

§660.18 Observer and catch monitor provider permits and endorsements.

(a) *Provider permits.* Persons seeking to provide observer or catch monitor services must obtain a provider permit from NMFS before providing certified catch monitors or certified observers for the Shorebased IFQ Program, the MS Coop Program, the C/P Coop Program, or for processing vessels in the fixed gear or open access fisheries. There are two types of endorsements for provider permits, an observer endorsement and a catch monitor endorsement. Provider permits must have at least one endorsement and it must be appropriate for the services being provided. Provider permits are obtained through an application process and must be renewed annually to remain valid in the following year. A provider permit and associated endorsements expire if not renewed or if services have not been provided for 12 consecutive months.

(b) *Application process to become an observer or catch monitor provider—(1) New provider applications.* An applicant seeking a provider permit may submit an application at any time during the calendar year. Any provider permit issued during a given year will expire on December 31. Application forms must be submitted by mail to the West Coast Region Fisheries Permits Office, 7600 Sand Point Way NE., Bldg 1, Seattle, WA 98115. Only complete applications will be considered for approval by the review board.

(2) *Contents of provider application.* A complete application for a provider permit shall contain the following:

(i) An indication of which endorsement the applicant is seeking: observer provider, catch monitor provider, or both endorsements. A single application may be used to apply for both endorsements.

(ii) Applicant contact information.

(A) Legal name of applicant organization. If the applicant organization is United States business entity, include the state registration number.

(B) The primary business mailing address, phone and fax numbers where the owner(s) can be contacted for official correspondence.

(iii) Description of the management, organizational structure, and ownership structure of the applicant's business, including identification by name and general function of all controlling management interests in the company, including but not limited to owners, board members, officers, authorized agents, and employees. List all office locations and their business mailing address, business phone, fax number, and email addresses. If the applicant is a corporation, the articles of incorporation must be provided. If the applicant is a partnership, the partnership agreement must be provided.

(iv) A narrative statement describing relevant direct or indirect prior experience or qualifications the applicant may have that would enable them to be a successful provider.

(A) For applicants seeking an observer provider endorsement, the applicant should describe experience in placing individuals in remote field and/or marine work environments. This includes, but is not limited to, recruiting, hiring, deployment, and personnel administration.

(B) For applicants seeking a catch monitor provider endorsement, a narrative statement should identify 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.

(v) A narrative description of the applicant's ability to carry out the required responsibilities and duties as described at §§660.140(h), 660.150(j), and 660.160(g) for observer providers and/or §660.17(f) for catch monitor providers.

(vi) A statement signed under penalty of perjury by an authorized agent of the applicant about each owner, or owners, board members, and officers if a corporation, authorized agents, and employees, regarding:

(A) Conflict of interest as described in §660.18 (c)(3),

(B) Criminal convictions,

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

(D) Previous decertification action while working as an observer, catch monitor, observer provider, or catch monitor provider.

(vii) NMFS may request additional information or clarification from the applicants.

(c) *Application evaluation.* Complete applications will be forwarded to Observer Program and/or the Catch Monitor Program for review and evaluation.

(1) A provider permit application review board will be established and be comprised of at least three members. The review board will evaluate applications submitted under paragraph (a) of this section. If the applicant is an entity, the review board also will evaluate the application criteria for each owner, board member, officer, authorized agent, and employee.

(2) The provider permit application will, at a minimum, be evaluated on the following criteria:

(i) The applicant's ability to carry out the responsibilities and relevant experience and qualifications.

(ii) Review of any conflict of interest as described in §660.18(c)(3).

(iii) Review of any criminal convictions.

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

(v) Review of any history of decertification as an observer, catch monitor, observer provider, or catch monitor provider.

