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**National Oceanic and Atmospheric
Administration**

50 CFR Part 660

**Fisheries Off West Coast States; Pacific
Coast Groundfish Fishery Management
Plan; Amendments 20 and 21; Trawl
Rationalization Program; Proposed Rule**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 660****[Docket No. 100212086–0307–03]****RIN 0648–AY68****Fisheries off West Coast States; Pacific Coast Groundfish Fishery Management Plan; Amendments 20 and 21; Trawl Rationalization Program**

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes specific measures for the implementation of Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. The trawl rationalization program is intended to increase net economic benefits, create individual economic stability, provide full utilization of the trawl sector allocation, consider environmental impacts, and achieve individual accountability of catch and bycatch. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. These allocations are intended to improve management under the rationalization program by streamlining its administration, providing stability to the fishery, and addressing halibut bycatch.

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21. Accordingly, this rule proposes the key components that would be necessary to implement the trawl rationalization program at the start of the 2011 fishery. NMFS previously published a proposed rule on June 10, 2010 that would restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed measures (the initial issuance proposed rule). The proposed rule and references to the groundfish regulations in the preamble for this proposed rule cite to the applicable sections of in the initial

issuance proposed rule. The initial issuance proposed rule would also establish the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares (QS), and catch history assignments under the IFQ and coop programs. This rule supplements the prior initial issuance proposed rule, and provides additional details, including: Program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits, coop agreement requirements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. NMFS is also planning a future “cost recovery” rule based on a recommended methodology yet to be developed by the Pacific Fishery Management Council (the Council).

DATES: Comments on this proposed rule must be received no later than 5 p.m., local time on September 30, 2010.

ADDRESSES: You may submit comments, identified by 0648–AY68, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal, at <http://www.regulations.gov>.
- *Fax:* 206–526–6736; *Attn:* Jamie Goen.
- *Mail:* William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE., Seattle, WA 98115–0070; *Attn:* Jamie Goen.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (if submitting comments via the Federal e-Rulemaking portal, enter “N/A” in the relevant required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS, Northwest Region, e-mailed to

David.Rostker@omb.eop.gov; or faxed to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, 206–526–4656; (fax) 206–526–6736; Jamie.Goen@noaa.gov.

SUPPLEMENTARY INFORMATION:**Electronic Access**

This proposed rule is accessible via the Internet at the Office of the Federal Register’s Web site at <http://www.gpoaccess.gov/fr/index.html>. Background information and documents, including the Final Environmental Impacts Statements for Amendment 20 and Amendment 21, are available at the Pacific Fishery Management Council’s Web site at <http://www.pcouncil.org/>.

Background

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 20 would establish a trawl rationalization program for the Pacific Coast groundfish fishery, which would consist of: An individual fishing quota (IFQ) program for the shorebased trawl fleet (including whiting and non-whiting sectors); and cooperative (coop) programs for the at-sea (whiting only) mothership (MS) and catcher/processor (C/P) trawl fleets. Amendment 21 would establish fixed allocations for limited entry (LE) trawl participants. On May 12, 2010 (75 FR 26702), NMFS published a notice of availability of Amendments 20 and 21, and—consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)—made its decision to partially approve the amendments on August 9, 2010.

Because of the complexity of these amendments, NMFS determined that implementation would take place through multiple rulemakings. The first rule developed by NMFS would: Restructure and clarify the Pacific Coast groundfish regulations to more closely track the organization of the proposed management measures, establish the allocations set forth under Amendment 21, and establish procedures for the initial issuance of permits, endorsements, QS, and catch history assignments under the IFQ and coop programs. Council staff and NMFS coordinated to develop this initial issuance rule in early 2010, and the Council deemed a version of the initial issuance rule necessary or appropriate for the implementation of Amendments 20 and 21 at its April 2010 meeting in Portland, Oregon. At the April meeting,

the Council directed Council staff to make specific revisions to the regulations and additional edits as appropriate, convened a Regulatory Deeming Workgroup (RDW) to review the continuing regulatory development, and delegated authority to the Executive Director of the Council to further deem the rule as necessary or appropriate prior to their transmittal to NMFS for publication. On May 7, 2010, the Executive Director transmitted Amendments 20 & 21 to NMFS for review by the Secretary of Commerce. In that same letter, the Executive Director deemed that the revised rule continued to be necessary or appropriate for the purpose of implementing the plan amendments consistent with the Council's intent, and after review by NMFS headquarters, the initial issuance proposed rule was published in the **Federal Register** on June 10, 2010 (75 FR 32994). The preamble to the June 10, 2010, proposed rule provided the detailed background for the proposed management measures and is not repeated here.

After the April 2010 Council meeting, Council staff and NMFS coordinated to develop the second set of draft regulations, which would establish several of the program components required for implementation of the rationalized trawl fishery in 2011, including IFQ gear switching provisions, details of observer requirements and first receiver catch monitor programs, first receiver site licenses, equipment requirements, catch weighing requirements, retention requirements in the shorebased IFQ program, QS accounts, vessel accounts for use of quota pounds (QP), requirements for coop permits and coop agreements, further tracking and monitoring components, and economic data collection requirements. A version of the program components proposed rule was provided to the RDW for its June 10–11, 2010 meeting to review and comment to the Council. NMFS provided this version for the Council's consideration at its June 2010 meeting. At the June 2010 meeting, the Council directed NMFS to continue drafting the proposed rule consistent with the Council's direction on remaining issues to be addressed, and to provide a revised version for the RDW to review at its June 30, 2010 meeting. The Council delegated authority to its Executive Director to deem the final version of the program components proposed rule as necessary or appropriate after consideration of any further comments by the RDW. The RDW reviewed additional revisions to

the program components proposed rule on June 30, 2010, and provided its comments to the Council. NMFS completed drafting the regulations in close coordination with Council staff, and on July 12, 2010, provided its final version of the program components proposed rule to the Council. Council staff made additional revisions, and on July 20, 2010, the Executive Director deemed the regulations to be necessary or appropriate to implement Amendments 20 and 21 consistent with the Council's action.

The program components proposed rule provides details necessary for implementation of trawl rationalization by January 2011. Some of the provisions apply to several or all of the programs (*i.e.*, Shorebased IFQ Program, MS Coop Program, C/P Coop Program), while other details only affect one program, as discussed below.

As mentioned in the preamble to the initial issuance proposed rule (75 FR 32994, June 10, 2010) on page 32997, the management approaches set forth in the trawl rationalization program consist of different types of limited-access approaches. These limited-access approaches grant permission to the holder of the privilege or permit to participate in the program. Such permission may be revoked, limited, or modified at any time. In other words, it is a conditional privilege. Amendment 20 includes features such as annual renewal requirements and regular program reviews that would ensure program goals are being met, provide NMFS the ability to review, track, and monitor program implementation and needs, and prevent the perception that the program confers "rights" as opposed to privileges.

Amendment 20 establishes programs that are "limited-access privilege programs," which are consistent with the MSA provisions at section 303A. Limited-access privileges, including the QS, QP, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA, and do not create any right of compensation to the holder of the limited-access privilege, QS, QP, or catch history assignment if revoked, limited or modified. The limited-access privilege program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited-access privilege to engage in activities permitted by the limited-access privilege program. For further statutory provisions related to limited-access privileges, *see* section 303A of the MSA.

Section 303A contains an "antitrust savings clause" that provides that "nothing in this Act shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. For purposes of the preceding sentence, the term 'antitrust laws' has the meaning given such term in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 applies to unfair methods of competition." NOAA advises that any fishery participants who are uncertain about the legality of their activities under the antitrust laws of the United States should consult legal counsel prior to commencing those activities.

Changes Applicable to All Programs

Recordkeeping and Reporting

The program components proposed rule includes several new recordkeeping and reporting requirements, including provisions for new declarations, electronic fish tickets, a mandatory economic data collection program (described further under "Economic Data Collection (EDC) Program" later in this preamble), scale reports, annual coop reports, and cease fishing reports.

The proposed rule would expand the use of declarations for the management of the groundfish fisheries. Current regulations require groundfish vessels to submit declarations in order to facilitate tracking of compliance with area management measures when a vessel is required to carry a vessel monitoring system (VMS). The proposed rule would use declarations not only to complement VMS requirements, but also to establish what fishery a vessel would be participating in for the purpose of catch accounting and identifying what other requirements would be applicable to that vessel. The proposed rule would also add a declaration for vessels participating in the Shorebased IFQ Program under gear switching, as described below. Motherships would be exempted from the requirement to submit declarations, because motherships do not operate as a catcher vessel, are not subject to any groundfish conservation areas (GCAs), are not required to carry a VMS, and do not switch between various gear types such that a declaration would be of any use.

Landings in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system. Shorebased IFQ first receivers, which would be issued a first receiver site license from NMFS, would complete the

landings information for each fishing trip by a vessel offloading at their site.

Scale reports would be required for scales used at shorebased IFQ first receivers and for scales used on mothership and catcher/processor vessels. Scales used to weigh catch on vessels would be required to be inspected annually and tested daily. Records of the scale tests and records of the scale printouts (catch weight and cumulative weight) would be required to be maintained onboard the vessel until the end of the year during which the reports were made, and be made available to NMFS upon request. In addition, the vessel owner would be required to retain printed reports for 3 years after the end of the year during which the printouts were made. IFQ first receivers would be required to allow for in-season scale testing. IFQ first receivers would also be required to ensure that printouts of the scale weight of each delivery or offload are made available to NMFS staff or to authorized officers at the time printouts are generated. An IFQ first receiver would be required to 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 authorized officers for 3 years after the end of the fishing year during which the printout was made.

Additional new recordkeeping and reporting requirements for the coop fisheries would include a requirement for an annual coop report describing the coop allocation, the total catch (retained and discards) of the coop, monitoring, and other coop activities. Cease fishing reports would be required in the coop fisheries to report to NMFS when a coop has completed fishing for the year.

Permits

Under the proposed initial issuance rule, several new permits that could be registered to a vessel would be issued. The program components proposed rule sets forth the rules for registration and transfer of registration that would apply to these permits. Consistent with current regulations, when the owner of a limited entry trawl permit registered to a vessel operating in the Shorebased IFQ Program transfers the registration to another vessel, the registration would be effective at the start of the next cumulative trip limit period. This provision would remain in place because trip limits would remain in place in the Shorebased IFQ Program (for non-IFQ species and for Pacific whiting outside the primary whiting season). A transfer of registration for MS/CV-endorsed limited entry trawl permits would also be effective at the

start of the next cumulative limit period because vessels registered to MS/CV-endorsed permits would be eligible to participate in both the Shorebased IFQ Program and the MS Coop Program. Transfers of MS permits and C/P-endorsed limited entry trawl permits would be effective immediately upon reissuance to the new vessel, because neither of these permits would be affected by trip limits.

With respect to transfer of MS/CV-endorsed permits, the Council motion included a provision (Appendix D, Page D-34) that would allow an MS/CV-endorsed permit to have two changes in vessel registration in the same calendar year, provided that the second change in vessel registration would return the registration to the original vessel assigned to the permit in that year. Transfer rules for limited entry trawl permits without an MS/CV endorsement, however, limit the permit owner to only one transfer in a given year. During its March 2010 meeting, the Council considered that because vessels registered to an MS/CV-endorsed permit would be able to deliver whiting to the MS sector and would also potentially be able to deliver IFQ groundfish to shorebased first receivers, it may be possible for owners of an MS/CV-endorsed permit to circumvent the restrictions on transfers of limited entry permits in the Shorebased IFQ Program for owners of permits that lack an MS/CV endorsement. Consequently, the Council decided that if the owner of an MS/CV-endorsed permit were to transfer registration of the permit a second time, the vessel to which the permit is transferred to would not be eligible to fish in the Shorebased IFQ Program under that permit during the remainder of the year. The Council's motion on this issue did not address the timing of when the second transfer would be effective. Under the regulations being proposed, the second transfer would be effective at the start of the next cumulative limit period (*i.e.*, 2-month period). If there are no trip limits for the mothership fishery, then this restriction on the effective date of transfers may not be necessary. NMFS solicits public comment on the effective date for a second transfer within the same year of an MS/CV-endorsed limited entry permit.

Pacific whiting vessel licenses, currently used in the at-sea whiting fishery, would be removed under this proposed rule. Consequently, section 660.26 of the initial issuance proposed rule would be removed from the regulations. These licenses, which were first issued in 2009 as an interim step

in implementing Amendment 10, would no longer be necessary under the trawl rationalization program. Under trawl rationalization, participation in the mothership and catcher/processor sectors would be limited by vessel permits that would replace the Pacific whiting vessel licenses: MS permits and MS/CV-endorsed limited entry trawl permits for the mothership sector and C/P-endorsed limited entry trawl permits for the catcher/processor sector. Initial eligibility and application processes for these permits and endorsements were proposed in the initial issuance proposed rule (75 FR 32994, June 10, 2010). Vessels fishing for whiting in the Shorebased IFQ Program would be limited through the existing limited entry trawl permit system, and thus, Pacific whiting vessel licenses would no longer be needed.

The at-sea whiting sectors (both mothership and catcher/processor) would require a coop permit for any coops. Coop permits are discussed further in the "at-sea sector" discussion below.

Economic Data Collection (EDC) Program

Trawl rationalization is expected to change both the size and distribution of economic benefits generated by the West Coast groundfish trawl fishery. Recognizing these likely changes in the economic performance of the fishery, and the limitations inherent in voluntary economic data collection programs, the Council voted to implement a mandatory EDC program.

Authority To Implement the EDC Program

Economic data collection from harvesters and processors participating in the West Coast groundfish trawl fishery is required not only to determine if the trawl rationalization goals identified by the Council are being met, but also to meet the heightened requirements for economic analysis contained in the MSA. The MSA (Sec. 303A.(c)(1)(C)(iii)) requires that any limited access privilege program (LAPP) shall promote social and economic benefits. In addition, Sec. 303A(c)(1)(G) of the MSA contains a monitoring requirement to determine whether a LAPP is meeting its goals. The Council's stated goals include several economic performance measures such as: a profitable and efficient fleet, operational flexibility, minimize adverse impact on fishing communities, promotion of economic and employment benefits, and to provide quality product to consumers. The monitoring of economic performance can also provide needed

information to fishery managers about how to best use quota that has been reserved for adaptive management. Without the collection of economic data it would be difficult, if not impossible, to measure the economic benefits and consequences of the proposed groundfish trawl rationalization program. The EDC program seeks to provide the economic data needed not only to meet legislative mandates, but also to provide the Council with valuable information for future fisheries management decisions. At the same time, the design of this program is mindful of confidentiality concerns and the compliance burden created for harvesters and processors.

Type of Information To Be Submitted

In order for economists to provide decision makers with information on the magnitude and distribution of economic benefits of the trawl rationalization program, available data collection must provide reliable information on (1) the relevant parties whose economic welfare is affected by trawl rationalization, and (2) the elements (such as earnings, expenditures and employment) that comprise each party's economic welfare derived from the groundfish trawl fishery. To meet these needs, NMFS has designed mandatory survey questionnaires for catcher vessels (both delivering shoreside and to motherships), catcher-processors, motherships, shoreside processors, and first receivers. These mandatory surveys would replace the existing voluntary survey program undertaken with the shoreside limited entry groundfish trawl fleet. This data collection would provide, for the first time, a comprehensive source of economic information that can be used to quantify the economic benefits and consequences accruing to shoreside processors, catcher-processors, motherships, harvesters, individuals employed in the fishery, and regional economic impacts.

Information Confidentiality

Under Federal law, EDC information would be considered confidential and, as such, would not be disclosed to the public. In particular, under the MSA, information that is submitted to NMFS pursuant to the MSA is considered confidential and cannot be disclosed. The information submitted through the questionnaires would be a required submission under the MSA. If a Freedom of Information Act (FOIA) request for EDC were received by NMFS, EDC information would only be released in aggregated form, that is, without identifiers and other

information components that, if released, would allow someone to identify the submitter and result in competitive or other harm to the submitter. Further information about NMFS' confidentiality and aggregation guidance can be found on its Web sites. NMFS' reports or other publications on trawl rationalization would discuss EDC information, but only in aggregated form.

Purposes for the EDC Information

Topics that would be addressed by economic analysis of the trawl rationalization program include the magnitude and distribution of economic benefits generated by the groundfish trawl fishery, regional economic impacts, employment, the efficiency of harvesting and processing operations within the fishery, capacity utilization, the functioning of the quota market, spillover effects into other fisheries, product quality, and incentives to reduce bycatch. Addressing these topics would require collecting data at the level of the individual harvesting vessel, processing vessel, first receiver and processing plant. The data collection would be done on an annual basis, with specific questionnaires designed for catcher vessels, catcher-processors, motherships, and first receivers and shoreside processing plants. Due to the relatively small number of vessels or processing plants in each of these populations, a census of all members of the survey population would be conducted each year. In addition to the mandatory surveys of harvesters and processors, NMFS is conducting voluntary social surveys of a wide range of participants in the fishery.

Deadlines for EDC Form Submission

The questionnaires would be mailed to permitted and licensed fishery participants (both active and inactive), as well as others who according to available databases are required to complete a questionnaire. Baseline information is necessary for NMFS and the Council to understand program effects. To achieve a complete and useful baseline database, NMFS would require 2009 and 2010 trawl fisheries participants to provide baseline economic information. Although it is possible that certain participants may not possess baseline information, or may have dropped out of the fishery, NMFS believes it must attempt to acquire the information. Requiring submission of 2009 and 2010 baseline information and not older information reduces the submission burden.

To facilitate program administration, NMFS would attempt to mail

questionnaires to all relevant fishery participants on or around May 1 of every year. However, it is possible that NMFS would not identify all participants who would be obligated to submit a questionnaire, thus it would ultimately be the relevant participant's responsibility to obtain a questionnaire and complete it. NMFS would conduct outreach to facilitate identification of those who must provide both baseline and annual questionnaires.

NMFS believes that persons required to submit EDC questionnaires must have sufficient time to retrieve necessary information and complete the questionnaire. Information submitted in annual questionnaires is typically similar to information used to complete tax returns. Given these considerations, NMFS proposes that EDC questionnaires would be due no later than September 1 for both baseline and annual EDC questionnaires. Thus, baseline questionnaires would be submitted before September 1, 2011. Annual questionnaires would be submitted before September 1 of each corresponding year, that is, September 1 of the year following the year for which the information must be provided.

Compliance With the EDC Form Submission Requirement

Because questionnaire submission would be mandatory, NMFS must ensure there are compliance incentives. In addition to incentives to avoid enforcement actions for failure to submit the questionnaire, another incentive would be to withhold permit issuance or other applications authorizing participation in the trawl program. For example, if a prior year's annual questionnaire is not submitted by a permit applicant or a vessel owner who maintains a vessel account, the application or renewal process would be considered incomplete by NMFS. The permit or renewal application would be denied and an Initial Administrative Determination (IAD) issued setting forth the underlying facts, a discussion and determination. Upon issuance of the IAD, NMFS may withhold issuance of any new annual QS, not reauthorize a vessel account, not register a permit to a vessel, not renew a permit, not issue a license, or other related authorization to a participant. An aggrieved permit or other participation applicant could appeal an IAD through the Office of Administrative Appeals (OAA) in NMFS. An IAD that is not appealed to the OAA within 30 days of the issuance would become final agency action. Thus, if a questionnaire had not been submitted prior to its receipt of an application or renewal request, NMFS

would suspend permit application or renewal processing. Upon receipt of the questionnaire, NMFS would then finish application or renewal processing, assuming the applicant or requestor had met all other requirements.

Who Would Be Required To Submit the EDC Form

The EDC program would require all trawl program participants to submit the questionnaires. These participants include owners, lessees and charterers of, catcher vessels, catcher processor vessels, and mothership vessels; and, first receivers and shorebased processors. For purposes of identifying shorebased processors from whom NMFS would receive questionnaires and relevant economic information, NMFS—in consultation with the RDW—crafted a specific, EDC program only, definition for “shorebased processor.” Identifying the “who” among shorebased processors that would be required to submit the questionnaire raised a practical issue. There are a variety of seafood processing operations, including first receivers and primary fish processing operations that subject round or headed-and-gutted fish to the first strokes of a knife. However, a certain amount of “shorebased” fish processing occurs long past the point of the initial processors. For example, commercial processing can occur in major food manufacturing facilities and supermarkets. While NMFS may have authority to collect economic information from certain processing operations, the EDC program was not designed to require information from these operations.

In its consultations with the RDW, NMFS initially proposed that the limited entry permit owner would bear the burden of submitting the questionnaire and all information for vessels, including all vessel economic information. This meant that the permit owner would be required to submit data from “third parties,” that is, a person who leases a permit to operate a vessel. In that instance, if the permit owner were unable to obtain the lessee or charter’s economic information, it was possible that the permit owner would be unable to submit a completed EDC questionnaire to NMFS. The RDW responded to NMFS’ proposal and asked that NMFS not require the permit owner to be responsible for the submission of third-party lessee information.

The problem, according to the RDW, would be that in some circumstances it would be impossible to obtain third-party information. Thus, it would be unfair to impose this burden on the permit owner. In view of the RDW’s

response, NMFS has changed the requirements it initially proposed before the RDW. Thus, in this proposed rule, NMFS would require that the permit owner submit only the permit owner’s information, if required, and not a third-party’s information. Further, the permit lessees would be required to submit questionnaires. This eliminates the RDW’s concerns and reduces the reporting burden for permit owners and certain other program participants. However, in order to facilitate its ability to identify who must submit a questionnaire, NMFS proposes that permit owners and vessel owners be required to disclose identifying information about lessees and charters.

The RDW also registered concerns about NMFS’ use of the administrative permit process to gain compliance with the EDC requirements. In other EDC programs, NMFS has found that holding-up a permit or renewal process for failure to submit a questionnaire resulted in high compliance. NMFS believes that this administrative-based compliance incentive is preferred to enforcement-based incentives. An enforcement-based violation requires a lengthy and administratively-complex adjudication process, while the administrative-based, “complete permit application” process is more efficient and requires fewer resources.

EDC Audit Process

In other EDC programs, NMFS has installed an economic information verification process to ensure that submitted information is accurate and to ascertain sources or causes for anomalous or outlier information. Because an audit process enhances the reliability and accuracy of the information database, NMFS proposes an audit process for the trawl program. The audit program would consist of a process to request submission of supporting documentation, either to NMFS itself, or to a third-party such as a contractor or auditor. Further, NMFS or the third-party could require the submitter to respond to any questions within 20 days, unless an extension is granted by NMFS. A NMFS or third-party auditor would review requested information for verification purposes. Requested information would include financial statements, worksheets, and tax returns. Information submitted in this audit process would be a required submission to either NMFS or the third-party auditor, thus the information would be considered confidential.

Transaction Prices

Separate from the EDC Program, NMFS would collect transaction prices

as recommended in the Council motion (Appendix D, A–2.3.2, p.D–14). For collecting transaction values on permits, QS, and QP transactions, the data collection system would have two components: (a) A request for monetary estimates; and (b) key questions that characterize the nature of the transaction. Responses may require a few sentences to describe the nature of transactions. The permits office would use this data to provide the public, via the NMFS IFQ Web site, with simple averages so that the estimates may not reflect the total values of the transactions. Detailed data on the nature of the transactions would be provided to the NWFSC for use in developing more precise estimates using econometric techniques. Because all reporting would be electronic, NMFS would not be requesting copies of supporting documentations, such as sales or lease agreements. Instructions would be provided to encourage retention of supporting documents in order to be responsive to audits that may be conducted by OLE as part of an enforcement action or by NWFSC as part of their economic audit function. Only relevant questions would be asked, with the intent being to keep the list of questions to a minimum.

Observer Program

The initial issuance proposed rule created a separate section (at § 660.116) for regulatory requirements regarding mandatory observer coverage as an interim step until discrete observer regulations were proposed under this program components rule for each trawl program (IFQ, MS, and C/P). Observers have been deployed in the Pacific coast groundfish fisheries since 2001 in the West Coast Groundfish Observer Program (WCGOP). In order to incorporate changes expected under trawl rationalization, NMFS has been adapting the regulations implementing the WCGOP. During this regulatory development, NMFS recognized that each observer’s roles and responsibilities would differ between each fishery and may change in the future based upon a specific fishery’s requirements or needs. Accordingly, the program components proposed rule removes § 660.116 and reorganizes the observer regulations to follow the overall structure of the regulations, providing detailed requirements by fishery: Shorebased IFQ Program (§ 660.140(h)), MS Coop Program (§ 660.150(j)), and C/P Coop Program (§ 660.160(g)). While a general description of the observer program applicable to all is provided here, sections within each program outline

changes in the proposed regulations specific to each.

Vessels would be required to procure observer services from any one of a number of observer providers that are currently permitted to deploy observers in the North Pacific fisheries. This presents a distinct change for catcher vessels which have previously had no observer coverage or which have had government-funded observers selected and deployed by NMFS. The catcher vessels' cost of procuring observer services may be partially defrayed by the government via a subsidy for at least the first year of the Shorebased IFQ Program, subject to appropriations.

Companies providing observer services (aka observer providers) would be required to comply with all observer support, deployment limitations and logistics and communication in this rule. The requirements are similar to those found in other areas of the country and focused on those considered necessary to receiving quality data without impacting the efficiency of the provider companies operating in the West Coast rationalized groundfish fleet.

Observers would be required to meet the minimum qualification standards currently in use and successfully complete all training. Observers would also be required to collect and submit data as per the protocols of the program. If an observer's performance does not meet the observer program minimum standards outlined in the observer program manuals and other materials, the observer may be decertified and would not be eligible to observe in any West Coast groundfish fishery. If an observer fails to meet performance standards while conducting their responsibilities, NMFS would initiate a proceeding to propose their decertification. As with any proceeding to revoke a certification, NMFS would provide the observer notice and an opportunity to challenge the proposed decertification. NMFS would issue a preliminary decision and, if it is unfavorable to the observer, an appeal process for further review would be provided.

In addition to continuing to deploy observers in the non-rationalized fleet, the WCGOP is reorganizing to meet the new demands of trawl rationalization including training and briefings. To maintain observer deployment flexibility and efficiency, observer training will capitalize on the existing program structure to train and certify qualified observers in the least number of trainings and briefings as possible. Currently, observers are qualified, trained and certified separately for the shorebased fleet and at-sea whiting

processing fleet. NMFS envisions continuing to design observer training around similar observer duties and deployment logistics. Thus, in the future coop whiting fleet, observers deployed aboard the motherships and catcher processors would still be required to be certified and in good standing with the North Pacific Groundfish Observer Program (NPGOP) (as data collection, recording and transmission methods are similar) and successfully complete a whiting observer briefing. These existing briefings are expected to incorporate any additional duties aboard motherships and catcher processors due to trawl rationalization. As for observers deploying aboard catcher vessels delivering shoreside or to motherships, a broader training incorporating updated duties or a stand-alone IFQ training or briefing, is being investigated. The current shorebased observer training is 13 days and instruction includes data sampling methodology, data recording, species identification, at-sea safety, *etc.* The Pacific whiting IFQ fishery and mothership catcher vessel coverage that would be required under this proposed rule creates the need to develop and train observers in new methodology not previously included in WCGOP training. Given the number of vessels anticipated to be in the Shorebased IFQ Program, the given staffing and class size restrictions, NMFS is planning on two to three trainings to ensure enough qualified observers are available for the fleet by year end.

Conflict of Interest Regulations in the Observer or Catch Monitor Programs

The proposed regulations, as deemed by the Council, contain language on conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and catch monitors (§ 660.18(c)). However, NMFS has concerns with the language and believes it has the potential to undermine the integrity of the shorebased and at-sea monitoring programs.

The data coming from observers aboard fishing vessels and catch monitors at shorebased first receivers is crucial to NMFS's ability to sustainably manage groundfish in general, and would be particularly important during management of the pending groundfish trawl rationalization program. A crucial component of NMFS's tracking and monitoring system for the trawl rationalization program is the collection of timely and accurate landings and discard data to allow managers to ensure that landings stay within

prescribed limits in order to prevent overfishing and promote rebuilding. Such landings and discard data would also provide fishermen with an accurate accounting of their harvesting activities so that they can efficiently plan their fishing operations. Maintaining strict conflict of interest standards for monitors and observers would give managers and fishermen a high level of assurance that they are basing their decisions on accurate data. NMFS believes that the changes proposed by the Council would unacceptably reduce the assurance that NMFS is receiving the best available information from its monitoring programs.

In addition, if the language deemed by the Council were to be implemented, there would be inconsistent conflict of interest requirements within NMFS regulations, both between the regions, and on the West Coast. The conflict of interest requirements that were presented to the Council at its June 2010 meeting (*see http://www.pcouncil.org/wp-content/uploads/B6a_ATT2_DRAFT_PRGRM_COMPONENTS_JUNE2010BB.pdf*; requirements for catch monitors starting on page 9, and for observers on page 41) are consistent with conflict of interest standards set forth in the NMFS policy statement 04-109-01, National Minimum Eligibility Standards for Marine Fisheries Observers, implemented on August 6, 2007. In addition, the provisions proposed by NMFS are consistent with existing requirements in the WCGOP, which will remain in place for the fixed gear and open access fleets. NMFS believes that the changes proposed by the Council would create discrepancies both within the region and nationally, and would place undue administrative burdens on NMFS.

Because of these reasons, NMFS intends to use its authority under section 305(d) of the MSA to publish language in the final rule that differs from what was deemed by the Council. This proposed rule includes both the Council-deemed regulatory language and the language proposed by NMFS. The regulatory language labeled Alternative 1 in the conflict of interest provisions for observers (§§ 660.140(h)(6)(vii), 660.150(j)(6)(vii), and 660.160(g)(6)(i)(G)) and for catch monitors (§ 660.18(c)) is the Council-deemed language, and Alternative 2 is the language NMFS proposes to publish in the final rule.

NMFS specifically requests comment on these conflict of interest provisions for observers and catch monitors, and on NMFS's intent to publish Alternative 2 to make these requirements consistent

within the region and with other NMFS programs.

