector.

(ii) Mothership catcher vessel responsibilities.

(A) Observers. Procure observer services as specified at § 660.XXX, maintain the appropriate level of coverage as specified at § 660.XXX, and meet the vessel responsibilities specified at § 660.XXX.

(B) Recordkeeping and reporting. Provide a valid declarations for the XXXfisheryXXX as specified at § 660.XX; maintain all required logbooks as specified at XXXXXXX; Economic Data; Centralized registry of ownership.

Comment [Jg41]: Needs further developed

(3) MS coops.

(i) MS coop participation requirements. For a MS coop to participate in the Pacific whiting mothership sector fishery it must:

(A) be issued a MS coop permit;

(B) be owned and operated by MS/CV endorsed limited entry permit owners;

(C) be formed voluntarily;

(D) be a legally recognized entity that represents its members and employs a designated coop manager;

(E) have at least 20 percent of all MS/CV permits as members. The coop membership percentage will be interpreted by rounding to the nearest whole permit (i.e. 0.1 through 0.4 rounds down and 0.5 through 0.9 rounds up).

(ii) MS coop responsibilities. A MS coop is responsible for:

(A) Applying for and receive a MS Coop Permit;

(B) Organizing and coordinating harvest activities of vessels registered to member permits;

(C) Reassigning catch history assignments for use by coop members;

(D) Organizing and coordinating the transfer and leasing of catch allocations with other permitted coops through inter-coop agreements;

(E) Monitoring harvest activities and enforcing the catch limits of coop members;

(F) Submitting an annual report.

(G) Having a designated coop manager. The designated coop manager must:

(1) Serve as the contact person between NMFS, the Council and other coops;

(2) Organize the annual distribution of catch and bycatch between coop members;

(3) Oversee reassignment of catch within the coop;

(4) Oversee inter-coop catch reassignments;

(5) Prepare and submit an annual reports on behalf of the coop; and,

(6) Be authorized to receive or respond to any legal process in which the coop is involved.

(iii) Liability for violations. A MS coop must comply with the provisions of this section. The permit owners, and vessels owners and operators registered to the member permits, including vessels under contract, are responsible for the fishery cooperative comply with the provisions of this section.

(iv) MS coop failure.

(A) A permitted MS coop is considered to have failed if:

(1) the coop members voluntarily dissolve the coop, or

(2) the coop membership falls below 20 percent of the MS/CV endorsed limited entry permits, or

(3) the coop agreement is no longer valid, or

(4) the coop fails to meet the MS coop responsibilities specified at § 660.XXX.

(B) If a permitted MS coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

(C) The Regional Administrator may make an independent determination of a permitted coop failure based on factual information collected by or provided to NMFS.

(D) In the event of a NMFS determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination. Upon notification of a coop failure, the MS coop permit will no longer be in effect. Should a coop failure determination be made during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history will not be available for harvest by the coop that failed or any other MS coop.

(c) Inter-coop agreements.

(1) Permitted MS coops may voluntarily enter into inter-coop agreements for the purpose of sharing permitted MS coop allocations of Pacific whiting and allocated non-whiting groundfish.

(2) If two or more permitted MS coops enter into an inter-coop agreement, the inter-coop agreement must incorporate and honor the provisions of each permitted MS coop. Changes or modifications to the existing permitted MS coop agreements must be submitted to NMFS and accepted by NMFS prior to the permitted MS coop entering in to an inter-coop agreement.

(d) MS coop program species and allocations--(1) MS coop program species. MS Coop Program Species are as follows:

(i) Species with formal allocations to the MS Program are Pacific whiting, canary rockfish, darkblotched rockfish, Pacific Ocean perch, and widow rockfish;

(ii) Species with set-asides for the MS and C/P Programs combined, as described in Tables 1d and 2d, subpart C.

(2) Annual mothership sector sub-allocations. Annual allocation amount(s) will be determined using the following procedure:

(i) MS/CV catch history assignments. Catch history assignments will be based on catch history using the following methodology:

(A) Pacific whiting catch history assignment. For each MS/CV endorsed limited entry permit, the entire catch history assignment of Pacific whiting will be annually allocated to a single permitted MS coop or to the non-coop fishery. A MS/CV permit owner cannot divide the catch history assignment to more than one MS coop or to the non-coop fishery for that year. Once assigned to a permitted MS coop or the non-coop fishery, it remains with that permitted MS coop or non-coop fishery for that calendar year. When the mothership sector allocation is established through the final Pacific whiting specifications, the information for the conversion of catch history assignment to pounds will be made available to the public through a Federal Register announcement and/or public notice and/or the NMFS website. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (i.e. 0.1 through 0.4 rounds down and 0.5 through 0.9 rounds up).

(B) Non-whiting groundfish species catch.

(1) Groundfish species with a mothership sector allocation established in regulation at § 660.55(X), including overfished species, will be divided annually between the permitted coops and the non-coop fisheries. The pounds associated with each permitted MS coop will be provided when the coop permit is issued.

(2) Groundfish species with at-sea sector set-asides, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(3) Groundfish species not addressed in paragraph (1) or (4) above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) Halibut set-asides. Annually a specified amount of the Pacific halibut will be held in reserve as a set-aside for the Pacific whiting mothership sector.

(ii) Annual coop allocations.

(A) Pacific whiting. Each permitted MS coop is authorized to harvest a quantity of Pacific whiting that is based on the sum of the catch history assignments for each MS/CV endorsed permit identified in the accepted coop agreement for a given calendar year. Eligible vessels registered to limited entry permits without a MS/CV endorsement do not bring catch allocation to a permitted MS coop.

(B) Non-whiting groundfish with allocations. Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops will be in proportion to the Pacific whiting catch history assignments assigned to each permitted MS coop.

(iii) Annual non-coop allocation.

(A) Pacific whiting. The non-coop whiting fishery is authorized to harvest a quantity of Pacific whiting that is remaining in the mothership sector annual allocation after the deduction of all coop allocations.

(B) Non-whiting groundfish with allocations. The sub-allocation to the non-coop fishery will be in proportion to the mothership catcher vessel Pacific whiting catch history assignments for the non-coop fishery.

(C) Announcement of the non-coop fishery allocations. Information on the amount of Pacific whiting and non-whiting groundfish with allocations that will be made available to the non-coop fishery when the final Pacific whiting specifications for the mothership sector is established and will be announced to the public through a Federal Register announcement and/or public notice and/or the NMFS website.

(3) Reaching an allocation or sub-allocation. When the mothership sector Pacific whiting allocation, Pacific whiting sub-allocation, or non-whiting groundfish catch allocation is reached or is projected to be reached, the following action may be taken:

(i) Further harvesting, receiving or at-sea processing of by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation is projected to be reached. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a mothership may continue to process catch that was on board before at-sea processing was prohibited. Pacific whiting may not be taken and retained, possessed, or landed by a catcher vessel participating in the mothership sector.

(ii) When a permitted MS coop sub-allocation of Pacific whiting or non-whiting groundfish species is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in the permitted MS coop must cease, unless the permitted MS coop is operating under an accepted inter-coop agreement. No additional unprocessed groundfish may be brought on board a mothership, but a mothership may continue to process catch that was on board before at-sea processing was prohibited.

(iii) When the non-coop fishery sub-allocation of Pacific whiting or non-whiting groundfish species is projected to be reached, further harvesting or receiving of groundfish by vessels fishing in under the non-coop fishery must cease. No additional unprocessed groundfish may be brought on board a mothership, but a mothership may continue to process catch that was on board before at-sea processing was prohibited.

(4) Non-whiting groundfish species reapportionment. This paragraph describes the process for reapportioning non-whiting groundfish species with allocations between permitted MS coops and the catcher/processor sector. Reapportionment of mothership sector allocations to the catcher/processor will not occur until all permitted MS coops and the non-coop fishery have been closed by NMFS or have informed NMFS that they have ceased operations for the remainder of the calendar year.