(3) *Limitations on conflict of interest for providers.* (i) Providers must not have a direct financial interest, other than the provision of observer, catch monitor or other biological sampling services, in any federal or state managed fisheries, including but not limited to:

(A) Any ownership, mortgage holder, or other secured interest in a vessel, first receiver, shorebased or floating stationary processor facility involved in the catching, taking, harvesting or processing of fish;

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

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

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

(4) *Existing providers.* Businesses that provided observers and/or catch monitors in the 12 months prior to May 21, 2015 will be issued a provider permit without submission of an application. This permit will be effective through December 31, 2015.

(i) Providers who deployed catch monitors in the Shorebased IFQ Program in the 12 months prior to May 21, 2015 will be issued a provider permit with a catch monitor provider endorsement effective through December 31, 2015, except that a change in ownership of an existing catch monitor provider after January 1, 2015, requires a new permit application under this section.

(ii) Providers who deployed certified observers in the Pacific Coast groundfish fishery in the 12 months prior to May 21, 2015 will be issued a provider permit with an observer provider endorsement effective through December 31, 2015, except that a change in ownership of an existing observer provider after January 1, 2015, requires a new permit application under this section.

(iii) To receive a provider permit for 2016 and beyond, the existing providers must follow the provider permit renewal process set forth in this section.

(d) *Agency determination on an application.*

(1) *Initial administrative determination.* For all complete applications, NMFS will issue an IAD that either approves or disapproves the application. If approved, the IAD will be the provider permit and any associated endorsements. If disapproved, the IAD will provide the reasons for this determination. If the applicant does not appeal the IAD within 30 calendar days, the IAD becomes the final decision of the Regional Administrator acting on behalf of the Secretary of Commerce.

(2) *Appeal.* The applicant may appeal the IAD consistent with the observer, catch monitor, and provider appeals process defined at §660.19.

(e) *Effective dates.* The provider permit will be valid from the effective date identified on the permit until the permit expiration date of December 31. Provider permit holders must reapply annually by following the application process specified in paragraph (b) of this section.

(f) *Expiration of the provider permit—(1) Expiration due to inactivity.* After a period of 12 continuous months during which no observers or catch monitors are deployed by the provider in the Pacific coast groundfish fishery, NMFS will issue an IAD describing the intent to expire the provider permit or to remove the appropriate endorsement(s) and the timeline to do so. A provider that receives an IAD may appeal under §660.19. The provider permit and endorsements will remain valid until a final agency decision is made or until December 31, whichever is earlier.

(2) *Expiration due to failure to renew.* Failure to renew annually will result in expiration of the provider permit and endorsements on December 31.

(3) *Obtaining a new permit or endorsement following an expiration or voided permit.* A person holding an expired or void permit or endorsement may reapply for a new provider permit or endorsement at any time consistent with §660.18(b).

(g) *Provider permit renewal process.* To maintain a valid provider permit, provider permit holders must reapply annually prior to the permit expiration date.

(1) NMFS will mail a provider permit application form to existing permit holders on or about September 15 each year.

(2) Providers who want to have their permits effective for January 1 of the following calendar year must submit their complete application form to NMFS by October 31. If a provider fails to renew the provider permit, the provider permit and endorsements will expire on December 31.

(h) *Change of provider permit ownership and transfer restrictions.* Neither a provider permit nor the endorsements are transferable. Ownership of a provider permit cannot be registered to another individual or entity. The provider permit owner cannot change, substitute, or add individuals or entities as owners of the permit (*i.e.*, cannot change the legal name of the permit owner(s) as given on the permit). Any change in ownership of the provider permit requires the new owner(s) to apply for a provider permit, and is subject to approval by NMFS.

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

(j) *Permit fees.* The Regional Administrator may charge fees to cover administrative expenses related to issuance of permits including initial issuance, renewal replacement, and appeals.

[80 FR 22283, Apr. 21, 2015]

Attachment 2

§660.19 Appeals process for catch monitors, observers, and provider permits.