Ownership Information

Previously, NMFS promulgated rules to determine ownership interests of limited entry trawl permits under the data collection rule (75 FR 4684, January 29, 2010). Information regarding ownership is necessary for NMFS to determine compliance with control limits and accumulation limits in the trawl rationalization program. Based on NMFS's review of the ownership information that it has received, NMFS realizes that additional information may be necessary to make this determination. For instance, while in many cases the owner of the trawl limited entry permit is the same person as the owner of the vessel to which the permit is registered, this does not always appear to be the case. Because control of QS is determined on a case by case basis and extensive control of QP may indicate control of the underlying QS, NMFS needs ownership information related to vessel accounts as well as for the permit owner. The proposed rule would require vessel account owners to submit an ownership identification form in order to collect this information. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple ownership identification forms.

In some cases, the structure of the ownership interests may raise questions as to how NMFS interprets the ownership interest in order to make its determination. NMFS has identified two such instances: (1) Joint ownership, and (2) ownership by a trust. Each of these situations is addressed in the proposed rule, and NMFS specifically requests comments on the implications of its interpretations of these ownership structures, or of any other ownership structure not previously identified that may raise questions.

A joint ownership situation exists where more than one person claims an interest indivisible from that of another person, such that the total ownership interest is greater than 100 percent. An example of this would be a joint tenancy, a form of property ownership where two parties (often a husband and wife) each own 100 percent, and in the event of death of one of them, the survivor would retain the indivisible 100 percent already owned. In these situations, NMFS would credit each owner with the full percent claimed (e.g., in this example, 100 percent each),

even though the sum of all ownership interests would exceed 100 percent. NMFS believes that for some owners, the benefits of joint tenancy may be greater than the parties' concern for accumulation limits, particularly if they are more interested in estate planning than accumulation of privileges, and that if the parties to a joint tenancy don't want to avoid individual accountability for the entire ownership interest, they would have the option of restructuring.

Ownership by a trust creates another area where questions arise regarding compliance with accumulation limits. In any consideration of trusts, there are three parties that need to be considered: the trustee, the beneficiaries, and the trustor. Generally speaking, the trustee manages the property held in the trust according to the terms of the trust document for the benefit of the beneficiaries of the trust. The beneficiaries are equitable owners of the property, but generally, since they are not the legal owners do not exercise control over the property. The trustor is the party that sets up and grants property to the trust. Because a trust vests the legal title to the property in the trustee, under the proposed rule NMFS would credit ownership to the trustee. If there is more than one trustee (i.e., "co-trustees"), NMFS would consider each trustee to have 100 percent ownership of the trust property. NMFS recognizes that whether other parties besides the trustee would be impacted by ownership and control rules depends upon the nature of the trust and how it is set up. For instance, a trustor might retain authority to take the property back from the trust (i.e., a revocable trust), or, in some circumstances, beneficiaries could assert control over the trust property, modify the trust document, and/or wrest the legal ownership away from the trustee. For both of these cases, ownership would not appear to be an issue unless the trustor or beneficiaries gain actual legal ownership of the trust property, however, whether control rules would be implicated is harder to say and would depend upon the trust document. Thus, the program components rule includes provisions that NMFS may ask for additional information it believes to be necessary for its determination.

Monitoring and Enforcement Measures

As is the case for any quota-based program, NMFS would need to be able to accurately monitor the use of QS and accumulation limits. The Council voted to institute a variety of monitoring and enforcement measures. The shorebased monitoring and catch accounting system

would be an expansion of the program that has been conducted under exempted fisheries permits for the Pacific whiting shoreside fishery since 1992. The primary tools for monitoring would include: (1) Requiring the use of observers aboard catcher, catcher-processor, and mothership vessels; (2) requiring the use of catch monitors at all first receivers and related processing facilities; (3) requiring the weighing of all catch on NMFS approved scales; (4) requiring that catcher-processors follow specified procedures when handling catch prior to processing; (5) requiring that first receivers participating in the program use electronic fish tickets and related computer software, and adopt and comply with catch monitoring plans for each site. These measures are discussed in more detail below.

Cost Recovery

The agency may collect fees to cover the administrative costs of issuing any permits (one-time fee for initial issuance and annual renewal), QS accounts and vessel accounts (annual), and first receiver site licenses (annual). Amendment 20 provides for the assessment of cost recovery fees up to 3 percent of ex-vessel value, consistent with section 303A(e) of the MSA. Under the MSA (Section 303A(e)(1)(2)) and Public Law 109-479, the Secretary is authorized and shall collect a fee to recover the agency's costs of management, data collection, analysis, and enforcement activities. Cost recovery is not included in this proposed rule, but will be addressed through a future Council action and trailing regulatory amendment.

Status Quo Management of the Trawl Fishery

Under the trawl rationalization program, some status quo management measures would remain in place for the trawl fishery, including the use of trip limits and closed areas. One example of a status quo management measures that would remain in place is the provision at § 660.55 in the initial issuance proposed rule that "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." This issue was specifically addressed by the Council at its April 2010 meeting as a management measure that should remain because of implications for Chinook salmon bycatch.

Many groundfish species would continue to be subject to trip limits under the Shorebased IFQ Program; any IFQ species caught (retained or

discarded) under these trip limits would still be required to be covered by QP. Trip limits would also remain in place for Pacific whiting prior to the primary whiting season (*see* Appendix D, A–1.5, p. D–6), in order to maintain protections for incidentally-caught Chinook salmon. The proposed rule would eliminate trip limits at the close of the primary season, because under an IFQ program, the effective date of the close of the primary whiting season would be the end of the calendar year, and any catch of Pacific whiting would be subject to available whiting QP. Closed areas, including the GCAs and Ocean Salmon Conservation Zone, would also remain in place as a management tool for all trawl programs. One potential concern may be that whiting fishermen could increase targeting of non-whiting stocks, such as yellowtail, that could be caught with midwater trawl gear used in the GCAs as allowed for vessels targeting whiting. The proposed rule would not prohibit this. NMFS believes that it can monitor the fishery, and that the Council can take action if it determines that this possibility presents a concern.

Shorebased IFQ Program

Observers and Catch Monitors

Under the Shorebased IFQ Program, in order to assure that all catch, including discards, would be matched against QP, the Council voted to implement 100 percent at-sea observer coverage for all vessels and 100 percent monitoring of catch by all IFQ first receivers. The proposed rule would require all vessels in the Shorebased IFQ Program to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities. The proposed rule would also require all IFQ first receivers to employ catch monitors, and would establish similar definitions of responsibilities for first receivers, catch monitor providers, and catch monitors.

The qualifications, roles, and responsibilities would differ between observers and catch monitors, therefore, each are addressed in separate areas in the rule. Observers in the WCGOP are highly-trained biologists that work independently aboard vessels in difficult at-sea environments to quantify discards and mortality estimates of certain bycatch species, collect biological samples and monitor for any fishery interactions with marine mammals, sea turtles and seabirds. The WCGOP was developed consistent with guidelines for fishery observer programs

developed under the MSA (*see* MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the Shorebased IFQ Program. New provisions would include the collection of accurate estimates of discards of IFQ species that would be used to estimate individual vessels' overall use of QP and the requirement for observer coverage until all IFQ species from the trip are offloaded.

In contrast to observers, catch monitors would be land-based—principally at first receiver facilities—and would confirm that total landings are accurately recorded on fish tickets (landing receipts). A catch monitors' focus would be more akin to an enforcement role than that of a biologist. The shorebased monitoring and catch accounting system in the proposed rule would expand the current program that has been conducted under exempted fisheries permits (EFPs) for the Pacific whiting shoreside fishery since 1992. The new collection of data would cover not only the Pacific whiting shoreside fishery but all groundfish delivered shoreside by vessels participating in the Shorebased IFQ Program.

The proposed rule would adopt similar regulations for catch monitors as for observers, including definitions of prohibited actions that undermine catch monitors, such as harassment, and responsibilities of IFQ first receivers, responsibilities of companies providing catch monitor services, and catch monitor qualifications and responsibilities. The key differences between the observer and the catch monitor programs include physical location, tracking of discards versus landings, and educational requirements. The program components proposed rule would require catch monitors and catch monitor providers to meet the standards outlined in the rule, but for the first year of the trawl rationalization program, to ease the implementation of the catch monitor program and assure that there are enough catch monitors available for the fishery to proceed, NMFS would “grandfather” existing catch monitors and catch monitor providers that have provided services in the EFP fishery.

There are some additions to the catch monitor regulations in this proposed rule that were deemed through the Council deeming process after the June 2010 Council meeting. A summary of these additions to § 660.17 follows: (1) That a qualified catch monitor would be required to have computer skills; (2) that a catch monitor would be required to be certified by NMFS, not have

ailments that would prevent them from performing their duties, and to have completed training; (3) that catch monitor providers would be required to provide catch monitors to first receivers pursuant to the terms of their contract; (4) that the catch monitor providers would be required to ensure that catch monitors complete their duties in a timely manner; (5) that the catch monitor providers would be required to provide catch monitors' salaries, benefits, and logistical support; (6) that catch monitor providers would be required to assign catch monitors within specified assignment limitations and workload; (7) that catch monitor providers would be required to maintain communications with catch monitors and the catch monitor program office; (8) details of training, briefing, and debriefing requirements for catch monitors; (9) details on requirements of the catch monitor provider contracts; (10) that catch monitor providers would be required to provide NMFS status reports on catch monitors; (11) that catch monitor providers would be required to replace lost or stolen gear; and (12) that catch monitor providers would be required to ensure that records on individual catch monitor performance remain confidential. These provisions would delineate the respective responsibilities between catch monitors, catch monitor providers, and first receivers and are included to assure the effectiveness of the catch monitor program.

In order to improve efficiency in some ports, the proposed rule anticipates that some observers would also take the role as a catch monitor, provided the qualifications for both would have been met. However, an individual who functions as both would not work more than a maximum number of hours that would negatively affect their safety, health, or job performance. NMFS continues to discuss possible coordination between observer training and catch monitor training programs to gain further efficiencies. In addition, NMFS is examining the Council's request to explore the possibility that State employees may be used as observers or catch monitors, but discussions have not progressed sufficiently to include in this proposed rule.

First Receiver Site License, Catch Monitoring Plan, Electronic Fish Tickets, and Scales

The Shorebased IFQ Program requires that fish harvested in the program be delivered to an IFQ first receiver holding a first receiver site license. Under the program components

proposed rule, for an applicant to obtain a first receiver site license, the applicant would be required to have a NMFS-approved catch monitoring plan that complies with regulatory requirements, have been subject to a site inspection conducted by NMFS staff, be in compliance with equipment requirements (e.g., scales), and report landings through an electronic fish ticket system. Because the rule is not projected to be effective until the end of December 2010, NMFS anticipates that there would not be sufficient time to review all catch monitor plans submitted with first receiver site license applications, nor would there be sufficient time to physically inspect each site prior to the start of the groundfish season on January 1, 2011. Thus, the program components proposed rule includes a provision for an interim first receiver site license that would provide a temporary authorization for first receivers to buy IFQ groundfish while NMFS processes the applications for the first receiver site licenses.

To obtain an interim site license, a first receiver would need to submit an application with a catch monitor plan, and NMFS would issue the interim license. Subsequently, NMFS would review the plan and inspect the site, and if the plan and inspection meets the listed criteria, NMFS would issue a (non-interim) first receiver site license which would supersede the interim license. If the catch monitor plan or inspection does not meet the required standards, the first receiver may attempt to fix the deficiencies and have its application reconsidered by NMFS. The interim license would be effective for a period of up to six months, or until NMFS issues a (non-interim) first receiver site license, whichever comes first. NMFS anticipates that this six month period would be sufficient to process initial applications for first receiver site licenses, and any subsequent applications would be processed as applications are received.

An IFQ first receiver would be required to meet equipment requirements and electronic landing reporting requirements while operating under an interim first receiver license. A first receiver site license applicant would be required to prepare a catch monitoring plan and be subject to on-site verification for compliance. These plans would be subject to approval by NMFS to ensure the plan conforms with program monitoring criteria. The plans would include descriptions of catch-sorting spaces, how first receiver staff would sort catch and prevent unsorted catch from entering areas beyond the

sorting space, scales used for weighing and their location, ensure accurate catch weighing, delivery points where catch is removed from vessels, and the catch monitor's observing area sufficient to allow monitoring of the flow of fish. Likewise, a first receiver site license holder would be required to ensure that all catch is landed, sorted, and weighed in accordance with the plan. Should conditions change and the plan require modification, a first receiver would be able to amend the plan.

First receivers would be required to provide complete facility access to NMFS staff, catch monitors, and other authorized persons. Such access is necessary for monitoring and program enforcement. Further, scales to weigh catch would be periodically checked for accuracy and written printouts verifying their accuracy would be required to be provided on a periodic basis.

After catch is weighed by the first receiver, the landing information would be reported on the electronic fish ticket system. The electronic fish ticket system would require a first receiver to have a computer installed with NMFS-specified hardware and software. To facilitate and ensure accurate scales and a reliable electronic fish ticket system, NMFS proposes a number of standards by which the scales and computer and software systems would be operated.

QS Permits, QS Accounts, Vessel Accounts

The initial issuance proposed rule established a QS permit that would be issued to eligible applicants for QS. Under the initial issuance proposed rule, a QS permit would be required for the establishment of a QS account, which would be used for tracking the QS owner's amounts of QS or IBQ for each IFQ species. Also under the proposed initial issuance rule, such QS permits would be required to be renewed annually in order to track ownership of QS and IBQ for compliance with control limits. The program components proposed rule further develops how NMFS would manage QS accounts and QS permit renewals.

The proposed rule would allow QS owners to access their QS accounts electronically, through the use of a unique ID and personal identification number (PIN). Previously, NMFS had drafted language that QS account and vessel account owners would be required to make a request to NMFS in writing in order to designate other people with access to the account. NMFS has decided, however, that in order to reduce the paperwork burden on NMFS and the public, NMFS would

issue an ID and PIN to account owners to access their individual QS account or vessel account. If an account owner wants to grant access to their account, the account owner may authorize any individual to access their QS account by providing their unique ID and PIN. NMFS would not manage access to the accounts, and the burden of ensuring the integrity of the account would fall to the account owner. While not in the proposed regulation, if preferable, NMFS could issue access level PINs as well, allowing account owners to grant different levels of account access to other individuals as needed. That is, an account owner could have a PIN that would allow him/her to make a transfer, but another individual may have a different PIN that only allows for read-only access to the account, which may be desirable for a vessel captain to verify QP balances in the vessel account before making a trip, for example.

For the first two years of the program, QS and IBQ would not be transferable, but QS and IBQ pounds would be able to be transferred to vessel accounts. Each year, QS account holders must transfer their associated QP and IBQ pounds to a vessel account by September 1. QP and IBQ pounds, once transferred to a vessel account, would not be able to be transferred back to a QS account, but could be transferred to other vessel accounts.

Annually, NMFS would make allocations of QP and IBQ pounds to QS accounts based on available OYs, the amount of QS or IBQ in the QS account, and the results of any initial issuance appeals processes and/or non-renewed QS permits.

A vessel account would be created by NMFS upon request by the owner of a vessel registered to a valid trawl limited entry permit (other than a C/P-endorsed permit). A vessel account registration would be specific to the vessel and its unique vessel owners. The vessel may be registered with different trawl permits in a given year (one at a time), and the vessel account would cover landings of IFQ species only when the vessel is registered to a trawl limited entry permit. Subject to accumulation limits, vessel accounts would be able to receive QP via transfers from QS accounts or from other vessel accounts. After an IFQ landing by a vessel, the amount of the landing would be initially debited from the vessel account, based on electronic fish ticket submissions by first receivers. However, if the catch monitor estimates were to be higher than that reported by the first receiver, the account would be adjusted to reflect the higher estimate, and both the first receiver and the vessel account holder

would be notified of the discrepancy. When a discrepancy occurs, NMFS would review available information against its quality control procedures. If differences cannot be resolved, the final correction would be based on the final fish ticket estimates developed under the State fish ticket system. The accounts would also be debited by the discard estimates submitted by the observer program. Should the vessel owner dispute the observer estimates, the owner would be able to request the WCGOP to review its processes and make appropriate corrections.

QS permit owners and owners of vessels that land IFQ species would be required to use an online IFQ system to account for and to transfer QS and IBQ, or QP and IBQ pounds. The online IFQ system would grant access to both QS accounts and vessel accounts.

For transfers, each transaction would be subject to accumulation limits. Because of this, both the transferee and the transferor would be required to agree to the transaction online. NMFS would review the proposed transaction, and accept the transaction if accumulation limits would not be exceeded as a result of the transfer, thus allowing the transaction to proceed. NMFS acceptance of the transaction would only relate to compliance with accumulation limits and not control limits, as a determination on compliance with control limits would require more information than that which would be provided in the online IFQ system. Upon acceptance, the online system would send both the transferee and transferor confirmation notices for the transaction. Account holders would be able to use these confirmation notices for purposes of providing documentation to banks or other third parties associated with the transaction. NMFS would also provide a process by which account holders could request a correction of transaction data that were incorrectly recorded by the online IFQ system.

The November 2008 Council motion states that transfers of "QS will be highly divisible and the QP will be transferred in whole pound units (*i.e.*, fractions of a pound may not be transferred)." Appendix D, A-2.2.3(d), p. D-12. While the motion clearly identified the lowest unit for the transfer of QP, the motion did not state what the lowest unit of "highly divisible" QS would be once QS becomes transferable in the third year of the program. NMFS presented this issue to the Council at its June 2010 meeting, and the Council determined that the smallest unit for QS transfers would be one one-thousandth of a percent. Thus,

the proposed rule establishes the minimum unit for QS transfer at 0.001 percent.

Under the proposed initial issuance rule, QS permits would be required to be renewed annually. The program components proposed rule adds a renewal requirement for vessel accounts as well. Upon review of ownership information for limited entry permits collected from the data collection rule (75 FR 4684, January 29, 2010), NMFS realized that ownership of limited entry trawl permits alone would be insufficient to administer the Shorebased IFQ Program and that additional information would be needed. In particular, NMFS would need to collect information for the economic data collection program, ownership information to assure compliance with control limits, and general administrative information to keep NMFS' database current. Requiring an annual renewal of vessel accounts would provide NMFS the ability to collect such information at the vessel level, in particular where the permit owner and vessel owner are not the same. In the event that the permit owner and vessel owner are the same, there may be some duplication in the requested information, and NMFS is exploring methods to coordinate processes in order to minimize the burden of multiple renewals. If NMFS does not renew a QS permit or a vessel account after the owner submits the renewal application (*e.g.*, because the renewal is incomplete), this action would be subject to NMFS' permit appeals process.

While the initial issuance proposed rule would establish a QS permit renewal requirement, it did not specify what would happen to the QP that would be derived from the QS associated with the QS permit in the event that the permit owner failed to renew the permit. Allowing a QS permit owner to renew at a later time and delaying the issuance of QP until that time would provide greater flexibility for an individual QS permit owner, but would provide less overall flexibility for the fleet as the QP would not be available for transfer to vessels that seek additional QP. At its June 2010 meeting, the Council determined that for any QS permit that is not timely renewed, the QP that would be derived from the QS associated with the QS permit would be redistributed among all of the QS permit owners that timely renew their permits, in proportion to the amount of QS they each own for each IFQ species. The redistribution of QP would not affect the ownership of QS; the owner of the QS permit that did not timely renew in one

year would be able to renew the QS permit in a subsequent year to bring the QS permit current.

Accumulation Limits and "Other Fish"

The accumulation limits on used and unused QP in vessel accounts in the Council motion (Appendix D, Table D-2, p. D-20) erroneously included limits on "other fish," which is not an IFQ species subject to these limits. The initial issuance proposed rule likewise included "other fish" erroneously in the accumulation limits table at § 660.140(e)(4). In this proposed rule, NMFS has removed "other fish" from the accumulation limits table, and intends to make the same change in the final initial issuance rule.

Maximized Retention in the Pacific Whiting IFQ Fishery

Under current practices in the maximized retention Pacific whiting fisheries, some minor amounts of operational discard are allowed. Under trawl rationalization, any minor operational amounts of discard would be estimated by the observer and deducted from allocations. NMFS raised this issue at the Council's March 2010 meeting for the maximized retention fishery in the mothership sector (Agenda Item E.6.b, NMFS Report 1, March 2010, #25). For the Shorebased IFQ Program, however, the Council motion at Appendix D, A-2.3.1, p. D-13 states: "Whiting: Maximized retention vessels: Discarding of fish covered by IFQ or IBQ, and nongroundfish species prohibited." The proposed rule adopts this language at § 660.140(g)(2), which states: "Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species[;]" however, this language is potentially ambiguous in that it refers to maximized retention vessels, but prohibits discarding. NMFS specifically requests public comment on any implications that the prohibition on discarding may have on the prosecution of a maximized retention fishery, and further requests comment on what should constitute discarding under this provision of the Shorebased IFQ Program.

IFQ Program Management Measures

Prohibition on Processing Groundfish in Shorebased IFQ Program

Under the trawl rationalization program, vessels participating in the Shorebased IFQ Program may have more flexibility in when and how they harvest their quota, including fishing

with any legal groundfish gear under the gear switching provisions. Therefore, there may be increased opportunity for processing of groundfish at sea. Under current regulations at § 660.302 (which would remain under the proposed rule at § 660.11), “processing” is defined as “the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.” Current groundfish regulations prohibit the following: (1) Processing sablefish taken at-sea in the limited entry fixed gear primary sablefish fishery from a vessel that does not have a sablefish at-sea processing exemption (§ 660.334(e)); or (2) processing of Pacific whiting except by Pacific whiting shoreside vessels 75 feet in length or less that are allowed to head and gut, remove tails, and freeze whiting (§ 660.373(a)(3)). The current regulations do not include a general prohibition on processing all groundfish at-sea for vessels landing groundfish at shorebased processors. In other words, under current regulations, the non-whiting trawl catcher vessels are not prohibited from processing non-whiting catch.

NMFS brought the prohibitions on processing for limited entry fixed gear sablefish and Pacific whiting shoreside vessels to the Council’s attention at its March and April 2010 meetings in regards to implications for the Shorebased IFQ Program. At the Council’s April meeting, NMFS provided a document that stated “Because at-sea processing is prohibited for participants of the limited entry primary sablefish fishery and in order to maintain fairness between this fishery and the shorebased IFQ fishery, sablefish processing at-sea will also be prohibited for participants in the shorebased IFQ fishery.” (Agenda Item I.1.b, Supplemental NMFS Report 3, April 2010, #5). Extending from that interpretation, and as brought forward in the version of the regulations deemed by the Council at its June 2010 Council meeting, the prohibition was broadened to include processing of all groundfish at sea by vessels in the Shorebased IFQ Program, regardless of the type of gear used, with the following exceptions: (A) A vessel that is 75-ft (23-m) or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, and (B) a vessel that has a sablefish at-sea processing

exemption may process sablefish at-sea. The proposed rule would adopt this prohibition at § 660.112(b)(1)(xii).

Weight Limits and Conversions

Groundfish allocations, harvest guidelines, and quotas are expressed in round weight. In cases where fish are landed dressed (headed and gutted, or in the case of Pacific whiting, headed and gutted with tails removed (neither activity is considered processing under the groundfish regulations which prohibit processing at-sea for the shorebased fishery), catch weight conversions are used to determine actual round weight of the harvested fish. To derive the weight of round fish harvested by a vessel that delivers dressed fish, a weight conversion factor is multiplied by the dressed weight.

Due to the increased individual accountability of catch (landings and discards) and the individual allocations of harvest opportunity under the Shorebased IFQ Program, NMFS proposes to revise regulations at § 660.60(h)(5)(ii) to create more consistent use of weight conversion factors coastwide. Currently, some discrepancies exist between the weight conversions used by the States of Washington, Oregon, and California. The use of State weight conversions would remain in place for the limited entry fixed gear and open access fisheries because they would continue to be managed under sector allocations (rather than individual quotas) and would continue to be tracked under the State paper fish ticket system. However, under trawl rationalization, landings of groundfish in the Shorebased IFQ Program would be reported through a Federal electronic fish ticket system in addition to the State paper fish ticket system. A consistent, accurate round weight must be reported on the electronic fish ticket submitted to NMFS, and would be used to determine total catch in the Shorebased IFQ Program.

The use of different weight conversions in the different States for catch estimates under the Shorebased IFQ Program may influence vessels to make deliveries based on conversion factors perceived to be more favorable for a particular species, especially if landing near a State border. Another concern from using different State weight conversions would be discrepancies in reported landings values. NMFS believes that the use of consistent coastwide conversion factors in the Shoreside IFQ Program would provide consistency in catch estimates between States, prevent artificial influences on individual landings

choices, and benefit NMFS’s ability to track landings values. Thus, NMFS proposes Federal conversion factors for species within the scope of the IFQ program at § 660.60(h)(5)(ii) based on published values.

The new catch weight conversion values for dressed IFQ species proposed by this action were derived from an Alaska Sea Grant College Program publication titled, “Recoveries and Yields from Pacific Fish and Shellfish” (Marine Advisory Bulletin number 37, 2004). For Pacific whiting that has been dressed (headed and gutted) with tails removed, the weight conversion was derived from the value for pollock as published at § 679 for the Alaska groundfish fishery. NMFS informed the Council at its March 2010 meeting of its intent to use published values for these weight conversions, however, NMFS specifically requests public comment on the actual values and implications of the proposed conversion factors.

Area Management

Under the Shorebased IFQ Program, IFQ species would be managed in four distinct geographic areas: U.S./Canada border to $\geq 40^{\circ}10'$; $40^{\circ}10'$ to $\geq 36^{\circ}$; 36° to $\geq 34^{\circ}27'$; $34^{\circ}27'$ to the U.S./Mexico border. These management areas would have different management measures for different species. Many groundfish species would be tracked as either a single species with different QS by area; or as a single species in one area and as a component of a species group in another area (e.g., minor shelf or slope group north or south of $40^{\circ}10'$ N. lat.). For example, yellowtail rockfish is an individual species management unit north of $40^{\circ}10'$, but a member of the minor shelf rockfish species complex south of $40^{\circ}10'$. As another example, QS for sablefish would be issued with area distinctions either north or south of 36° N. lat. As still another example, QS for shortspine thornyhead would be issued with area distinctions either north or south of $34^{\circ}27'$ N. lat.

To address the different management measures in the different areas, the proposed rule would prohibit a vessel from fishing in different areas during the same trip. Because landings in the Shorebased IFQ Program would be a mix of all hauls taken during a single trip, a vessel would be required to fish entirely in one management area during any trip to simplify sorting requirements, at-sea observation, and enforcement of IFQ limits. While this provision would reduce flexibility for a vessel that wishes to fish in more than one area during a trip, this provision would address the catch accounting and enforcement concerns without

increasing costs of the program by overburdening the observer and enforcement programs, and thus would provide the most straightforward and efficient method to track and verify total catch of a vessel's IFQ limits for individual species and rockfish complexes.

Gear Switching Provisions

The proposed initial issuance rule laid out the provisions of the Council motion that would allow IFQ species to be harvested with gear other than trawl gear, also known as "gear switching." The program components proposed rule would set forth details of how such gear switching would be managed by NMFS. Many existing management measures depend upon the gear employed by the vessel, and not by the sector endorsement on the vessel's limited entry permit. For instance, GCAs are specific to whether the vessel employs trawl gear or fixed gear, regardless of whether the permit the vessel is registered to is endorsed for trawl or for fixed gear. In order to account for when a vessel participating in the Shorebased IFQ Program elects to use gear other than trawl gear, the proposed rule would incorporate a new designation in the vessel declaration process that would identify the vessel as "Limited entry groundfish non-trawl, shorebased IFQ."

Under the proposed rule, a vessel would be required to elect gear switching in the declaration before the trip begins, and would not be able to use trawl gear on that trip. Current regulations prohibit a vessel from carrying both trawl gear and non-trawl gear onboard the vessel at the same time. This restriction would continue under the proposed rule, because of the gear-specific management measures in place. If vessels were to be allowed to fish more than one gear on the same trip, it would present significant management difficulties. While vessels fishing in the Shorebased IFQ Program under gear switching would be required to have observer coverage onboard at all times, the observer program is designed to identify species composition in the catch, account for discards and, for some species, mortality estimates; to have the observer account for changes in gear use during the trip would detract from the purposes of the observer program and thus would be impracticable. Alternatively, if a vessel wanted to fish with more than one gear during the same trip, the vessel would need to be accountable to management measures for both gear types, as for instance, being restricted from both fixed gear GCAs and trawl GCAs, a

management outcome that would likewise be impracticable. Instead, to reduce the complexity of managing gear switching under the Shorebased IFQ Program, the proposed rule would require that a vessel only fish with trawl gear or non-trawl gear on the same trip.

One issue under consideration with regards to gear switching is how often a fisherman would be able to declare and switch gears. Although the declaration system managed by the NMFS Office of Law Enforcement can manage frequent changes in vessel declarations as would be the case for frequent gear switching, NMFS believes the process must be managed in an orderly fashion so as to not compromise the efficient management of the observer program by the Northwest Fisheries Science Center. NMFS specifically requests comment regarding the impact of any restrictions on changes in declarations on gear switching in the Shorebased IFQ Program.

The proposed rule would establish the new declaration for gear switching as "Limited entry groundfish non-trawl, shorebased IFQ." During the June 2010 Council meeting and at the RDW meetings, some members of the public expressed that the declaration process should be more specific, with separate declarations for pot gear or longline gear as opposed to the more general non-trawl declaration. NMFS has not included more specific declarations for vessels electing to fish in the Shorebased IFQ Program under the gear switching provisions because the management measures for non-trawl gears do not differ such that separate declarations would be of any use. For instance, whether a vessel fishes with pot gear or longline gear, the vessel would be subject to the same GCAs. Furthermore, if the management of the nontrawl gears were to change in the future such that a separate declaration would make sense (e.g., separate GCAs for pot and longline gears), such change would require a change to the regulations and a new declaration category could be added at that time. Because of this, NMFS declines to adopt unnecessary additional declaration categories at this time.