(i) Within the mothership sector. The Regional Administrator may make available for harvest to permitted coops and the non-coop fishery that have not notified NMFS that they have ceased fishing for the year, the amounts of a permitted MS coop's non-whiting catch allocation remaining when a coop reaches its Pacific whiting allocation or when the designated coop manager notifies NMFS that a permitted coop has ceased fishing for the year. The reapportioned allocations will be in proportion to their original allocations.

(ii) Between the mothership and catcher/processor sectors. The Regional Administrator may make available for harvest to the catcher/processor sector of the Pacific whiting fishery identified in § 660.373, the amounts of the mothership sector's non-whiting catch allocation remaining when the Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation. The designated coop manager, or in the case of an inter-coop, all of the designated coop managers must submit a cease fishing report to NMFS indicating that harvesting has concluded for the year. At any time after greater than 80 percent of the Mothership sector Pacific whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take in to consideration the best available data on total projected fishing impacts. Reapportionment between permitted MS coops and the non-coop fishery within the mothership sector will be in proportion to their original coop allocations for the calendar year.

(iii) Set-aside species No inseason management actions are associated with set asides

(5) Announcements. The Regional Administrator will announce in the Federal Register when the mothership sector or the allocation of Pacific whiting or non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, internet (www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the Federal Register, in which instance public comment will be sought for a reasonable period of time thereafter.

(6) Redistribution of annual allocation.

(i) Between members of a permitted MS coop. The owners of MS/CV endorsed limited entry permits may lease or otherwise redistribute Pacific whiting catch shares between catcher vessels identified on the same MS coop permit through a private agreement, providing the

processor obligation (§ 660.150(d)(7)) has been met or a mutual agreement exception (§ 660.150(d)(7)(i)) has been submitted to NMFS.

(ii) Between permitted MS coops (inter-coop). Through an inter-coop agreement, the designated coop managers of permitted MS coops may distribute Pacific whiting and non-whiting groundfish allocations among one or more permitted MS coops, providing the processor obligations (§ 660.150(d)(7)) have been met or a mutual agreement exception (§ 660.150(d)(7)(i)) has been submitted to NMFS.

(iii) Between Pacific whiting sectors. Pacific whiting may not be redistributed between the mothership sector and catcher/processor sector. Whiting may not be redistributed to the Shorebased IFQ Program.

(7) Processor obligation and mutual agreement exceptions.

(i) Processor obligation. Through the annual MS Coop permit application process, the MS/CV endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to have the vessel registered to the MS/CV endorsed permit deliver its catch.

(ii) Expiration of a processor obligation. Processor obligations expire at the end of each calendar year when the MS Coop Permit expires. A processor obligation from the prior year may be changed for the following the calendar year through a new application for a MS Coop Permit.

(iii) Processor obligation when MS coop allocation is redistributed. When a permitted MS coop redistributes Pacific whiting allocation within the permitted MS coop or from one permitted MS coop to another permitted MS coop through an inter-coop agreement, such allocations must be delivered to the mothership registered to the MS permit to which the allocation was obligated to through the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) Mutual agreement exception. A catcher vessel can be released from a processor obligation through a mutual agreement exception. The MS/CV endorsed permit owner must submit a copy to NMFS of the written agreement that includes the initial MS permit owner's acknowledgment of the termination of the MS/CV endorsed permit owner's processor obligation and the MS/CV endorsed permit owner must identify a processor obligation for a new MS permit.

(v) MS permit withdrawal. If a MS Permit withdraws from the mothership fishery **XXX before the resulting amounts of catch history assignment have been announced by NMFSXXX** the MS/CV endorsed permit that is obligated to the MS permit is free to participate in the coop or non-coop fishery. In such an event, the MS/CV endorsed permit owner must provide to NMFS a written notification of the withdrawal of the MS permit that includes the initial MS permit owner's acknowledgment of the withdrawal along with a request to revise the processor obligation for a new MS permit or the non-coop fishery.

(vi) Submission of a mutual agreement exception or MS permit withdrawal. Written notification of a mutual exception agreement or MS permit withdrawal must be submitted to NMFS, Northwest Region, Permits Office, Bldg. 1, 7600 Sand Point Way NE, Seattle, WA 98115.

(e) MS coop permit and agreement.

(1) Eligibility and application requirements to register for a MS coop permit.

(i) Eligibility. To be an eligible coop entity a group of MS/CV endorsed permit owners (coop members) must be a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members .

(ii) Annual registration and deadline. A coop entity intending to participate as a coop under the MS Coop Program must submit an application for a MS coop permit by March 31 of the year in which they intend to participate. NMFS will not consider any applications received after **XXDATEXX**. A MS coop permit expires on December 31 of the year in which it was issued.

(iii) Application for a MS coop permit. The coop entity must submit a complete application form and each of the items listed in paragraphs **(e)(2)(iii)(A) through (B)**. Only complete applications will be considered for issuance of a MS coop permit. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR website (www.nwr.noaa.gov) or by request from NMFS.

(A) Coop agreement. A coop agreement must include all of the information listed in this **paragraph** to be considered a complete coop agreement. NMFS will only review complete coop agreements. Coop agreements will not be accepted when the agreement unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information is submitted is correct and accurate.

(1) Coop agreement contents. Each coop agreement must be signed by all of the coop members (MS/CV endorsed permit owners) and include the following information:

(i) A listing of all vessels, including those registered to a MS/CV endorsed limited entry permit or a trawl-endorsed limited entry permit without a MS/CV endorsement that the member permit owners intend to use for fishing under the requested coop permit.

(ii) All MS/CV endorsed limited entry member permits identified by permit number.

(iii) The mothership sector catch history assignment associated with each member MS/CV endorsed limited entry permit.

(iv) All MS permits obligated to coop member permits by MS permit number and vessel registered to each MS permit.

(v) A processor obligation clause indicating that each MS/CV permit was obligated to a specific MS permit by July 1 of the previous year.

(vi) A clause indicting that each member MS/CV endorsed permit's catch history assignment is based on the catch history assignment that the member permit brings to the coop.

(vii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(viii) A new member permit owner clause that requires new owners of member permit's to comply with membership restrictions in the coop agreements.

(ix) A description of the coop's enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations.

(x) A description of measures to reduce catch of overfished species.

(xi) A description of how the responsibility to manage inter-coop reassignment of catch history assignments will be met, should any occur.

(xii) A description of how the responsibility to produce an annual report documenting the coop's catch, bycatch data, inseason catch history reassignments and any other significant activities undertaken by the coop during the year will be met by **XXdue dateXX**.

(xiii) Identification of the designated coop manager.

(xiv) A signed clause by the designated coop manager acknowledging the responsibilities of a designated coop manager defined in **§660.XXX**.

(xv) A description for how the coop will be dissolved.

(xvi) ~~Provisions that prohibit members permit owners that have incurred legal sanctions from fishing in the coop.~~

(2) Department of Justice correspondence. Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a MS Coop Permit.

(3) Inter-coop agreement. The coop entity must provide, at the time of annual application, copies of any inter-coop agreement(s) into which the coop has entered. Such agreements must incorporate and honor the provisions of the individual coop agreements for each coop that is a party to the inter-coop agreement.

(B) Acceptance of a coop agreement.

(1) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(2) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the letter of rejection and resubmitting the entire coop permit application by the date specified in the letter of rejection.

(3) An approved coop agreement that was submitted with the MS coop permit application and for which a MS permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in **this paragraph** if there is a material change to the coop agreement.

(4) Within 3 days following a material change, a revised coop agreement must be submitted to NMFS with a letter that describes such changes. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) Effective date of MS coop permit. A MS coop permit will be effective upon the date approved by NMFS and remain in effect until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the fishing season for the mothership sector or a specific MS coop or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) the coop has reached its Pacific whiting allocation,

(C) a material change to the coop agreement has occurred and the designated coop manager failed to provide a revised coop agreement to NMFS within three calendar days of the material change, or

(D) NMFS has determined that a coop failure occurred.