(a) *Allowed appeals.* This section describes the procedure for appealing IADs described at §§660.17(g), 660.18(d) and (f), 660.140(h), 660.150(j), 660.160(g), 660.603(b)(3) for catch monitor decertification, observer decertification, provider permit expirations due to inactivity, and EM service provider permit denials. Any person whose interest is directly and adversely affected by an IAD may file a written appeal. For purposes of this section, such person will be referred to as the “applicant.”

(b) *Appeals process.* In cases where the applicant disagrees with the IAD, the applicant may appeal that decision. Final decisions on appeals of IADs will be made in writing by the Regional Administrator or designee acting on behalf of the Secretary of Commerce and will state the reasons therefore.

(1) *Submission of appeals.* (i) The appeal must be in writing and comply with this paragraph.

(ii) Appeals must be mailed or faxed to: National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, ATTN: Appeals, 7600 Sand Point Way NE., Seattle, WA 98115; Fax: 206-526-6426; or delivered to National Marine Fisheries Service at the same address.

(2) *Timing of appeals.* The appeal must be filed within 30 calendar days after the IAD is issued. The IAD becomes the final decision of the Regional Administrator or designee acting on behalf of the Secretary of Commerce if no appeal is filed within 30 calendar days. The time period to submit an appeal begins with the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of business on the next business day.

(3) *Address of record.* The address used by the applicant in initial correspondence to NMFS concerning the application will be the address used by NMFS for the appeal. Notifications and correspondence associated with all actions affecting the applicant will be mailed to the address of record unless the applicant provides NMFS, in writing, an address change. NMFS bears no responsibility if NMFS sends a notification or correspondence to the address of record and it is not received because the applicant's actual address has changed without notification to NMFS.

(4) *Statement of reasons for appeals.* Applicants must submit a full written statement in support of the appeal, including a concise statement of the reasons the IAD determination has a direct and adverse effect on the applicant and should be reversed or modified. The appellate officer will limit his/her review to the issues stated in the appeal; all issues not set out in the appeal will be waived.

(5) *Decisions on appeals.* The Regional Administrator or designee will issue a final written decision on the appeal which is the final decision of the Secretary of Commerce.

[80 FR 22285, Apr. 21, 2015, as amended at 84 FR 31159, June 28, 2019]

Attachment 3

§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, hardware and software for electronic fish tickets, 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 the records available upon request to NMFS staff or an authorized officer.

(b) Scales used to weigh fish at sea. Vessel owners, operators, and managers are jointly and severally responsible for their vessel's compliance with the requirements specified in this section.

(1) Performance and technical requirements for scales in the MS and C/P Coop Programs. A scale used to weigh fish in the MS and C/P Coop Programs must meet the type evaluation, initial inspection, and annual reinspection requirements set forth in 50 CFR 679.28(b)(1) and (2), and must be approved by NMFS to weigh fish at sea.

(2) Annual inspection. Once a scale is installed on a vessel and approved by NMFS for use to weigh fish at sea, it must be reinspected annually within 12 months of the date of the most recent inspection to determine if the scale meets all of the applicable performance and technical requirements as described in 50 CFR 679.28(b).

(3) Daily testing. Each scale used to weigh fish must be tested at least once each calendar day to ensure that each scale meets the maximum permissible error requirements described at paragraph (b)(4) of this section.

(4) Daily at-sea scale tests. To verify that the scale meets the maximum permissible errors specified in this paragraph, each scale used to weigh fish must be tested at least one time during each calendar day when use of the scale is required. The tests must be performed in an accurate and timely manner.

(i) Flow or Belt scales—(A) Maximum permissible errors. The maximum permissible errors for the daily at-sea scale test is plus or minus 3 percent of the known weight of the test material.

(B) Test Procedure. A test must be conducted by weighing no less than 400 kg (882 lb) of test material, supplied by the scale manufacturer or approved by a NMFS-authorized scale inspector, on the scale under test. The test material may be run across the scale multiple times in order to total 400 kg; however, no single run of test material across the scale may weigh less than 40 kg (88.2 lb). The known weight of test material must be determined at the time of each scale test by weighing it on a platform scale approved for use under 50 CFR 679.28(b)(7).