Reallocation

The November 2008 Council motion provided directions for reallocation of QS in response to future management changes or for future allocations of groundfish currently outside the scope of the IFQ program (Appendix D, A-2.1.6, p. D-9). Specific potential changes addressed in the Council motion include changes in overfished status, changes in area management,

subdivision of an IFQ species group, or subdivision of an IFQ species group. Changes in area management could entail geographic subdivision of an area for management of an IFQ species, recombination of two or more subdivided areas, or movement of a management boundary line.

The proposed rule sets forth what action NMFS would take in the event of a change in area management or subdivision of a species group. For area subdivision, NMFS would issue QS for each newly created area that is equivalent to the amount that was owned for the area before it was subdivided. When two areas are combined, NMFS would adjust the QS for each area so that the total sums to 100 percent and the QS owner would receive the same amount of QP as if the areas had not been combined. If a management boundary line is moved, NMFS would adjust the QS proportionally so that the QS owner would maintain the same share of the trawl allocation for that species on a coastwise basis. If a species group becomes subdivided, NMFS would issue an amount of QS for the newly created IFQ management unit equal to the amount of QS owned of the species group before subdivision.

With regards to changes in overfished status, the November 2008 Council motion states that "When an overfished species is rebuilt or a species becomes overfished there may be a change in the QS allocation within a sector. When a stock becomes rebuilt, the reallocation will be to facilitate the reestablishment of historic target fishing opportunities. When a stock becomes overfished, QS may be reallocated to maintain target fisheries to the degree possible. That change may be based on a person's holding of QS for target species associated with the rebuilt species or other approaches deemed appropriate by the Council." Appendix D, A-2.1.6, p. D-9. Because any reallocation based on a change in overfished status anticipates future Council action, NMFS does not include this language in this proposed rule, but highlights it as a statement of Council intent.

With regards to future allocations of groundfish outside the scope of the IFQ program, the November 2008 Council motion states "For the 'Other Fish,' category of groundfish, if at some time in the future the Council adds it to the IFQ system, the initial allocation would be determined using the same history criteria as was used for other IFQ species (i.e., 1994-2003 history), unless otherwise specified by a future Council action." *Id.* This, too, anticipates future action by the Council and is thus not

included in this proposed rule, but is highlighted here in the preamble.

IFQ Carryover Provision

The proposed carryover provisions at § 660.140(d)(5) would allow a limited amount of surplus QP and IBQ pounds in a vessel account to be carried over from one year to the next or would allow a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit would be calculated by multiplying the percent allowed for a carryover by the total cumulative amount of QP or IBQ pounds transferred into the vessel account for the year (used and unused), less any transfers of QP or IBQ pounds out of the vessel account and less any prior carryover amounts. The reason that QP or IBQ pounds transferred out of the account would not be included in the calculation is to prevent a carryover from being calculated from the same QP or IBQ pounds in more than one account, which would effectively circumvent the percent determined by the Council for the carryover limit. The reason prior carryover amounts would be excluded from the calculation of the carryover limit is to prevent carryovers from being carried forward more than one year, consistent with the Council motion. The Council determined that the percentage to be used for calculating the carryover limit would be 10 percent, but that if there was any reduction in the OY for an IFQ species, the carryover limit would be reduced proportionately. The Council could revise the percentage used for this calculation in future action.

Under the proposed rule, a surplus up to the carryover limit could be carried over if a vessel account has remaining unused QP for an IFQ species at the end of the year. In the case of a surplus, the carryover limit would be based on the cumulative total QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) for the entire year. Alternatively, a vessel account that incurs a deficit (a negative balance for any IFQ species) that is lower than the carryover limit where the vessel account owner is unable to transfer QP or IBQ pounds into the vessel account to cure the deficit within 30 days, the vessel account owner could cure the deficit by declaring the vessel out of the fishery for the remainder of the year and transferring sufficient QP or IBQ pounds into the vessel account within 30 days of NMFS's issuance of QP and IBQ pounds in the following year. In the case of a deficit, the carryover limit would be based on the cumulative total

QP or IBQ pounds in the account (used and unused, less any transfers out of the account and any prior carryover amounts) at the date upon which the deficit was documented. If a vessel declares out of the fishery for the remainder of the year, remaining QP or IBQ pounds in the vessel account (species for which there is no deficit) would still be transferable.

During discussions at the RDW, some commenters expressed concern that the requirement to declare out of the fishery for the remainder of the year in order to invoke the carryover provision for a deficit would be overly restrictive and that, in their view, a vessel that declares out of the IFQ fishery under the carryover provision should be able to declare back into the fishery if able to obtain sufficient QP or IBQ pounds later in the year. Under the proposed rule, a vessel would be able to declare back into the Shorebased IFQ Program if it cures the deficit in the same year in which the deficit occurs, however, if a vessel opts to do so, it would no longer meet the requirements for the carryover provision. Instead, the vessel would be subject to enforcement for a violation of the requirement to cure a deficit within 30 days of the date the deficit is documented. The Council was emphatic on the importance of curing deficits within 30 days, and that the carryover provision was a narrow exception to this requirement. If a vessel were allowed to declare out of the fishery under the carryover provision, and subsequently declare back into the fishery before the end of the year, a vessel could effectively circumvent the requirement to cure a deficit within 30 days. The RDW did not achieve consensus regarding this issue, and it was suggested that if any approach different from that in this proposed rule were considered preferable, the Council could address it in the trailing amendments for the rationalization program. Thus, NMFS specifically highlights this issue to solicit public comment.

At-Sea Sectors

Changes Applicable to All At-Sea Sectors

Coop Permits & Coop Agreements

The proposed rule would require that any coop participating in the MS Coop Program or C/P Coop Program would need to obtain a NMFS-approved coop permit in order to address management at the coop level. A coop permit would formally register the coop and its associated members to harvest and process in the sector. Under the proposed rule, in order to obtain a coop

permit, the coop would need to specify a coop manager and submit a coop agreement that would establish the terms and conditions for the coop. These provisions would provide NMFS with a mechanism to track and communicate with the coop. In addition, the coop permit would provide a means to assure accountability at the coop level instead of at the individual level, and would provide NMFS with an avenue to take enforcement or administrative action at the coop level if any of the conditions of the coop permit and its associated coop agreement are not met. Under the proposed rule, the coop permit may be revised by NMFS to reflect changes in the membership or participating vessels and other material changes to the coop.

A coop agreement must be submitted with any application for an MS or C/P coop permit. The coop agreement would establish the terms and conditions for the coop. The MS coop agreement language from the Council motion at Appendix D, B-2.3.3 (e), p. D-31, stated that a coop agreement must include "A list of all vessels, and which must match the amount distributed to individual permit holders by NMFS." Some text was inadvertently removed from an earlier version of this Council motion language. Council staff clarified after the June 30th RDW meeting that the text should read, "A list of all vessels *and permit holders participating in the coop and their share of the allocated catch*, which must match the amount distributed to individual permit owners by NMFS." NMFS requires this missing language because of its need to track vessels participating in the coop for enforcement reasons. Accordingly, this corrected language has been inserted in this proposed rule. The C/P coop agreement language also requires a list of vessels for NMFS' enforcement reasons, but does not specify associated catch allocations because the C/P Coop Program is one voluntary coop that receives the entire C/P sector allocation.

MS coop agreements would also be required to include, "Provisions that prohibit co-op membership by permit holders that have incurred legal sanctions that prevent them from fishing groundfish in the Council region" (Appendix D, B-2.3.3(e)(10), p. D-31). Because MS coops would also be required to represent at least 20 percent of the catch history assignment associated with MS/CV-endorsed limited entry trawl permits, as stated, such provisions could result in a coop failure if a coop member permit incurs a legal sanction, is prohibited membership in the coop, and the coop membership falls below the 20 percent

threshold as a result. Such an outcome could potentially penalize all members of a coop for actions of a single member unrelated to the coop's activity. In this proposed rule, NMFS revised this clause to require of MS coop agreements "Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region *from fishing in the coop*." This way, such members would remain coop members, avoiding the risk of triggering a coop failure, but could not fish for the coop. The proposed rule does not include a parallel clause for C/P coop agreements referring to legal sanctions.

The Council motion did not include a C/P coop agreement provision. However, NMFS determined the need for the coop agreement provisions for the same reasons such provisions are required for the MS Coop Program. C/P coop agreement contents would not be directly parallel to the MS coop agreement language because these fisheries are structured differently.

At-Sea Sector Observers

Under the MS Coop Program and the C/P Coop Program, the Council voted to implement 100 percent at-sea observer coverage for all vessels, including processing vessels, in order to assure that all catch, including discards, would be matched against allocations. The proposed rule would require all vessels in the MS Coop or C/P Coop Programs to carry observers, and defines prohibited actions and responsibilities of vessels, the responsibilities of companies providing observer services, and observer qualifications and responsibilities.

As previously described, the WCGOP was developed consistent with guidelines for fishery observer programs developed under the MSA (see MSA sec. 403, 16 U.S.C. 1881b; 50 CFR 600.746), and as such, the program components proposed rule would retain the WCGOP's existing general framework and add new components specific to the MS or C/P Coop Programs. New provisions would include mandatory observer coverage, the placement of observers on catcher vessels, and collection of estimates of any operational or other discards.

Observers certified for catcher vessels in the mothership fishery would be trained in the same manner as those trained for the Shorebased IFQ Program because of the similarity of their roles (refer back to Shorebased IFQ Program observer discussion for details applicable to catcher vessel observers). Observers certified for mothership processors or catcher/processors would

be trained in the same manner as under the current at-sea observer program.

At-Sea Sector Donation Program

A management measure that may no longer be necessary or may need further revision is the optional "bycatch reduction and full utilization program for at-sea processors" (called bycatch reduction and donation program). The bycatch reduction and donation program was established to allow vessels harvesting unsorted catch to retain and donate amounts of groundfish that were in excess of trip limits. Under trawl rationalization, the at-sea sector regulations may not require vessels to be subject to trip limits for groundfish species other than Pacific whiting outside of the primary whiting season. Therefore, the donation program may no longer be necessary or may require minor adjustments. In this proposed rule, the bycatch reductions and donation program remains as stated in existing regulations. NMFS specifically requests comment on the implications of removing or retaining this program and suggested language revisions.

Other At-Sea Management Measures

Many of the existing Pacific whiting management measures and provisions for bycatch management remain in place under the implementation of the rationalization program. With regards to bycatch, the Council motion states that "[t]he goal of bycatch management is to control the rate and amounts of rockfish and salmon bycatch to ensure that each sector is provided an opportunity to harvest its whiting allocation" (Appendix D, B-1.3, p. D-24). For rockfish, hard caps for widow, canary, darkblotched, and Pacific ocean perch would be subdivided between sectors, and in the MS Coop Program, would be further subdivided between the coop fishery and non-coop fishery, and between the coops in the coop fishery. The motion further states that "[t]he ESA listed salmon bycatch management measures—that is, the 11,000 Chinook threshold, 0.05 rate threshold, and triggered 100 fathom closure—will also continue to be in place." *Id.* The program components proposed rule specifies that these measures would continue to be applicable to the at-sea sector under rationalization.

Existing regulations at § 660.306(f)(8) prohibit sorting or discarding of any portion of the catch taken by a catcher vessel in the mothership sector prior to the catch being received on a mothership, and prior to the observer being provided access to the unsorted catch, with the exception of minor

amounts of catch that are lost when the codend is separated from the net and prepared for transfer. Moreover, § 660.306(i)(2) prohibits all vessels with an observer onboard from interfering with or biasing the observer's sampling procedure, including either mechanically or physically sorting or discarding catch before sampling. These prohibitions were retained in the proposed initial issuance rule, at § 660.112(c)(5) and § 660.112(e)(2), respectively. These existing prohibitions address retention requirements sufficiently in the catcher/processor sector. However, because of the allocations to coops and increased observer coverage, additional provisions have been proposed in the MS Coop Program. In the draft program components rule provided by NMFS to the Council for its review at the June 2010 meeting, NMFS had included language in § 660.150 regarding retention requirements in the MS Coop Program with the understanding that catcher vessels would be able to continue to operate as a maximized retention fishery where vessels transfer all of their catch to the mothership prior to sorting the catch. In this program components proposed rule, NMFS has clarified the retention requirements in the MS Coop Program consistent with Council guidance that a maximized retention fishery would still be allowed to continue, but that discards would need to be accounted for and applied against allocations.

MS Coop Program

The proposed rule provides details of the requirements of the MS Coop Program. Each year, a vessel registered to an MS/CV-endorsed permit would be allowed to fish in the coop or non-coop portion of the MS Coop Program, but not both. As discussed above, the MS Coop Program is a maximized retention fishery. While some minor amounts of operational discards may occur, the intent is that all such discards would be accounted for (estimated by the observer) and deducted from allocations.

Motherships

The proposed rule specifies the participation responsibilities for mothership processors in the MS Coop Program. A mothership would be allowed to receive and process fish provided that it was registered to an MS permit and that it neither fished in the MS sector as a catcher vessel nor fished in the C/P sector as a catcher processor during the same calendar year. An MS permit is a new kind of limited entry permit; however, unlike vessels

registered to other limited entry permits, a mothership would not be required to have a vessel monitoring system (VMS) onboard. VMS provides location data to assure fishing vessel with groundfish conservation areas, and is inapplicable to motherships. As described above, the mothership would need to maintain observer coverage, provide NMFS-approved catch weighing equipment, and ensure that all catch which it receives is accurately weighed in its round form. The mothership would also be required to maintain and submit required records and reports, including: Economic data collection forms, scale test records, and cease fishing reports. A vessel registered to an MS permit would also be required to declare its intent to operate as a mothership in the MS permit renewal process. MS permits would be subject to a usage limit in that no person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. Ownership of an MS permit would be calculated using the individual and collective rule, which means the person would be credited with 100 percent of the processing associated with each permit wholly owned by that person and with an amount of processing equivalent to that person's ownership interest in the permit for each permit partially owned by that person.

Catcher Vessels

A catcher vessel would be eligible to participate in the MS Coop Program provided it is registered to a trawl-endorsed limited entry permit; however, it may only elect to participate in the non-coop fishery in the MS Coop Program if the permit has an MS/CV endorsement. The vessel would not be eligible to participate as a catcher vessel in the MS Coop Program if it operated as a mothership in the MS Coop Program or as a catcher-processor in the C/P Coop Program during the same year. A vessel would also not be allowed to catch more than 30 percent of the Pacific whiting allocation for the mothership sector. As with motherships, catcher vessels would be required to procure observers, and maintain and submit required records and reports such as economic data collection forms and scale test records (if scales are employed). MS/CV-endorsed permits could be combined with another limited entry trawl permit in order to increase the size endorsement, but if combined with another MS/CV-endorsed permit would be subject to accumulation limits restricting ownership of catch history

assignment to no more than 20 percent of the MS Coop Program allocation. MS/CV-endorsed permits would be subject to limited entry permit regulations regarding change in ownership, change in vessel registration, and annual renewal.

If the owner of an MS/CV-endorsed permit fails to renew the permit, the catch history assignment for that permit would be assigned to the non-coop fishery in the first year in which this occurs; if not renewed in a second year, the catch history assignment would be redistributed proportionally to all valid MS/CV-endorsed permits. The reason the catch history assignment would be assigned to the non-coop fishery in the first year is to provide sufficient time for the permit owner to appeal the extinguishment of the permit as a result of the permit owner's failure to renew the permit. If the permit owner's appeal were to be successful, the permit owner would be eligible to fish in the non-coop fishery. If the permit owner's appeal does not succeed, the catch history assignment would be redistributed among all other MS/CV-endorsed permits in the following year; NMFS would not redistribute the catch history assignment in the first year because of the timing involved.

Coops

Owners of MS/CV-endorsed limited entry trawl permits would be allowed to form coops, provided the coop meets its own participation requirements and responsibilities. A coop would be required to be a voluntarily formed, legally recognized entity that is owned and operated by and representative of its members, who would need to be the owners of at least 20 percent of all MS/CV-endorsed permits, and would be required to designate a coop manager and obtain an MS coop permit from NMFS. The coop would be responsible for applying for and being registered to an MS coop permit, managing and monitoring transfers of catch allocations between members and with other coops, managing and monitoring harvest activities and enforcing catch limits of the coop members, submitting an annual report and identifying a designated coop manager. The designated coop manager would serve as the contact person for the coop, and would be responsible for the annual distribution of catch and bycatch, oversee transfers, prepare annual reports, and be authorized to receive and respond to any legal process against the coop. The designated coop manager would also be required to notify NMFS if the coop dissolves.

Each year, a coop entity that wishes to participate in the MS Coop Program as a permitted coop would be required to submit a complete application for an MS coop permit, including a coop agreement and any administrative fees and annual reports that may be due. The coop entity would also be required to provide copies of any inter-coop agreement(s) into which the coop has entered at the time of annual application, which must incorporate and honor the provisions of each permitted MS coop. For a coop agreement to be complete, it must be signed by all members of the coop and include all of the information outlined in the regulation. If NMFS does not accept the coop agreement, the application would be returned with a letter explaining why not, the coop entity could resubmit the application after addressing any deficiencies. If NMFS accepts the coop agreement and issues an MS coop permit, the coop agreement would remain in place through the end of the calendar year. If any material changes to the coop agreement were to occur during the year, the designated coop manager would be required to notify NMFS within 7 calendar days and would be required to submit a revised coop agreement within 30 calendar days (a material change would be any change in the required components of the coop agreement). The MS coop permit itself would remain in effect until the coop has reached its Pacific whiting allocation or notifies NMFS that it has ceased fishing for the calendar year, a material change to the coop agreement has occurred and the designated coop manager failed to provide a revised coop agreement to NMFS within 7 calendar days of the material change, or NMFS has determined that a coop failure occurred.

MS Coop Program Allocations

The proposed rule sets forth how sub-allocations in the MS Coop Program would be determined and managed. Catch history assignment associated with each MS/CV-endorsed limited entry trawl permit would be annually allocated to a single permitted MS coop or to the non-coop fishery, and would remain with that coop or non-coop fishery for that year. Each permitted MS coop would be 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. Designated coop managers may redistribute Pacific whiting sub-allocations between permitted MS coops

through an inter-coop agreement, but Pacific whiting would not be allowed to be redistributed from a permitted MS coop to the non-coop fishery, nor from the MS Coop Program to either the Shorebased IFQ Program or the C/P Coop Program.

Annual mothership sector allocations of non-whiting groundfish species would be divided between MS coops and the non-coop fishery annually; NMFS would inform each MS coop with the amount of its allocation for such species at the time NMFS issues the MS coop permit. Sub-allocations of non-whiting groundfish species with allocations to permitted MS coops would be in proportion to the Pacific whiting catch history assignments assigned to each permitted MS coop. The annual amount of both whiting and allocated non-whiting groundfish species to the non-coop fishery would likewise be calculated from the sum of the catch history assignments for each MS/CV-endorsed permit in the non-coop fishery plus any permits that did not identify a coop, did not renew or were revoked in the previous year. [Note: After any permits that did not renew or were revoked have been through due process, the catch history assignments from those permits would be redistributed pro-rata to all remaining MS/CV-endorsed permits in the second year after revocation or non-renewal. Permits that did not declare into a coop and that do not have an obligation to an MS permit would default to the non-coop fishery due to failure to meet the processor obligation and coop agreement requirements.] Pacific halibut and groundfish species that are not allocated (e.g., those with at-sea sector set-asides and those with no set-asides) would not be divided between MS coops and the non-coop fishery, but would be managed annually.

Under the proposed rule, when a mothership sector allocation is reached or is projected to be reached, fishing would be required to cease and a mothership would be prohibited from receiving further deliveries. Likewise, if a sub-allocation to the non-coop fishery is reached or is projected to be reached, all fishing would be required to cease in the non-coop fishery. In a permitted MS coop, fishing would be required to cease once the annual sub-allocation is reached, unless the coop is operating under an inter-coop agreement. Unused non-whiting allocations that remain after a MS coop ceases fishing could be reapportioned among permitted MS coops and the non-coop fishery in proportion to their sub-allocations, or could be reallocated to the C/P sector if

the mothership sector's Pacific whiting allocation is reached or participants in the sector do not intend to harvest the remaining allocation.

Processor Obligations

The proposed rule outlines requirements for owners of MS/CV-endorsed permits to make a preliminary declaration in the annual permit renewal process whether they intend to participate in an MS coop or in the non-coop fishery in the following year. If declaring to fish in an MS coop, the owner of the permit would also be required to designate to which mothership the owner intends to obligate its permit for that year. An MS/CV-endorsed permit owner would be required to indicate its intended processor obligation through the renewal process for that permit, and the actual processor obligation would be required to be disclosed on the MS coop permit application in the following year. A permitted MS coop would be required to honor the processor obligation of each permit with respect to any distribution of Pacific whiting sub-allocation within the coop or between permitted coops through an inter-coop agreement, unless it obtains a mutual agreement with the processor to release the MS/CV-endorsed permit owner's processor obligation and the MS/CV-endorsed permit owner identifies a processor obligation to another MS permit. A vessel registered to an MS/CV-endorsed permit may fish for more than one coop in a year, but can only transfer the catch history assignment associated with its MS/CV-endorsed permit through an inter-coop agreement and deliveries of fish caught under that catch history assignment may only be delivered to another MS permit through a mutual agreement exception.

In developing the regulations for the processor obligation provision, NMFS discovered that there may be some confusion over the extent of the annual obligation of an MS/CV-endorsed permit to a specific processor. The Council motion states that "Each year, a permit will obligate to a processor all of its catch for a coming year[.]" and that "CV(MS) permits will be obligated to a single MS permit for an entire year[.]" (Appendix D, B-2.4, p. D-31). As the motion further describes this obligation, it refers to the obligation as a "linkage" between the MS/CV-endorsed permit and the MS permit, and states that the "CV permit must notify the MS permit that the CV permit QP will be linked to." *Id.* at p. D-32 (emphasis added). Because of this language in the Council motion, NMFS believes the nature and extent of the processor obligation is the

commitment of the annual catch history assignment associated with the MS/CV-endorsed permit, analogous to QP in the Shorebased IFQ Program. Draft regulations provided to the Council for review as part of the deeming process referred only to the obligation of the MS/CV-endorsed permit to the MS permit, and did not specify the nature or extent of that obligation. Members of the Council's RDW expressed concern that such language could be interpreted to require all deliveries of a vessel registered to the MS/CV-endorsed permit to be delivered to the mothership registered to the MS permit, not just deliveries of the fish associated with the MS/CV-endorsed permit's catch history assignment, and that under such an interpretation, for a vessel to deliver to a processor other than that to which its permit is obligated would require registration of the vessel to another permit or release of the permit through mutual agreement with the processor to which the permit is obligated. For the reasons described above, NMFS does not believe that such an interpretation comports with the intent of the Council motion. Accordingly, NMFS has clarified the regulation to specify that the processor obligation refers only to the commitment of the permit's catch history assignment to a given MS permit, and specifically requests comment on the implications that this interpretation may have on anticipated operations within the MS Coop Program.

There is no processor obligation provision for participants in the non-coop fishery. The version of the regulations provided to the Council at its June 2010 meeting erroneously included a processor obligation for participants in the non-coop fishery. This has been removed from these proposed regulations to conform to the Council motion on the trawl rationalization program.

The Council motion included a clause where a mothership processor may withdraw from the mothership fishery and its obligation to any MS/CV endorsed permits. This provision requires a mothership to notify NMFS and all MS/CV-endorsed permit owners that have declared their obligation to the MS permit registered to that mothership if the mothership is withdrawing from their processor obligation before NMFS assignment of catch history assignments to an individual mothership coop. The Council motion states that this withdrawal could happen "subsequent to quota assignments[.]" (Appendix D, B-2.4.3, p. D-32.) NMFS interprets this to mean subsequent to the declaration of MS/CV-endorsed permit owners' intent

to obligate to particular MS permits during the limited entry permit renewal process up to NMFS's issuance of coop permits in the following year. After NMFS assigns catch history assignments to individual MS coops, MS/CV-endorsed permits would not be able to move between the coop and non-coop fishery within the calendar year, and the Council provided for transfers of allocations in such circumstances through the mutual agreement process described above. Under the MS permit withdrawal provision, if an MS permit were to withdraw from the mothership fishery before the allocations to individual MS coops have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for another MS permit.

MS Coop Failure

In the event of a coop failure during the Pacific whiting primary season for the mothership sector, unused allocation associated with the catch history would not be available for harvest by the coop that failed, by any former members of the coop that failed, any other MS coop, or the non-coop fishery for the remainder of that calendar year. The regulations at § 660.150(k) do not reference the non-coop fishery because regulations at § 660.150(c)(2), annual mothership sector sub-allocations, already establishes that allocations could not be redistributed between the coop and non-coop fishery within the calendar year. If allocations were permitted to move to the non-coop fishery within year, it may create incentives for coop failure.

Items Disapproved by NMFS

On August 9, 2010, NMFS made its decision to partially approve Amendments 20 and 21 to the FMP. The proposed rule, which was developed by NMFS and deemed by the Council prior to this partial approval, and contains several provisions in the MS Coop Program that NMFS has subsequently disapproved. NMFS intends to remove these provisions in the final rule. One such provision states: "Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing

activities." NMFS disapproved of the requirement to submit agreements to the Council and for public review because not only would it be impracticable given the timing for public review, but also could violate restrictions on the disclosure of confidential information under the MSA. Accordingly, NMFS intends to revise this provision in the final rule to state: "Signed copies of the coop agreement must be submitted to NMFS before the coop is authorized to engage in fishing activities." Another provision would require coops to submit a letter to the Department of Justice requesting a business review letter on the fishery coop, and to submit copies of all such correspondence with an MS coop permit application. NMFS disapproved this provision because compliance with antitrust laws is a separate and distinct obligation of each and every participant and does not need to be a requirement specified in the FMP. Accordingly, NMFS intends to remove this provision entirely in the final rule. Another provision would require coop agreements to include "A requirement that agreement by at least a majority of the members is required to dissolve the coop." NMFS disapproved this provision because it would interfere with private parties' ability to contract and agree to the terms of dissolution that are appropriate for their coop. Accordingly, NMFS intends to remove this provision entirely in the final rule as well.

C/P Coop Program

Under Amendment 20, the C/P Coop Program would formalize in the FMP provisions that support the formation of a single, voluntary coop consisting of all owners of C/P-endorsed permits. Because there could be only one coop, the allocation of Pacific whiting to the C/P Coop Program in a given year would be equal to the entire catcher/processor sector allocation. The annual amount of non-whiting groundfish species with allocations (canary rockfish, darkblotched rockfish, POP, and widow rockfish) would be allocated to the C/P Coop Program in proportion to its allocation of Pacific whiting (*i.e.*, the same percent as the catcher/processor sector whiting allocation). Pacific halibut and groundfish species that are not allocated (*e.g.*, those with at-sea sector set-asides and those with no set-asides) would not be so divided, but would be managed annually.

When the catcher-processor sector whiting allocation is reached or is projected to be reached, fishing within the sector would be required to cease. If the catcher-processor sector's whiting allocation is reached, or if participants

in the sector do not intend to harvest the remaining whiting allocation, unused non-whiting allocations that remain after the C/P coop ceases fishing could be reapportioned to the mothership sector.

Because the catcher-processor sector already operates as a voluntary coop under existing regulations, NMFS does not anticipate significant change to its operations. One change that the proposed rule would adopt is the provision that if the voluntary coop were to fail, it would be replaced with an IFQ program, and NMFS would issue IFQ equally to each owner of a C/P-endorsed permit, as specified in the Council motion. Appendix D, B-4, p. D-34. Other changes to the C/P Coop Program are described in sections of this preamble applicable to all fisheries or to at-sea sectors (*e.g.*, EDC program, observer program, coop permits and coop agreements, *etc.*).

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pacific Coast Groundfish FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The Council prepared a final environmental impact statement (EIS) for Amendment 20 and Amendment 21 to the Pacific Coast Groundfish FMP; a notice of availability for each of these final EISs was published on June 25, 2010 (75 FR 36386).

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A copy of the IRFA is available from NMFS (*see ADDRESSES*) and a summary of the IRFA, per the requirements of 5 U.S.C. 604(a) follows:

The Council has prepared two EIS documents: Amendment 20—Rationalization of the Pacific Coast Groundfish Limited Entry Trawl Fishery, which would create the structure and management details of the trawl fishery rationalization program; and Amendment 21—Allocation of Harvest Opportunity Between Sectors of

the Pacific Coast Groundfish Fishery, which would allocate the groundfish stocks between trawl and non-trawl fisheries. The two draft EIS's prepared by the Council provide economic analyses of the Council's preferred alternatives and draft RIR and IRFAs. The draft RIR and IRFAs were updated and combined into a single RIR/IRFA for use with the "initial issuance" proposed rule that was published on June 10, 2010 (75 FR 32994). This single RIR/IRFA reviewed and summarized the benefits and costs, and the economic effects of the Council's recommendations as presented in the two EIS's. In addition, the RIR/IRFA contains additional information on characterizing the participants in the fishery and on the tracking and monitoring costs associated with this program.

The RIR/IRFA analyzed the overall program as recommended by the Pacific Fishery Management Council. The analysis encompassed aspects of the initial issuance rule which establishes the allocations set forth under Amendment 21 and procedures for initial issuance of permits, endorsements, quota shares, and catch history assignments under the IFQ and coop programs. It also encompassed this rule—the "program components" rule which provides additional details, including: program components applicable to IFQ gear switching, observer programs, retention requirements, equipment requirements, catch monitors, catch weighing requirements, coop permits/agreements, first receiver site licenses, quota share accounts, vessel quota pound accounts, further tracking and monitoring components, and economic data collection requirements. Revenue and landings data in the RIR/IRFA have been updated based on recent analysis by the Council (Appendix F: Historical Landings and Revenue in Groundfish Fisheries; Agenda Item B.3.a, Attachment 3, June 2010). The Council analysis provides revenue trends based on inflation adjusted dollars where estimates are adjusted to current (2009) dollars. The RIR/IRFA was also revised based on comments received on the initial issuance rule and includes a discussion of the other alternatives considered by the Council. This revised RIR/IRFA will also be revised again to address the future "cost-recovery" rule, based on a recommended methodology yet to be developed by the Council. A summary of the revised RIR/IRFA follows.