(2) Initial administrative determination. For all complete applications, NMFS will issue an Initial Administrative Determination (IAD) that either approves or disapproves the application. If approved, the IAD will include a MS coop permit. If disapproved, the IAD will provide the reasons for this determination. An application will be disapproved if any required fees and annual reports have not been received by NMFS.

(2) Submission of inter-coop agreements. Inter-coop agreements must be submitted to NMFS for acceptance.

(3) Inter-coop agreement review process. Each designated coop manager must submit a copy of the inter-coop agreement signed by both designated coop managers for review. Complete coop agreements containing all items listed under paragraph (C) below will be reviewed by NMFS.

(4) Appeals. An appeal to a MS coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(5) Fees. The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a MS coop permit consistent with the provisions given at § 660.25(f), subpart C.

(6) Cost recovery. The owner of a MS coop permit (coop entity) will be required to pay all cost recovery fees based on the harvest of Pacific whiting by the coop members in a given year. Cost recovery fees will not be collected until further cost recovery regulations are implemented by NMFS.

Comment [Jg42]: And bycatch species?

* * * * *

(f) Mothership (MS) permit.

(1) General. * * *

(2) Renewal, change of permit ownership, or vessel registration. [Reserved]

(3) Accumulation limits. * * *

(4) Appeals. An appeal to a MS permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(5) Fees. * * *

(6) Application requirements and initial issuance for MS permit. * * *

* * * * *

(g) Mothership catcher vessel (MS/CV) endorsed permit.

(1) General. * * *

(2) Change of permit owner, vessel registration, vessel owner, or combination.

(i) During the annual limited entry permit renewal processes all MS/CV limited entry permit owners must make a preliminary declaration regarding their intent to participate in the coop or non-coop portion of the MS coop program. MS/CV permits non-obligated to a permitted MS coop by XX the annual deadline date to register as a MS coopXX, will be assigned to the non-coop fishery.

Comment [Jg44]: Needs revised

(ii) Combination. An action by NMFS to combine two or more permits results on one permit with an increased size endorsement. If a MS/CV endorsed permit is combined with another limited entry permit, the resulting permit will be MS/CV endorsed. If a MS/CV endorsed permit is combined with a C/P endorsed permit, the resulting permit will be a C/P endorsed permit. If a MS/CV endorsed permit is combined with another MS/CV endorsed permit, the combined catch history assignment of the permit(s) will be added to the active permit (the permit remaining after combination) and the other permit will be retired. NMFS will not approve a permit combination if it results in a person exceeding the accumulation limits specified at 660.XXX. Any request to combine permits is subject to the provision provided at §§ 660.335(b) and 660.334(C)(2)(iii).

(3) Accumulation Limits. * * *

(4) Appeals. An appeal to a MS/CV endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(5) Fees. * * *

(6) Application requirements and initial issuance for MS/CV endorsement. * * *

* * * * *

(h) Non-coop fishery.

(A) Catch history assignments. The owner of MS vessel must submit in writing to NMFS a letter indicating if it will participate in the non-coop fishery and which vessels are obligated to it.

(B) Access to non-coop fishery allocation. All vessels registered to the MS/CV permits assigned to the non-coop fishery will have access to harvest and deliver the aggregate catch history assignment of all MS/CV permits assigned to the non coop fishery.

(C) Non-coop fishery processor obligation. Permits opting to participate in a non-coop are tied to the mothership until the end of the calendar year. Permits opting to participate in a non-coop are tied to the mothership until the end of the calendar year.

(D) Non-coop fishery closure. The non-coop fishery will be closed by automatic action as specified at § 660.XXX when the Pacific whiting or non-whiting allocations to the non-coop fishery have been reached or are projected to be reached.

(i) Retention requirements. [Reserved]

(j) Observer requirements.

(l) Observer coverage requirements.

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

(ii) Any vessel delivering catch to any mothership must carry one NMFS-certified observer each day that the vessel is used to take groundfish.

(iii) Refusal to Board. Any boarding refusal on the part of the observer or vessel is reported to the observer program and NMFS OLE observer compliance coordinator by the observer provider and observer. Observer must be available for an interview with the observer program or OLE if necessary.

(iv) Observer Workload. For observers deployed on mothership vessels, the time required for the observer to complete sampling duties must not exceed 12 consecutive hours in each 24-hour period. For observers deployed aboard mothership catcher vessels, not exceed observer deployment limitations and workload as outlined in § 660.140 (h)(ii).

(2) Vessel Responsibilities. An operator and/or crew of a vessel required to carry an observer must provide:

(i) Accommodations and food.

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

(B) Catcher vessels. Provide accommodations and food that are equivalent to those provided to the crew.

(ii) Safe Conditions.

(1) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(C) Have on board: a valid Commercial Fishing Vessel Safety Decal issued at a time interval consistent with current USCG regulations or policy that certifies compliance with

Comment [jg45]: Is this already addressed earlier in section?

Comment [jg46]: Needs developed
If removed, change instructions

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.

(D) Computer hardware and software. Motherships vessels must:

(1) provide hardware and software pursuant to regulations at 50 CFR 679.50(g)(1)(iii)(B)(1) through 50 CFR 679.50(g)(1)(iii)(B)(3), as follows:

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

(3) Ensure that the mothership has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(iii) Ensure that the communication equipment required in this paragraph (g)(1)(iii)(B) of this section and that is used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(1)(iii)(B)(2) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(2) Catcher vessels. [Reserved]

(E) Vessel position. Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(F) Access. Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(G) Prior notification. 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, unless the observer specifically requests not to be notified.

(H) Records. Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(I) Assistance. Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

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

(2) Providing the observer(s) with a safe work area.

(3) Collecting samples of catch.

(4) Collecting and carrying baskets of fish.

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

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

(J) Sample Station and Operational Requirements For Mothership and Mothership

Catcher Vessels.

(1) Observer sampling station on Motherships. This paragraph contains the requirements for observer sampling stations on mothership vessels. To allow the observer to carry out required duties, the vessel owner must provide an observer sampling station that meets the requirements of paragraph (X)(X) (i) through (viii) of this section.

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

(ii) Location. The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(iii) Access. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(iv) Minimum work space. The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(v) Table. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(vi) Diverter Board. The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weigh total catch, must be available for the observer's use when sampling.

(vii) Other Requirements. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(viii) Observer Sampling Scale. The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at § 679.28(j)(2)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(2) Sampling Stations on Catcher Vessels Delivering To Motherships. This paragraph contains the requirements for observer sampling stations on mothership catcher vessels. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the requirements of paragraphs (i) through (XX) of this section.

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

(ii) Hazards. As much as 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.

(v) Transfer at-sea: Motherships must:

(A) 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.

(B) 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.

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

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

(3) Procurement of observer services.

(i) Owners of vessels required to carry observers under **paragraph XXXXX of this section** must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under **50 CFR 679.50(i)**, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

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

(4) Observer provider responsibilities.

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

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

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

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

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

(ii) Description of Observer Duties. The observer provider must provide the candidate a copy of NMFS-provided pamphlets, information and other literature describing observer duties (i.e. The At-Sea Hake Observer Program's Observer Manual) prior to hiring the candidate. Observer job information is available from the Observer Program Office's web site at www.nwfsc.noaa.gov/research/divisions/fram/observer/atseahake.cfm

(iii) Observer Contracts. The observer provider must provide for each observer, either a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment and that contains the following provisions for continued employment:

(A) That all the observer's catch reports required to be sent during the season are delivered to the Observer Program Office as specified by written Observer Program instructions;

(B) Prior to the time of embarkation, disclosure of any mental illness or physical ailments or injury that would prevent the candidate from performing their assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate as required in **paragraph XX** of this section;

(C) Requirement that ensures the observers complete duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Once an observer is scheduled for a final deployment debriefing under **paragraph XX of this section**, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(2) Report for the scheduled debriefing and complete all debriefing responsibilities;

(3) Report to the observer program office and the NMFS OLE observer compliance coordinator any refusal to board an assigned vessel.