(ii) Platform scales required for observer sampling or to determine known weight of test material on mothership and catcher/processor vessels—(A) Maximum permissible errors. The maximum permissible errors for the daily at-sea scale test for platform scales is plus or minus 0.5 percent of the weight tested.

(B) Test Procedure. 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. Any combination of test weights that will allow the scale to be tested at 10 kg, 25 kg, and 50 kg may be used. A platform scale used to weigh fish must be tested at a weight equal to the largest amount of fish that will be weighed on the scale in one weighing.

(C) 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.

(iii) Requirements for all at-sea scale tests. The following conditions must be met:

(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 by placing the test material or test weights on or across the scale and recording 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 in local time;

(4) Known weight of test materials or test weights;

(5) Weight of test material or test weights recorded by scale;

(6) Percent error as determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test material or test weights, and multiplying by 100; and

(7) Signature of operator.

(C) Maintain the scale test report form from all at-sea scale tests, including test report forms from failed scale tests 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 scale test report forms must be retained 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 operator immediately following completion of each scale test.

(5) Scale maintenance. The scale must be maintained in proper operating condition throughout its use; adjustments made to the scale must be made to bring the performance errors as close as practicable to a zero value; and no adjustment may be made that will cause the scale to weigh fish inaccurately.

(6) Printed reports from the scale (not applicable to observer sampling scales). 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 made available to observers, NMFS staff or authorized officers. In addition, printed reports must be retained for 3 years after the end of the year during which the printouts were made.

(i) Printed reports of catch weight and cumulative weight. Reports must be printed at least once every calendar day when use of the scale is required. 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 the observer, NMFS personnel or an authorized officer.

(iii) Printed report from calibration log. The operator must print the calibration log on request by NMFS staff or an authorized officer, or person authorized by NMFS. The calibration log must be printed and retained before any information stored in the scale computer memory is replaced. The calibration log must detail either the prior 1,000 calibrations or all calibrations since the scale electronics were first put into service, whichever is less. The printout from the calibration log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, and year of the calibration;

(C) The time of the calibration to the nearest minute in local time;

(D) The weight used to calibrate the scale; and

(E) The magnitude of the calibration in comparison to the prior calibration.

(iv) Printed reports from the fault log. The operator must print the fault log on request by NMFS staff, an authorized officer or person authorized by NMFS. The fault log must be printed and retained before any information stored in the scale computer memory is replaced. The fault log must detail either the prior 1,000 faults and startups, or all faults and startups since the scale electronics were first put into service, whichever is less. A fault, for the purposes of the fault log, is any condition other than underflow detected by the scale electronics that could affect the metrological accuracy of the scale. The printout from the fault log must show:

(A) The vessel name and Federal fisheries or processor permit number;

(B) The month, day, year, and time of each startup to the nearest minute in local time;

(C) The month, day, year, and time that each fault began to the nearest minute in local time; and

(D) The month, day, year, and time that each fault was resolved to the nearest minute in local time.

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

(7) Video monitoring for scales used by the vessel crew to weigh catch. Mothership or Catcher/Processor vessels required to weigh fish under the regulations in this section must provide and maintain a NMFS-approved video monitoring system as specified in paragraph (e) of this section.