Although other alternatives were examined, the RIR/IRFA focuses on the two key alternatives—the No-Action

Alternative and the Preferred Alternative. The EISs include an economic analysis of the impacts of all the alternatives and the RIR/IRFA incorporates this analysis. For the Amendment 20 EIS, the alternatives ranged from status quo (no action), to IFQ for all trawl sectors, IFQ for the non-whiting sector and coops for all whiting sectors, and IFQ for the shorebased sector and coops for the at-sea sectors (preferred). Various elements were part of each of these alternatives and varied among them, including initial qualifications and allocations, accumulation limits, grandfathering, processor shares, species covered, number of sectors, adaptive management, area management, and carryover provisions. The preferred alternative is a blending of components from the other alternatives analyzed in the EIS. For the Amendment 21 EIS, alternatives were provided for 6 decision points: (1) Limited entry trawl allocations for Amendment 21 species, (2) shoreside trawl sector allocations, (3) trawl sector allocations of trawl-dominant overfished species, (4) at-sea whiting trawl sector set-asides, (5) Pacific halibut total bycatch limits, and (6) formal allocations in the FMP. For most of these decision points, the alternatives within them were crafted around approximately maintaining historical catch levels by the sectors or, in some cases, increasing opportunity for the non-trawl sector.

By focusing on the two key alternatives in the RIR/IRFA (no action and preferred), it encompasses parts of the other alternatives and informs the reader of these proposed regulations. The analysis of the no action alternative describes what is likely to occur in the absence of the proposed action. It provides a benchmark against which the incremental effects of the proposed action can be compared. Under the no action alternative, the current, primary management tool used to control the Pacific coast groundfish trawl catch includes a system of two month cumulative landing limits for most species and season closures for Pacific whiting. This management program would continue under the no action alternative. Only long-term, fixed allocations for Pacific whiting and sablefish north of 36° N. lat. would exist. All other groundfish species would not be formally allocated between the trawl and non-trawl sectors. Allocating the available harvest of groundfish species and species complexes would occur in the Council process of deciding biennial harvest specifications and management

measures and, as such, would be considered short term allocations.

The analysis of the preferred alternative describes what is likely to occur as a result of the proposed action. Under the preferred alternative, the existing shore-based whiting and shore-based non-whiting sectors of the Pacific Coast groundfish limited entry trawl fishery would be managed as one sector under a system of IFQs, and the at-sea whiting sectors of the fishery (*i.e.*, catcher-processor sector and mothership sector, which includes motherships and catcher vessels) would be managed under a system of sector-specific harvesting cooperatives (co-ops). The catcher-processor sector would continue to operate under the existing, self-developed co-op program entered into voluntarily by that sector. A distinct set of groundfish species and Pacific halibut would be covered by the rationalization program. Amendment 20 would include a tracking and monitoring program to assure that all catch (including discards) would be documented and matched against QP. The Council specified that observers would be required on all vessels and shore-based monitoring (catch monitors) would be required during all off-loading (100 percent coverage). Compared to status quo monitoring, this would be a monitoring and observer coverage level increase for a large portion of the trawl fleet, particularly for non-whiting shorebased vessels.

The limited entry trawl fishery is divided into two broad sectors: a multi-species trawl fishery, which most often uses bottom trawl gear (hereafter called the non-whiting fishery), and the Pacific whiting fishery, which uses midwater trawl gear. Over the 2005–2009 period, these fisheries when combined have average annual inflation adjusted revenues of about \$57 million and total landings of about 215,000 tons. The non-whiting fishery is principally managed through 2-month cumulative landing limits along with closed areas to limit overfished species bycatch. Fishery participants target the range of species described above with the exception of Pacific whiting. By weight, the vast majority of trawl vessel groundfish is caught in the Pacific whiting fishery. In contrast, the non-whiting fishery accounts for the majority of limited entry trawl fishery ex-vessel revenues. On average, for the period 2005–2009, Pacific whiting accounted for about 90 percent of the quantity of groundfish landed in the limited entry trawl fishery, but only 44 percent of the value due to their relatively low ex-vessel price.

Non-whiting trawl vessels deliver their catch to shoreside processors and buyers located along the coasts of Washington, Oregon, and California, and tend to have their homeports located in towns within the same general area where they make deliveries, though there are several cases of vessels delivering to multiple ports during a year. Some Pacific whiting trawl vessels are catcher-processors, which, as their name implies, process their catch on-board, while other vessels in this sector deliver their catch to shoreside processors or motherships that receive Pacific whiting for processing but do not directly harvest the fish.

Over time, landings in the limited entry trawl fishery have fluctuated, especially on a species-specific basis. Pacific whiting has grown in importance, especially in recent years. Through the 1990s, the volume of Pacific whiting landed in the fishery increased. In 2002 and 2003, landings of Pacific whiting declined due to information showing the stock was depleted and the subsequent regulations that restricted harvest in order to rebuild the species. Over the years 2005–2009, estimated Pacific whiting ex-vessel revenues averaged about \$25 million (figures have been adjusted to 2009 dollars to account for inflation). In 2008, these participants harvested about 216,000 tons of whiting worth about \$51 million in ex-vessel revenues, based on shore-based ex-vessel prices of \$235 per ton, the highest ex-vessel revenues and prices on record. In comparison, the 2007 fishery harvested about 214,000 tons worth \$29 million at an average ex-vessel price of about \$137 per ton while the 2009 non-Tribal fishery harvested about 99,000 tons worth about \$12 million at a price of \$120 per ton.

While the Pacific whiting fishery has grown in importance in recent years, harvests in the non-whiting component of the limited entry trawl fishery have declined steadily since the 1980s. Non-whiting trawl ex-vessel revenues (adjusted for inflation) in the fishery peaked in the mid 1990s of about \$40 million. Following the passage of the Sustainable Fisheries Act (1996) and the listing of several species as overfished, harvests became increasingly restricted and landings and revenues declined steadily until 2002. Over the period 2005 to 2009, inflation adjusted ex-vessel revenues from groundfish in the non-whiting trawl sector have averaged \$27 million annually; ranging from \$24 million (2005) to \$32 million (2008). The 2009 fishery earned \$30 million in ex-vessel revenues. Under the trawl rationalization program, shorebased whiting sector will be joined with the

shorebased non-whiting sector. For perspective, when these fisheries are combined, their total ex-vessel revenues have averaged about \$36 million annually over the last five years.

Expected Effects of Amendment 21—Intersector Allocation

The allocation of harvest opportunity between sectors under the proposed regulation does not differ significantly from the allocation made biennially under the no action alternative. The primary economic effect of the long-term allocation under the proposed regulations is to provide more certainty in future trawl harvest opportunities, which would enable better business planning for participants in the rationalized fishery. As described elsewhere, the trawl rationalization program could create an incentive structure and facilitate more comprehensive monitoring to allow bycatch reduction and effective management of the groundfish fisheries. In support of the trawl rationalization program, the main socioeconomic impact of Amendment 21 allocations is longer term stability for the trawl industry. While the preferred Amendment 21 allocations do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions. The economic effects of Amendment 21 arise from the impacts on current and future harvests. The need to constrain groundfish harvests to address overfishing has had substantial socioeconomic impacts. The groundfish limited entry trawl sector has experienced a large contraction, spurred in part by a partially Federally-subsidized vessel and permit buyback program implemented in 2005. This \$46 million buyback program was financed by a Congressional appropriation of \$10 million and an industry loan of \$36 million. Approximately 240 groundfish, crab, and shrimp permits were retired from State and Federal fisheries, and there was a 35 percent reduction in the groundfish trawl permits. To repay the loan, groundfish, shrimp and crab fisheries are subject to landings fees. Follow-on effects of the buyback have been felt in coastal communities where groundfish trawlers comprise a large portion of the local fleet. As the fleet size shrinks and ex-vessel revenues decline, income and employment in these communities is affected. Fishery-related businesses in the community may cease operations because of lost

business. This can affect non-groundfish fishery sectors that also depend on the services provided by these businesses, such as providing ice and buying fish. An objective to the trawl rationalization program is to mitigate some of these effects by increasing revenues and profits within the trawl sector. However, because further fleet consolidation is expected, the resulting benefits are likely to be unevenly distributed among coastal communities. Some communities may see their groundfish trawl fleet shrink further as the remaining vessels concentrate in a few major ports. Species subject to Amendment 21 allocations would be: Lingcod, Pacific cod, sablefish south of 36° N. lat., Pacific ocean perch, widow rockfish, chilipepper rockfish, splitnose rockfish, yellowtail rockfish north of 40°10' N. lat., shortspine thornyhead (north and south of 34°27' N. lat.), longspine thornyhead north of 34°27' N. lat., darkblotched rockfish, minor slope rockfish (north and south of 40°10' N. lat.), Dover sole, English sole, petrale sole, arrowtooth flounder, starry flounder, and Other Flatfish. While the preferred Amendment 21 allocations of these species do not differ significantly from status quo ad hoc allocations made biennially, there is more certainty in future trawl harvest opportunities, which enables better business planning for participants in the rationalized fishery. This is the main purpose for the Amendment 21 actions.

Based on ex-vessel revenue projections, Table 4–18 (ISA DEIS) shows the potential 2010 yield to trawl and non-trawl (including recreational) sectors under the Amendment 21 alternatives and the potential 2010 value of alternative trawl allocations. Under the status quo option Alternative 1, the projected ex-vessel value of the trawl allocation is \$56 million while the projected ex-vessel value of the Council's preferred alternative is \$54 million, indicating a potential increase to the non-trawl sectors and a potential decrease to the trawl sector.

In addition to the species above, halibut would also be specifically allocated to the trawl fishery. The proposed regulations include a halibut trawl bycatch reduction program in phases to provide sufficient time to establish a baseline of trawl halibut bycatch and for harvesters to explore methods (e.g., adjustments to time and/or area fished, gear modifications) to reduce halibut bycatch and bycatch mortality. Pacific halibut are currently not allowed to be retained in any U.S. or Canadian trawl fisheries per the policy of the IPhC. The Council's intent on setting a total catch limit of Pacific

halibut in Area 2A trawl fisheries is to limit the bycatch and progressively reduce the bycatch to provide more benefits to directed halibut fisheries. The program establishes a limit for total Pacific halibut bycatch mortality (legal-sized and sublegal fish) through the use of an individual bycatch quota in the trawl fishery. The initial amount for the first two years of the trawl rationalization program would be calculated by taking 15% of the Area 2A Total Constant Exploitation Yield (CEY) as set by the International Pacific Halibut Commission (IPHC) for the previous year, not to exceed 130,000 lbs per year for total mortality. For example, if the trawl rationalization program went into effect in 2013, the trawl halibut IBQ would be set at 15% of the Area 2A CEY adopted for 2012 or 130,000 lbs per year, whichever is less, for 2013 and 2014 (years 1 and 2 of the program). Beginning with the third year of implementation, the maximum amount set aside for the trawl rationalization program would be reduced to 100,000 lbs per year for total mortality. This amount may be adjusted downward through the biennial specifications process for future years.

Currently there are no total catch limits of Pacific halibut specified for the west coast trawl fishery. Trawl bycatch of Pacific halibut, therefore, does not limit the trawl fishery. A phased in, halibut bycatch reduction program, would provide sufficient time to establish a baseline of trawl halibut bycatch under the new rationalization program and for harvesters to explore methods (*e.g.*, adjustments to time and/or area fished, gear modifications) to reduce both halibut bycatch and bycatch mortality. By limiting the bycatch of Pacific halibut in the LE trawl fisheries, Amendment 21 would control bycatch and could provide increased benefits to Washington, Oregon, and California fishermen targeting Pacific halibut. Reducing the trawl limit would also provide more halibut to those who participate in the directed Tribal, commercial and recreational halibut fisheries.

Effects of Amendment 20—Trawl Rationalization

An overall comprehensive model that simultaneously captures changes in fishermen's behavior, changes in the markets, and changes in communities was not feasible because of lack of data and empirical analyses that show needed relationships. Instead, a set of models designed to focus on specific issues was developed. For example, models were used to: Analyze the effects of the initial allocation of QS in

the trawl IFQ program; project geographic shifts in fishery patterns; and illustrate the potential for reducing bycatch, increasing target catch, and increasing revenues. To illustrate the benefits of the IFQ program, a model projecting the expected amount of fleet consolidation in the shore-based non-whiting fishery was developed. This model illustrates the potential for the fleet to reduce bycatch and potentially increase the amount of target species harvested. This model is primarily based on bycatch reduction experiences in the Pacific whiting fishery and under an Exempted Fishing Permit carried out in the arrowtooth flounder fishery. The model accounts for the fact that trawlers harvest many species (multiple outputs). The model also uses fish ticket data and the data from the recently completed West Coast Limited Entry Cost Earnings Survey sponsored by the NMFS Northwest Fisheries Science Center. (For the other sectors, similar models could not be developed because the appropriate cost data was unavailable.)

Estimates of potential economic benefits are generated based on the predicted harvesting practices from the first step analysis. Because the west coast nonwhiting groundfish fishery is not a derby fishery, it is expected that economic benefits will come through cost reductions and increased access to target species that arise from modifications in fishing behavior (overfished species avoidance). The key output of this analysis is an estimate of post-rationalization equilibrium harvesting cost.

Changes in harvesting costs can arise from three sources. First, the total fixed costs incurred by the groundfish trawl fleet change as the size of the fleet changes. Since many limited entry trawlers incur annual fixed costs of at least \$100,000, reductions in fleet size can result in substantial cost savings. In other words, a fewer number of vessels in the fishery will lead to decreased costs through a decrease in annual fixed costs. Second, costs may change as fishery participation changes and no longer incur diseconomies of scope (such as the costs of frequently switching gear for participating in multiple fisheries). Third, costs may change as vessels are able to buy and sell quota to take advantage of economies of scale and operate at the minimum point on their long-run average cost curve (*i.e.* the strategy that minimizes the cost of harvesting).

The major conclusions of this model suggest that (with landings held at 2004 levels), the current groundfish fleet (non-whiting component) which

consisted of 117 vessels in 2004, will be reduced by roughly 50% to 66%, or 40–60 vessels under an IFQ program. The reduction in fleet size implies cost savings of \$18–\$22 million for the year 2004 (most recent year of the data). Vessels that remain active will, on average, be more cost efficient and will benefit from economies of scale that are currently unexploited under controlled access regulations in the fishery. The cost savings estimates are significant, amounting to approximately half of the costs incurred currently, suggesting that IFQ management may be an attractive option for the Pacific Coast Groundfish Fishery. Assuming a 10% annual return to the vessel capital investment, estimates indicate that the 2004 groundfish fleet incurred a total cost of \$39 million. The PacFIN data indicate fleetwide revenue (this includes groundfish, crab, and other species) at roughly \$36 million in 2004, and, therefore, fleetwide losses of about \$3 million occurred in 2004. Based on a lower 5% return to vessel capital, the results suggest that the groundfish fleet merely broke even in 2004; *i.e.*, dockside revenues were offset by the fleetwide harvesting costs. The results also suggest a switch from the current controlled access management program to IFQs could yield a significant increase in resource rents in the Pacific Coast Groundfish fishery. For instance, the analysis finds that the 2004 groundfish catch generated zero resource rent. Instead, it could have yielded a substantial positive rent at about \$14 million.

As the model was based on the 2004 fishery, it may be useful to show current trends in the fishery. In 2004, the shorebased non-whiting trawl fishery generated about \$21 million in groundfish ex-vessel revenues (inflation adjusted). But according to cost estimates discussed above, this fishery was at best breaking even or perhaps suffering a loss of up to \$2 million. Since 2004, shorebased non-whiting trawl fisheries have increased their revenues to about \$30 million. The increase in shorebased revenues have come from increased landings of flatfish and sablefish and significant increase in sablefish ex-vessel prices. Sablefish now accounts for almost 40 percent of the trawl fleet's revenues. While revenues were increasing, so were fuel prices. Fuel costs now account for approximately 30 to 40 percent of the vessels' revenues. The average 2005–2009 revenues were about \$27 million, or 29 percent greater than 2004. The average 2005–2009 fuel price was about \$2.81 per gallon, 70% greater than that

of 2004. Therefore, it appears that the profitability of the 2009 fishery may not be that much improved over that of 2004.

Ex-vessel revenues for the non-whiting sector of the limited entry trawl fishery are projected to be approximately \$30–40 million per year under the preferred alternative, compared to \$22–25 million under the no action alternative. These projections yield a potential range in increased revenues of 20 to 80 percent. This revenue increase is expected to occur in a rationalized fishery, because target species quotas can be more fully utilized. Currently, in the non-whiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level by means of IFQs provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunities of others. In addition, under the preferred alternative, the non-whiting sector would have control over harvest timing over the whole calendar year. Nonwhiting harvesters currently operate under 2-month cumulative landing limits, which allow greater flexibility in terms of harvest timing between 2-month periods but less flexibility within periods (because any difference between actual limits and the period limit cannot be carried over to the next period). In contrast, under the IFQ program harvesters will have control over harvest timing over the whole calendar year. However, in terms of any influence on price, this increased flexibility is unlikely to have a noticeable effect. Finally, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish. This opportunity would mainly relate to sablefish, which are caught in deeper water, rather than nearshore species where State level regulatory constraints apply.

Costs for the non-whiting sector of the limited entry trawl fishery are expected to decrease under the preferred alternative because of productivity gains related to fleet consolidation. Productivity gains would be achieved through lower capital requirements and a move to more efficient vessels. Operating costs for the non-whiting sector are predicted to decrease by as much as 60 percent annually. Based on estimates of current costs, this

percentage decrease represents a \$13.8 million cost reduction relative to the no action alternative.

The accumulation limits considered under the preferred alternative are not expected to introduce cost inefficiencies in the non-whiting sector, provided that current prices and harvest volumes do not decrease. However, the preferred alternative would impose new costs on the non-whiting sector that would not be incurred under the no action alternative. First, a landings fee of up to 3 percent of the ex-vessel value of fish harvested would be assessed under the preferred alternative to recover management costs, such as maintenance of the system of QS accounts. Second, new at-sea observer requirements would be introduced, and vessels would have to pay the costs of complying with these requirements, estimated at \$500 a day if independent contractors are hired. The daily observer cost could place a disproportionate adverse economic burden on small businesses because such costs would comprise a larger portion of small vessels costs than that of larger vessels.

The increase in profits that commercial harvesters are expected to experience under the preferred alternative may render them better able to sustain the costs of complying with the new reporting and monitoring requirements. The improved harvesting cost efficiency under the preferred alternative may allow the non-whiting sector to realize profits of \$14–23 million compared to \$0 or less under the no action alternative. In addition, a provision that allows vessels managed under the IFQ program to use other legal gear (gear switching) would allow sablefish allocated to the trawl sector to be sold at a higher price per pound, possibly contributing to increased profits. The imposition of accumulation limits could reduce the expected increase in the profitability of the non-whiting sector by restricting the amount of expected cost savings, and the costs of at-sea observers may reduce profits by about \$2.2 million, depending on the fee structure. However, the profits earned by the non-whiting sector would still be substantially higher under the preferred alternative than under the no action alternative.

New entrants are likely to face a barrier to entry in the Pacific Coast groundfish limited entry trawl fishery in the form of the cost of acquiring QS (or a co-op share in the case of the at-sea whiting sector). This disadvantages them in comparison to those entities that receive an initial allocation of harvest privileges. Small entities may be particularly disadvantaged to the degree

that they may find it more difficult to finance such quota purchases. Among the goals the Council identified for the adaptive management program was to use the reserved non-whiting QS to facilitate new entry into the fishery. In addition, the Council identified, as a trailing action, a framework to allow the establishment and implementation of Community Fishing Associations as part of the adaptive management program. These entities could facilitate entry into the fishery by leasing QS at below market rates, thereby leveling the playing field in terms of costs between initial recipients of QS and new entrants.

The incremental effects of the preferred alternative on buyers and processors of trawl caught groundfish are detailed Sections 4.9–4.10 of the Rationalization of the Amendment 20 Pacific Coast Groundfish Limited Entry Trawl Fishery DEIS. Even though processors may have to pay fishermen higher ex-vessel prices, processors may see cost savings under the preferred alternative to the degree that rationalization allows greater processors and fishermen greater ability to plan the timing, location, and species mix of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation in the non-whiting sector could also provide cost savings for processors if landings occur in fewer locations, thereby reducing the need for facilities and/or transport. The preferred alternative would also impose new costs on processors that would not be incurred under the no action alternative. Processors would be required to pay some or all of the costs of plant monitors, who would verify landings. Similar to at-sea observers, these monitors would be independent contractors rather than direct employees of the processing firm.

In the non-whiting processing industry, harvest volumes may increase because of a decrease in constraining species bycatch and a subsequent increase in under-utilized target species catch. This boost in target species catch may increase utilization of processing capital and processing activity. (It should be noted that if under the current system bycatch has been underreported, with 100 percent observer coverage under the new system, the gains in increased target catches may be less than expected.) Consequently, the possibility of capital consolidation in the non-whiting shorebased sector may be less than in the shore-based whiting sector.

However, shifts in the distribution of landings across ports as a result of fleet consolidation, industry agglomeration, and the comparative advantage of ports (a function of bycatch rates in the waters constituting the operational area for the port, differences in infrastructure, and other factors) could lead to consolidation in processing activity at a localized or regional scale and an expansion in processing activity elsewhere. To mitigate harm to adversely impacted non-whiting shoreside processors, the adaptive management program provides a mechanism to distribute non-whiting QS to processors, thereby ensuring that some processors receive greater landings of groundfish than would otherwise be the case.

As noted above, the preferred alternative may reduce the power of non-whiting shoreside processors to negotiate ex-vessel prices with harvesters. The larger harvest volume due to bycatch avoidance may lower processor average costs, which could offset the negative effects on non-whiting shoreside processors of a shift in bargaining power. In addition, QS could be purchased by processors over the long term, thereby increasing processors' negotiation power. However, the accumulation limits included in the preferred alternative would limit the ability of processors to purchase substantial quantities of QS. Alternatively, the adaptive management provision could be used to allocate QS to non-whiting shoreside processors, thereby providing them additional leverage when negotiating terms with harvesters.

The allocation of 20 percent of the initial shore-based whiting QS to the shoreside processor portion of the groundfish fishery would give these processors more influence in negotiations over ex-vessel prices and would tend to offset the gains in bargaining power for harvesters. For example, a processor could use QS to induce a harvester that is short of quota pounds for a Pacific whiting trip to make deliveries under specified conditions and prices. However, because of a reduction in peak harvest volume, fewer processing companies and/or facilities may be necessary to handle harvest volumes of Pacific whiting, meaning some companies may find themselves without enough product to continue justifying processing operations of Pacific whiting. Revenues from harvesting and processing trawl-caught groundfish are expected to increase. Revenues in the non-whiting trawl sector are projected to increase by 20 to 80 percent in a

rationalized fishery, depending on bycatch rate reductions and stock status. Revenue increases are mainly expected because under rationalized fisheries, target species quotas can be more fully utilized. Currently, in the nonwhiting sector, cumulative landing limits for target species have to be set lower because the bycatch of overfished species cannot be directly controlled. Introducing accountability at the individual vessel level provides a strong incentive for bycatch avoidance (because of the actual or implicit cost of quota needed to cover bycatch species) and prevents the bycatch of any one vessel from affecting the harvest opportunity of others. Whiting fisheries are more directly managed through quotas, and in recent years, by limits on bycatch. Beginning in 2009, bycatch limits have been established for each of the three whiting sectors. For the shore-based and mothership whiting sectors, the fishery can potentially close before the whiting allocation is fully harvested because a bycatch cap is reached. (The catcher-processor sector currently operates as a voluntary co-op and is therefore better able to coordinate harvest strategy to avoid reaching bycatch limits.) However, in general, the whiting sectors have been able to harvest their sector allocations. Whiting vessels could increase revenues due to improved product recovery as a result of the ability to better control harvest timing. As mentioned above, the ability for vessels managed under IFQs to use other types of legal groundfish gear could allow some increases in revenue by targeting higher-value line or pot gear caught fish.

Harvester and possibly processor costs are expected to decrease because of productivity gains related to fleet consolidation. Cost savings would be due to lower capital requirements and a move to more efficient vessels in the nonwhiting sector. Costs are predicted to decrease by as much as 60 percent annually, which based on estimates of current operating costs would represent a \$13.8 million decrease. Similar levels of consolidation are expected for shorebased and mothership catcher vessels. Proposed mitigation measures could reduce these costs savings. For example, a 1 percent quota share accumulation limit could reduce cost savings by as much as 20 percent. But the accumulation limits considered in the alternatives are not expected to introduce higher costs at current prices and harvest volume. The proposed action would introduce some new costs. First, up to 3 percent of the value of landings may be assessed to cover

administrative and management costs. Second, new at-sea observer requirements would be introduced and vessels would have to pay the cost, estimated at \$350–\$500 a day.

Processors may see cost-savings to the degree that rationalization allows greater control over the timing and location of landings. Processors could use current plant capacity more efficiently, because available information suggests that processing facilities are currently underutilized. Fleet consolidation could also drive some cost savings on the part of processors if landings occur in fewer locations. This would reduce the need for facilities and/or transport. Under the proposed action, processors would be required to pay the costs of plant monitors, who would verify landings. These monitors would not be directly employed by the processing firm but, similar to at-sea observers, be independent contractors.

Rationalization of the groundfish trawl sector is expected to free up capital and labor because of increases in productivity. (Since the basic input, trawl-caught fish, is subject to an underlying constraint due to biological productivity, increases in labor and capital productivity are expected to reduce the amount of those inputs needed.) However, from a national net benefit perspective these effects are neutral since capital and labor can be put to some productive use elsewhere in the broader economy. Also, current groundfish fishery participants that receive QS (trawl limited entry trawl permit holders and eligible shoreside processors) are compensated to the degree that the asset value of the QS covers capital losses.

It was noted in the RIR/IRFA associated with the initial issuance rule that tracking and monitoring costs of this program will be provided in more detail with this rule. The program details associated with this rule do not change; however, the RIR/IRFA now presents an explicit range of costs based on different daily observer cost rates. What follows is a summary of those estimates—these estimates are focused on the shorebased non-whiting fishery so that it is compared to the results of the NWFSC economic model of this fishery. After a transition period, for the shore-based fishery, the initial estimates of the annual Federal and State agency costs to run this program are about \$5 million; and after the transition period, these costs could fall to \$4.0 million. Based on the observer cost of \$500 per day, the annual costs to the vessel of observer monitoring is about \$4 million. Based on \$350 per day, the annual costs

of compliance monitors is just over \$1 million. These figures add up to about \$10 million. From a cost-benefit viewpoint, if consolidation leads to \$14 million savings from reduced harvesting costs and the new program increases the tracking and monitoring costs of \$10 million, there is a projected net gain of about \$4 million. These estimates do not take into account expectations that agency, observer and compliance costs are likely to be reduced due to consolidation or the expected increases in revenues discussed above. Better planning by the industry and companies that provide the observers and compliance monitors should further reduce costs. Recent analyses developed for the North Pacific Council and for the New England Council were reviewed. The New England analysis includes observer cost estimates associated with the Canadian Pacific Groundfish fishery. Based on a review of these analyses, a daily observer rate of \$350 a day is feasible. If so, the annual shoreside non-whiting costs of observers and catch monitors will add up to about \$3.5 million.

In contrast to the shoreside non-whiting fishery, the effect of the preferred alternative on revenues and costs in the whiting sector of the limited entry trawl fishery can only be discussed qualitatively, as there is no economic model because of lack of cost data. The lower motivation to "race for fish" due to coop harvest privileges is expected to result in improved product quality, slower-paced harvest activity, increased yield (which should increase exvessel prices), and enhanced flexibility and ability for business planning. The overall effect of these changes would be higher revenues and profits for harvesters in the shoreside and mothership portions of the whiting fishery in comparison to the no action alternative. Under the preferred alternative, some consolidation may occur in the shoreside and mothership sectors of the Pacific whiting fishery, though the magnitude of consolidation is expected to be less than in the non-whiting sector. The existing catcher-processor coop would continue under the preferred alternative, with effects on the catcher-processor sector that look similar, or identical, to those of the no action alternative. However, the change from a vessel-based limit under Amendment 15 to the permit-based limit of Amendment 21 will provide additional flexibility that currently does not exist in the catcher-processor fishery. Using estimates of \$350 per day for observers and compliance monitors, the total annual costs of observers and

catch monitors for the whiting sector (shoreside harvesters, processors, mothership processors, mothership catcher vessels, and catcher-processors) is about \$1.5 million. Additional agency costs associated with managing these whiting fisheries are included in the estimates provided in the above discussion on shore-based non-whiting costs.

This proposed rule would regulate businesses that harvest groundfish and processors that wish to process limited entry trawl groundfish. Under the RFA, the term "small entities" includes small businesses, small organizations, and small governmental jurisdictions. For small businesses, the SBA has established size criteria for all major industry sectors in the U.S., including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of \$4.0 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the \$4.0 million criterion for fish harvesting operations. A wholesale business servicing the fishing industry is a small business if it employs 100 or fewer persons on a full time, part time, temporary, or other basis, at all its affiliated operations worldwide. For marinas and charter/party boats, a small business is one with annual receipts not in excess of \$7.0 million. The RFA defines a small organization as any nonprofit enterprise that is independently owned and operated and is not dominant in its field. The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

NMFS makes the following conclusions based primarily on analyses associated with fish ticket data and limited entry permit data, available employment data provided by processors, information on the charterboat and Tribal fleets, and available industry responses industry to on-going survey on ownership. Entities were analyzed as to whether they were only affected by the Amendment 21 allocation processes (non-trawl), or if

they were affected by both Amendment 20 and 21 (trawl).

The non-trawl businesses are associated with the following fleets: limited entry fixed gear (approximately 150 companies), open access groundfish (1,100), charterboats (465), and the Tribal fleet (four Tribes with 66 vessels). Available information on average revenue per vessel suggests that all the entities in this group can be considered small.