(4) Return all sampling and safety gear to the Observer Program Office.

(iv) Providing NMFS-certified Observers to Motherships. The observer provider must only provide observers to mothership vessels that have:

(A) a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification to provide observer services;

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

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

(v) Providing NMFS-certified Observers to Motherships. Observer providers must only provide observers to mothership catcher vessels that meet the certification and training requirements specified at 660.140 (h) for vessels in the shorebased IFQ Program.

(vi) Respond to industry requests for observers. An observer provider must provide an observer for deployment as requested by vessels to fulfill vessel requirements for observer coverage specified at sections XX. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

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

(viii) Provide Observer Deployment Logistics. An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

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

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

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

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

(3) For a period not to exceed twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(4) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

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

(ix) Not Exceed Observer Deployment Limitations. Unless alternative arrangements are approved by the Observer Program Office, an observer provider must not:

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

- (B) Deploy an observer for more than 90 days in a single deployment;
- (C) Include more than four vessels assignments in a single deployment, or
- (D) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(x) Verify vessel's safety decal. An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph XX of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

(xii) Maintain Communications With The Observer Program Office. An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(A) Training and Briefing Registration Materials. The observer provider must submit training and briefing registration materials to the Observer Program Office at least 5 business days prior to the beginning of a scheduled observer at-sea hake training or briefing session. Registration materials consist of the date of requested training or briefing with a list of observers. Each observer's full name (i.e., first, middle and last names).

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

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

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

(1) Any information regarding possible observer harassment;

(i) Any information regarding any action prohibited under section XX (660.12 Prohibitions section) or § 600.725(o), (t) and (u);

(ii) Any concerns about vessel safety or marine casualty under 46 CFR 4.05-1 (X)(X) through (X);

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

(iv) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described at paragraph XX of this section.

(vx) Replace lost or damaged gear. An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(vix) Maintain Confidentiality of Information. An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

(viix) Limitations on Conflict of Interest. Observer providers must meet limitations on conflict of interest. Observer providers:

(A) Must not have a direct financial interest, other than the provision of observer services, in the West Coast Groundfish fishery managed under an FMP for the waters off the coasts of Washington, Oregon, and California, including, but not limited to,

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

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

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

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

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

(viiiix) Observer Conduct and Behavior. Observer providers must develop and maintain a policy addressing observer conduct and behavior for their employees that serve as observers. The policy shall address the following behavior and conduct regarding:

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

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

(5) Observer certification and responsibilities.

(i) Observer Certification for Observers deployed on motherships:

(A) Applicability. Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-permitted observer provider and according to certification endorsements as designated under paragraph XX of this section.

(B) Observer certification official. The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(C) Certification requirements. NMFS will certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at 50 CFR 679.50 regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in 50 CFR 679.50 and

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

(A) Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training;

(B) meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(D) Have not been decertified under paragraph (X)(X) of this section, or pursuant to 50 CFR 679.50.

(E) Agency determinations on observer certification

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

(2) Issuance of an observer certification. An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified ~~XXXXXX~~.

(i) Endorsements. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) North Pacific Groundfish Observer Program certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(B) North Pacific Groundfish Observer Program annual general endorsements. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) North Pacific Groundfish Observer Program deployment endorsements. Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend

and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(D) At-Sea Hake Observer Program endorsements. A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements:

(2) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast;

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

(a) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

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

(F) Limitations on conflict of interest.

(1) Observers: Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

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

(3) May not serve as observers on any vessel or at any shore-based or floating stationary processing facility owned or operated by a person who previously employed the observers.

(4) May not solicit or accept employment as a crew member or an employee of a vessel or shoreside processor while employed by an observer provider.

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

(G) Standards of behavior.

(1) Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

(i) Observers must:

(A) perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(B) report to the observer program office and the NMFS OLE any time they refuse to board.

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

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

(H) Suspension and decertification—

(1) Suspension and decertification review official. The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

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

(i) When it is alleged that the observer has committed any acts or omissions of any of the following:

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

(B) Failed to abide by the standards of conduct for observers as prescribed under paragraph XX of this section;

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

(A) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

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

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

(3) Issuance of initial administrative determination. Upon determination that suspension or decertification is warranted under paragraph XX of this section, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(4) Appeals. A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph XX of this section.

(i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefore.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(B) Observers deployed on mothership catcher vessels. Certifications and responsibilities for observers deployed aboard mothership catcher vessels are found in **660.140 XXX**.

(k) Catch weighing requirements.

(1) Approved scales. The owner and operator of a mothership vessel must:

(i) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements specified at **§ 660.15(b)**;

(ii) Provide a NMFS-approved platform scale and test weights that meet the requirements specified at **§ 660.15(b)** and **§ 660.150 (j)(2)(J)**.

(2) At-sea scale tests. To verify that the scale meets the maximum permissible error (MPE) requirements specified at **§ 660.15(b)**, subpart C, the vessel operator must ensure that vessel crew test each scale used to weigh IFQ catch at least one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) Belt scales. The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under **§ 679.28 (b)(7)**.

(ii) Platform scales used for observer sampling. A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent.

(iii) Approved test weights. Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(iv) Requirements for all scale tests.

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(1) Vessel name;

(2) Month, day, and year of test;

(3) Time test started to the nearest minute;

(4) Known weight of test weights;

(5) Weight of test weights recorded by scale;

(6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or NMFS authorized personnel. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) Scale maintenance. The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(4) Printed reports from the scale. The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made, and be made available to NMFS staff or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) Reports of catch weight and cumulative weight. Reports must be printed at least once every 24 hours **prior to submitting a landing report as described in § XXXX**. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

(A) The vessel name and **Federal vessel permit number**;

(B) The date and time the information was printed;

(C) The haul number as recorded in the processors DCPL

(D) The Total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection

(ii) Printed report from the audit trail. The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of **appendix A to 50 CFR part 679**. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) Platform scales used for observer sampling. A platform scale used for observer sampling is not required to produce a printed record.

(5) Equipment failure. [Reserved]

16. INSTRUCTION - In section 660.160, paragraphs (a)(3) and (a)(4) are revised; paragraphs (b) through (h) are renumbered as paragraphs (c) through (i); a new paragraph (b) is added; the new paragraph (c)(2) is revised; the new paragraphs (c)(3) through (c)(7) are added; the new paragraphs (d), (e)(2) through (4), (f) through (i) are revised to read as follows:

§ 660.160 Catcher/processor (C/P) coop program

* * * * *

(a) General. * * *

(3) Regulations set out in the following sections of subpart C: § 660.11 Definitions, § 660.12 Prohibitions, § 660.13 Recordkeeping and reporting, § 660.14 VMS requirements, § 660.15 Equipment requirements, § 660.16 Groundfish Observer Program, § 660.20 Vessel and gear identification, § 660.25 Permits, § 660.55 Allocations, § 660.60 Specifications and

management measures, § 660.65 Groundfish harvest specifications, and §§ 660.70 through 660.79 Closed areas.

(4) Regulations set out in the following sections of subpart D: § 660.111 Trawl fishery definitions, § 660.112 Trawl fishery prohibitions, § 660.113 Trawl fishery recordkeeping and reporting, § 660.120 Trawl fishery crossover provisions, § 660.130 Trawl fishery management measures, and § 660.131 Pacific whiting fishery management measures.

* * * * *

(b) Participation requirements and responsibilities.

(1) C/P vessel participation requirements. A vessel is eligible to fish as a catcher/processor in the C/P coop program if:

(i) The vessel is registered to a C/P permit.

(ii) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(iii) The vessel is not used to fish as a mothership in the MS coop program in the same calendar year.

(iv) ~~The vessel has not been under foreign registry and fished in the territorial waters or exclusive economic zones of other countries, as per Section 12102(e)(6) of the AFA.~~

(2) C/P responsibilities. The owner and operator of a catcher/processor vessel must:

(i) Recordkeeping and reporting. Maintain a valid declaration as specified at § 660.13(d); and maintain and submit all records and reports specified at § 660.113(d) including, economic data, scale tests records, and cease fishing declarations.