(c) Scales used to weigh fish 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 fish 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. The IFQ first receiver must ensure that the scale and scale display are visible simultaneously to the catch monitor. Catch monitors, NMFS staff, NMFS-authorized personnel, or authorized officers must be allowed to observe the weighing of fish 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 the catch monitor, 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 the catch monitor, 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)) must produce a printed record for each landing, or portion of a landing, weighed on that scale. NMFS may exempt, through approval of the NMFS-accepted catch monitoring plan, scales not designed for automatic bulk weighing from part or all of the printed record requirements. IFQ first receivers that receive no more than 200,000 pounds of groundfish in any calendar month may be exempt under §660.140(j)(2). 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) For belt scales and weight belts, the total cumulative weight of all fish or other material weighed on the scale since the last inspection;

(E) The date the information is printed; and

(F) The name and vessel registration or documentation number of the vessel making the landing. The person operating the scale 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 fish. A scale that does not pass an inseason test may not be used

to weigh IFQ fish 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 this paragraph:

(1) Flow scales (also known as belt scales and weight belts). The maximum permissible error is plus or minus 0.25 percent of the known weight of the test material with repeatability between tests of no more than 0.25 percent. Percent error is determined by subtracting the known weight of the test material or test weights from the weight recorded on the scale, dividing that amount by the known weight of the test material or test weights, and multiplying by 100.

(2) All other scales.

Test load in scale divisions Maximum error in scale divisions

(i) 0-500 1

(ii) 501-2,000 2

(iii) 2,001-4,000 3

(iv) >4,000 5

(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. First receivers are required to meet the hardware and software requirements below.

(1) Hardware and software requirements. A personal computer system, tablet, mobile device, or other device that has software (e.g., web browser) capable of submitting information over the internet, such that submission to Pacific States Marine Fisheries Commission can be executed effectively.

(2) Internet access. The first receiver is responsible for maintaining internet access sufficient to access the web-based interface and submit completed electronic fish ticket forms.

(3) Maintenance. The 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 groundfish species for which an electronic fish ticket is required. “Functional” means that the software requirements and minimum hardware requirements described at paragraphs (d)(1) and (2) of this section are met and submission to Pacific States Marine Fisheries Commission can be executed effectively by the equipment.

(4) Improving data quality. Vessel owners and operators, first receivers, or shoreside processor owners, or managers may contact NMFS to request assistance in improving data quality and resolving issues. Requests may be submitted to: Attn: Electronic Fish Ticket Monitoring, National Marine Fisheries Service, West Coast Region, Sustainable Fisheries Division, 7600 Sand Point Way, NE., Seattle, WA 98115.

(e) Video monitoring systems used monitor at-sea scales—(1) Performance and technical requirements for video monitoring systems for the MS and C/P Coop Programs. A video monitoring system used to monitor at-sea scales must meet the system requirements and system inspections, set forth in 50 CFR 679.28(e)(1) through (4) and be issued a Video Monitoring Inspection Report verifying that the video system meets all applicable requirements for use in the Alaska Pollock fishery. Any change to the system must meet the requirements specified at 50 CFR 679.28(e)(7) and be approved by the Alaska Regional Administrator in writing before any changes are made.

(i) MS or C/P vessels required to weigh fish at sea under the regulations in this section must:

(A) Provide and maintain a video monitoring system that provides sufficient resolution and field of view to monitor: All areas where catch enters the scale, moves across the scale and leaves the scale; any access point to the scale from which the scale may be adjusted or modified by vessel crew while the vessel is at sea; and the scale display and the indicator for the scale operating in a fault state.

(B) Record and retain video for all periods when catch that must be weighed is on board the vessel.

(ii) [Reserved]

(2) Video Monitoring System Inspection Report. A current NMFS-issued Video Monitoring System Inspection Report must be maintained on board the vessel at all times the vessel is required to have an approved video monitoring system. The Video Monitoring System Inspection Report must be made available to the observer, NMFS staff, or to an authorized officer upon request.

(3) Retention of records. Consistent with the requirements set forth at 50 CFR 679.28(e) (1), the video data must be maintained on the vessel and made available on request by NMFS staff, or any individual authorized by NMFS. The data must be retained on board the vessel for no less than 120 days after the date the video is recorded, unless NMFS has notified the operator in writing that the video data may be retained for less than this 120-day period.

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