For the trawl sector, there are 177 permit holders. Nine limited entry trawl permits are associated with the catcher-processing vessels which are considered "large" companies. Of the remaining 168 limited entry permits, 25 limited entry trawl permits are either owned or closely associated with a "large" shore-based processing company or with a non-profit organization who considers itself a "large" organization. Nine other permit owners indicated that they were large "companies." Almost all of these companies are associated with the shorebased and mothership whiting fisheries. The remaining 134 limited entry trawl permits are projected to be held by "small" companies. Three of the six mothership processors are "large" companies. Within the 14 shorebased whiting first receivers/processors, there are four "large" companies. Including the shorebased whiting first receivers, in 2008, there were 75 first receivers that purchased limited entry trawl groundfish. There were 36 small purchasers (less than \$150,000); 26 medium purchasers (purchases greater than \$150,000 but less than \$1,000,000); and 13 large purchasers (purchases greater than \$1.0 million). Because of the costs of obtaining a "processor site license", procuring and scheduling a catch monitor, and installing and using the electronic fish ticket software, these "small" purchasers will likely opt out of buying groundfish, or make arrangements to purchase fish from another company that has obtained a processing site license.

The major impacts of this rule appear to be on three groups: Shoreside processors which are a mix of large and small processors; and shore-based trawlers which are also a mix of large and small companies. The non-whiting shore-based trawlers are currently operating at a loss or at best are "breaking even." The new rationalization program would lead to profitability, but only with a reduction of about 60 percent of the fleet. This program would lead to major changes in the fishery. To help mitigate against these changes, as discussed above, the agency has announced its intent, subject to available Federal funding, that

participants would initially be responsible for 10 percent of the cost of hiring observers and catch monitors. The industry proportion of the costs of hiring observers and catch monitors would be increased every year so that by 2014, once the fishery has transitioned to the rationalization program, the industry would be responsible for 100 percent of the cost of hiring the observers and catch monitors. NMFS believes that an incrementally reduced subsidy to industry funding would enhance the observer and catch monitor program's stability, ensure 100 percent observer and catch monitor coverage, and facilitate the industries' successful transition to the new quota system. In addition, to help mitigate against the negative impacts of this program, the Council has adopted an Adaptive Management Program where starting in year 3 of the program, 10 percent of non-whiting QS would be set aside every year to address community impacts and industry transition needs. After reviewing the initial effects of ITQ programs in other parts of the world, the council had placed a short term QS trading prohibition so that fishermen can learn from their experiences and not make premature sales of their QS. The Council is also envisioning future regulatory processes that would allow community fisheries associations to be established to help aid communities and fishermen.

A summary of the proposed action is as follows. The proposed action is to replace the current, primary management tool used to control the West Coast groundfish trawl catch—a system of 2-month cumulative landing limits for most species and season closures for whiting—with a system requiring more individual accountability by the assignment of limited access privileges (LAPs). LAPs are a form of output control whereby an individual fisherman, community, or other entity is granted the privilege to catch a specified portion of the total allowable catch (TAC). The alternatives include (1) a catch-based IFQ system where all groundfish catch (landings plus bycatch) by LE trawl vessels would count against a vessel's IFQ holdings, which could be applied to the whole groundfish trawl fishery or selected trawl sectors; and (2) a system of coops that would be applied to one or more of the fishery sectors that target Pacific whiting. The status quo alternative (no action) could also be considered for application to one or more trawl fishery sectors even if one or both action alternatives (IFQs or coops) are chosen for the other trawl sectors.

The description of purpose and need in section 1.2 of the Amendment 20 DEIS also outlines the objectives of the proposed action. The introductory paragraph in Chapter 1 and section 1.3 of the DEIS, background to the purpose and need, provide information on the legal basis for the proposed action (proposed rule). The Council articulated the following goal for the trawl rationalization program: "Create and implement a capacity rationalization plan that increases net economic benefits, creates individual economic stability, provides for full utilization of the trawl sector allocation, considers environmental impacts, and achieves individual accountability of catch and bycatch." The objectives supporting this goal are: Provide a mechanism for total catch accounting; provide for a viable, profitable, and efficient groundfish fishery; promote practices that reduce bycatch and discard mortality, and minimize ecological impacts; increase operational flexibility; minimize adverse effects from an IFQ program on fishing communities and other fisheries to the extent practical; promote measurable economic and employment benefits through the seafood catching, processing, distribution elements, and support sectors of the industry; provide quality product for the consumer; and increase safety in the fishery.

As part of the proposed action, NMFS would place observers and/or cameras on board all catcher vessels in the shore-based sector (which combines the current shore-based whiting and non-whiting trawl sectors). Existing requirements for motherships, catcher vessels in the MS sector, and C/Ps would continue. Independently contracted processing plant monitors would track landings. Also, there would be new reporting requirements related to the tracking of QS and QP in the shore-based fishery.

No Federal rules have been identified that duplicate, overlap, or conflict with the alternatives. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (*see ADDRESSES*).

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for the Economic Data Collection survey is estimated to average 8 hours per response (268 responses). Public reporting burden for QS Permit Renewal Application is estimated to average 0.33 hour per response (120 responses), First Receiver Site License Initial Issuance/Renewal

Application is estimated to average 0.5 hour per response (80 responses), MS Renewal Application is estimated to average 0.33 hour per response (6 responses), MS Transfer Application is estimated to average 0.5 hour per response (3 responses) C/P Coop Permit Transfer Application is estimated to average 3 hours per response (1 response), MS Coop Permit Application is estimated to average 3 hours per response (1 response), Change in vessel fishing for coop form is estimated to average 0.33 hours per response (3 responses), Material Change form is estimated to average 2 hours per response (3 responses), MS Withdrawal/Mutual Exception form is estimated to average 2 hours per response (2 responses), Ownership Interest Form Renewal is estimated to average 0.5 hour per response (156 responses), Ownership Interest Form Transfer, is estimated to average 0.5 hour per response (20 responses), Vessel Account Registration (Initial) is estimated to average 0.5 hour per response (120 responses), Vessel Account Registration (ongoing) is estimated to average 0.5 hour per response (10 responses), Vessel Account Renewal (annual), is estimated to average 0.33 hour per response (30 responses), QS Account Registration is estimated to average 1 hour per response (1 response), QS/QP transfer from QS account to vessel account is estimated to average 0.25 hour per response (180 responses), QP Transfer from vessel account to vessel account is estimated to average 0.25 hour per response (600 responses), Transaction Dispute Request is estimated to average 1 hour per response (10 responses). Public reporting burden for the catch monitor providers, Application preparation & submission is estimated to average 10 hours per response (3 responses), Training registration is estimated to average 1 hour per response (3 responses), Exit Interview registration is estimated to average 10 minutes per response (3 responses), Appeals—written response & submission is estimated to average 4 hours per response (1 response). Public reporting burden for the catch monitors application appeals—written response & submission is estimated to average 4 hours per response (5 responses). Public reporting burden for the catch monitoring plans, Preparation & submission is estimated to average 4 hours per response (80 responses), Inspection, is estimated to average 2 hours per response (80 responses), inseason scale testing is estimated to average 1 hour per response (80 responses), reports are estimated to

average 10 minutes per response (2400 responses). Public reporting burden for electronic fish tickets are estimated to average 10 minutes per response (400 responses). Public reporting burden for the changes to the declaration reporting system and the changes to the observer program are not expected to change the public reporting burden. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS, Northwest Region, at the **ADDRESSES** section above; e-mail to David_Rostker@omb.eop.gov; or fax to 202-395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the FMP for the Pacific Coast groundfish

fishery was not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999, Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to complete an analysis of salmon take in the bottom trawl fishery.

NMFS prepared a Supplemental Biological Opinion dated March 11, 2006, which addressed salmon take in both the Pacific whiting midwater trawl and groundfish bottom trawl fisheries. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 fish over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000 fish.

Since 1999, annual Chinook bycatch has averaged about 8,450 fish. The Chinook ESUs most likely affected by the whiting fishery has generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior "no jeopardy" conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA.

The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) and the southern DPS of Pacific eulachon (75 FR 13012, March 18, 2010) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC's Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

This proposed rule was developed after meaningful consultation and collaboration with the Tribal representative on the Council who has agreed with the provisions that apply to Tribal vessels.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: August 20, 2010.

Samuel D. Rauch III,
Deputy Assistant Administrator for
Regulatory Programs, National Marine
Fisheries Service.

For the reasons stated in the preamble, 50 CFR Chapter VI, as proposed to be amended at 75 FR 32994, June 10, 2010, is further proposed to be amended as follows:

50 CFR Chapter VI

PART 660—FISHERIES OFF WEST COAST STATES

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

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

2. In § 660.11, the definitions for "processing or to process" and "processor" are revised to read as follows:

§ 660.11 General definitions.

* * * * *

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or

rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done. (*Also see* an exception to certain requirements at § 660.131(a), subpart D pertaining to Pacific whiting shoreside vessels 75-ft (23-m) or less LOA that, in addition to heading and gutting, remove the tails and freeze catch at sea.)

(1) At-sea processing means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another, whether shore-based or on the water.

(2) Shorebased processing or processing means processing that takes place at a facility that is permanently fixed to land. (*Also see* the definition for shoreside processing at § 660.140, subpart D which defines shoreside processing for the purposes of qualifying for a Shorebased IFQ Program QS permit.) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processing means either of the following:

(i) Any activity that takes place shoreside; and that involves: Cutting groundfish into smaller portions; or freezing, cooking, smoking, drying groundfish; or packaging that groundfish for resale into 100 pound units or smaller; for sale or distribution into a wholesale or retail market.

(ii) The purchase and redistribution in to a wholesale or retail market of live groundfish from a harvesting vessel.

Processor means a person, vessel, or facility that engages in commercial processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing. (*Also see* the definition for processors at § 660.140, subpart D which defines processor for the purposes of qualifying for initial issuance of QS in the Shorebased IFQ Program.)

(1) For the purposes of economic data collection in the Shorebased IFQ Program, shorebased processor means a person that engages in commercial processing, that is an operation working on U.S. soil or permanently fixed to land, that takes delivery of fish that has not been subject to at-sea processing or shorebased processing; and that thereafter engages that particular fish in shorebased processing; and excludes retailers, such as grocery stores and markets, which receive whole or headed and gutted fish that are then filleted and packaged for retail sale. At § 660.114(b), trawl fishery—economic data collection program, the definition of processor is further refined to describe which shorebased processors are required to

submit their economic data collection forms.

(2) [Reserved]

* * * * *

3. In § 660.12, paragraph (e)(7) and (e)(8) are revised, paragraph (f) is redesignated as paragraph (g), and a new paragraph (f) is added to read as follows:

§ 660.12 General groundfish prohibitions.

* * * * *

(e) * * *

(7) Fail to provide departure or cease fishing reports specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(8) Fail to meet the vessel responsibilities specified at §§ 660.140, 660.150, 660.160, subpart D; § 660.216, subpart E; or § 660.316, subpart F.

(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 monitoring procedure employed by a catch monitor, including either mechanically or manually sorting or discarding catch before its monitored.

(3) Tamper with, destroy, or discard a catch monitor's collected samples, equipment, records, photographic film, papers, or personal effects.

(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) 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.

* * * * *

4. In § 660.13, paragraph (d)(5)(iv) introductory text, paragraph (d)(5)(iv)(A) introductory text, and paragraphs (d)(5)(iv)(A)(1) through (4), and (6) through (8) are revised to read as follows:

§ 660.13 Recordkeeping and reporting.

* * * * *

(d) * * *

(5) * * *

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

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

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

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

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

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

* * * * *

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

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

(8) Limited entry demersal trawl, shorebased IFQ,

* * * * *

5. In § 660.14, paragraph (b)(1) is revised to read as follows:

§ 660.14 Vessel Monitoring System (VMS) requirements.

* * * * *

(b) * * *

(1) Any vessel registered for use with a limited entry "A" endorsed permit (*i.e.*, not a MS permit) that fishes in State or Federal waters seaward of the

baseline from which the territorial sea is measured off the States of Washington, Oregon or California (0–200 nm offshore).

* * * * *

6. Section 660.15 is 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. Unless otherwise specified by regulation, the operator or manager must retain, for 3 years, a copy of all records described in this section and make available the records upon request of NMFS staff or authorized officer.

(b) *Scales used to weigh catch at sea—performance and technical requirements.* (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 50 CFR 679.28(b)(1) and (2), and must be approved by NMFS.

(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 50 CFR 679.28(b).

(3) *Daily testing.* Each scale must be tested daily and meet the maximum permissible error (MPE) requirements described at paragraph (b)(4) of this section.

(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 50 CFR 679.28(b)(7).

(ii) *Platform scales used for observer sampling on MSs 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.

(iv) *Requirements for all at-sea scale tests.* The vessel operator must ensure that vessel crew:

(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 authorized officers. 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. Each scale test report form must be signed by the vessel operator immediately following completion of each scale test.

(5) *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.

(6) *Printed reports from the scale.* The vessel owner must ensure that the printed reports are provided to NMFS 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 authorized officers. 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. 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, slime, 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;

(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 authorized officer.

(iii) *Platform scales used for observer sampling.* A platform scale used for observer sampling is not required to produce a printed record.

(c) *Scales used to weigh catch at IFQ first receivers—performance and technical requirements.* 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 sticker indicating that the scale is currently approved in accordance with the laws of the State where the scale is located.

(2) *Visibility.* NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the weighing of catch on the scale and be allowed to read the scale display at all times.

(3) *Printed scale weights.* (i) An IFQ first receiver must ensure that printouts of the scale weight of each delivery or

offload are made available to NMFS staff, to NMFS-authorized personnel, or to authorized officers at the time printouts are generated. An IFQ 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, NMFS-authorized personnel, or authorized officers for 3 years after the end of the fishing year during which the printout was made.

(ii) All scales identified in a catch monitoring plan (*see* § 660.140(f)(3), subpart D) must produce a printed record for each delivery, or portion of a delivery, weighed on that scale, unless specifically exempted by NMFS. NMFS may exempt, as part of the NMFS-accepted catch monitoring plan, scales not designed for automatic bulk weighing from part or all of the printed record requirements. For scales that must produce a printed record, the printed record must include:

(A) The IFQ 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.

(4) *Inseason scale testing.* IFQ first receivers must allow, and provide reasonable assistance to NMFS staff, NMFS-authorized personnel, and authorized officers 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.

(i) *Inseason testing criteria.* To pass an inseason test, NMFS staff or authorized officers must be able to verify that:

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

(B) Weight values are visible on the display until the value is printed;

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

Test load in scale divisions	Maximum error in scale divisions
(1) 0–500	1
(2) 501–2,000	2
(3) 2,001–4,000	3
(4) >4,000	4

(D) *Automatic weighing systems.* An automatic weighing system must be provided and operational that will prevent fish from passing over the scale or entering any weighing hopper unless the following criteria are met:

(1) No catch may enter or leave a weighing hopper until the weighing cycle is complete;

(2) No product may be cycled and weighed if the weight recording element is not operational; and

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

(ii) [Reserved]

(d) *Electronic fish tickets.* IFQ first receivers using the electronic fish ticket software provided by Pacific States Marine Fisheries 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 Fisheries 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 Fisheries Commission, or compatible with the data export specifications specified by Pacific States Marine

Fisheries Commission and for maintaining Internet access sufficient to transmit data files via e-mail. 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.

7. Section 660.16 is revised to read as follows:

§ 660.16 Groundfish observer program.

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

(b) *Purpose.* The purpose of the Groundfish Observer Program is to collect fisheries data 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.

(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.

West coast groundfish fishery	Regulation section
(1) Shorebased IFQ Program—Trawl Fishery	§ 660.140, subpart D.
(2) MS Coop Program—Whiting At-sea Trawl Fishery	§ 660.150, subpart D.

<i>West coast groundfish fishery</i>	<i>Regulation section</i>
(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.

8. Section 660.17 is added 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) *Catch monitor 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 paragraph (e)(1)(i) through (viii) of this section 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.

(3) Have not been decertified as an observer or catch monitor under provisions in §§ 660.18, 660.140(h)(6), 660.150(g)(6), and 660.160(g)(6).

(4) *Existing catch monitors as of 2010.* A catch monitor who has completed sampling or monitoring activities in 2010 in NMFS-managed West Coast groundfish fisheries, and has not had his or her certification revoked during or after that time, will be considered to have met his or her certification requirements under this section. These catch monitors will be issued a new catch monitor certification prior to their first deployment to a first receiver after December 31, 2010, unless NMFS determines that he or she has not completed any additional training required for this program.

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

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

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

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

(4) Keep confidential and not disclose data and observations collected at the processing facility to any person except, NMFS staff 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, *Attn:* Catch Monitor Coordinator, 7600 Sand Point Way NE., Seattle, WA 98115. An application for a catch monitor provider permit shall consist of a narrative that contains the following:

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

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

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

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

or employee of a catch monitor provider.

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

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

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

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

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

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

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

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

(C) Absence of a conflict of interest.

(D) Absence of relevant criminal convictions.

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

(4) *Existing catch monitor providers as of 2010.* NMFS-certified providers

who deployed catch monitors in a NMFS-managed West Coast groundfish fishery or observers under the North Pacific Groundfish Program in 2010, are exempt from the requirement to apply for a permit for 2011 and will be issued a catch monitor provider permit effective through December 31, 2011, except that a change in ownership of an existing catch monitor provider or observer provider after January 1, 2011, requires a new permit application under this section. To receive catch monitor certification for 2012 and beyond, these exempted catch monitor providers must follow application procedures otherwise set forth in this section.

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

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

(vi) 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.

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

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

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

(viii) Have signed a statement indicating that they are free from conflict of interest as described under § 660.18(c); and

(ix) 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.

(4) *Catch monitors provided to a first receiver.*

- (i) Must have a valid catch monitor certification;
- (ii) Must not have informed the provider prior to the time of assignment that he or she is experiencing a mental illness or a physical ailment or injury developed since submission of the physician's statement, as required in paragraph (e)(1)(vii)(A) of this section that would prevent him or her from performing his or her assigned duties; and
- (iii) Must have successfully completed all NMFS required training and briefing before assignment.

(5) *Respond to industry requests for catch monitors.* A catch monitor provider must provide a catch monitor for assignment pursuant to the terms of the contractual relationship with the first receiver to fulfill first receiver requirements for catch monitor coverage under paragraph (e)(10)(i)(C)(1)(ii) of this section. An alternate catch monitor must be supplied in each case where injury or illness prevents the catch monitor from performing his or her duties or where the catch monitor resigns prior to completion of his or her duties. If the catch monitor provider is unable to respond to an industry request

for catch monitor coverage from a first receiver for whom the provider is in a contractual relationship due to the lack of available catch monitors, the provider must report it to NMFS at least 4 hours prior to the expected assignment time.

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

(i) Submit to NMFS all data, logbooks and reports as required under the catch monitor program deadlines.

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

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

(8) *Provide catch monitor assignment logistics.*

(i) A catch monitor provider must ensure each of its catch monitors under contract:

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

(B) Has Internet access for catch monitor program communications and data submission.

(C) Remains available to NOAA Office for Law Enforcement and the catch monitor program until the completion of the catch monitors' debriefing.

(D) Receives all necessary transportation, including arrangements and logistics, of catch monitors to the location of assignment, to all subsequent assignments during that assignment, and to the debriefing location when an assignment ends for any reason; and

(E) Receives lodging, per diem, and any other services necessary to catch monitors assigned to first receivers, as specified in the contract between the catch monitor and catch monitor provider.

(F) While under contract with a permitted catch monitor provider, catch monitor shall be provided with accommodations in accordance with the contract between the catch monitor and the catch monitor provider. If the catch monitor provider is responsible for providing accommodations under the contract with the catch monitor, the

accommodations must be at a licensed hotel, motel, bed and breakfast, or other accommodations that has an assigned bed for each catch monitor that no other person may be assigned to for the duration of that catch monitor's stay.

(ii) [Reserved]

(9) *Catch monitor assignment limitations and workload.*

(i) Not assign a catch monitor to the same first receiver for more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

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

(10) *Maintain communications with catch monitors.* A catch monitor provider must have an employee responsible for catch monitor activities on call 24 hours a day to handle emergencies involving catch monitors or problems concerning catch monitor logistics, whenever catch monitors are assigned, or in transit, or awaiting first receiver reassignment.

(11) *Maintain communications with the catch monitor program office.* A catch monitor provider must provide all of the following information by electronic transmission (e-mail), fax, or other method specified by NMFS.

(i) *Catch monitor training, briefing, and debriefing registration materials.* This information must be submitted to the catch monitor program at least 7 business days prior to the beginning of a scheduled catch monitor certification training or briefing session.

(A) Training registration materials consist of the following:

(1) Date of requested training;

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

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

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

(5) Projected candidate assignments. Prior to the completion of the training session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of catch monitor's contract.

(B) Briefing registration materials consist of the following:

(1) Date and type of requested briefing session;

(2) List of catch monitors to attend the briefing session, that includes each catch monitor's full name (first, middle, and last names);

(3) Projected catch monitor assignments. Prior to the catch

monitor's completion of the briefing session, the catch monitor provider must submit to the catch monitor program a statement of projected catch monitor assignments that includes each catch monitor's name and length of observer contract.

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

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

(2) [Reserved]

(ii) *Catch monitor provider contracts.*

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

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

(B) Catch monitors.

(iii) *Change in catch monitor provider management and contact information.* A catch monitor provider must submit to the catch monitor program any change of management or contact information submitted on the provider's permit application under paragraph (d)(1) of this section within 30 days of the effective date of such change.

(iv) *Catch monitor status report.* Each Tuesday, catch monitor providers must provide NMFS with an updated list of

contact information for all catch monitors that includes the catch monitor's name, mailing address, e-mail address, phone numbers, first receiver assignment for the previous week and whether or not the catch monitor is "in service", indicating when the catch monitor has requested leave and/or is not currently working for the provider.

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

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

(A) Any information regarding possible catch monitor harassment;

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

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

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

(12) *Replace lost or damaged gear.* A catch monitor provider must replace all lost or damaged gear and equipment issued by NMFS to a catch monitor under contract to that provider.

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

9. 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 or catch monitor provider

certification pursuant to the regulations at §§ 660.17 and 660.18, subpart C.

(b) *Agency determinations on certifications*—Certification may be issued upon determination by the certification official that the candidate has successfully met all requirements for certification as specified in:

- (i) § 660.17(b) for catch monitors; and
- (ii) § 660.17(d) for catch monitor providers.

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

[Alternative 1 for paragraph (c) (Council-deemed)]

(c) *Limitations on conflict of interest for catch monitors*. (1) Catch monitors must not have a direct financial interest in the first receivers at which they serve as catch monitors or vessels that deliver to those first receivers, other than the provision of observer or catch monitor services.

(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's official duties.

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

(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.

[Alternative 2 for paragraph (c) (NMFS-proposed)]

(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's official duties.

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

(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, Alaska State waters, or in a Pacific Coast fishery managed by either the State or Federal governments in waters off Washington, Oregon, or California, including but not limited to:

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

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

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

(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 specified 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 § 660.17(c) or (e), 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*. Pursuant to § 679.43, a catch monitor who receives an IAD that revokes certification may appeal within 30 days of the determination revoking the certification.

10. In § 660.25, paragraphs (b)(1)(i)(A) and (B) are removed; paragraph (b)(4)(i)(F) is added; paragraphs (b)(4)(iv)(A), (b)(4)(v)(A), (b)(4)(v)(C), (b)(4)(vi)(C), and (e) are revised to read as follows:

§ 660.25 Permits.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(F) A limited entry permit will not be renewed until a complete economic data collection form is submitted as required under § 660.113(b), (c) and (d), subpart D. The permit renewal will be marked incomplete until the required information is submitted.

* * * * *

(iv) *Changes in permit ownership and permit holder*—(A) *General*. The permit owner may convey the limited entry permit to a different person. The new permit owner will not be authorized to use the permit until the change in permit ownership has been registered with and approved by the SFD. The SFD will not approve a change in permit ownership for a limited entry permit with a sablefish endorsement that does not meet the ownership requirements for such permit described at paragraph (b)(3)(iv)(C) of this section. The SFD

will not approve a change in permit ownership for a limited entry permit with a MS/CV endorsement or an MS permit that does not meet the ownership requirements for such permit described at § 660.150(g)(3), subpart D, and § 660.150(f)(3), subpart D, respectively. Change in permit owner and/or permit holder applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. During the initial issuance application period for the trawl rationalization program, NMFS will not review or approve any request for a change in limited entry trawl permit owner at any time during the application period as specified at § 660.140(d)(8)(viii) for QS applicants, at § 660.150(g)(6)(vii) for MS/CV endorsement applicants, and at § 660.160(d)(7)(vii) for C/P endorsement applicants.

(v) *Changes in vessel registration-transfer of limited entry permits and gear endorsements*—(A) *General*. A permit may not be used with any vessel other than the vessel registered to that permit. For purposes of this section, a permit transfer occurs when, through SFD, a permit owner registers a limited entry permit for use with a new vessel. Permit transfer applications must be submitted to SFD with the appropriate documentation described at paragraph (b)(4)(vii) of this section. Upon receipt of a complete application, and following review and approval of the application, the SFD will reissue the permit registered to the new vessel. Applications to transfer limited entry permits with sablefish endorsements will not be approved until SFD has received complete documentation of permit ownership as described at paragraph (b)(3)(iv)(C)(4) and as required under paragraph (b)(4)(vii) of this section. Applications to transfer limited entry permits with trawl endorsements or MS permits will not be approved until SFD has received complete EDC forms as required under § 660.114, subpart D.

(C) *Effective date*. Changes in vessel registration on permits will take effect no sooner than the first day of the next major limited entry cumulative limit period following the date that SFD receives the signed permit transfer form and the original limited entry permit, except for MS permits and C/P endorsement permits will take effect immediately upon reissuance to the new vessel. No transfer is effective until the limited

entry permit has been reissued as registered with the new vessel.

(vi) * * *

(C) *Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement*. Limited entry MS permits and limited entry permits with a MS/CV or C/P endorsement may be registered to another vessel up to two times during the fishing season as long as the second transfer is back to the original vessel. The original vessel is 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 the first vessel to which the permit is registered after January 1. After the original vessel has been established, the first transfer would be to another vessel, but any second transfer must be back to the original vessel. For a MS/CV endorsed permit on the second transfer back to the original vessel, that vessel must be used to fish exclusively in the MS Coop Program described § 660.150, and declare in to the limited entry midwater trawl, Pacific whiting mothership sector as specified at § 660.13(d)(5)(iv).

(e) *Coop permit*—(1) *MS coop permit*. A MS coop permit conveys a conditional privilege to an eligible coop entity to receive and manage 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 an eligible coop entity to receive and manage 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.

§ 660.26 [Removed]

11. Section 660.26 is removed.
12. In § 660.55, paragraph (i)(2) is revised to read as follows:

§ 660.55 Allocations.

(i) * * *

(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.

13. In § 660.60, paragraph (d)(1), paragraph (h)(2), and paragraph (h)(5)(ii), (h)(5)(iii), and (h)(5)(iv) are revised; and paragraphs (h)(5)(v) through (xii) are added to read as follows:

§ 660.60 Specifications and management measures.

(d) * * *

(1) Automatic actions are used in the Pacific whiting fishery to:

(i) Close an at-sea sector of the fishery when that sector's Pacific whiting allocation is reached, or is projected to be reached;

(ii) Close all at-sea sectors or a single sector of the fishery when a non-whiting groundfish species with allocations is reached or projected to be reached;

(iii) Reapportion unused allocations of non-whiting groundfish species from one at-sea sector of the Pacific whiting fishery to another.

(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.

(h) * * *

(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 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) * * *

(ii) *Weight limits and conversions.* To determine the round weight, multiply the processed weight times the conversion factor. For participants in the Shorebased IFQ Program landing sorted catch, the weight conversions are provided below for purposes of applying QP. For participants in the limited entry fixed gear or open access fisheries, 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 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.

(iii) *Sablefish.* The following conversions apply:

(A) The following conversion applies to both the limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.6.

(B) The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated) sablefish the weight conversion factor is 1.47.

(iv) *Lingcod.* The following conversions apply:

(A) North of 42° N. lat., for lingcod with the head removed, the minimum size limit is 18 inches (46 cm), which corresponds to 22 inches (56 cm) total length for whole fish.

(B) South of 42° N. lat., for lingcod with the head removed, the minimum size limit is 19.5 inches (49.5 cm), which corresponds to 24 inches (61 cm) total length for whole fish.

(C) The following conversions apply in both limited entry fixed gear and open access fisheries: For headed and gutted (eviscerated) lingcod, the weight conversion factor is 1.5; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(D) The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.43; for lingcod that has only been gutted with the head on, the weight conversion factor is 1.1.

(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 weight conversion factor is 1.67; for headed and gutted Pacific whiting with the tail removed the weight conversion factor is 2.0.

(vi) *Rockfish (including thornyheads), except POP.* The following conversions apply to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.75; for headed and gutted, western cut (head removed just in front of the collar bone and viscera removed), the weight conversion factor is 1.66; for headed and gutted, eastern cut (head removed just in behind the collar bone and viscera removed,) the weight conversion factor is 2.0.

(vii) *Pacific ocean perch (POP).* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.6.

(viii) *Pacific cod.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.58.

(ix) *Dover sole, English sole, and "other flatfish."* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.53.

(x) *Petrale sole.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.51.

(xi) *Arrowtooth flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.35.

(xii) *Starry flounder.* The following conversion applies to vessels landing sorted catch in the Shorebased IFQ Program: For headed and gutted (eviscerated), the weight conversion factor is 1.49.

* * * * *

14. Section 660.100 is revised to read as follows:

§ 660.100 Purpose and scope.