(ii) Observers. Procure observer services as specified at § 660.XXX, maintain the appropriate level of coverage as specified at § 660.XXX, and meet the vessel responsibilities specified at § 660.XXX.

(iii) Catch weighing requirements.

(A) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in section § 660.15 (b), is tested as is required at § 660.XXX, and is operated as required at § 660.XXX;

(B) Provide a NMFS-approved platform scale and test weights that meet the requirements of described in section § 660.15 (b) and that is tested as is required at § 660.XXX.

(C) Centralized registry of ownership. [Reserved]

Comment [jg47]: Needs developed

(3) C/P coops.

(i) C/P coop participation requirements. For a C/P coop to participate in the catcher/processor sector of the Pacific whiting fishery, the C/P coop must:

(A) be issued a MS coop permit;

(B) be owned and operated by C/P endorsed limited entry permit owners;

(C) be formed voluntarily;

(D) be a legally recognized entity that represents its members and employs a designated coop manager; and

(E) have all C/P permit owners as coop members.

(ii) C/P coop responsibilities. A C/PS coop is responsible for:

(A) applying for and being registered to a C/P Coop Permit;

(B) organizing and coordinating harvest activities of vessels registered to member

permits;

(C) allocating catch for use by specific coop members;

(D) monitoring harvest activities and enforcing the catch limits of coop members;

- (E) submitting an annual report.
- (F) having a designated coop manager. The designated coop manager must:
 - (1) serve as the contact person with NMFS and the Council;
 - (2) **organize the annual distribution of catch and bycatch between coop members;**
 - (3) prepare and submit an annual reports on behalf of the coop; and,
 - (4) be authorized to receive or respond to any legal process in which the coop is involved.
- (iii) Liability for violations. A C/P coop must comply with the provisions of this section.

The permit owners, and vessels owners and operators of vessels registered to the member permits, including vessels under contract, are responsible for the fishery cooperative complying with the provisions of this section.

(iv) C/P coop failure.

(A) A coop failure results when:

- (1) any vessel registered to a current C/P endorsed permit fishes **without being identified in the C/P coop agreement submitted to NMFS during the coop permit application process;**
- (2) any vessel registered to a current C/P endorsed permit withdraws from the C/P coop agreement;
- (3) the coop members voluntarily dissolve the coop;
- (4) the coop agreement is no longer valid; or
- (5) the coop fails to meet the C/P coop responsibilities specified at **§ 660.XXX.**

Comment [A48]: Correct?

(B) If the C/P coop dissolves, the designated coop manager must notify NMFS SFD in

writing of the dissolution of the coop.

(C) The Regional Administrator may make an independent determination of a coop failure based on factual information collected by or provided to NMFS.

(D) In the event of a NMFS determined coop failure:

- (1) The catcher/processor sector will convert to an IFQ-based fishery beginning the following calendar year after a coop failure, or a soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ fishery for the C/P sector.
- (2) each C/P endorsed permit would receive an equal percent (10 percent) of IFQ QS.

* * * * *

(c) C/P Coop program species and allocations--* * *

(2) C/P coop program annual allocations. The C/P Coop Program allocation is equal to the catcher/processor sector allocation. Only a single coop, comprised of all C/P endorsed permits, may be formed in the catcher/processor sector with the one permitted coop receiving the catcher/processor sector allocation.

(3) Non-whiting groundfish species.

(i) Non-whiting groundfish species with a catcher/processor sector allocation are established in accordance with regulation at **§ 660.55(X).** The pounds associated with each species will be allocated to the coop permit.

(ii) Groundfish species with at-sea sector set-asides, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken. Set asides may be adjusted through the biennial specifications and management measures process as necessary.

(iii) Groundfish species not covered under **paragraph (i) or (ii)** above, will be managed on an annual basis unless there is a risk of a harvest specification being exceeded, unforeseen impact on another fisheries, or conservation concerns in which case inseason action may be taken.

(4) Halibut set-asides. Annually a specified amount of the Pacific halibut will be held in reserve as a set-aside for the Pacific whiting C/P sector.

(5) Non-whiting groundfish species reapportionment. The Regional Administrator may make available for harvest to the mothership sector of the Pacific whiting fishery as identified in § 660.131(a), the amounts of a sector's non-whiting catch allocation remaining when a sector reaches its Pacific whiting allocation or participants in the sector do not intend to harvest the remaining sector allocation. The designated coop managers must notify NMFS in writing when harvesting has concluded for the year. At any time after greater than 80 percent of the catcher/processor sector Pacific whiting allocation has been harvested, the Regional Administrator may contact designated coop managers to determine whether they intend to continue fishing. When considering redistribution of non-whiting catch allocation, the Regional Administrator will take into consideration the best available data on total projected fishing impacts.

(6) Reaching the C/P allocation. When the catcher/processor sector allocation of Pacific whiting is reached or is projected to be reached, the following action may be taken:

(i) Pacific whiting. Further taking and retaining, receiving, or at-sea processing of Pacific whiting by a catcher/processor is prohibited when the catcher/processor sector Pacific whiting allocation is reached or projected to be reached. No additional unprocessed Pacific whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process Pacific whiting that was on board before at-sea processing was prohibited.

(ii) Non-whiting groundfish with allocations. The Catcher/processor sector will close when the allocation of any one species is reached or projected to be reached.

(7) Announcements. The Regional Administrator will announce in the Federal Register when the catcher/processor sector or the allocation of non-whiting groundfish with an allocation is reached, or is projected to be reached, and specify the appropriate action. In order to prevent exceeding an allocation and to avoid underutilizing the resource, prohibitions against further taking and retaining, receiving, or at-sea processing of Pacific whiting, or reapportionment of non-whiting groundfish with allocations may be made effective immediately by actual notice to fishers and processors, by e-mail, internet (www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/Whiting-Management/index.cfm), phone, fax, letter, press release, and/or USCG Notice to Mariners (monitor channel 16 VHF), followed by publication in the Federal Register, in which instance public comment will be sought for a reasonable period of time thereafter.

(d) C/P coop permit and agreement.

(1) Eligibility and application requirements to register for a C/P coop permit.

(i) Eligibility. Only an entity that is a recognized entity under the laws of the United States or the laws of a State and that represents all of the coop members can apply for and obtain a C/P coop permit. ~~The only person that can hold a permit must be: 1) a United States citizen; or 2) a permanent resident alien; or 3) a corporation, partnership or other entity established under the laws of the United States or any State.~~

(ii) Annual registration and deadline. Each year, the coop entity must submit a complete application to NMFS for a C/P coop permit. The application must be submitted to NMFS by **XXFebruary IXX** of the year in which they intend to participate. NMFS will not consider any applications received after **XXDATEXX**. A C/P coop permit expires on December 31 of the year in which it was issued.

(iii) Application for a C/P coop permit. The coop entity must submit a complete application form and include each of the items listed in paragraphs (e)(2)(iii)(A) through (B). Only complete applications will be considered for issuance of a C/P coop permit. NMFS may request additional supplemental documentation as necessary to make a determination of whether to approve or disapprove the application. Application forms and instruction are available on the NMFS NWR website (www.nwr.noaa.gov) or by request from NMFS.

(A) Coop agreement. A coop agreement must include all of the information listed in this paragraph to be considered a complete coop agreement. NMFS will only review complete coop agreements. Coop agreements will not be accepted when the agreement unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information is submitted is correct and accurate.

(1) Coop agreements contents. Each agreement must be signed by the coop members and include the following information:

(i) A listing of all vessels registered to C/P endorsed permits that the member permit owners intend to use for fishing under the C/P coop permit.

(ii) A listing of all C/P endorsed limited entry member permits identified by permit number.

(iii) A description of the coop's plan to adequately monitor and account for the catch of Pacific whiting and non-whiting groundfish allocations, and to monitor and account for the catch of prohibited species.

(iv) A new member permit owner clause that requires new owners of member permit's to comply with membership restrictions in the coop agreements.

(v) A description of the coop's plan for enforcement and penalty provisions adequate to maintain catch of Pacific whiting and non-whiting groundfish within the allocations and that Pacific halibut set-aside overages do not occur.

(vi) A description of measures to reduce catch of overfished species.

(vii) A description of how the coop's responsibility to produce an annual report documenting the coop's catch, bycatch data, and any other significant activities undertaken by the coop during the year will be met by ~~XX~~due date~~XX~~.

(viii) Identification of the designated coop manager.

(ix) A signed clause by the designated coop manager acknowledging the responsibilities of a designated coop manager defined in ~~660.XXXXX~~.

(x) A description for how the coop will be dissolved.

(xi) ~~Provisions that prohibit member permit owners that have incurred legal sanctions from fishing groundfish in the Council region~~

(2) Department of Justice correspondence. Each coop must submit a letter to the Department of Justice requesting a business review letter on the fishery coop. Copies of the letter and any correspondence with the Department of Justice regarding the request must be included in the application to NMFS for a MS Coop Permit.

(B) Acceptance of a coop agreement.

(1) If NMFS does not accept the coop agreement, the coop permit application will be returned to the applicant with a letter stating the reasons the coop agreement was not accepted by NMFS.

(2) Coop agreements that are not accepted may be resubmitted for review by sufficiently addressing the deficiencies identified in the letter of rejection and resubmitting the entire coop permit application by the date specified in the letter of rejection.

(3) An approved coop agreement that was submitted with the C/P coop permit application and for which a C/P permit was issued will remain in place through the end of the calendar year. The designated coop manager must resubmit a complete coop agreement to NMFS consistent with the coop agreement contents described in this paragraph if there is a material change to the coop agreement.

(4) Within 3 days following a material change, a revised coop agreement must be submitted to NMFS. NMFS will review the material changes and provide a letter to the coop manager that either accepts the changes as given or does not accept the revised coop agreement with a letter stating the reasons that it was not accepted by NMFS. The coop may resubmit the coop agreement with further revisions to the material changes responding to NMFS concerns.

(iv) Effective date of C/P coop permit. A C/P coop permit will be effective on the date approved by NMFS and remain in effect until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the fishing season for the catcher/processor sector or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) the C/P coop has reached the catcher/processor sector Pacific whiting allocation,

(C) a material change to the coop agreement has occurred and the designated coop manager failed to provide a revised coop agreement to NMFS within three calendar days of the material change.

(D) NMFS has determined that a coop failure occurred.

(2) Initial administrative determination. For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will include a C/P coop permit. If disapproved, the IAD will provide the reasons for this determination. An application will be disapproved if any required fees and annual reports have not been received by NMFS.

(3) Appeals. An appeal to a C/P coop permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(4) Fees. The Regional Administrator is authorized to charge fees for administrative costs associated with the issuance of a C/P coop permit consistent with the provisions given at § 660.25(f), subpart C.

(5) Cost recovery. The owner of a C/P coop permit (coop entity) will be required to pay all cost recovery fees based on the harvest of Pacific whiting by the coop members in a given year. Cost recovery fees will not be collected until further cost recovery regulations are implemented by NMFS.

* * * * *

(e) C/P endorsed permit.

(1) General. * * *

(2) Eligibility and renewal for C/P endorsed permit.

(i) Eligibility. An owner of C/P endorsed limited entry permit must be eligible to own a U.S. documented vessel as given at § 660.333(b).

(ii) Renewal of C/P endorsed limited entry permit. A C/P endorsed permit must be renewed consistent with the regulations given at § 660.335(a). If a vessel registered to the C/P endorsed permit will operate as a mothership in the year for which the permit is renewed, the permit owner must make a declaration as part of the C/P endorsed permit renewal consistent with the regulations at § 660.373(h)(3).

(iii) Effective date of the C/P endorsed permit. XXX

Comment [jg49]: And bycatch species?

Comment [jg50]: Add text

(3) Change in permit ownership, vessel registration, vessel owner, transfer or combination.

(i) Changes in permit or vessel owner of C/P endorsed permit. The requirements for making a change in the permit owner or vessel owner found at § 660.335(d) remain in effect with for the exception listed in paragraph (ii).

(ii) Frequency of changes in vessel registration to a C/P endorsed permit. A limited entry permit with a catcher/processor endorsement may be registered to another vessel only once during a fishing season, except that it may be registered to another vessel two times during the fishing season as long as the second transfer is back to the original vessel. NMFS deems the original vessel to mean either the vessel registered to the permit as of January 1 or if no vessel is registered to the permit as of January 1, the original vessel is considered the first registration of a vessel after January 1. The frequency of transfer provisions at § 660.20(b)(3)(x) does not apply to C/P endorsed permit.

(iii) Effective date of transfer of a C/P endorsed permit. A change in vessel registration to a C/P endorsed permit will be effective upon NMFS approval and not subject to provisions at § 660.20(b)(3)(x).

(iv) Combination. A C/P endorsed permit that is combined with other trawl endorsed limited entry permits that do not have a C/P endorsement will result in a single trawl limited entry permit with a C/P endorsement with a larger size endorsement. The resulting size endorsement from a combination involving a C/P endorsed limited entry permit will be determined based on the existing combination formula given at § 660.20(b)(2)(iii).

(4) Appeals. An appeal to a C/P endorsed permit action follows the same process as the general permit appeals process defined at § 660.25(g), subpart C.

(5) Fees. * * *

* * * * *

(6) Cost recovery. A C/P endorsed permit owner will not be responsible to pay cost recovery fees. The C/P coop permit owner owners will be required to pay all cost recovery fees based as specified at paragraph (e)(7) of this section. If the C/P coop fails, the owner of C/P endorsed permit or the owner of a vessel registered to C/P endorsed permit in a given year may be required to pay cost recovery fees. Cost recovery fees will not be collected until further cost recovery regulations are implemented by NMFS.

(7) Application requirements and initial issuance for C/P endorsement. * * *

* * * * *

(f) Retention requirements. [Reserved]

(g) Observer requirements.

(1) Observer coverage requirements.

(2) Coverage. Any vessel registered to a C/P permit that is 125 ft (38.1 m) LOA or longer must carry two NMFS-certified observers, and any vessel registered to a C/P permit that is shorter than 125 ft (38.1 m) LOA must carry one NMFS-certified observer, each day that the vessel is used to take, retain, receive, land, process, or transport groundfish.

(3) Refusal to board. Any boarding refusal on the part of the observer or vessel is reported to the observer program and NMFS OLE observer compliance coordinator by the observer provider and observer. Observer must be available for an interview with the observer program or OLE if necessary.

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

Comment [jg51]: Needs developed
If not, revise instructions

(5) Vessel Responsibilities. An operator and/or crew of a vessel required to carry an observer must provide:

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

(ii) Safe Conditions.

(A) Maintain safe conditions on the vessel for the protection of observers including adherence to all U.S. Coast Guard and other applicable rules, regulations, or statutes pertaining to safe operation of the vessel.

(B) Have On Board: a valid Commercial Fishing Vessel Safety Decal issued within the past or at a time interval consistent with current USCG regulations or policy 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.

(iii) Computer Hardware and Software. Catcher/processors vessels must:

(A) provide hardware and software pursuant to regulations at **50 CFR 679.50(g)(1)(iii)(B)(1) through 50 CFR 679.50(g)(1)(iii)(B)(3)**.

(B) provide the observer(s) access to a computer required under paragraph (b)(3)(i) of this section that is connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) ensure that the catcher/processor has installed the most recent release of NMFS data entry software provided by the Regional Administrator, or other approved software prior to the vessel receiving, catching or processing IFQ species.

(D). Ensure that the communication equipment required in **paragraph (g)(1)(iii)(B)** of this section and used by observers to enter and transmit data, is fully functional and operational. "Functional" means that all the tasks and components of the NMFS supplied, or other approved, software described at **paragraph (g)(1)(iii)(B)(2)** of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) Vessel Position. Allow observer(s) access to, and the use of, the vessel's navigation equipment and personnel, on request, to determine the vessel's position.