This subpart covers the Pacific coast groundfish limited entry trawl fishery. Under the trawl rationalization program, the limited entry trawl fishery consists of the Shorebased IFQ Program, the MS

Coop Program, and the C/P Coop Program. Nothing in these regulations shall be construed to modify, impair, or supersede the operation of any of the antitrust laws. The trawl rationalization program creates limited access privileges. These limited access privileges, including the QS or IBQ, QP or IBQ pounds, and catch history assignments, may be revoked, limited or modified at any time in accordance with the MSA—and do not create any right of compensation to the holder of the limited access privilege if it is revoked, limited, or modified. The trawl rationalization program does not create any right, title, or interest in or to any fish before the fish is harvested by the holder and shall be considered a grant of permission to the holder of the limited access privilege to engage in activities permitted by the trawl rationalization program.

15. In § 660.111, the following definitions are removed: "Pacific whiting shoreside first receivers", "Pacific whiting shoreside or shore-based fishery", "Pacific whiting shoreside vessel," and "Vessel limits"; "Pacific whiting IFQ fishery" is revised; and new definitions are added in alphabetical order for: "accumulation limits," "charterer," "complete economic data collection (EDC) form," "IFQ trip", "lessee," and "Pacific whiting IFQ trip".

§ 660.111 Trawl fishery—definitions.

* * * * *

Accumulation limits mean the maximum extent of permissible ownership, control or use of a privilege within the trawl rationalization program, and include the following:

(1) *Shorebased IFQ Program.* (i) *Control limits* means the maximum amount of QS that a person may own or control, as described at § 660.140(d)(4).

(ii) *Vessel limits* means the maximum amount of QP a vessel can hold, acquire, and/or use during a calendar year, and specify the maximum amount of QP that may be registered to a single vessel during the year (QP Vessel Limit) and, for some species, the maximum amount of unused QP registered to a vessel account at any one time (Unused QP Vessel Limit), as described at § 660.140(e)(4).

(2) *MS Coop Program.* (i) MS permit usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a person may cumulatively process, no more than 45 percent, as described at § 660.150(f)(3)(i).

(ii) MS/CV permit ownership limit means the maximum amount of catch history assignment that a person may own, no more than 20 percent of the MS

sector's allocation of Pacific whiting, as described at § 660.150(g)(3)(i).

(iii) Catcher vessel usage limit means the maximum amount of the annual mothership sector Pacific whiting allocation that a vessel may catch, no more than 30 percent, as described at § 660.150(g)(3)(ii).

* * * * *

Charterer means, for the purpose of economic data collection program, a person, other than the owner of the vessel, who: Entered in to any agreement or commitment by which the possession or services of the vessel are secured for a period of time for the purposes of commercially harvesting or processing fish. A long-term or exclusive contract for the sale of all or a portion of the vessel's catch or processed products is not considered a charter.

* * * * *

Complete economic data collection (EDC) form means that a response is supplied for each question, sub-question, and answer-table cell. If particular question or sub-question is not applicable, "NA", must be entered in the appropriate space on the form. The form must also be signed and dated to certify that the information is true and complete to the best of the signatory's knowledge.

* * * * *

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 groundfish non-trawl, shorebased IFQ.

* * * * *

Lessee means, for the purpose of economic data collection program, a person, other than the owner of the vessel or facility, who: Was identified as the leaseholder, in a written lease, of the vessel or facility, or paid expenses of the vessel or facility, or claimed expenses for the vessel or facility as a business expense on a Federal income tax return, or on a State income tax return.

* * * * *

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 whiting 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)(iv)(A) during the dates that the Pacific whiting IFQ fishery primary season.

* * * * *

16. In § 660.112:

- a. Paragraph (f) is removed;
- b. Paragraph (a)(2) is added;
- c. Paragraph (a)(3)(iii) is added;
- d. Paragraph (a)(4) is redesignated as paragraph (a)(5), and a new paragraph (a)(4) is added; and
- e. Paragraphs (b) through (e) are added to read as follows:

§ 660.112 Trawl fishery—prohibitions.

* * * * *

(a) * * *

(2) *Sorting*. Fail to sort catch consistent with the requirements specified at § 660.130(d).

* * * * *

(3) * * *

(iii) Failure to submit a complete EDC form to NMFS as required by § 660.113.

* * * * *

(4) *Observers*. (i) Fish (including processing, as defined at § 600.10 of this chapter) 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.

* * * * *

(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 or that has a vessel account with a deficit (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 the deficit (negative balance) from that trip is documented, unless the deficit is within the limits of the carryover provision specified at § 660.140(e)(5), subpart D, in which case the vessel has 30 days after the QP for the following year are issued to eliminate the deficit.

(iv) Transfer the limited entry trawl endorsed permit to another vessel or sell the limited entry trawl endorsed permit to another owner if the vessel registered to the permit has 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 in more than one IFQ management area, specified at § 660.140(c)(2), on the same trip.

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

(ix) 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)(iv)(A), subpart C.

(x) Use midwater trawl gear to fish for Pacific whiting within an RCA outside the Pacific whiting IFQ fishery primary season as specified at § 660.131(b)(2)(iii).

(xi) Bring a haul on board before all catch from the previous haul has been stowed.

(xii) Process groundfish at-sea ("at-sea processing") by vessels in the Shorebased IFQ Program regardless of the type of gear used, with the following exceptions:

(A) A vessel that is 75-ft (23-m) or less LOA that harvests whiting and, in addition to heading and gutting, cuts the tail off and freezes the whiting, is not considered to be a catcher/processor nor is it considered to be processing fish, and

(B) A vessel that has a sablefish at-sea processing exemption, defined at § 660.25(b)(3)(iv)(D), subpart C may process sablefish at-sea.

(xiii) Retain any IFQ species/species group onboard a vessel unless the vessel has observer coverage. A vessel may deliver IFQ species/species groups to more than one IFQ first receiver, but must maintain observer coverage until all IFQ species from the trip are offloaded. Once transfer of fish begins, all fish aboard the vessel are counted as part of the same landing as defined at § 660.11.

(xiv) Discard IFQ species/species group onboard a vessel unless observer has documented the amount and species of the discards.

(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 § 660.130(d)(2) for the Shorebased IFQ Program, except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(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 transported 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 an IFQ landing without coverage by a catch monitor when one is required by regulations, unless NMFS has granted a written waiver exempting the IFQ first receiver from the catch monitor coverage requirements. On a case-by-case basis, a temporary written waiver may be granted by the Assistant Regional Administrator or designee if he/she determines that the failure to obtain coverage of a catch monitor was due to circumstances beyond the control of the first receiver. The duration of the waiver will be determined on a case-by-case basis.

(vi) Receive an IFQ landing without a NMFS-accepted catch monitoring plan or not in accordance with their NMFS-accepted catch monitoring plan.

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

(viii) Fail to comply with the IFQ first receiver responsibilities specified at § 660.140(b)(2).

(ix) 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.

(x) 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(h), subpart D; or

(iii) The vessel is completing processing of Pacific whiting taken on board prior to the close of 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(h), 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(b), 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) Catch, take, or harvest fish in the mothership non-coop fishery with a vessel 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 it 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) Catch, take, or harvest fish in the MS Coop Program with a vessel that does not have a valid VMS declaration for limited entry midwater trawl, Pacific whiting mothership sector, as specified at § 660.13(d)(5)(iv)(A), 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) Process more than 45 percent of the annual mothership sector's Pacific whiting allocation.

(8) Catch, take, or harvest fish before all catch from any previous haul has been transferred to a single vessel registered to a MS permit.

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

(10) Catch, take, or harvest fish for a MS coop with a vessel that has not been identified by the coop as a vessel

authorized to harvest that coop's allocation.

(11) Catch, take, or harvest fish in the non-coop fishery with a vessel registered to a MS/CV endorsed permit in the same year the MS/CV endorsed permit was registered to a vessel that fished as a member of a coop in the MS Coop Program.

(12) 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, except for minor operational amounts of catch lost by a catcher vessel provided the observer has accounted for the discard (*i.e.*, a maximized retention fishery).

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

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

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

(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 as a catcher/processor vessel in the same year that the vessel operates as a mothership in the mothership fishery.

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

(5) Fish in the C/P Coop Program with a vessel that is not identified in the C/P coop agreement.

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

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

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

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

17. In § 660.113, paragraphs (a) through (c) are added, and paragraph (d) is revised, to read as follows:

§ 660.113 Trawl fishery—recordkeeping and reporting.

* * * *

(a) *General requirements.* (1) 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.

(2) *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) *Economic data collection (EDC) program.* The following persons are required to submit an EDC form as specified at § 660.114:

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit.

(ii) All owners of a first receiver site license.

(iii) All owners and lessees of a shorebased processor.

(2) *Electronic vessel logbook.*

[Reserved]

(3) *Gear switching declaration.* Any person with a limited entry trawl permit participating in the Shorebased IFQ Program using groundfish non-trawl gear (*i.e.*, gear switching) must submit a valid gear declaration reporting such participation as specified in § 660.13(d)(5)(iv)(A).

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

(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, catch area, 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) Include as part of each electronic fish ticket submission, the actual scale weight for each groundfish species as specified by requirements at § 660.15(c) and the vessel identification number.

(B) Use for the purpose of submitting electronic fish tickets, and maintain in good working order, computer equipment as specified at § 660.15(d)(1);

(C) Install, use, and update as necessary, any NMFS-approved software described at § 660.15(d)(3);

(D) 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 (b)(4)(iv) 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) *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.

(v) *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 (EDC) program.* The following persons are required to submit a complete economic data collection form as specified at § 660.114.

(i) All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl MS/CV endorsed permit.

(ii) All owners, lessees, and charterers of a vessel registered to a MS permit.

(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 § 660.15(b), subpart C, for mothership vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight printouts are specified at § 660.15(b), subpart C, 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, NMPS staff, or authorized officers. 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 designed coop manager for the mothership coop must submit an annual report to the Pacific Fishery Management Council for their November meeting each year. The 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 submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

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

(d) *C/P Coop Program*—(1) *Economic data collection (EDC) program.* All owners, lessees, and charterers of a vessel registered to a C/P endorsed limited entry trawl permit are required to submit a complete economic data collection form as specified at § 660.114.

(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 § 660.15(b), subpart C, for C/P vessels.

(ii) *Printed scale reports.* Specific requirements pertaining to printed scale reports and scale weight print outs are

specified at § 660.15(b), subpart C, 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 authorized officers. 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 to the Pacific Fishery Management Council for their November meeting each year. The 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 submitted to the Pacific Fishery Management Council must be finalized to capture any additional fishing activity that year and submitted to NMFS by March 31 of the following year before a coop permit is issued for the following year.

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

18. Section 660.114 is added to read as follows:

§ 660.114 Trawl fishery—economic data collection program.

(a) *General.* The economic data collection (EDC) program collects mandatory economic data from participants in the trawl rationalization program. NMFS requires submission of an EDC form to gather ongoing, annual data for 2011 and beyond, as well as a onetime collection in 2011 of baseline economic data from 2009 through 2010.

(b) *Economic data collection program requirements.* The following fishery participants in the limited entry groundfish trawl fisheries are required to comply with the following EDC program requirements:

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
(1) Limited entry trawl catcher vessels.	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2009 or 2010.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher vessel registered to a limited entry trawl endorsed permit at any time in 2011 and beyond.	(A) For permit owner, a limited entry trawl permit application (including MS/CV endorsed limited entry trawl permit) will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration, vessel account actions, or if own QS permit, issuance of annual QP) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C and § 660.140(e), subpart D. (C) For a vessel lessee or charterer, participation in the groundfish fishery (including, but not limited to, issuance of annual QP if own QS) will not be authorized, until the required EDC for their operation of that vessel is submitted.
(2) Motherships	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a mothership vessel that received whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a mothership vessel registered to a MS permit at any time in 2011 and beyond.	(A) For permit owner, a MS permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(3) Catcher processors	(i) Baseline (2009 and 2010) economic data.	All owners, lessees, and charterers of a catcher processor vessel that harvested whiting in 2009 or 2010 as recorded in NMFS' NORPAC database.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.

Fishery participant	Economic data collection	Who is required to submit an EDC?	Consequence for failure to submit (In addition to consequences listed below, failure to submit an EDC may be a violation of the MSA)
	(ii) Annual/ongoing (2011 and beyond) economic data.	All owners, lessees, and charterers of a catcher processor vessel registered to a catcher processor permit at any time in 2011 and beyond.	(A) For permit owner, a C/P endorsed limited entry trawl permit application will not be considered complete until the required EDC for that permit owner associated with that permit is submitted, as specified at § 660.25(b)(4)(i), subpart C. (B) For a vessel owner, participation in the groundfish fishery (including, but not limited to, changes in vessel registration) will not be authorized until the required EDC for that owner for that vessel is submitted, as specified, in part, at § 660.25(b)(4)(v), subpart C. (C) For a vessel lessee or charterer, participation in the groundfish fishery will not be authorized, until the required EDC for their operation of that vessel is submitted.
(4) First receivers/ shorebased processors.	(i) Baseline (2009 and 2010) economic data. (ii) Annual/ongoing (2011 and beyond) economic data.	All owners and lessees of a shorebased processor and all buyers that received groundfish or whiting harvested with a limited entry trawl permit as listed in the PacFIN database in 2009 or 2010. (A) All owners of a first receiver site license in 2011 and beyond. (B) All owners and lessees of a shore-based processor (as defined under “processor” at § 660.11, subpart C, for purposes of EDC) that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver in 2011 and beyond.	A first receiver site license application for a particular physical location for processing and buying will not be considered complete until the required EDC for the applying processor or buyer is submitted, as specified at § 660.140(f)(3), subpart D. A first receiver site license application will not be considered complete until the required EDC for that license owner associated with that license is submitted, as specified at § 660.140(f)(3), subpart D.

(c) *Submission of the EDC form and deadline*—(1) *Submission of the EDC form*. The complete, certified EDC form must be submitted to *Attn: Economic Data Collection Program (FRAM Division)*, NMFS, Northwest Fisheries Science Center, 2725 Montlake Boulevard East, Seattle, WA 98112. A complete EDC form contains responses for all data fields, which include but are not limited to costs, labor, earnings, activity in a fishery, vessel or plant characteristics, value, quota, operational information, location of expenditures and earnings, ownership information and leasing information.

(2) *Deadline*. Complete, certified EDC forms must be mailed and postmarked by or hand-delivered to NMFS NWFSC no later than September 1, 2011, for baseline data, and, for the annual/ongoing data collection beginning September 1, 2012, September 1 each year for the prior year's data.

(d) *Confidentiality of information*. Information received on an EDC form will be considered confidential under applicable law and guidance.

(e) *EDC audit procedures*—(1) NMFS reserves the right to conduct verification of economic data with the submitter of the form. NMFS may employ a third party agent to conduct the audits.

(2) The submitter of the EDC form must respond to any inquiry by NMFS or a NMFS agent within 20 days of the date of issuance of the inquiry, unless an extension is granted by NMFS.

(3) The submitter of the form must provide copies of additional data to facilitate verification by NMFS or NMFS' agent upon request. The NMFS auditor may review and request copies of additional data provided by the submitter, including but not limited to, previously audited or reviewed financial statements, worksheets, tax returns, invoices, receipts, and other original documents substantiating the economic data submitted.

§ 660.116 [Removed]

19. Section 660.116 is removed.

20. In § 660.130, paragraphs (a) and (d) are revised to read as follows:

§ 660.130 Trawl fishery—management measures.

(a) *General*. Limited entry trawl vessels are those vessels registered to a limited entry permit with a trawl endorsement and those 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. 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 be exceeded. Federal commercial groundfish regulations are not intended to supersede any more restrictive State commercial groundfish regulations relating to Federally-managed groundfish.

* * * * *

(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) *First receivers*. 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 the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C, may weigh catch on a bulk scale before sorting as described at § 660.140(j)(2).

(ii) *Catcher vessels*. All catch must be sorted to the species groups specified in paragraph (d)(1) of this section for vessels with limited entry permits, except those retaining all catch during a Pacific whiting IFQ trip. The catch must not be discarded from the vessel and the vessel must not mix catch from hauls until the observer has sampled the catch. 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 (d)(1) of this section and all incidental catch (groundfish and non-groundfish species) must be accurately accounted for 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 mix catch from hauls until the observer has sampled the catch.

* * * * *

21. In § 660.131:

a. Paragraphs (a) and (b), the introductory text of paragraph (c), and paragraphs (e) and (f) are revised;

b. Paragraphs (g), (h), and (k) are removed;

c. Paragraphs (i) and (j) are redesignated as paragraphs (g) and (h); and

d. The newly redesignated 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 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 authorized to harvest the coop's allocation.

(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.

(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;

(ii) For catcher/processors, the period(s) when catching and at-sea processing is allowed for the catcher/processor sector (after the season closes at-sea processing of any fish already on board the processing vessel is allowed to continue); and

(iii) For vessels delivering to motherships, the period(s) when catching and at-sea processing is allowed for the mothership sector (after the season closes, at-sea processing of any fish already on board the processing vessel is allowed to continue).

(2) *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° and 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; the period between when catcher vessels make annual processor obligations and the start of the fishery; environmental conditions; timing of alternate or competing fisheries; industry agreement; fishing or processing rates; and other relevant information.

(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 sector allocation of whiting or non-whiting groundfish (with allocations) is reached or projected to be 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° and 40°30' N. lat.—April 1; and

(3) South of 40°30' N. lat.—April 15.

(3) *Trip limits in the whiting fishery*.

The "per trip" limit for whiting before the regular (primary) season for the shorebased 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 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:

* * * * *

(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 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 <http://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.

* * * * *

22. In § 660.140:
a. Paragraphs (a), (d)(1), (d)(4)(iv), and (d)(5) are revised;

b. Paragraph (i) is removed and paragraphs (j) through (m) are redesignated as paragraphs (i) through (l), and text is added to the newly redesignated paragraphs (i) through (l);

c. Paragraph (c) heading is revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and a new paragraph (c)(2) is added, and the newly redesignated paragraph (c)(3)(vi) is revised; and

d. Paragraphs (b), (c)(3)(vii), (d)(2), (d)(3), and (e) through (h) are added, and paragraph (d)(7) is added and reserved, to read as follows:

§ 660.140 Shorebased IFQ Program.

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(a) *General.* The Shorebased IFQ Program requirements in this section 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 Shorebased 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 transferable IBQ for Pacific halibut) and trip limits or set-asides for the remaining groundfish species or species groups. NMFS will issue a QS permit to eligible participants and will establish a QS account for each QS permit owner

to track the amount of QS or IBQ and QP or IBQ pounds owned by that owner. QS permit owners may own QS or IBQ for IFQ species, expressed as a percent of the allocation to the Shorebased IFQ Program for that species. NMFS will issue QP or IBQ pounds to QS permit owners, expressed in pounds, on an annual basis, to be deposited in the corresponding QS account. NMFS will establish a vessel account for each eligible vessel owner participating in the Shorebased IFQ Program, which is independent of the QS permit and QS account. In order to use QP or IBQ pounds, a QS permit owner must transfer the QP or IBQ pounds from the QS account in to the vessel account for the vessel to which the QP or IBQ pounds is to be assigned. Harvests of IFQ species may only be delivered to an IFQ first receiver with a first receiver site license. 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) *IFQ vessels*. (i) Vessels must be registered to a

groundfish limited entry permit, endorsed for trawl gear with no C/P endorsement.

(ii) To start a trip in the Shorebased IFQ Program, a vessel and its owner(s) (as described on the USCG documentation) must be registered to the same vessel account established by NMFS with no deficit (negative balance) for any species/species group.

(iii) All IFQ species/species group catch (landings and discards) must be covered by QP or IBQ pounds. Any deficit (negative balance in a vessel account) must be cured within 30 days from the date the deficit from that trip is documented in the vessel account, unless the deficit is within the limits of the carryover provision at paragraph (e)(5) of this section, in which case the vessel may declare out of the IFQ fishery for the year in which the deficit occurred and must cure the deficit within 30 days after the issuance of QP or IBQ pounds for the following year.

(iv) Any vessel with a deficit (negative balance) in its vessel account is prohibited from fishing that is within the scope of the Shorebased IFQ Program until sufficient QP or IBQ pounds are transferred in to the vessel account to remove any deficit, regardless of the amount of the deficit.

(v) A vessel account may not have QP or IBQ pounds (used and unused combined) in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limit, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are specified at paragraph (e)(4) of this section.

(vi) Vessels must use either trawl gear as specified at § 660.130(b), or a legal non-trawl groundfish gear under the gear switching provisions as specified at § 660.140(k).

(vii) Vessels that are registered to MS/CV endorsed permits may be used to fish in the Shorebased IFQ Program provided that the vessel is registered to a valid Shorebased IFQ Program vessel account.

(viii) 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 authorized by the MS coop.

(ix) Vessels that are registered to C/P endorsed permits may not be used to fish in the Shorebased IFQ Program.

(2) *IFQ first receivers*. The IFQ first receiver must:

(i) Ensure that all catch removed from a vessel making an IFQ delivery is

weighed on a scale or scales meeting the requirements described in § 660.15(c), subpart C;

(ii) Ensure that all catch is landed, sorted, and weighed in accordance with a valid catch monitoring plan as described in § 660.140(f)(3)(iii), subpart D.

(iii) Ensure that all catch is sorted, prior to first weighing, by species or species groups as specified at § 660.130(d), except the vessels declared in to the limited entry midwater trawl, Pacific whiting shorebased IFQ at § 660.13(d)(5)(iv)(A), subpart C may weigh catch on a before sorting as described at § 660.140(j)(2).

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

(v) Ensure that each scale produces a complete and accurate printed record of the weight of all catch in a delivery, unless exempted in the NMFS-accepted catch monitoring plan.

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

(vii) Ensure that each delivery of IFQ catch is monitored by a catch monitor and that the catch monitor is on site the entire time the delivery is being weighed or sorted.

(viii) Ensure that sorting and weighing is completed prior to catch leaving the area that can be monitored from the observation area.

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(c) *IFQ species, management areas, and allocations*. * * *

(2) *IFQ management areas*. A vessel participating in the Shorebased IFQ Program may not fish in more than one IFQ management area during a trip. IFQ management areas are as follows:

(i) Between the U.S./Canada border and 40°10' N. lat.,

(ii) Between 40°10' N. lat. and 36° N. lat.,

(iii) Between 36° N. lat. and 34°27' N. lat., and

(iv) Between 34°27' N. lat. and the U.S./Mexico border.

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(3) * * *

(vi) For each IFQ species, NMFS will determine annual sub-allocations to individual QS accounts by multiplying the percent of QS or IBQ registered to the account by the amount of each

respective IFQ species allocated to the Shorebased IFQ Program for that year. For each IFQ species, NMFS will issue QP or IBQ pounds to the respective QS account in the amount of each sub-allocation determined.

(vii) *Reallocations*—(A) *Reallocation with changes in management areas*.

(1) *Area subdivision*. If at any time after the initial allocation, an IFQ species/species group is geographically subdivided, those holding QS for the species/species group being subdivided will receive an amount of QS for each newly created area that is equivalent to the amount they held for the area before it was subdivided.

(2) *Area recombination*. When two areas are combined, the QS held by individuals in each area will be adjusted proportionally such that:

(i) The total QS for the area sums to 100 percent, and

(ii) A person holding QS in the newly created area will receive the same amount of total QP as they would if the areas had not been combined.

(3) *Area line movement*. When a management area boundary line is moved, the QS held by individuals in each area will be adjusted proportionally such that they each maintain their same share of the trawl allocation on a coastwide basis (a fishing area may expand or decrease, but the individual's QP for both areas combined wouldn't change because of the change in areas). In order to achieve this end, the holders of QS in the area being reduced will receive QS for the area being expanded, such that the total QP they would be issued will not be reduced as a result of the area reduction. Those holding QS in the area being expanded will have their QS reduced such that the total QP they receive in the year of the line movement will not increase as a result of the expansion (nor will it be reduced).

(B) *Reallocation with subdivision of a species group*. If at any time after the initial allocation an IFQ species group is subdivided, those holding QS for the species group being subdivided will receive an amount of QS for each newly created IFQ species/species group that is equivalent to the amount they held for the species group before it was subdivided. For example, if a person holds one percent of a species group before the subdivision, that person will hold one percent of the QS for each species or species group resulting from the subdivision.

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(d) *QS permits and QS accounts*—(1) *General*. In order to obtain QS, a person must apply for a QS permit. NMFS will

determine if the applicant is eligible to acquire QS in compliance with the accumulation limits found at paragraph (d)(4) of this section. For those persons that are found to be eligible for a QS permit, NMFS will issue QS and establish a QS account. On or about January 1 each year, QS permit owners will be notified, via the IFQ Web site and their QS account of their QP or IBQ pound allocations, for each of the IFQ species/species groups, for the upcoming fishing year. These updated QS/QP values will reflect the results of: changed OYs, carryover adjustments, and any redistribution of QS (resulting from nonrenewal or permanent revocation of applicable permits, subject to accumulation limits). QS permit owners can monitor the status of their QS and QP allocations throughout the year via the IFQ Web site. QP will be issued to the nearest whole pound using standard rounding rules (*i.e.* decimal amounts from zero up to 0.5 round down and 0.5 up to 1.0 round up), except that initial allocations of QP for overfished species greater than zero but less than one pound will be rounded up to one pound in the first year of the trawl rationalization program. QS owners must transfer their QP from their QS account to a vessel account in order for those QP to be fished. QP must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). All QP in a QS account must be transferred to a vessel account by September 1 of each year.

(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 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.

(ii) *Registration*. A QS account will be established by NMFS with the issuance of a QS permit. The administrative functions associated with the Shorebased IFQ Program (*e.g.*, account registration, landing transactions, and transfers) are designed to be accomplished online; therefore, a participant must have access to a computer with Internet access and must set up an appropriate QS account to participate. The computer must have Internet browser software installed (*e.g.* Internet Explorer, Netscape, Mozilla Firefox); as well as the Adobe Flash Player software version 9.0 or greater. NMFS will mail initial QS permit owners instructions pertinent to setting up an online QS account. Each IFQ participant must monitor his/her online QS account and all associated messages and comply with all online reporting requirements.

(3) *Renewal, change of permit ownership, and transfer*—(i) *Renewal*. (A) QS permits expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete QS permit renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew QS permits will be issued by SFD prior to September 1 each year to the QS permit owner's most recent address in the SFD record. The permit owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any QS permit for which SFD does not receive a QS permit renewal request by November 30 will have its QS account inactivated by NMFS at the end of the calendar year and the QS permit will not be renewed by NMFS for the following year. NMFS will not issue QP or IBQ pounds to the inactivated QS account associated with the non-renewed QS permit. Any QP or IBQ pounds derived from the QS in the inactivated QS account will be redistributed among all other QS permit owners that renewed their permit by the deadline. Redistribution to QS permit owners will be proportional to the QS or IBQ for each IFQ species. A non-renewed QS permit may be renewed in a subsequent year by submission of a complete QS permit renewal package during the permit renewal period for that year.

(D) QS permits will not be renewed until SFD has received a complete application for a QS permit renewal, which includes payment of required

fees, complete documentation of QS permit ownership on the Trawl Identification of Ownership Interest Form as required under (d)(4)(iv) of this section, and a complete economic data collection form if required under § 660.114, subpart D. The QS permit renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date.* A QS permit is effective on the date given on the permit and remains in effective until the end of the calendar year.

(F) *IAD and appeals.* QS permit renewals are subject to the permit appeals process specified at § 660.25(g), subpart C.

(ii) *Change of permit ownership and transfer restrictions—(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 (*i.e.*, cannot change the registered permit owners as given on the permit). Any change to the owner of the QS permit requires the new owner(s) to apply for a QS permit, and is subject to accumulation limits and approval by NMFS.

(B) *Transfer of QS or IBQ.* Transfers of QS or IBQ must be accomplished online via the IFQ Web site. To make a transfer, a QS permit owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the QS permit owner must enter pertinent information regarding the transfer request including, but not limited to: amount of QS, IBQ, QP or IBQ pounds to be transferred; name and any other identifier of the eligible transferee (*e.g.*, account number); and the value of the transferred QS, IBQ, QP, or IBQ pounds. If the information is not accepted, the online system will send the QS permit owner an electronic message explaining the reason(s). During the year there may be situations where NMFS deems it necessary to prohibit transfers (*i.e.*, account reconciliation, system maintenance, or for emergency fishery management reasons). If the information is accepted, the online system will send the transferee an electronic message regarding the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the transfer, the online system will send a transfer transaction confirmation notice to both the QS permit owner and the vessel account owner confirming the transaction. If the transaction itself is incorrectly recorded,

either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information.

(1) *Transfer of QS or IBQ between QS accounts.* After the second year of the trawl rationalization program, QS permit owners may transfer QS or IBQ to another QS permit owner, subject to accumulation limits and approval by NMFS. QS or IBQ is transferred as a percent, divisible to one-thousandth of a percent (*i.e.*, greater than or equal to 0.001%). QP or IBQ pounds may not be transferred with the QS or IBQ. During the first 2 years after implementation of the program, QS or IBQ cannot be transferred to another QS permit owner, except under U.S. court order and as approved by NMFS. QS or IBQ may not be transferred between December 1 through December 31.

(2) *Transfer of QP or IBQ pounds from a QS account to a vessel account.* QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred). QP or IBQ pounds must be transferred to a vessel account in order to be used. Transfers of QP or IBQ pounds from a QS account are subject to vessel accumulation limits and NMFS' approval. All QP or IBQ pounds from a QS account must be transferred to one or more vessel accounts by September 1 each year. Once QP or IBQ pounds are transferred from a QS account to a vessel account, they cannot be transferred back to a QS account and may only be transferred to another vessel account. QP or IBQ pounds may not be transferred from one QS account to another QS account.

(C) *Effective date—(1) Transfer of QS or IBQ between QS accounts is effective on the date approved by NMFS.*

(2) *Transfer of QP or IBQ pounds from a QS account to a vessel account is effective on the date approved by NMFS.*

(E) *IAD and appeals.* Transfers are subject to the permit appeals process specified at § 660.25 (g), subpart C.

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(iv) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing a QS permit shall document those persons that have an ownership interest in the limited entry trawl or QS permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. For renewal, if the limited entry trawl permit and QS

permit have identical ownership interest, only one form need be submitted attesting to such ownership. SFD will not issue a QS Permit unless the Trawl Identification of Ownership Interest Form has been completed. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits and is not authorized to do so under paragraph (d)(4)(v) of this section, the person will be notified and the QS permit will be issued up to the accumulation limit specified in the QS Control Limit table from paragraph (d)(4)(i) of this section. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

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(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.