(v) Access. Allow observer(s) free and unobstructed access to the vessel's bridge, trawl or working decks, holding bins, processing areas, freezer spaces, weight scales, cargo holds, and any other space that may be used to hold, process, weigh, or store fish or fish products at any time.

(vi) Prior Notification. 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, unless the observer specifically requests not to be notified.

(vii) Records. Allow observer(s) to inspect and copy any state or Federal logbook maintained voluntarily or as required by regulation.

(viii) Assistance. Provide all other reasonable assistance to enable observer(s) to carry out their duties, including, but not limited to:

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

(B) Providing the observer(s) with a safe work area.

(C) Collecting samples of catch when requested by the observer(s).

(D) Collecting and carrying baskets of fish when requested by the observer(s).

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

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

(ix) Sample Station and Operational Requirements for catcher/processor vessels.

This paragraph contains the requirements for observer sampling stations. To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that meets the requirements of paragraph (b)(9) (i) through (viii) of this section.

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

(B) Location. The observer sampling station must be located within 4 m of the location from which the observer samples unsorted catch.

(C) Access. Unobstructed passage must be provided between the observer sampling station and the location where the observer collects sample catch.

(D) Minimum Work Space. The observer must have a working area of at least 4.5 square meters, including the observer's sampling table, for sampling and storage of fish to be sampled. The observer must be able to stand upright and have a work area at least 0.9 m deep in the area in front of the table and scale.

(E) Table. The observer sampling station must include a table at least 0.6 m deep, 1.2 m wide and 0.9 m high and no more than 1.1 m high. The entire surface area of the table must be available for use by the observer. Any area for the observer sampling scale is in addition to the minimum space requirements for the table. The observer's sampling table must be secured to the floor or wall.

(F) Diverter board. The conveyor belt conveying unsorted catch must have a removable board ("diverter board") to allow all fish to be diverted from the belt directly into the observer's sampling baskets. The diverter board must be located downstream of the scale used to weigh total catch. At least 1 m of accessible belt space, located downstream of the scale used to weight total catch, must be available for the observer's use when sampling.

(G) Other Requirements. The sampling station must be in a well-drained area that includes floor grating (or other material that prevents slipping), lighting adequate for day or night sampling, and a hose that supplies fresh or sea water to the observer.

(H) Observer Sampling Scale. The observer sample station must include a NMFS-approved platform scale (pursuant to requirements at [50 CFR 679.28\(d\)\(5\)](#)) with a capacity of at least 50 kg located within 1 m of the observer's sampling table. The scale must be mounted so that the weighing surface is no more than 0.7 m above the floor.

(I) Transfer At-sea. To ensure observer safety during at-sea transfers, vessels must:

(1) 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.

(2) 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.

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

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

(3) Procurement of Observer Services.

(i) Owners of vessels required to carry observers under **paragraph (a)(1)** of this section must arrange for observer services from an observer provider permitted by the North Pacific Groundfish Observer Program under **50 CFR 679.50(i)**, except that:

(A) Vessels are required to procure observer services directly from NMFS when NMFS has determined and given notification that the vessel must carry NMFS staff or an individual authorized by NMFS in lieu of an observer provided by a permitted observer provider.

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

(4) Observer provider responsibilities.

(i) Qualified Candidates. Observer providers must provide qualified candidates to serve as observers.

(A) To be qualified, a candidate must have:

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

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

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

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

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

(iii) Observer Contracts. The observer provider must provide for each observer either a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment and that contains the following provisions for continued employment:

(A) That all the observer's catch reports required to be sent during the season are delivered to the Observer Program Office as specified by written Observer Program instructions;

(B) Prior to the time of embarkation, disclosure of any mental illness or physical ailment or injury that would prevent the candidate from performing the assigned duties of an observer and which were not documented in the physician's statement submitted by the candidate as required in **paragraph XX** of this section;

(C) Requirement that ensures the observers complete duties in a timely manner. An observer provider must ensure that observers employed by that observer provider do the following in a complete and timely manner:

(1) Once an observer is scheduled for a final deployment debriefing under **paragraph XX** of this section, submit to NMFS all data, reports required by the Observer Manual, and biological samples from the observer's deployment by the completion of the electronic vessel and/or processor survey(s);

(2) Report for the scheduled debriefing and complete all debriefing responsibilities;

(3) Report to the observer program office and the NMFS OLE observer compliance coordinator any refusal to board an assigned vessel, and

(4) Return all sampling and safety gear to the Observer Program Office.

(iv) Providing NMFS-Certified Observers. The observer provider must only provide observers to vessels that have:

(A) a valid North Pacific groundfish observer certification endorsements and an At-Sea Hake Observer Program certification to provide observer services;

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

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

(v) Respond to Industry Requests for Observers. An observer provider must provide an observer for deployment as requested by vessels to fulfill vessel requirements for observer coverage specified under sections XX of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties.

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

(vii) Provide Observer Deployment Logistics. An observer provider must provide to each of its observers under contract:

(A) All necessary transportation, including arrangements and logistics, of observers to the initial location of deployment, to all subsequent vessel assignments during that deployment, and to the debriefing location when a deployment ends for any reason; and

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

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

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

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

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

(C) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

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

(viii) Deployment Limitations. An observer provider must not exceed observer deployment limitations specified in this paragraph unless alternative arrangements are approved by the Observer Program Office. An observer provider must not:

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

- (B) Deploy an observer for more than 90 days in a single deployment;
- (C) Include more than four vessel assignments in a single deployment, or
- (D) Disembark an observer from a vessel before that observer has completed his or her sampling or data transmission duties.

(ix) Verify Vessel's Safety Decal. An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph XX of this section before an observer may get underway aboard the vessel. One of the following acceptable means of verification must be used to verify the decal validity:

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

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

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

(xi) Maintain Communications With the Observer Program. An observer provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

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

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

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

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

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under section XX (660.12 Prohibitions section) or §600.725(o), (t) and (u);

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

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

(5) Any information, allegations or reports regarding observer conflict of interest or breach of the standards of behavior described at paragraph XX of this section.

(xii) Replace Lost or Damaged Gear. An observer provider must replace all lost or damaged gear and equipment issued by NMFS to an observer under contract to that provider. All replacements must be in accordance with requirements and procedures identified in writing by the Observer Program Office.

(xiii) Maintain Confidentiality of Information. An observer provider must ensure that all records on individual observer performance received from NMFS under the routine use provision of the Privacy Act remain confidential and are not further released to anyone outside the employ of the observer provider company to whom the observer was contracted except with written permission of the observer.

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

(A) Must not have a direct financial interest, other than the provision of observer services, in the West Coast Groundfish fishery managed under an FMP for the waters off the coasts of Washington, Oregon, and California, including, but not limited to,

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

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

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

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

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

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

(A) Observer use of alcohol;

(B) Observer use, possession, or distribution of illegal drugs and;

(C) Sexual contact with personnel of the vessel or processing facility to which the observer is assigned, or with any vessel or processing plant personnel who may be substantially affected by the performance or non-performance of the observer's official duties.

(D) An observer provider shall provide a copy of its conduct and behavior policy by February 1 of each year, to:

Observers, observer candidates and;
the Observer Program Office.

(5) Observer Certification and Responsibilities.

(i) Observer Certification.

(A) Applicability. Observer certification authorizes an individual to fulfill duties as specified in writing by the NMFS Observer Program Office while under the employ of a NMFS-

permitted observer provider and according to certification endorsements as designated under paragraph XX of this section.

(B) Observer Certification Official. The Regional Administrator will designate a NMFS observer certification official who will make decisions for the Observer Program Office on whether to issue or deny observer certification.

(C) Certification Requirements. NMFS will certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company permitted pursuant to 50 CFR 679.50 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at 50 CFR 679.50 regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer education and health standards as specified in 50 CFR 679.50 and

(iii) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake Observer Program. Successful completion of training by an observer applicant consists of meeting all attendance and conduct standards issued in writing at the start of training; meeting all performance standards issued in writing at the start of training for assignments, tests, and other evaluation tools; and completing all other training requirements established by the Observer Program.

(3) Have not been decertified under paragraph (f)(3) of this section, or pursuant to 50 CFR 679.50.

(D) Agency Determinations on Observer Certification.

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

(2) Issuance of an Observer Certification. An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph XX of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(i) North Pacific Groundfish Observer Program certification training endorsement. A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(ii) North Pacific Groundfish Observer Program annual general endorsements. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(iii) North Pacific Groundfish Observer Program deployment endorsements. Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully

completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(iv) At-Sea Hake Observer Program endorsements. A Pacific hake fishery endorsement is required for purposes of performing observer duties aboard vessels that process groundfish at sea in the Pacific whiting fishery. A Pacific whiting fishery endorsement to an observer's certification may be obtained by meeting the following requirements: Be a prior NMFS-certified observer in the groundfish fisheries off Alaska or the Pacific Coast, unless an individual with this qualification is not available; Receive an evaluation by NMFS for his or her most recent deployment (if any) that indicated that the observer's performance met Observer Program expectations for that deployment; Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and Comply with all of the other requirements of this section.

(E) Limitations on Conflict of Interest. Observers:

(1) Must not have a direct financial interest, other than the provision of observer services, in a North Pacific fishery managed pursuant to an FMP for the waters off the coast of Alaska, or in a Pacific Coast fishery managed by either the state or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

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

(3) May not serve as observers on any vessel or at any shore-based or floating stationary processing facility owned or operated by a person who previously employed the observers.

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

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

(F) Standards of Behavior.

(1) Observers must avoid any behavior that could adversely affect the confidence of the public in the integrity of the Observer Program or of the government, including but not limited to the following:

Observers must:

(i) perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(ii) report to the observer program office and the NMFS Office of Law Enforcement any time they refuse to board a vessel.

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

(iv) not disclose collected data and observations made on board the vessel or in the processing facility to any person except the owner or operator of the observed vessel or processing facility, an authorized officer, or NMFS.

(G) Suspension and Decertification.

(1) Suspension and decertification review official. The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

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

(i) When it is alleged that the observer has committed any acts or omissions of any of the following: Failed to satisfactorily perform the duties of observers as specified in writing by the NMFS Observer Program; or Failed to abide by the standards of conduct for observers as prescribed under paragraph XX of this section;

(ii) Upon conviction of a crime or upon entry of a civil judgment for: commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; commission of any other offense indicating a lack of integrity or honesty that seriously and directly affects the fitness of observers.

(3) Issuance of Initial Administrative Determination. Upon determination that suspension or decertification is warranted under paragraph XX of this section, the suspension/decertification official will issue a written Initial Agency Determination (IAD) to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken. If the IAD issues a suspension for an observer certification, the terms of the suspension will be specified. Suspension or decertification is effective immediately as of the date of issuance, unless the suspension/decertification official notes a compelling reason for maintaining certification for a specified period and under specified conditions.

(4) Appeals. A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal pursuant to paragraph XX of this section.

(i) Decisions on appeals of initial administrative decisions denying certification to, or suspending, or decertifying, an observer, will be made by the Regional Administrator (or designated official).

(ii) Appeals decisions shall be in writing and shall state the reasons therefore.

(iii) An appeal must be filed with the Regional Administrator within 30 days of the initial administrative decision denying, suspending, or revoking the observer's certification.

(iv) The appeal must be in writing, and must allege facts or circumstances to show why the certification should be granted, or should not be suspended or revoked, under the criteria in this section.

(v) Absent good cause for further delay, the Regional Administrator (or designated official) will issue a written decision on the appeal within 45 days of receipt of the appeal. The

Regional Administrator's decision is the final administrative decision of the Department as of the date of the decision.

(h) [Reserved]

(i) Catch weighing requirements.

(1) Approved scales. The owner and operator of a catcher/processor vessel must:

(i) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements specified at § 660.15(b);

(ii) Provide a NMFS-approved platform scale and test weights to the observer that meet the requirements specified at § 660.15(b) and § 660.160 (f)(2)(ix).

(2) At-sea scale tests. To verify that the scale meets the maximum permissible errors (MPEs) specified in this paragraph, the vessel operator must ensure that vessel crew test each scale used to weigh catch at least one time during each 24-hour period when use of the scale is required. The vessel owner must ensure that these tests are performed in an accurate and timely manner.

(i) Belt scales. The MPE for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material. The scale must be tested by weighing at least 400 kg (882 lb) of fish or an alternative material supplied by the scale manufacturer on the scale under test. The known weight of the fish or test material must be determined by weighing it on a platform scale approved for use under § 679.28 (b)(7).

(ii) Platform scales used for observer sampling. A platform scale used for observer sampling must be tested at 10, 25, and 50 kg (or 20, 50, and 100 lb if the scale is denominated in pounds) using approved test weights. The MPE for the daily at-sea scale test is plus or minus 0.5 percent.

(iii) Approved test weights. Each test weight must have its weight stamped on or otherwise permanently affixed to it. The weight of each test weight must be annually certified by a National Institute of Standards and Technology approved metrology laboratory or approved for continued use by the NMFS authorized inspector at the time of the annual scale inspection.

(iv) Requirements for all scale tests.

(A) Notify the observer at least 15 minutes before the time that the test will be conducted, and conduct the test while the observer is present.

(B) Conduct the scale test and record the following information on the at-sea scale test report form:

(1) Vessel name;

(2) Month, day, and year of test;

(3) Time test started to the nearest minute;

(4) Known weight of test weights;

(5) Weight of test weights recorded by scale;

(6) Percent error as determined by subtracting the known weight of the test weights from the weight recorded on the scale, dividing that amount by the known weight of the test weights, and multiplying by 100; and

(7) Sea conditions at the time of the scale test.

(C) Maintain the test report form on board the vessel until the end of the fishing year during which the tests were conducted, and make the report forms available to observers, NMFS staff, or NMFS authorized personnel. In addition, the vessel owner must retain the scale test report forms for 3 years after the end of the crab fishing year during which the tests were performed. All scale test report forms must be signed by the vessel operator.

(3) Scale maintenance. The vessel owner must ensure that the vessel operator maintains the scale in proper operating condition throughout its use, that adjustments made to the scale are made so as to bring the performance errors as close as practicable to a zero value, and that no adjustment is made that will cause the scale to weigh inaccurately.

(4) Printed reports from the scale. The vessel owner must ensure that the printed reports are provided as required by this paragraph. Printed reports from the scale must be maintained on board the vessel until the end of the year during which the reports were made, and be made available to NMFS staff or NMFS authorized personnel. In addition, the vessel owner must retain printed reports for 3 years after the end of the year during which the printouts were made.

(i) Reports of catch weight and cumulative weight. Reports must be printed at least once every 24 hours prior to submitting a landing report as described in § **XXXX**. Reports must also be printed before any information stored in the scale computer memory is replaced. Scale weights must not be adjusted by the scale operator to account for the perceived weight of water, mud, debris, or other materials. Scale printouts must show:

- (A) The vessel name and Federal vessel permit number;
- (B) The date and time the information was printed;
- (C) The haul number as recorded in the processors DCPL
- (D) The Total weight of the haul; and

(E) The total cumulative weight of all fish and other material weighed on the scale since the last annual inspection

(ii) Printed report from the audit trail. The printed report must include the information specified in sections 2.3.1.8, 3.3.1.7, and 4.3.1.8 of appendix A to 50 CFR part 679. The printed report must be provided to the authorized scale inspector at each scale inspection and must also be printed at any time upon request of NMFS staff or other NMFS-authorized personnel.

(iii) Platform scales used for observer sampling. A platform scale used for observer sampling is not required to produce a printed record.

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