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(7) *Cost recovery.* [Reserved]

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(e) *Vessel account—(1) General.* QP or IBQ pounds will have the same species/species groups and area designations as the QS or IBQ from which it was issued. Annually, QS or IBQ (expressed as a percent) are converted to QP or IBQ pounds (expressed as a weight) in a QS account. QP or IBQ pounds may only be transferred from a QS account to a vessel account. QP or IBQ pounds are required to cover catch (landings and discards) by limited entry trawl vessels of all IFQ species/species groups, 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 or Pacific halibut catch with IBQ pounds: non-groundfish trawl, gear types defined in the coastal pelagic species FMP, gear types defined in the highly migratory species FMP, 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 have a registered 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); all vessel owner names (as given on USCG Form 1270); if the vessel owner is a business entity, then include the name of the authorized vessel account manager that may act on behalf of the entity; business contact information, including: address, phone number, fax number, and e-mail. Applications for a vessel account must also include the following information: a complete economic data collection form as required under § 660.113(b), (c) and (d), subpart D, and a complete Trawl Identification of Ownership Interest Form as required under paragraph (e)(4)(ii) of this section. The application for a vessel account will be marked incomplete until the required information is submitted. Any change in the legal name of the vessel owner(s) will require the new owner to register with NMFS for a vessel account.

(3) *Renewal, change of account ownership, and transfer of QP or IBQ pounds*—(i) *Renewal*. (A) Vessel accounts expire at the end of each calendar year, and must be renewed between October 1 and November 30 of each year in order to remain in force the following year. A complete vessel account renewal package must be received by SFD no later than November 30 to be accepted by NMFS.

(B) Notification to renew vessel accounts will be issued by SFD prior to September 1 each year to the vessel account owner's most recent address in the SFD record. The vessel account owner shall provide SFD with notice of any address change within 15 days of the change.

(C) Any vessel account for which SFD does not receive a vessel account renewal request by November 30 will have its vessel account inactivated by NMFS at the end of the calendar year. NMFS will not issue QP or IBQ pounds to the inactivated vessel account. Any QP or IBQ pounds in the vessel account will expire and surplus QP or IBQ pounds will not be available for carryover. A non-renewed vessel account may be renewed in a subsequent year by submission of a complete vessel account renewal package.

(D) Vessel accounts will not be renewed until SFD has received a complete application for a vessel account renewal, which includes payment of required fees, a complete documentation of permit ownership on the Trawl Identification of Ownership Interest Form as required under (e)(4)(ii) of this section, and a complete economic data collection form as required under § 660.114, subpart D. The vessel account renewal will be marked incomplete until the required information is submitted.

(E) *Effective Date*. A vessel account is effective on the date issued by NMFS and remains effective until the end of the calendar year.

(F) *IAD and appeals*. Vessel account renewals are subject to the appeals process specified at § 660.25 (g), subpart C.

(ii) *Change in vessel account ownership*. Vessel accounts are non-transferable and ownership of a vessel account cannot change. If the owner of a vessel changes, then a new vessel account must be opened.

(iii) *Transfer of QP or IBQ pounds*—(A) *General*. QP or IBQ pounds may only be transferred from a QS account to a vessel account or between vessel accounts. QP or IBQ pounds cannot be transferred from a vessel account to a QS account. QP or IBQ pounds transfers are subject to accumulation limits. QP or IBQ pounds in a vessel account may only be transferred to another vessel account. QP or IBQ pounds must be transferred in whole pounds (*i.e.* no fraction of a QP can be transferred).

(B) *Transfer procedures*. QP or IBQ pound transfers from one vessel account to another vessel account must be

accomplished online via the IFQ Web site. A vessel account owner must initiate a transfer request by logging onto the IFQ Web site. Following the instructions provided on the Web site, the vessel account owner must enter pertinent information regarding the transfer request including, but not limited to: Amount of QP or IBQ pounds to be transferred (in whole pound increments); name and any other identifier (*e.g.*, vessel account number) of the eligible vessel account receiving the transfer; and value of the transferred QPs or IBQ pounds. The online system will verify the information entered. If the information is not accepted, the online system will send the both parties an electronic message explaining the reason(s). If the information is accepted, the online system will send the transferee receiving the QP or IBQ pounds an electronic message of the pending transfer. The transferee must approve the transfer by electronic signature. If the transferee approves the QP or IBQ pound transfer, the online system will send a transfer transaction confirmation notice to both the vessel account owner that made the transfer and transferee receiving the QP or IBQ pounds. Once this confirmation is received, this transaction is final. If the transaction itself is incorrectly recorded, either party can contact the NMFS NWR for instructions on how to request a correction. NMFS will review and make a determination on whether to make a correction based on the request and available information. QP or IBQ pounds may be transferred to vessel accounts at any time during the year unless otherwise notified by NMFS. During the year there may be situations where NMFS deems it necessary to prohibit transfers because of account reconciliation purposes, system maintenance, or for emergency fishery management reasons.

(4) *Accumulation limits*—(i) *Vessel limits*. Vessel accounts may not have QP or IBQ pounds in excess of the QP Vessel Limit in any year, and for species covered by Unused QP Vessel Limits, may not have QP or IBQ pounds in excess of the Unused QP Vessel Limit at any time. These amounts are as follows:

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:		

Species category	QP Vessel limit (annual limit) %	Unused QP Vessel limit (daily limit) %
N. of 36° (Monterey north)	4.5	.....
S. of 36° (Conception area)	15.0	.....
PACIFIC OCEAN PERCH	6.0	4.0
WIDOW ROCKFISH ¹	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	.....
Petrale Sole	4.5	.....
Arrowtooth Flounder	20.0	.....
Starry Flounder	20.0	.....
Other Flatfish	15.0	.....
Pacific Halibut	14.4	5.4

¹ If widow rockfish is rebuilt before initial allocation of QS, the vessel limit will be set at 1.5 times the control limit.

(ii) *Trawl identification of ownership interest form.* Any person that owns a vessel registered to a limited entry trawl permit and that is applying for or renewing a vessel account shall document those persons that have an ownership interest in the vessel greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue a vessel account unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits.

(5) *Carryover.* The carryover provision allows a limited amount of surplus QP or IBQ pounds in a vessel account to be carried over from one year to the next or allows a deficit in a vessel account in one year to be covered with QP or IBQ pounds from a subsequent year, up to a carryover limit. The carryover limit is calculated by multiplying the carryover percentage by the cumulative total of QP or IBQ pounds (used and unused) in a vessel account for the base year, less any transfers out of the vessel account or any previous carryover amounts. The percentage used for the carryover

provision may be changed during the biennial specifications and management measures process.

(i) *Surplus QP or IBQ pounds.* A vessel account with a surplus of QP or IBQ pounds (unused QP or IBQ pounds) for any IFQ species at the end of the fishing year may carryover for use in the immediately following year an amount of unused QP or IBQ pounds up to its carryover limit. The carryover limit for the surplus is calculated as 10 percent of the cumulative total QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account at the end of the year. NMFS will credit the carryover amount to the vessel account in the immediately following year. If there is a decline in the OY between the base year and the following year in which the QP or IBQ pounds would be carried over, the carryover amount will be reduced in proportion to the reduction in the OY. Surplus QP or IBQ pounds may not be carried over for more than one year. Any amount of QP or IBQ pounds in a vessel account and in excess of the carryover amount will expire on December 31 each year and will not be available for any future use.

(ii) *Deficit QP or IBQ pounds.* A vessel account with a deficit (negative balance) of QP or IBQ pounds for any IFQ species

in the current year may cover that deficit with QP or IBQ pounds from the following year without incurring a violation if the following conditions are met:

(A) The vessel declares out of the shorebased IFQ fishery for the year in which the deficit occurred (If the deficit occurs less than 30 days before the end of the calendar year, then declaring out for the year is not required.);

(B) The amount of QP or IBQ pounds required to cover the deficit from the current fishing year is less than or equal to the vessel's carryover limit for a deficit. The carryover limit for a deficit is calculated as 10 percent of the total cumulative QP or IBQ pounds (used and unused, less any transfers or any previous carryover amounts) in the vessel account 30 days after the date the deficit is documented; and

(C) Sufficient QP or IBQ pounds are transferred in to the vessel account to cure the deficit within 30 days of NMFS' issuance of QP or IBQ pounds to QS accounts in the following year.

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

(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.* [Reserved]

(f) *First receiver site license*—(1)

General. Any IFQ first receiver that receives IFQ landings must hold a valid first receiver site license. The first receiver site license authorizes the holder to receive, purchase, or take custody, control, or possession of an IFQ landing at a specific physical site onshore directly from a vessel. Once the trawl rationalization program is implemented, a temporary, interim first receiver site license will be available by application to NMFS and will be valid until June 30, 2011, or until an application for a first receiver site license as specified in paragraph (f)(3) of this section is approved by NMFS, whichever comes first. An application for an interim first receiver site license is subject to all of the requirements in this paragraph (f) including the submission of a catch monitoring plan, except that the catch monitoring plan in paragraph (f)(3)(iii) does not have to have been previously accepted by NMFS and the site does not have to have been previously inspected.

(2) *Issuance.* (i) First receiver site licenses will only be issued to a person registered to a valid license issued by the State of Washington, Oregon, or California, and that authorizes the person to receive fish from a catcher vessel.

(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 for one year from the date it was issued by NMFS, or until the State license required by paragraph (f)(2)(i) of this section is no longer effective, whichever occurs first. 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 license.* A copy of a valid license issued by the State in which they operate which allows the person to receive fish from a catcher vessel.

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

(A) *Catch monitoring plan review process.* NMFS will accept a catch monitoring plan if it meets all the requirements specified in paragraph (f)(3)(iii)(C) of this section. The site must be inspected by NMFS staff or a NMFS designated inspector prior to acceptance to ensure that the first receiver 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 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 monitoring plan inspection must be arranged by submitting a written request for an inspection to NMFS at NMFS, Northwest Region, Permits Office, *Attn:* Catch Monitor Coordinator, 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:

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

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

(3) A proposed catch monitoring plan detailing how the IFQ first receiver will meet each of the performance standards in paragraph (f)(3)(iii)(C) of this section.

(C) *Contents of a catch monitoring plan.* The catch monitoring plan must:

(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 IFQ first receiver staff will ensure that sorting is complete; 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; and what steps will be taken if unsorted catch enters 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 the type and capacity and describe where it is located and what it will be used for. Each scale must be appropriate for its intended use.

(4) *Printed record.* Identify all scales that will be used to weigh IFQ landings that cannot produce a complete printed record as specified at § 660.15(c), subpart C. State how the scale will be used, and how the plant intends to produce a complete and accurate record of the total weight of each delivery.

(5) *Weight monitoring.* Detail how the IFQ first receiver will ensure that all catch is weighed and the process used to meet the catch weighing requirements specified at paragraph (j) of this section. 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 accurately account for the weight of ice and/or totes.

(6) *Delivery points.* Identify specific delivery points where catch is removed from an IFQ vessel. The delivery point is the first location where fish removed from a delivering catcher vessel can be sorted or diverted to more than one location. 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.

(7) *Observation area.* Designate and describe the observation area. The observation area is a location 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. Standards for the observation area are specified at paragraph (i)(4)(ii) of this section.

(8) *Lockable cabinet.* Identify the location of a secure, dry, and lockable cabinet or locker with the minimum interior dimensions of two feet wide by two feet tall by two feet deep for the exclusive use of the catch monitor, NMFS staff, or authorized officers.

(9) *Plant liaison.* Identify the designated plant liaison. The plant liaison responsibilities are specified at paragraph (i)(6) of this section.

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

- (i) The delivery point(s);
- (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 acceptance period and changes.* NMFS will accept a catch monitoring plan if it meets the performance standards specified in paragraph (f)(3)(iii)(C) of this section. For the first receiver 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 a NMFS-accepted catch monitoring plan.* An owner and manager may change an accepted catch monitoring plan by submitting a plan addendum to NMFS. NMFS will accept the modified catch monitoring plan if it continues to meet the performance standards specified in paragraph (f)(3)(iii)(C) 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 e-mail address (if available) of the person submitting the addendum;
- (3) A complete description of the proposed catch monitoring plan change.

(iv) *Completed EDC form.* A first receiver site license application must include a complete economic data collection form as required under § 660.113(b), subpart D. The application for a first receiver site license will be marked incomplete until the required information is submitted.

(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 and issuance by NMFS and will be effective for one year from the date of NMFS issuance.

(6) *Reissuance in subsequent years.* Existing license holders must reapply annually. If the existing license holder fails to reapply, the first receiver's site license will expire one year from the

date of NMFS issuance of the license. The first receiver will not be authorized to receive or process groundfish IFQ species if their first receiver site license has expired.

(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 defined at § 660.25(g), subpart C.

(g) *Retention requirements (whiting and non-whiting vessels)*—(1) *Non-whiting vessels.* Vessels participating in the Shoreside IFQ Program other than vessels participating in the Pacific whiting IFQ fishery (non-whiting vessels) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Non-whiting vessels must discard Pacific halibut and the discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Non-whiting vessels may discard non-IFQ species and non-groundfish species. The sorting of catch, the weighing and discarding of any IBQ and IFQ species, and the retention of IFQ species must be monitored by the observer.

(2) *Whiting maximized retention vessels.* Maximized retention vessels participating in the Pacific whiting IFQ fishery are prohibited from discarding any IFQ species/species group and nongroundfish species.

(3) *Whiting vessels sorting at-sea.* Vessels participating in the Pacific whiting IFQ fishery that sort their catch at sea (whiting vessels sorting at-sea) may discard IFQ species/species groups, provided such discards are accounted for and deducted from QP in the vessel account. Whiting vessels sorting at sea must discard Pacific halibut and such discard mortality must be accounted for and deducted from IBQ pounds in the vessel account. Whiting vessels sorting at-sea may discard non-IFQ species and non-groundfish species. The sorting of catch, weighing and discarding of any

IFQ or IBQ species must be monitored by the observer.

(h) *Observer requirements*—(1) *Coverage requirements.* (i) Any vessel participating in the Shorebased IFQ Program must carry a NMFS-certified observer during any trip until all fish from that trip have been offloaded. If a vessel delivers fish from an IFQ trip to more than one IFQ first receiver, the observer must remain onboard the vessel during any transit between delivery points.

(ii) *The observer deployment limitations and workload.* Observer must not be deployed for more than 22 calendar days in a calendar month. The observer program may issue waivers to allow observers to work more than 22 calendar days per month when it's anticipated one trip will last over 20 days or for issues with observer availability due to illness or injury of other observers.

(A) If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

(B) [Reserved]

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

(2) *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 or their designee.

(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 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.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to 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.

(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.

(ix) *Sampling station.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

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

(B) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfers at sea.* Transfers at-sea are prohibited.

(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 a permitted observer provider, 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.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific observer program in 2010 can supply observer services to the west coast trawl fishery and will be issued a West Coast Groundfish Observer Program permit.

(5) *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, have a written contract or a written contract addendum signed by the observer and observer

provider prior to the observer's deployment with the following clauses:

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

(3) That every observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Ensure that observers complete duties in a timely manner.* Observer providers 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) *Observers provided to vessel.*

(A) Must have a valid West Coast Groundfish observer certification;

(B) Must not have 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 (h)(5)(xi)(B) of this section that would prevent him or her from performing his or her assigned duties; and

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

(v) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage under paragraphs (h)(5)(xi)(D) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the

provider is in a contractual relationship due to the lack of available observers by the estimated embarking time of the vessel, the provider must report it to NMFS at least 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.

(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 NOAA Office for Law Enforcement and the Observer Program until the conclusion of debriefing.

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

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

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

(ii) 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.

(iii) Otherwise, each observer between vessels, while still under contract with a permitted observer provider, shall be provided with accommodations in accordance with the contract between the observer and the observer provider. If the observer provider is responsible for providing accommodations under

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

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

(viii) *Observer deployment limitations and workload.* (A) Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period, unless otherwise authorized by NMFS.

(B) Not exceed observer deployment limitations and workload as outlined in paragraph (h)(1)(ii) of this section.

(ix) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (h)(2)(ii)(B) 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, briefing, and debriefing 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 that includes each candidate's full name (*i.e.*, first, middle and last names), date of birth, and gender;

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

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

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

(vi) Length of observers contract.

(2) Briefing registration materials consist of the following:

(i) Date and type of requested briefing session;

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

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

(iv) Length of observer contract.

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

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

(ii) [Reserved]

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

dangerous, remote, and rigorous nature of the work by reading the NMFS-prepared information. The physician's statement must be submitted to the Observer Program Office prior to certification of an observer. The physical exam must have occurred during the 12 months prior to the observer's or observer candidate's deployment. The physician's statement 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 (h)(1)(i) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via e-mail, fax, or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

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

(2) Observers.

(E) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (h)(4) of this section within 30 days of the effective date of such change.

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

(G) *Observer status report.* Each Tuesday, 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.

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

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

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under § 660.112 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 or as otherwise required by law 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) *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 North Pacific or Pacific coast fishery managed under an FMP for the waters off the coasts of Alaska, 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 Alaska, California, Oregon, and Washington, or

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

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

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

(xv) *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.

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

(6) *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 (h)(6)(iii) of this section.

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

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

(1) Are employed by an observer provider company permitted pursuant to § 660.140(h) at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 660.140(h) regarding an observer candidate's health and physical fitness for the job;

(ii) Meet all observer candidate education and health standards as specified in § 660.140(h); 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 (h)(6)(ix) of this section.

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

certification for any other relevant reason.

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

(A) *West Coast Groundfish Observer Program training certification endorsement*. A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(B) *West Coast Groundfish Observer Program annual general endorsement*. Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(C) *West Coast Groundfish Observer Program deployment endorsement*. Each observer who has completed an initial deployment after their 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 briefing requirements, when applicable. 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.

(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.

[Alternative 1 for Paragraph (h)(6)(vii) (Council-Deemed)]

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

(A) Must not have a direct financial interest in the vessels on which the observers are stationed or in the first receivers to which those vessels make deliveries, other than the provision of observer services.

(B) 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 in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

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

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

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

[Alternative 2 for Paragraph (h)(6)(vii) (NMFS-Proposed)]

(vii) Limitations on conflict of interest. Observers:

(A) Must not have a direct financial interest, other than the provision of observer services, in a 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.

(B) 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 in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

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

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

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

(viii) *Standards of behavior.*

Observers must:

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

(B) Report to the Observer Program office and the NOAA OLE any time they refuse to board a vessel.

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

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

(ix) *Suspension and decertification—(A) Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of observer certification suspension and/or decertification.

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

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

(i) Failed to satisfactorily perform duties as described or directed by the observer program; or

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

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

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

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

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

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification

may appeal within 30 of issuance of the IAD to the Office of Administrative Appeals pursuant to § 679.43.

(i) *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) *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) *Access to the observation area.* The observation area must be freely accessible to NMFS staff, NMFS-authorized personnel, or authorized officers at any time a valid catch monitoring plan is required.

(B) *Monitoring the flow of fish.* 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 taken place and each species has been weighed.

(C) *Adequate lighting.* 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.

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

(6) *Plant liaison for the catch monitor.* Each IFQ first receiver must designate a plant liaison. The plant liaison is responsible for:

(i) Orienting new catch monitors to the facility;

(ii) Assisting in the resolution of catch monitoring concerns; and

(iii) Informing NMFS if changes must be made to the catch monitoring plan.

(7) *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.

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

(A) The first receiver has not previously operated under a catch monitoring plan where a printed record was required;

(B) The first receiver ensures that all catch is weighed; and

(C) The catch monitor, NMFS staff, or authorized officer can verify that all catch is weighed.

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

(v) *Weight monitoring.* An IFQ first receiver must ensure that it is possible for the catch monitor, NMFS staff, or authorized officer 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(d).

(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 an 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 at § 660.130(d) 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) A belt or automatic hopper scale may be used to weigh all of the catch prior to sorting. All but a single predominant species must then be reweighed.

(B) 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.

(C) 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 at § 660.15. 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; and

(4) The vessel name.

(D) *Totes and ice.* If a catch monitoring plan proposes the use of totes in which fish will be weighed, or a deduction for the weight of ice, the deduction must be accurately accounted for. No deduction may be made for the 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 an authorized officer to verify that the deduction or tare weight is accurate.

(E) An alternate approach accepted by NMFS in the catch monitoring plan.

(3) *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 § 660.130(d) and in accordance with an approved catch monitoring plan.

(ii) *Catch monitors, NMFS staff, and authorized officers.* (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.

(C) Provide catch monitors, NMFS staff, or an authorized officer 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 staff, or an authorized officer 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 an authorized officer at the time printouts are generated.

(4) *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 staff or an authorized officer 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.

(k) *Gear switching.* (1) Participants in the Shorebased IFQ Program may take IFQ species using any legal groundfish non-trawl gear (*i.e.*, gear switching) and are exempt from the gear endorsements at § 660.25(b)(3) for limited entry fixed gear permits, provided the following requirements are met:

(i) The vessel must be registered to a limited entry trawl permit.

(ii) The vessel must be registered to a vessel account that is not in deficit on any IFQ species.

(iii) The vessel operator must have submitted a valid gear declaration for the trip that declares "Limited entry groundfish non-trawl, shorebased IFQ," as specified in § 660.13(d)(5)(iv)(A), and does not declare any other designation (a Shorebased IFQ Program trip may not be combined with any other designation).

(iv) The vessel must comply with prohibitions applicable to limited entry fixed gear fishery as specified at § 660.212, gear restrictions applicable to limited entry fixed gear as specified in §§ 660.219 and 660.230(b), and management measures specified in § 660.230(d), including restrictions on the fixed gear allowed onboard, its usage, and applicable fixed gear groundfish conservation area restrictions, except that the vessel will not be subject to limited entry fixed gear trip limits when fishing in the Shorebased IFQ Program.

(v) The vessel must comply with the limited entry trawl trip limits for species/species groups not covered under the Shorebased IFQ Program or whiting trip limits outside the primary season.

(vi) The vessel must comply with recordkeeping and reporting requirements applicable to limited entry trawl gear as specified in § 660.113.

(vii) The vessel must comply with and observer requirements and all other provisions of the Shoreside IFQ Program as specified in this section.

(2) [Reserved]

(l) *Adaptive management program—* (1) *General.* The adaptive management program (AMP) is a set-aside of 10 percent of the non-whiting QS to address the following objectives:

(i) Community stability;

(ii) Processor stability;

(iii) Conservation;

(iv) Unintended/unforeseen consequences of IFQ management; or

(v) Facilitating new entrants.

(2) *Years one and two.* The 10 percent of non-whiting QS will be reserved for the AMP during years one and two of the Shorebased IFQ Program, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS during years one and two.

23. In § 660.150;

a. Paragraph (g)(1) introductory text is revised, and paragraph (g)(1)(v) is removed;

b. Paragraph (a) introductory text and paragraphs (a)(3), (a)(4), (d), (f)(3), and (g)(3)(i)(C) are revised;

c. Paragraphs (b), (c), (e), (f)(2), (f)(4), (g)(1)(iv), (g)(2), (g)(3)(ii), (g)(4), and (h) through (k) are added; and

d. Paragraph (l) is removed to read as follows:

§ 660.150 Mothership (MS) Coop Program.

(a) *General.* The MS Coop Program requirements in this section will be effective beginning January 1, 2011, except for paragraphs (f)(3), (f)(5), (f)(6), (g)(3), (g)(5), and (g)(6) of this section, which are effective immediately. The MS Coop Program is a general term to describe the limited access program that applies to eligible harvesters and processors in the mothership sector of the Pacific whiting at-sea trawl fishery. Eligible harvesters and processors, including coop and non-coop fishery participants, must meet the requirements set forth in this section of the Pacific Coast groundfish regulations. Each year a vessel registered to a MS/CV-endorsed permit may fish in either the coop or non-coop portion of the MS Coop Program, but not both. In addition to the requirements of this section, the MS Coop Program is subject to the following groundfish regulations of subparts C and D:

* * * * *

(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) *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; and

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

(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 reports.

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

(C) *Catch weighing requirements.* The owner and operator of a MS vessel must:

(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), subpart C;

(2) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in section § 660.15(b), subpart C.

(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 NMFS has been notified that the vessel is authorized to fish for the coop.

(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.

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

(B) [Reserved]

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

(B) *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 and scale tests records, if applicable.

(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 composed of MS/CV endorsed limited entry permit owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members;

(E) Designate an individual as a coop manager; and

(F) Include at least 20 percent of all MS/CV endorsed permits as members. The coop membership percentage will be interpreted by rounding to the nearest whole permit (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

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

(A) Applying for and being registered to a MS coop permit;

(B) Organizing and coordinating harvest activities of vessels authorized to fish for the coop;

(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) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(3) Oversee reassignment of catch allocations within the coop;

(4) Oversee inter-coop catch allocation reassignments;

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

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

(7) Notify NMFS if the coop dissolves.

(iii) *MS coop compliance and joint/several liability*. An MS coop must comply with the provisions of this section. The MS coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each MS coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, an MS coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

(c) *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 Coop 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 Coop 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 permit's 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 endorsed permit owner cannot divide the permit's catch history assignment between more than one MS coop or between a coop and the non-coop fishery for that year. Once assigned to a permitted MS coop or to

the non-coop fishery, the permit's catch history assignment 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 Web site. The amount of whiting from the catch history assignment will be issued to the nearest whole pound using standard rounding rules (*i.e.* zero up to 0.5 rounds down and 0.5 up to 1.0 rounds up).

(B) *Non-whiting groundfish species catch*—(1) Non-whiting groundfish species with a mothership sector allocation will be divided annually between the permitted coops and the non-coop fishery. 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 (2) 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 shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

(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 member MS/CV endorsed permit identified in the NMFS-accepted coop agreement for a given calendar year. Other limited entry permits registered to vessels that will fish for the coop 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 Web site.

(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 by a mothership or catcher vessel in the mothership sector is prohibited when the mothership sector Pacific whiting allocation or non-whiting groundfish 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 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 NMFS-accepted inter-coop agreement.

(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.

(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, 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 (<http://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 permitted MS coops (inter-coop)*. (A) 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, provided the processor obligations at paragraph (c)(7) of this section have been met or a mutual agreement exception at paragraph (c)(7)(iv) of this section has been submitted to NMFS.

(B) In the case of a MS coop failure 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, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

(ii) *Between the MS coop and non-coop fisheries*. Pacific whiting may not be redistributed between the coop and non-coop fisheries.

(ii) *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/CV endorsed limited entry permit renewal process, the MS/CV endorsed permit owner must identify to NMFS to which MS permit the MS/CV permit owner intends to obligate the catch history assignment associated with that permit if they are participating in the MS coop fishery. Only one MS permit may be designated (the obligation may not be split among MS permits).

(ii) *Expiration of a processor obligation*. Processor obligations expire at the end of each calendar year when the MS Coop Permit expires.

(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 under the processor obligation submitted to NMFS, unless a mutual agreement exception has been submitted to NMFS.

(iv) *Mutual agreement exception.* A MS/CV endorsed permit's catch history assignment 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 release 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 before the resulting amounts of catch history assignment have been announced by NMFS, any MS/CV endorsed permit obligated to the MS permit may elect to participate in the coop or non-coop fishery. In such an event, the MS permit owner must provide written notification of its withdrawal to NMFS and all MS/CV-endorsed permits that are obligated to the MS permit, and the owner of each MS/CV-endorsed permit obligated to the MS permit must provide written notification to NMFS of their intent to either participate in the non-coop fishery or the coop fishery, and if participating in the coop fishery must identify a processor obligation for a new MS permit.

(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.

(d) *MS coop permit and agreement—(1) Eligibility and registration.* (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 represent all of the coop members.

(ii) *Annual registration and deadline.* Each year, a coop entity intending to participate as a coop under the MS Coop Program must submit an application for a MS coop permit between February 1 and March 31 of the year in which it intends to fish. NMFS will not consider any applications received after March

31. A MS coop permit expires on December 31 of the year in which it was issued.

(iii) *Application for MS coop permit.* The designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (A) below. Only complete applications will be considered for issuance of a MS coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. 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 Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(3) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. 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. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information 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 list of all vessels, and permit holders participating in the coop and their share of the allocated catch which must match the amount distributed to individual permit owners by NMFS.

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

(iii) A processor obligation clause indicating that each MS/CV endorsed permit has notified a specific MS permit by September 1 of the previous year of that MS/CV endorsed permit's intent to obligate its catch history assignment to that MS permit.

(iv) A clause indicating that each member MS/CV endorsed permit's catch history assignment is based on the catch history assignment calculation by NMFS used for distribution to the coop.

(v) 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.

(vi) A clause stating that if a permit is transferred during the effective period of the coop agreement, any new owners of that member permit would be coop members required to comply with membership restrictions in the coop agreement.

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

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

(ix) A clause describing the co-op manager's responsibility for managing inter-coop reassignments of catch history assignment, should any occur.

(x) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, inseason catch history reassignments and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(xi) Identification of the designated coop manager.

(xii) A requirement that agreement by at least a majority of the members is required to dissolve the coop.

(xiii) Provisions that prohibit member permit owners that have incurred legal sanctions that prevent them from fishing groundfish in the Council region 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. Inter-coop agreements are specified at paragraph (e) of this section.

(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 NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(3) An accepted coop agreement that was submitted with the MS coop permit application and for which a MS coop 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 paragraph (d)(1)(iii)(A)(1) of this section if there is a material change to the coop agreement.

(4) Within 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manager must submit to NMFS the revised coop agreement 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 will allow fishing from the start of the MS sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS permanently closes the mothership sector fishing season for the year 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 notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(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 MS coop permit. If

disapproved, the IAD will provide the reasons for this determination.

(3) *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.

(4) *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.

(5) *Cost recovery.* [Reserved]

(e) *Inter-coop agreements—(1) General.* 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. 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 subject to the inter-coop agreement.

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

(4) *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 (d)(1)(iii)(A)(1) will be reviewed by NMFS.

* * * * *

(f) * * *

(2) *Renewal, change of permit ownership, or vessel registration—(i) Renewal.* A MS permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. If a vessel registered to the MS 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 permit renewal that while participating in the whiting fishery it will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A MS permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(3) *Accumulation limits—(i) MS permit usage limit.* No person who owns an MS permit(s) may register the MS permit(s) to vessels that cumulatively process more than 45 percent of the annual mothership sector Pacific whiting allocation. For purposes of determining accumulation limits, NMFS requires that permit owners submit a complete trawl ownership interest form for the permit owner as part of annual renewal for the MS permit. An ownership interest form will also be required whenever a new permit owner obtains a MS permit as part of a permit transfer request. Accumulation limits will be determined by calculating the percentage of ownership interest a person has in any MS permit. Determination of ownership interest will subject to the individual and collective rule.

(ii) *Ownership—individual and collective rule.* The ownership that counts toward a person's accumulation limit will include:

(A) Any MS permit owned by that person, and

(B) A portion of any MS permit owned by an entity in which that person has an interest, where the person's share of interest in that entity will determine the portion of that entity's ownership that counts toward the person's limit.

(iii) [Reserved]

(iv) *Trawl identification of ownership interest form.* Any person that is applying for or renewing an MS permit shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS Permit unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with 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.

* * * * *

(g) *Mothership catcher vessel (MS/CV) endorsed permit—(1) General.* Any vessel that delivers whiting to a mothership processor in the Pacific whiting fishery mothership sector must be registered to an MS/CV-endorsed permit, except that a vessel registered to

limited entry trawl permit without an MS/CV or C/P endorsement may fish for a coop if authorized by the coop. Within the MS Coop Program, an MS/CV endorsed permit may participate in an MS coop or in the non-coop fishery. A MS/CV endorsed permit is a limited entry permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

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(iv) *Restrictions on processing for MS/CV endorsed permits.* A vessel registered to an MS/CV-endorsed permit in a given year shall not engage in processing of Pacific whiting during that year.

* * * * *

(2) *Renewal, change of permit owner, vessel registration, or combination—(i) Renewal.* A MS/CV endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. During renewal, all MS/CV endorsed 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 for the following year. If the owner of the MS/CV endorsed permit intends to participate in the coop portion of the MS Coop Program, they must also declare which MS vessel to which they intend to obligate the permit's catch history assignment. MS/CV endorsed permits not obligated to a permitted MS coop by March 31 of the fishing year will be assigned to the non-coop fishery. For an MS/CV endorsed permit that is not renewed, the following occurs:

(A) For the first year after the permit is not renewed, the permit will be extinguished, and the catch history assignment from that permit will be assigned to the non-coop fishery.

(B) In the year after the permit is extinguished (the second year after the permit is not renewed), the catch history assignment from that permit will be redistributed proportionally to all valid MS/CV endorsed permits.

(ii) *Change of permit ownership.* A MS/CV endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A MS/CV endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* An MS/CV endorsed permit may be combined with one or more other limited entry trawl permits; the resulting permit will be a single permit with an increased size

endorsement. If the MS/CV endorsed permit is combined with another limited entry trawl-endorsed permit other than a C/P endorsed 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 exclusively a C/P endorsed permit, and will not have an MS/CV endorsement. 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 paragraph (g)(3) of this section. Any request to combine permits is subject to the provision provided at § 660.25(b), including the combination formula for resulting size endorsements.

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(3) * * *

(i) * * *

(C) *Trawl identification of ownership interest form.* Any person that owns a limited entry trawl permit and that is applying for or renewing an MS/CV endorsement shall document those persons that have an ownership interest in the permit greater than or equal to 2 percent. This ownership interest must be documented with the SFD via the Trawl Identification of Ownership Interest Form. SFD will not issue an MS/CV endorsement unless the Trawl Identification of Ownership Interest Form has been completed. NMFS may request additional information of the applicant as necessary to verify compliance with accumulation limits. Further, if SFD discovers through review of the Trawl Identification of Ownership Interest Form that a person owns or controls more than the accumulation limits, the person will be subject to divestiture provisions specified in paragraph (g)(3)(i)(D) of this section.

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(ii) *Catcher vessel usage limit.* No vessel may catch more than 30 percent of the mothership sector's whiting allocation.

(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.

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(h) *Non-coop fishery—(1) Access to non-coop fishery allocation.* All vessels registered to the MS/CV endorsed 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.

(2) *Non-coop fishery closure.* The non-coop fishery will be closed by automatic action as specified at § 660.60(d) 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.* Catcher vessels participating in the MS Coop Program may discard minor operational amounts of catch at sea if the observer has accounted for the discard (*i.e.*, a maximized retention fishery).

(j) *Observer requirements—(1) Observer coverage requirements.* (i) *Coverage.* (A) *Motherships.* 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.

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

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

(B) *Catcher vessels.* If an observer is unable to perform their duties for any reason, the vessel is required to be in port within 36 hours of the last haul sampled by the observer.

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

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

(2) *Accommodations and food for trips of 24 hours or more* must be

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

(ii) *Safe conditions.* Motherships and Catcher Vessels must:

(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 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 return to port if operated in an unsafe manner or if unsafe conditions are indentified.

(B) *Have on board* a valid Commercial Fishing Vessel Safety Decal that certifies compliance with regulations found in 33 CFR Chapter I and 46 CFR Chapter I, a certificate of compliance issued pursuant to 46 CFR 28.710 or a valid certificate of inspection pursuant to 46 U.S.C. 3311.

(iii) *Computer hardware and software*—(A) Motherships must:

(1) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

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

(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.

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

(B) *Catcher vessels.* [Reserved]

(iv) *Vessel position.* Allow observer(s) access to 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.

(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.

(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.

(ix) *Sample station and operational requirements.*

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

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

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

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

(4) *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.

(5) *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.

(6) *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.

(7) *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.

(8) *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.

(B) *Catcher vessels.* To allow the observer to carry out the required duties, the vessel owner must provide an observer sampling station that is:

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

(2) *Limits hazards.* To the extent possible, the area should be free and clear of hazards including, but not limited to, moving fishing gear, stored fishing gear, inclement weather conditions, and open hatches.

(x) *Transfer at-sea.* Observers may be transferred at-sea between motherships, between motherships and catcher-processors, or between a mothership and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels 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) *Motherships*—(A) Owners of vessels required to carry observers under paragraph (j)(1)(i) of this section must arrange for observer services from a permitted observer provider, except that:

(1) 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.

(2) 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.

(B) [Reserved]

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

(1) 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.

(2) 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.

(B) [Reserved]

(4) *Application to become an observer provider*—(i) *Mothership observers*. Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

(ii) *Catcher vessel observers*. [Reserved]

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

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

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

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

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

(ii) *Prior to hiring an observer candidate*—(A) *Motherships*.

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

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

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

(ii) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical ailments or injury 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;

(iii) That the observer completes 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: Once an observer is scheduled for a final deployment debriefing, 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); report for the scheduled debriefing and complete all debriefing responsibilities; report to the observer program office and the NOAA OLE any refusal to board an assigned vessel.

(iv) That all sampling and safety gear will be returned to the Observer Program Office.

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

(2) For each observer employed by an observer provider, have a written contract or a written contract addendum that is signed by the observer and observer provider prior to the observer's deployment with the following clauses:

(i) That all of the observer's in-season catch messages and catch reports between the observer and NMFS are delivered to the Observer Program Office as specified by the Observer Program instructions;

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

(iii) That the observer completes a basic cardiopulmonary resuscitation/first aid course prior to the end of the NMFS West Coast Groundfish Observer Training class.

(iii) *Observers provided to vessels*—(A) *Motherships*. Observers provided to mothership vessels:

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

(2) Must not 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 that would prevent him or her from performing his or her assigned duties; and

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

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

(1) Must have a valid West Coast Groundfish observer certification;

(2) Must 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 (j)(5)(x)(B)(2) of this section that would prevent him or her from performing his or her assigned duties; and

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

(iv) *Respond to industry requests for observers.* An observer provider must provide an observer for deployment pursuant to the terms of the contractual relationship with the vessel to fulfill vessel requirements for observer coverage specified at paragraph (j)(1)(i) of this section. An alternate observer must be supplied in each case where injury or illness prevents the observer from performing his or her duties or where the observer resigns prior to completion of his or her duties. If the observer provider is unable to respond to an industry request for observer coverage from a vessel for whom the provider is in a contractual relationship due to lack of available observers by the estimated embarking time of the vessel, the provider must report it to the observer program at least 4 hours prior to the vessel's estimated embarking time.

(v) *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.

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

(1) 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

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

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

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

(ii) For a period not to exceed 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.

(iv) 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.

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

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

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

(2) 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 NOAA OLE and the Observer Program until the conclusion of debriefing.

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

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

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

(ii) 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.

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

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

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

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

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

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

(B) *Catcher vessels.* Not deploy an observer on the same vessel more than 90 calendar days in a 12-month period.

(viii) *Verify vessel's safety decal.* An observer provider must verify that a vessel has a valid USCG safety decal as required under paragraph (j)(2)(ii)(B) 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.

(ix) *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.

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

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

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

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

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

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

(ii) Observers.

(4) *Change in observer provider management and contact information.*

Observer providers must submit notification of any other change to provider contact information, including but not limited to, changes in contact name, phone number, e-mail address, and address.

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

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

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

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

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

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

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

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

(ii) Briefing registration materials consist of the following: Date and type of requested briefing session; list of observers to attend the briefing session, that includes each observer's full name (first, middle, and last names); 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 that includes each observer's name, current mailing address, e-mail address, phone numbers and port of embarkation (“home port”); and length of observer contract.

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

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

(3) *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.

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

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

(iii) States Worker's Compensation as required.

(iv) Commercial General Liability.

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

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

(ii) Observers.

(5) *Change in observer provider management and contact information.* An observer provider must submit to the Observer Program office any change of management or contact information submitted on the provider's permit application under paragraphs (j)(4) of this section within 30 days of the effective date of such change.

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

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

(8) *Observer status report.* Each Tuesday, 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.

(9) 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.

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

(i) Any information regarding possible observer harassment;

(ii) Any information regarding any action prohibited under §§ 660.112 or 600.725(o), (t) and (u);

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

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

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

(xi) *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.

(xii) *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 or as otherwise required by law 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.

(xiii) *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 North Pacific or

Pacific Coast Groundfish fishery managed under an FMP for the waters off the coasts of Alaska, 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 Alaska, California, Oregon, and Washington, or

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

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

(C) Must not solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value except for compensation for providing observer services from 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.

(xiv) *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 nonperformance 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.

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

pertaining to safe operation of the vessel.

(6) *Observer certification and responsibilities.*

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

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

(iii) *Certification requirements.*

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

(1) Are employed by an observer provider company permitted pursuant to § 679.50 at the time of the issuance of the certification;

(2) Have provided, through their observer provider:

(i) Information identified by NMFS at § 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 § 679.50 and

(iii) Have successfully completed NMFS-approved training as prescribed by the At-Sea Hake and/or the West Coast Groundfish 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; and having not been decertified under paragraph (j)(6)(ix) of this section, or pursuant to § 679.50.

(B) [Reserved]

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

(v) *Issuance of an observer certification.* An observer certification will be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (j)(6)(iii) of this

section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(A) *Motherships—(1) North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(2) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(4) *At-Sea Hake Observer Program endorsements.* A Pacific 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:

(i) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska;

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

successfully complete 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.

(B) *Catcher vessels.* The following endorsements must be obtained in addition to observer certification, in order for an observer to deploy.

(1) *West Coast Groundfish Observer Program training certification endorsement.* A training certification endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and performed sampling duties as required by the observer Program office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing training once more.

(2) *West Coast Groundfish Observer Program annual general endorsement.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a training certification endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *West Coast Groundfish Observer Program deployment endorsement.* Each observer who has completed an initial deployment after their 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 briefing requirements, when applicable. 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.

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

(A) *Motherships—(1)* 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.

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

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

(4) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

[Alternative 1 for paragraph (j)(6)(vii) (Council-deemed)]

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

(A) Must not have a direct financial interest in the vessels on which the observers are stationed, or in the vessels receiving deliveries from or making deliveries to those vessels, other than the provision of observer services.

(B) 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 in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

(C) May not serve as observers on any vessel owned or operated by a person who employed the observer in the last two years.

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

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

[Alternative 2 for paragraph (j)(6)(vii) (NMFS-proposed)]

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

(A) Must not have a direct financial interest, other than the provision of observer services, in a 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.

(B) 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 in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

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

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

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

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

(1) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(2) Report to the observer program office and the NMFS OLE any time they refuse to board.

(3) 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.

(4) 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.

(B) [Reserved]

(ix) *Suspension and decertification—*

(A) *Suspension and decertification review official.* The Regional Administrator (or a designee) will designate an observer suspension and decertification review official(s), who will have the authority to review observer certifications and issue initial administrative determinations of

observer certification suspension and/or decertification.

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

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

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

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

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

(i) Commission of fraud or other violation in connection with obtaining or attempting to obtain certification, or in performing the duties as specified in writing by the NMFS Observer Program;

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

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

(C) *Issuance of initial administrative determination.* Upon determination that suspension or decertification is warranted, the suspension/decertification official will issue a written IAD to the observer via certified mail at the observer's most current address provided to NMFS. The IAD will identify whether a certification is suspended or revoked and will identify the specific reasons for the action taken.

(D) *Appeals.* A certified observer who receives an IAD that suspends or revokes his or her observer certification may appeal the IAD within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(k) *MS coop failure*—(1) The Regional Administrator will determine that a permitted MS coop is considered to have failed if:

(i) The coop members dissolve the coop, or

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

(iii) The coop agreement is no longer valid.

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

(3) 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, fishing under the MS coop permit will no longer be allowed. 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, by any former members of the coop that failed, or any other MS coop for the remainder of that calendar year.

24. In § 660.160:

a. Paragraphs (a)(3) and (a)(4) are revised;

b. Paragraphs (g) and (h) are removed;

c. Paragraphs (b) through (f) are redesignated as paragraphs (c) through (g);

d. A new paragraph (b) is added;

e. Text is added to the newly designated paragraph (c)(2);

f. New paragraphs (c)(3) through (c)(7), (d), and (e)(2) through (e)(4) are added;

g. The newly designated paragraphs (e)(1) introductory text, and (e)(5) are revised;

h. The newly designated paragraph (e)(7) is redesignated as paragraph (e)(6);

i. Text is added to the newly designated paragraph (g); and

j. A new paragraph (h) is added to read as follows:

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

* * * * *

(a) * * *

(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 vessels*—(i) *C/P vessel participation requirements.* A vessel is eligible to fish as a catcher/processor in the C/P Coop Program if:

(A) The vessel is registered to a C/P endorsed limited entry trawl permit.

(B) The vessel is not used to harvest fish as a catcher vessel in the mothership coop program in the same calendar year.

(C) The vessel is not used to fish as a mothership in the MS Coop Program in the same calendar year.

(ii) *C/P vessel responsibilities.* The owner and operator of a catcher/processor 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(d) including, economic data, scale tests records, and cease fishing reports.

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

(C) *Catch weighing requirements.* The owner and operator of a C/P vessel must:

(1) Ensure that all catch is weighed in its round form on a NMFS-approved scale that meets the requirements described in § 660.15(b), subpart C;

(2) Provide a NMFS-approved platform scale, belt scale, and test weights that meet the requirements described in § 660.15(b), subpart C.

(2) *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 C/P coop permit;

(B) Be composed of all C/P endorsed limited entry permits and their owners;

(C) Be formed voluntarily;

(D) Be a legally recognized entity that represents its members; and

(E) Designate an individual as a coop manager.

(ii) *C/P coop responsibilities.* A C/P coop is responsible for:

(A) Applying for and being registered to a C/P coop permit;

(B) Organizing and coordinating harvest activities of vessels that fish for the coop;

(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) Be responsible for the annual distribution of catch and bycatch allocations among coop members;

(3) Prepare and submit an annual report on behalf of the coop; and,

(4) Be authorized to receive or respond to any legal process in which the coop is involved; and

(5) Notify NMFS if the coop dissolves.

(iii) *C/P coop compliance and joint/several liability.* A C/P coop must comply with the provisions of this section. The C/P coop, member limited entry permit owners, and owners and operators of vessels registered to member limited entry permits, are jointly and severally responsible for compliance with the provisions of this section. Pursuant to 15 CFR part 904, each C/P coop, member permit owner, and owner and operator of a vessel registered to a coop member permit may be charged jointly and severally for violations of the provisions of this section. For purposes of enforcement, a C/P coop is a legal entity that can be subject to NOAA enforcement action for violations of the provisions of this section.

* * * * *

(c) * * *

(2) *C/P Coop Program annual allocations.* The C/P Coop Program allocation of Pacific whiting is equal to the catcher/processor sector allocation. Only a single coop 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(i). The pounds associated with each species will be provided when the coop permit is issued.

(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 addressed 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 shared set-aside for bycatch in the at-sea Pacific whiting fisheries and the shorebased trawl sector south of 40°10' N lat.

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

(6) *Reaching the catcher/processor sector allocation.* When the catcher/processor sector allocation of Pacific whiting or non-whiting groundfish catch allocation is reached or is projected to be reached, further taking and retaining, receiving, or at-sea processing by a catcher/processor is prohibited. No additional unprocessed groundfish may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process catch that was on board before at-sea processing was prohibited. 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 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 (<http://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 registration—*(i) *Eligibility.* To be an eligible coop entity a group of C/P 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.* 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 between February 1 and March 31 of the year in which it intends to participate. NMFS will not consider any applications received after March 31. 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 designated coop manager, on behalf of the coop entity, must submit a complete application form and include each of the items listed in paragraph (d)(1)(iii)(A) of this section. Only complete applications will be considered for issuance of a C/P coop permit. An application will not be considered complete if any required application fees and annual coop reports have not been received by NMFS. 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 Web site (<http://www.nwr.noaa.gov>) or by request from NMFS. The designated coop manager must sign the application acknowledging the responsibilities of a designated coop manager defined in paragraph (b)(2) of this section.

(A) *Coop agreement.* Signed copies of the coop agreement must be submitted to NMFS and the Council and available for public review before the coop is authorized to engage in fishing activities. 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. A coop agreement will not be accepted unless it includes all of the required information; the descriptive items listed in this paragraph appear to meet the stated purpose; and information submitted is correct and accurate.

(1) *Coop agreement contents.* The coop agreement must be signed by the coop members (C/P endorsed permit owners) and include the following information:

(i) A list 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) 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 clause stating that if a permit is transferred during the effective period of the co-op agreement, any new owners of that member permit would be coop members and are required to comply with membership restrictions in the coop agreement.

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

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

(vii) A clause describing how the annual report will be produced to document the coop's catch, bycatch data, and any other significant activities undertaken by the coop during the year, and the submission deadlines for that report.

(viii) Identification of the designated coop manager.

(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 C/P 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 NMFS letter and resubmitting the entire coop permit application by the date specified in the NMFS letter.

(3) An accepted coop agreement that was submitted with the C/P coop permit application and for which a C/P coop 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 7 calendar days following a material change, the designated coop manager must notify NMFS of the material change. Within 30 calendar days, the designated coop manager must submit to NMFS the revised coop agreement 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 C/P coop permit.* A C/P coop permit will be effective on the date approved by NMFS and will allow fishing from the start of the C/P sector primary whiting season until the end of the calendar year or until one or more of the following events occur, whichever comes first:

(A) NMFS closes the C/P sector fishing season for the year or the designated coop manager notifies NMFS that the coop has completed fishing for the calendar year,

(B) The C/P coop has reached its Pacific whiting allocation,

(C) A material change to the coop agreement has occurred and the designated coop manager failed to notify NMFS within 7 calendar days of the material change and submit to NMFS the revised coop agreement with a letter that describes such changes within 30 calendar days, or

(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.

(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.* [Reserved]

(e) *C/P endorsed permit—*(1) *General.* Any vessel participating in the C/P sector of the non-Tribal primary Pacific whiting fishery during the season described at § 660.131(b) of this subpart must be registered to a valid limited entry permit with a C/P endorsement. A C/P endorsed permit is a limited entry

permit and is subject to the limited entry permit provisions given at § 660.25(b), subpart C.

* * * * *

(2) *Renewal, change in permit ownership, vessel registration, or combination.*

(i) *Renewal.* A C/P endorsed permit must be renewed annually consistent with the limited entry permit regulations given at § 660.25(b)(4), subpart C. 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 permit renewal that while participating in the whiting fishery they will operate solely as a mothership during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit owner. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

(ii) *Change of permit ownership.* A C/P endorsed permit is subject to the limited entry permit change in permit ownership regulations given at § 660.25(b)(4), subpart C.

(iii) *Change of vessel registration.* A C/P endorsed permit is subject to the limited entry permit change of vessel registration regulations given at § 660.25(b)(4), subpart C.

(iv) *Combination.* If two or more permits are combined, the resulting permit is one permit with an increased size endorsement. A C/P endorsed permit that is combined with another limited entry trawl-endorsed permit that does 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. Any request to combine permits is subject to the provisions provided at § 660.25(b), including the combination formula for resulting size endorsements.

(3) *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.

(4) *Fees.* The Regional Administrator is authorized to charge fees for the administrative costs associated with review and issuance of a C/P endorsement consistent with the provisions at § 660.25(f), subpart C.

(5) *Cost recovery.* [Reserved]

* * * * *

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

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

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

(2) *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, 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 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/processor vessels must:

(A) Provide hardware and software pursuant to regulations at §§ 679.50(g)(1)(iii)(B)(1) through 679.50(g)(1)(iii)(B)(3).

(B) Provide the observer(s) access to a computer required under paragraph (g)(2)(iii) of this section that is

connected to a communication device that provides a point-to-point connection to the NMFS host computer.

(C) Ensure that the 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)(2)(iii) of this section and used by observers to enter and transmit data, is fully functional and operational.

“Functional” means that all the tasks and components of the NMFS supplied, or other approved, software described at paragraph (g)(2)(iii) of this section and the data transmissions to NMFS can be executed effectively aboard the vessel by the communications equipment.

(iv) *Vessel position*. Allow observer(s) access to, 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.

(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 following requirements:

(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 § 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.

(x) *Transfer At-sea*. Observers may be transferred at-sea between catcher-processors, between catcher-processors and motherships, or between a catcher-processor and a catcher vessel. Transfers at-sea between catcher vessels is prohibited. For transfers, both vessels 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 (g)(1) of this section must arrange for observer services from a permitted observer provider, 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.

(ii) [Reserved]

(4) *Application to become an observer provider.* Any observer provider holding a valid permit issued by the North Pacific Groundfish Observer Program in 2010 can supply observer services and will be issued a West Coast Groundfish Observer Program permit.

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

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

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

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

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

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

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

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

(B) That the observer inform the observer provider prior to the time of embarkation if he or she is experiencing any new mental illness or physical 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;

(C) That the observer completes 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, 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 NOAA OLE any refusal to board an assigned vessel, and

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

(iv) *Observers provided to vessels.* Observers provided to catcher processors:

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

(B) Must not have 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 that would prevent him or her from performing his or her assigned duties; and

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

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

(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 24 hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

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

(2) [Reserved]

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

(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 (g)(2)(ii)(B) 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 including 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) *Observer provider contracts.* If requested, observer providers must submit to the Observer Program Office a completed and unaltered copy of each type of signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract) between the observer provider and those entities requiring observer services under paragraph (g)(1) of this section. Observer providers must also submit to the Observer Program Office upon request, a completed and unaltered copy of the current or most recent signed and valid contract (including all attachments, appendices, addendums, and exhibits incorporated into the contract and any agreements or policies with regard to observer compensation or salary levels) between the observer provider and the particular entity identified by the Observer Program or with specific observers. The copies must be submitted to the Observer Program Office via fax or mail within 5 business days of the request. Signed and valid contracts include the contracts an observer provider has with:

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

(2) Observers.

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

(F) *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 e-mail address designated by the Observer Program Office within 24 hours after the observer provider becomes aware of the information:

(1) Any information regarding possible observer harassment;

(2) Any information regarding any action prohibited under §§ 660.112 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 or other applicable law 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 a fishery managed under an FMP for the waters off the coasts of Alaska, 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 Alaska, California, Oregon, and Washington, or

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

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

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

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

(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.

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

(6) *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 (g)(6)(i)(C) 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 may certify individuals who, in addition to any other relevant considerations:

(1) Are employed by an observer provider company holding a valid North Pacific Groundfish Observer Program permit at the time of the issuance of the certification to the observer;

(2) Have provided, through their observer provider:

(i) Information set forth at § 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 § 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 (g)(6)(i)(I) of this section, or pursuant to § 679.50.

(D) *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.

(E) *Issuance of an observer certification.* An observer certification may be issued upon determination by the observer certification official that the candidate has successfully met all requirements for certification as specified in paragraph (g)(6)(i)(C) of this section. The following endorsements must be obtained, in addition to observer certification, in order for an observer to deploy.

(1) *North Pacific Groundfish Observer Program certification training endorsement.* A certification training endorsement signifies the successful completion of the training course required to obtain observer certification. This endorsement expires when the observer has not been deployed and

performed sampling duties as required by the Observer Program Office for a period of time, specified by the Observer Program, after his or her most recent debriefing. The observer can renew the endorsement by successfully completing certification training once more.

(2) *North Pacific Groundfish Observer Program annual general endorsements.* Each observer must obtain an annual general endorsement to their certification prior to his or her first deployment within any calendar year subsequent to a year in which a certification training endorsement is obtained. To obtain an annual general endorsement, an observer must successfully complete the annual briefing, as specified by the Observer Program. All briefing attendance, performance, and conduct standards required by the Observer Program must be met.

(3) *North Pacific Groundfish Observer Program deployment endorsements.* Each observer who has completed an initial deployment after certification or annual briefing must receive a deployment endorsement to their certification prior to any subsequent deployments for the remainder of that year. An observer may obtain a deployment endorsement by successfully completing all pre-cruise briefing requirements. The type of briefing the observer must attend and successfully complete will be specified in writing by the Observer Program during the observer's most recent debriefing.

(4) *At-Sea Hake Observer Program endorsements.* A Pacific 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:

(i) Be a prior NMFS-certified observer in the groundfish fisheries off Alaska, unless an individual with this qualification is not available;

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

(iii) Successfully complete a NMFS-approved observer training and/or Pacific whiting briefing as prescribed by the Observer Program; and

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

(F) *Maintaining the validity of observer certification.* After initial issuance, an observer must keep their

certification valid by meeting all of the following requirements specified below:

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

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

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

(4) Successfully complete NMFS-approved annual briefings as prescribed by the At-Sea Hake Observer Program.

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

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

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

[Alternative 1 for paragraph (g)(6)(i)(G) (Council-deemed)]

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

(1) Must not have a direct financial interest in the vessels on which the observers are stationed, other than the provision of observer services.

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

(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.

[Alternative 2 for paragraph (g)(6)(i)(G) (NMFS-proposed)]

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

(1) Must not have a direct financial interest, other than the provision of observer services, in a 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 in the Pacific coast or North Pacific regions or has interests that may be substantially affected by the performance or nonperformance of the observers' official duties.

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

(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.

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

(1) Perform their assigned duties as described in the Observer Manual or other written instructions from the Observer Program Office.

(2) Report to the observer program office and the NOAA Office of Law Enforcement any time they refuse to board a vessel.

(3) 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.

(4) 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.

(I) *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 (including conflicts of interest);

(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; or 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, 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.

(4) *Appeals.* A certified observer who receives an IAD that suspends or revokes the observer certification may appeal the determination within 30 days of its issuance to the Office of Administrative Appeals pursuant to § 679.43.

(h) *C/P coop failure*—(1) The Regional Administrator will determine that a permitted C/P coop is considered to

have failed if any one of the following occurs:

(i) Any current C/P endorsed limited entry trawl permit is not identified as a C/P coop member in the coop agreement submitted to NMFS during the C/P coop permit application process;

(ii) Any current C/P endorsed permit withdraws from the C/P coop agreement;

(iii) The coop members voluntarily dissolve the coop; or

(iv) The coop agreement is no longer valid.

(2) If the permitted C/P coop dissolves, the designated coop manager must notify NMFS SFD in writing of the dissolution of the coop.

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

(4) In the event of a NMFS-determined coop failure, or reported failure, the designated coop manager will be notified in writing about NMFS' determination.

(i) Upon notification of a coop failure, the C/P coop permit will no longer be in effect.

(ii) The C/P sector will convert to an IFQ-based fishery beginning the following calendar year after a coop failure, or as soon as practicable thereafter. NMFS will develop additional regulations, as necessary to implement an IFQ fishery for the C/P sector. Each C/P endorsed permit would receive an equal distribution of QS from the total IFQ for the catcher/processor sector allocation.

25. In § 660.212, the introductory text, and paragraphs (a)(2) and (c)(1), are revised to read as follows:

§ 660.212 Fixed gear fishery—prohibitions.

These prohibitions are specific to the limited entry fixed gear fisheries and to the limited entry trawl fishery Shorebased IFQ Program under gear switching. General groundfish prohibitions are found at § 660.12, subpart C. In addition to the general groundfish prohibitions specified in § 660.12, subpart C, it is unlawful for any person to:

(a) * * *

(2) Take, retain, possess, or land more than a single cumulative limit of a

particular species, per vessel, per applicable cumulative limit period, except for sablefish taken in the limited entry, fixed gear sablefish primary season from a vessel authorized to fish in that season, as described at § 660.231, subpart E and except for IFQ species taken in the Shorebased IFQ Program from a vessel authorized under gear switching provisions as described at § 660.140.

* * * *

(c) *Fishing in conservation areas*—(1) Operate a vessel registered to a limited entry permit with a longline, trap (pot), or trawl endorsement and longline and/or trap gear onboard in an applicable GCA (as defined at § 660.230(d)), except for purposes of continuous transiting, with all groundfish longline and/or trap gear stowed in accordance with § 660.212(a) or except as authorized in the groundfish management measures at § 660.230.

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